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# Decision

**Matter of:** Halvik Corporation

**File:** B-421567.3; B-421567.4

**Date:** February 12, 2024

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## DIGEST

1. Protest challenging the agency's conduct of discussions is denied where the record provides no basis on which to conclude that discussions were misleading or improper, and dismissed where protester failed to timely raise unequal discussions allegations.
  2. Protest challenging the agency's cost realism evaluation of awardee's proposal is denied where the record shows that the analysis was reasonable and conducted in accordance with the solicitation.
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## DECISION

Halvik Corporation (Halvik), a small business of Vienna, Virginia, protests the issuance of a task order to Federal Information Systems, Inc. (FIS), of San Antonio, Texas, under task order request for proposals (TORFP) No. 415828, issued by the United States Special Operations Command (USSOCOM), for cybersecurity services. The protester challenges the agency's evaluation of proposals and resulting award decision.

We deny the protest.

## BACKGROUND

The agency issued the TORFP on July 22, 2022, under the Department of the Army's multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) Computer Hardware,

Enterprise Software, and Solutions Information Technology Enterprise Solutions-3 Services (ITES-3S) contract vehicle, in accordance with the procedures of Federal Acquisition Regulation (FAR) part 16. Contracting Officer's Statement (COS) at 2; Agency Report (AR), Tab 35, TORFP at 1.<sup>1</sup> The solicitation sought a contractor to provide enterprise-wide cybersecurity support and solutions to the Special Operations Forces Information Environment to assist in keeping its network and information systems secure. TORFP at 1; AR, Tab 36, Statement of Work (SOW) at 2. USSOCOM issued the TORFP as a total small business set-aside. TORFP at 1. The solicitation contemplated the issuance of a single cost-plus-fixed-fee and cost-reimbursable type task order, with a period of performance consisting of a 7-month base period and up to four 1-year option periods. *Id.*

The solicitation provided for award to be made on a best-value tradeoff basis, considering the following five evaluation factors: (1) facility clearance, (2) management, (3) technical, (4) performance risk, and (5) price.<sup>2</sup> AR, Tab 39, TORFP attach. 5 at 1. The facility clearance factor would be evaluated on an acceptable/unacceptable basis. *Id.* The management factor was the most important evaluation factor and was slightly more important than the performance risk factor. *Id.* The performance risk factor, in turn, was significantly more important than the technical factor. *Id.* For the management and technical factors, the solicitation explained that the agency would assign offers one of the following adjectival ratings: outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 3-6. Performance risk would be evaluated as: very low risk, low risk, moderate risk, or high risk. *Id.* at 7-8. All non-price factors, when combined, were significantly more important than price. *Id.* at 1.

Eight offerors submitted proposals by the August 26 submission deadline. COS at 2. The agency conducted multiple rounds of discussions, eliminating two offerors from the competitive range, and requested the remaining six offerors to submit final proposal revisions (FPRs) by February 16, 2023. *Id.* at 3. All six offerors submitted their FPRs by that due date. *Id.* On March 9, the agency awarded the task order to Halvik. *Id.*

FIS filed a protest with our Office, challenging the agency's award decision. On July 5, our Office issued a decision sustaining FIS's protest in part. *Federal Info. Sys., Inc.*, B-421567, B-421567.2, July 5, 2023, 2023 CPD ¶ 153. We sustained FIS's challenge to the agency's technical evaluation of Halvik's proposal and denied the remaining allegations. *Id.* at 3-15. Our decision recommended that the agency reevaluate Halvik's proposal consistent with the solicitation's terms. *Id.* at 15. We advised that the

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<sup>1</sup> Citations are to the Adobe PDF page numbers.

<sup>2</sup> Although this is a cost type task order, the TORFP identifies the evaluation factor as "price" and the submission of "price proposals." AR, Tab 39, TORFP attach. 5 at 1. The solicitation, however, advises that a "cost realism analysis will be performed to determine the probable cost of performance for each offeror," and that the most probable cost "may be determined by adjusting (for purposes of evaluation only) each Offeror's proposed cost." *Id.* at 8.

agency may need to reopen discussions among the competitors; solicit, obtain, and evaluate revised proposals; and make a new award decision. *Id.*

In response to our decision, the agency issued an amended TORFP to the six offerors remaining in the competitive range.<sup>3</sup> TORFP at 1. The agency allowed those offerors to submit revised proposals, to include changes to any volume from their previous February 2023 FPRs. AR, Tab 40, Notice of Amended TORFP at 2. Five offerors submitted proposals by the agency's August 7 submission deadline. TORFP at 4; COS at 4. The agency subsequently amended the TORFP and permitted offerors to submit revised price proposals. AR, Tab 42, TORFP amend. 004 at 1.

After initial evaluation of the revised proposals, the agency opened discussions and requested that offerors submit their FPRs by September 28. AR, Tab 54, Source Selection Decision Document (SSDD) at 7; AR, Tab 50, September 25, 2023, Halvik Discussions Letter at 1-2. Four offerors submitted FPRs by the due date. AR, Tab 54, SSDD at 7. The source selection evaluation board (SSEB) evaluated the FPRs, and assigned the following ratings to Halvik and FIS:

	<b>Halvik</b>	<b>FIS</b>
<b>Facility Clearance</b>	Acceptable	Acceptable
<b>Management</b>	Outstanding	Outstanding
<b>Technical</b>	Good	Good
<b>Performance Risk</b>	Very Low Risk	Very Low Risk
<b>Most Probable Cost</b>	\$81,832,909	\$78,619,496

*Id.* at 8.

The contracting officer, as the source selection authority, reviewed and adopted the SSEB's findings. *Id.* at 18. When comparing the proposals from Halvik and FIS, the SSA noted that both offerors had identical adjectival ratings and similar strengths. *Id.* at 15. Where Halvik's evaluated cost was 3.93 percent higher than FIS's, the SSA concluded that FIS's proposal provided the better value, since any benefits in Halvik's proposal did not justify its \$3,213,413 price premium. *Id.* The agency ultimately selected FIS's proposal for award as offering the overall best value, when considering both price and non-price factors. *Id.* at 18. After requesting and receiving a debriefing, Halvik filed its protest with our Office on November 6.<sup>4</sup> Protest at 10-11.

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<sup>3</sup> The amended TORFP identified mandatory ITES-3S labor categories for offerors to use in their proposals and revised the period of performance. TORFP at 1, 3-4.

<sup>4</sup> Because the value of the task order issued here is in excess of \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under IDIQ contracts established pursuant to the authority in title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

## DISCUSSION

The protester challenges numerous aspects of the agency's evaluation and resulting award decision. Protest at 11-27. Had the agency performed a proper evaluation, the protester contends, it would have been selected for award. We have considered the arguments and issues raised by Halvik, and while we do not address them all, we find no basis on which to sustain the protest.<sup>5</sup> As representative examples, we discuss specifically Halvik's challenges to the agency's conduct of discussions and cost evaluation, as well as the resulting source selection decision.

### Conduct of Discussions

The protester contends that USSOCOM engaged in both misleading and unequal discussions. Protest at 13-16. The agency responds that its discussions were meaningful and performed on a fair and equal basis. COS at 9-14; Memorandum of Law (MOL) at 8-16; Supp. COS/MOL at 4-7, 18-24.

The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule, govern task and delivery order competitions conducted under FAR part 16, such as the procurement here. *NCI Info. Sys., Inc.*, B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 9. In this regard, section 16.505 of the

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<sup>5</sup> Halvik's protest also alleged that USSOCOM failed to disqualify FIS for violating the Procurement Integrity Act (PIA). Protest at 22. Before the due date for the submission of the agency report, the agency requested that we dismiss this allegation as untimely. Req. for Partial Dismissal at 1-2. Under our Bid Protest Regulations, we will not review an alleged PIA violation "where the protester failed to report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation." *Matson Navigation Co.*, B-416976.2 *et al.*, Jan. 24, 2019, 2019 CPD ¶ 69 at 11-12 (citing 4 C.F.R. § 21.5(d)). The 14-day reporting requirement affords the agency responsible for the procurement an opportunity to investigate alleged improper action during the conduct of an acquisition and, in appropriate circumstances, to take remedial action before completing the tainted procurement. *Honeywell Tech. Sols., Inc.*, B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 7-8.

Here, Halvik's allegation of a potential violation of the PIA was premised on the same incident of unauthorized access discussed in the earlier related decision, issued on July 5, 2023. *Federal Info. Sys.*, *supra* at 5-6; Protest at 22 (noting allegation was "reflected in a GAO decision"). Halvik, however, did not raise this concern with the agency regarding a potential PIA violation until months later, on November 1. Protest at 22. Because the protester failed to report the perceived procurement integrity violation to the agency within 14 days after Halvik first discovered the possible violation --which, at the latest, occurred through our July 5 decision--we dismissed this allegation as untimely. 4 C.F.R. § 21.5(d); *Honeywell Tech. Sols., Inc.*, *supra* at 9.

FAR does not establish specific requirements for discussions in a task order competition; nonetheless, when exchanges with the agency occur in task order competitions, they must be fair and not misleading. *Id.*

### Misleading Discussions

Halvik argues that the agency's discussions misled the protester "into believing that its price could not be lowered to the extent FIS lowered its price." Protest at 13. To support this allegation, Halvik explains that it submitted its initial proposal in August 2022, with a total evaluated price (TEP) of \$77,827,277.<sup>6</sup> AR, Tab 88, Halvik August 2022 Price Matrix. For its direct labor rates, Halvik's initial proposal described using "between the 50th and 90th percentiles for most positions," and "only deviated from this percentile range where the salary survey data did not reflect the position levels reflected in the solicitation." AR, Tab 89, Halvik August 2022 Price Proposal Narrative at 3.

The agency thereafter issued 16 evaluation notices (EN) to Halvik throughout six rounds of discussions, 14 of which related to aspects in Halvik's price proposal. AR, Tabs 14-18, 50. One of those ENs, identified as HVK-V5-006, informed Halvik that its TEP "is low when comparing to the calculated TEP mean and IGCE [independent government cost estimate]." AR, Tab 14, September 22, 2022, Halvik Discussions Letter at 6. In October 2022, Halvik submitted a revised price proposal with a TEP of \$82,541,700, a \$4,714,423 increase from its initial proposal. AR, Tab 21, Halvik October 2022 Price Matrix. For its direct labor rates, Halvik shifted from proposing between the 50th and 90th percentiles for most positions to using the "90th percentile for all positions." AR, Tab 22, Halvik October 2022 Price Proposal Narrative at 4. As the basis for this revision, Halvik stated that "[i]n response to HVK-V5-006, Halvik has reviewed its proposed Direct Labor Rates for each labor category and determined that rates in the 90th Percentile range are more reasonable and realistic." *Id.*

The protester now argues that EN HVK-V5-006 "led Halvik to believe that its price could not drop below a certain threshold," thereby creating a "pricing floor" that misled Halvik into believing it could not lower its TEP. Protest at 13; Comments & Supp. Protest at 6. Had Halvik known it could have lowered its price, the firm maintains it would have done so, to below FIS's price. Protest at 13.

When an agency engages in discussions with an offeror, those discussions must be meaningful, that is, they must lead the offeror into the areas of its proposal that require correction or amplification. *Sabre Sys., Inc.*, B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 6. An agency may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns or misinform the offeror concerning a problem with

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<sup>6</sup> The TEP is derived automatically by the provided TORFP Microsoft Excel spreadsheet when the fields are completed by offerors in accordance with the solicitation's instructions. AR, Tab 38, TORFP attach. 4 at 9-12.

its proposal or about the government's requirements. *M.A. Mortenson Co.*, B-413714, Dec. 9, 2016, 2016 CPD ¶ 361 at 8-9.

Our review of the record finds that nothing in EN HVK-V5-006--or in any of the other ENs--advised Halvik that it could not lower its price, nor did the EN otherwise establish a minimum "threshold" price below which Halvik could not propose. For that matter, EN HVK-V5-006 neither cautioned Halvik that its price was unrealistically low nor that the price was found to be otherwise unacceptable. To the contrary, the EN simply informed Halvik of the agency's observation that the firm's TEP was low when compared to the "calculated TEP mean and IGCE," thereby advising Halvik of the relative standing of the firm's TEP in relation to the other proposals and the government's estimate. AR, Tab 14, September 22, 2022, Halvik Discussions Letter at 6. We find nothing misleading, or veiled, with such language, language which cannot reasonably be construed as directing Halvik to refrain from lowering its price.<sup>7</sup>

Here, the solicitation specifically instructed offerors to "submit a cost narrative which provides whatever information is necessary to help the Government understand why the proposed costs are realistic." AR, Tab 38, TORFP attach. 4 at 9. In addition, when requesting Halvik's FPR, the agency made clear that Halvik was permitted to change any aspect of its price proposal. AR, Tab 50, September 25, 2023, Halvik Discussions Letter at 2. Consistent with the TORFP and the agency's instructions, Halvik could have elected to provide additional information to substantiate how it could accomplish the solicited cybersecurity services at a lower TEP.

Rather than providing the invited justification for a lower price, the record reflects Halvik chose to raise its TEP based on its determination that certain price increases needed to be made. Comments & Supp. Protest at 5 (acknowledging Halvik made "targeted price

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<sup>7</sup> The protester argues that our decision in *DTH Management Group*, B-252879.2, B-252879.3, Oct. 15, 1993, 93-2 CPD ¶ 227, supports its challenge to the agency's discussions, as that decision shows "GAO's recognition that when an agency tells an offeror during discussions that its price is too low, it logically may be understood that the offeror cannot lower its price." Comments & Supp. Protest at 7. We disagree. In *DTH*, we sustained a protest, finding that the agency had engaged in misleading discussions. There, during discussions, the agency advised DTH that the firm's price was so low in comparison to the government estimate that it had been evaluated as unrealistic. *Id.* at 3. DTH, thereafter, raised its price based on the agency's discussion notice. The agency ultimately made award to a lower-priced offeror. The agency explained that due to identified "inaccuracies of the government estimate," proposals were, instead, evaluated by comparing offerors' "prices against each other." *Id.* Our Office found that, "given the actual basis for award, the agency's advice to DTH during discussions that its price was too low was misleading." *Id.* Here, by contrast, the agency's discussions did not inform Halvik that its price was unrealistically low. In fact, the agency initially made award to Halvik after finding its price to be realistic. AR, Tab 33, Initial SSDD at 1, 10-11. Based on the facts presented here, our decision in *DTH* does not support Halvik's argument.

increases”). Specifically, Halvik increased its TEP from \$77,827,277 in August 2022 (before ENs) to \$81,852,266 in its February 2023 FPR, based on specific pricing issues raised during discussions. AR, Tab 23, Halvik Initial Price Evaluation at 2; AR, Tab 22, Halvik October 2022 Price Proposal Narrative at 4, 30. In direct response to the disputed EN HVK-V5-006, Halvik expressed its own belief that the firm’s TEP was low and required upward revision, stating that it had “determined that rates in the 90th Percentile range are more reasonable and realistic.”<sup>8</sup> AR, Tab 22, Halvik October 2022 Price Proposal Narrative at 4.

We will not find discussions to be improper where the agency, in good faith, provides accurate information to an offeror and leaves it to the offeror’s discretion regarding how to respond, even where the offeror uses that information to its ultimate competitive detriment. *XtremeConcepts Sys.*, B-406804, Aug. 31, 2012, 2012 CPD ¶ 253 at 5. The requirement that discussions be meaningful does not obligate an agency to “spoon-feed” an offeror or to discuss every area where the proposal could be improved. *General Dynamics Info. Tech., Inc.*, B-418533, June 11, 2020, 2020 CPD ¶ 212 at 9. The protester’s assertion--that the agency should have explicitly told Halvik it could lower its price--would entail the type of “spoon-feeding” the agency was not required to do. *Id.* As such, we find no merit to this argument.

#### Unequal Discussions

Halvik also contends that the agency’s discussions were unequal. The gravamen of the protester’s argument is that USSOCOM unfairly provided FIS with a redacted copy of the agency’s initial SSDD during FIS’s debriefing, following the first award to Halvik. Comments & Supp. Protest at 8. In the protester’s view, this disclosure constituted unequal discussions because that SSDD included a “point-by-point” comparison of the FIS and Halvik proposals, as well as identified specific aspects of Halvik’s proposal the agency considered discriminators in the award to Halvik. *Id.* The protester claims that FIS was subsequently able to mitigate Halvik’s “competitive advantage” during the corrective action reevaluation by using the redacted SSDD to improve FIS’s management proposal, resulting in a rating increase from good to outstanding for FIS under that factor. *Id.*

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<sup>8</sup> Moreover, while the protester now claims that EN HVK-V5-006 misled it into believing it could not lower its TEP, Halvik did make downward adjustments to its TEP even after it received that EN. Specifically, Halvik decreased its price from \$82,541,700 in October 2022 to \$81,852,266 in its February 2023 FPR. AR, Tab 21, Halvik October 2022 Price Matrix; AR, Tab 23, Halvik Initial Price Evaluation at 2. During corrective action, Halvik further decreased its TEP to \$81,706,308. AR, Tab 52, Halvik Price Evaluation at 3. The record reflects Halvik made independent pricing adjustments throughout the procurement, at times both increasing and decreasing its TEP.

Relevant here, on March 21, 2023, the agency provided FIS with a redacted SSDD as part of its debriefing following the initial award to Halvik.<sup>9</sup> Supp. COS/MOL at 4; AR, Tab 32, FIS Debriefing SSDD. In its post-award protest, filed on March 27, FIS attached that redacted SSDD as exhibit O to its protest. *Federal Info. Sys., Inc.*, B-421567, B-421567.2, Electronic Protest Docketing System No. 1, Protest at exh. O. The agency report responding to FIS's protest, filed on April 27, also included the redacted SSDD from FIS's debriefing as tab 22. Supp. COS/MOL at 23. As the prior awardee, Halvik--represented by the same counsel as in this protest--intervened in the FIS protest. *Federal Info. Sys., supra* at 1.

It is evident from the record, however, that Halvik--through its counsel--was aware of, and had access to, the redacted SSDD provided as part of the earlier FIS protest. To the extent the redacted SSDD--in the protester's view--may have improperly included a "point-by-point" comparison of FIS's and Halvik's proposals, or unfairly identified aspects of Halvik's proposal that the agency had considered discriminators in the prior award decision, Halvik had been aware of this information by, at the very latest, April of 2023, when USSOCOM furnished, in the agency report, a copy of the redacted SSDD that FIS received at its debriefing.<sup>10</sup>

Moreover, on July 19, the agency informed offerors, including Halvik, that it would take corrective action in response to our Office's decision sustaining FIS's protest. AR, Tab 40, Notice of Amended TORFP at 1. The agency's announced corrective action included "requesting amended proposals," and permitting offerors to make changes to any proposal volume. *Id.* at 1-3. At that point, Halvik was on notice that FIS, having received the redacted SSDD in its debriefing, could revise its management proposal--revisions the protester now claims unfairly helped FIS obtain a higher rating under that factor. Comments & Supp. Protest at 8.

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<sup>9</sup> Section 215.506(d) of the Defense Federal Acquisition Regulation Supplement (DFARS) provides the option, as part of a debriefing, for a small business to "request disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award." DFARS 215.506(d)(i).

<sup>10</sup> In defending the timeliness of this allegation, Halvik's counsel argues that the "initial SSDD was provided to counsel for Halvik who was under a protective order and was not disclosed to Halvik." Supp. Comments at 8. Our Office has explained that outside counsel for a protester stands in the shoes of the client where information in the record is covered by a protective order and counsel cannot obtain the benefit of his or her client's input. *Merrill Co.- d/b/a Mission Support*, B-421082 *et al.*, Dec. 21, 2022, 2022 CPD ¶ 319 at 6. We consequently measure compliance with our timeliness rules from the time that protester's counsel receives notice of a protestable issue. *Columbia Rsch. Corp.*, B-247073.4, Sept. 17, 1992, 92-2 CPD ¶ 184 (dismissing allegation as untimely where, pursuant to protective order issued under prior protest, protester's counsel received information sufficient to put counsel on notice of protest basis).



Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *The MIL Corp.*, B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 5. Under these rules, a protest such as Halvik's, based on other than alleged improprieties in a solicitation, must be filed not later than 10 days after the protester knew or should have known of the basis for its protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

Here, the protester knew the operative facts underlying this allegation prior to filing its initial protest. Despite having this information, Halvik did not voice this concern to the agency when the corrective action was announced. Instead, Halvik waited until December 15, when submitting its comments on the agency report, to raise this as a supplemental protest. Comments & Supp. Protest at 2. Because the protester waited until its comments to raise this allegation, the challenge is untimely and will not be considered.<sup>11</sup> 4 C.F.R. § 21.2(a)(2); *Gryphon Techs., L.C.*, B-420882.2 *et al.*, Jan. 17, 2023, 2023 CPD ¶ 42 at 5.

In the alternative, the protester urges our Office to consider this protest ground by invoking the significant issue exception to our timeliness rules. Supp. Comments at 8-9. Our Office may consider the merits of an untimely protest where good cause is shown or where the protest raises issues significant to the procurement system. 4 C.F.R. § 21.2(c). Invoking the significant issue exception "is a matter entirely within [GAO's] discretion." *Capital Brand Grp., LLC--Recon.*, B-418656.2, July 9, 2020, 2020 CPD ¶ 231 at 4. In order to prevent our timeliness rules from becoming meaningless, exceptions are strictly construed and rarely used. *Vetterra, LLC*, B-417991 *et al.*,

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<sup>11</sup> Halvik attempts to argue that it timely advanced an unequal discussions argument in its initial protest, and "further supported" this argument in its supplemental protest. Supp. Comments at 7. We find this argument to be without merit. Here, based only on the \$10 million reduction FIS made to its TEP in response to the amended TORFP, Halvik's initial protest speculated that the agency, during discussions, must have told, or led FIS to believe "that [FIS] could dramatically reduce its price without any impact or consequences to its TEP." Protest at 14. Even, if we were to consider this bare speculative assertion to be a legally and factually sufficient basis of protest--which we do not--Halvik's untimely attempt to shore up this allegation, by introducing the redacted SSDD argument into its supplemental protest, would still be unavailing. As we have consistently stated, our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *CapRock Gov't Sols., Inc. et al.*, B-402490 *et al.*, May 11, 2010, 2010 CPD ¶ 124 at 24. Our Office will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. *Alfa Consult S.A.*, B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 3 n.2; 4 C.F.R. § 21.2(a)(2). Consequently, this allegation is untimely, regardless of how the protester presents its argument.

Dec. 29, 2019, 2020 CPD ¶ 15 at 3. We generally regard a significant issue as one of widespread interest to the procurement community and that has not been considered on the merits in a prior decision. *Baldt Inc.*, B-402596.3, June 10, 2010, 2010 CPD ¶ 139 at 2-3. Here, Halvik has failed to demonstrate how the firm's untimely allegation of unequal discussions is an issue of widespread interest to the procurement community or one that has not been previously considered on the merits by our Office. As such, the protester has provided no basis for our Office to invoke the significant issue exception to our timeliness rules.<sup>12</sup>

## Cost Realism

Next, Halvik alleges that USSOCOM performed an unreasonable cost realism evaluation of FIS's proposal. The protester contends that the agency failed to properly assess the impact of FIS's \$10 million price reduction in its latest proposal revision and failed to make sufficient upward adjustments to FIS's most probable cost (MPC). Protest at 19-21; Comments & Supp. Protest at 10-20. The agency responds that its cost realism evaluation of FIS's proposal was in accordance with the solicitation's terms. COS at 19-24; MOL at 23-29.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 15.305(a)(1), 16.505(b)(3); *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 18. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1), 16.505(b)(3); *Solers Inc.*, B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 4. An agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. *TeleCommunication Sys., Inc.*, B-413265, B-413265.2, Sept. 21, 2016, 2016 CPD ¶ 266 at 10. The analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs for an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. *Id.*

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<sup>12</sup> Halvik also protests the agency's evaluation of FIS's proposal under the management factor, arguing that the agency's improper disclosure of the redacted SSDD allowed FIS to improve its management proposal and increase its rating. Comments & Supp. Protest at 20-27. For the same reasons that we dismiss Halvik's unequal discussions challenge, we also dismiss this challenge to the agency's management evaluation as untimely. Moreover, given our dismissal of Halvik's protest allegations related to the redacted SSDD, we need not reach whether the document's disclosure constituted discussions. *Id.* at 8, 21-27; Supp. Comments at 3-7, 9-11.

Here, the TORFP instructed offerors to submit “information sufficient to support proposed costs,” including a completed price matrix and an accompanying “cost narrative which provides whatever information is necessary to help the Government understand why the proposed costs are realistic.” AR, Tab 38, TORFP attach. 4 at 9. As part of the evaluation of costs, the agency would perform a realism analysis to determine the probable cost of performance for each offeror. AR, Tab 39, TORFP attach. 5 at 8. Based on that analysis, the agency could adjust an offeror’s proposed costs to derive the offeror’s MPC for evaluation purposes. *Id.* at 9. This MPC would “reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis to ensure a realistic cost.” *Id.* at 8.

The record demonstrates that the agency’s cost analyst reviewed and evaluated the specific cost elements in FIS’s proposal to determine whether the proposed costs were realistic in comparison to data points such as historical costs, other proposed costs, and industry costs reported by third parties such as salary.com. AR, Tab 53, FIS Price Evaluation at 4. The analyst then reviewed FIS’s proposal to determine whether any seemingly unrealistic proposed costs “reflected a clear understanding of the requirements and were consistent with the unique methods of performance and materials described in the offeror’s technical proposal.” *Id.*

The agency’s pricing team concluded that FIS’s proposed costs (\$78,540,041) were “(a) realistic for the work to be performed, (b) reflect a clear understanding of the solicitation requirements (completeness), and (c) are consistent with the various elements of the offeror’s Technical and Management Volumes.” *Id.* at 24. The cost analyst did, however, identify an error in the location FIS used to calculate the living quarter allowance (LQA) entitlement in its proposed other direct costs (ODCs) for South Korea, as well as an error in FIS’s application of its subcontractor handling rate to ODCs. *Id.* at 19-20. The evaluator adjusted FIS’s TEP upwards by \$79,831 to account for these minor errors, resulting in a MPC of \$78,619,496. *Id.* at 24. The SSA concurred with the recommended MPC and agreed that FIS’s costs were realistic for the work to be performed. AR, Tab 54, SSDD at 11.

Halvik argues that the agency unreasonably concluded that FIS’s costs were realistic where FIS reduced its TEP by \$10 million in response to the amended TORFP, despite its additional requirements. Protest at 21. In this regard, FIS reduced its TEP by shifting [DELETED], and lowering [DELETED], resulting in an approximate \$10 million reduction to FIS’s TEP. AR, Tab 45, FIS September 2023 Price Proposal Narrative at 46; AR, Tab 44, FIS September 2023 Price Matrix.

Based on our review of the record, we have no basis to question the agency’s cost realism analysis of FIS’s revised cost proposal, particularly where the agency evaluated the realism of the specific cost elements associated with the proposed cost reduction. The agency analyzed [DELETED], and found them to be realistic. AR, Tab 53, FIS Price Evaluation at 15-18, 22. With regard to the [DELETED] indirect rates, the agency concluded those rates were realistic as they were in accordance with a Defense Contract Management Agency (DCMA)-approved forward pricing rate recommendation

letter. *Id.* at 15-18. Regarding fee, the agency recognized that FIS's proposed fee was a "reduction from their original proposed fee." *Id.* at 22. Ultimately, the agency found the fee to be realistic, concluding that there was both a low risk to the contractor, as FIS will "bill all direct and indirect costs as incurred," as well as a low risk to the government, since the fee will remain unchanged throughout the contract. *Id.*

Halvik also challenges individual cost elements in FIS's proposal as unrealistic. Comments & Supp. Protest at 11-20. We have reviewed these challenges and find none have merit. In any event, for only two of those individual cost element challenges has Halvik alleged actual quantified upward adjustment amounts it believes should have been made to FIS's MPC: \$340,000 due to certain excluded fringe costs from FIS's overhead calculation; and \$900,000 due to an alleged failure to account for certain professional fees that were removed to create FIS's material and subcontractor handling pool. *Id.* at 15-16, 18-19. In total, these two alleged flaws would only translate into a \$1.24 million upward adjustment to FIS's MPC, whereas Halvik's evaluated MPC was approximately \$3.21 million higher than FIS's. AR, Tab 54, SSDD at 15. Based on Halvik's own calculations, the protester has failed to demonstrate how it would have been prejudiced by the alleged errors in the analysis of the individual cost elements.

Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. *ICI Servs. Corp.*, B-418255.5, B-418255.6, Oct. 13, 2021, 2021 CPD ¶ 342 at 13. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if defects in the procurement were found. *Id.* Here, the agency's final evaluation assigned both offers identical adjectival ratings under the non-price factors, and the SSA concluded that both firms qualitatively offered "similar strengths." AR, Tab 54, SSDD at 15. Halvik fails to explain how, even accepting Halvik's alleged \$1.24 million in upward adjustments to FIS's MPC, Halvik's still higher-priced proposal (by approximately \$1.97 million) would represent the best value--where, as here, the TORFP advised that the non-price factors, when combined, were significantly more important than price. See *CharDonnay Dialysis, LLC*, B-420910, B-420910.2, Oct. 27, 2022, 2022 CPD ¶ 273 at 9 ("When an agency reasonably evaluates competing proposals as essentially equal, no tradeoff is required in selecting the lower-priced proposal."). Based on the upward adjustment amounts presented by Halvik, we need not address these challenges to the evaluation of individual cost elements, because the protester has failed to show prejudice. In this regard, even were we to find merit to these challenges, this would not alter Halvik's competitive position. See *NCI Info. Sys., Inc.*, B-417752 *et al.*, Oct. 17, 2019, 2019 CPD ¶ 363 at 9.

### Best-Value Determination

Finally, Halvik argues that the agency's best-value determination was flawed because it was based on a defective evaluation. Protest at 26-27. This allegation is derivative of the protester's challenges to the agency's evaluation of proposals. As discussed above, we find no basis to object to the agency's evaluation. Accordingly, we dismiss this

allegation because derivative allegations do not establish independent bases of protest.  
*FreeAlliance.com, LLC, B-420000.3 et al.*, June 28, 2022, 2022 CPD ¶ 165 at 16.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel