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# Decision

**Matter of:** BAE Systems Technology Solutions & Services, Inc.

**File:** B-420860.4; B-420860.5; B-420860.6

**Date:** June 18, 2024

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## DIGEST

Protest challenging the agency's evaluation of proposed professional employee compensation plans and cost realism is sustained where the record does not demonstrate that the agency conducted an evaluation in accordance with the solicitation.

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## DECISION

BAE Systems Technology Solutions & Services Inc., of Rockville, Maryland, protests the award of an integration support services contract to Guidehouse LLP, of Falls Church, Virginia, under request for proposals (RFP) No. FA8207-21-R-0001. The Department of the Air Force issued the solicitation for systems engineering and integration services in support of the Intercontinental Ballistic Missile (ICBM) organization. BAE Systems challenges the agency's evaluation of professional employee compensation plans, cost realism, and the resulting award decision.

We sustain the protest.

## BACKGROUND

The mission of the ICBM organization at Hill Air Force Base, Utah, is to “deliver 400 combat capable nuclear missiles that are safe, secure, and effective.” Contracting Officer’s Statement (COS) at 2.<sup>1</sup> The ICBM organization includes the program office for the Minuteman III, the current nuclear deterrent force, as well as the program office for the next generation weapon system, the Ground Based Strategic Deterrent. Agency Report (AR), Tab 2, Performance Work Statement at 3.

The integration support contract (ISC) provides systems engineering and integration services to the ICBM organization. Memorandum of Law (MOL) at 1. The Air Force awarded the predecessor contract (FA-8214-13-C-0001), known as ISC 1.0, to BAE in August 2013. *Guidehouse LLP; Jacobs Tech., Inc., B-420860.1 et al.*, Oct. 13, 2022, 2022 CPD ¶ 257 at 2. On November 20, 2020, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15, the Air Force issued RFP No. FA8207-21-R-0001 (at issue here) for the follow-on contract known as ISC 2.0. AR, Tab 1, RFP at 1. The solicitation contemplated the award of a single indefinite-quantity, indefinite-delivery contract with a 5-year base period and the potential for an 18-year overall period of performance. COS at 2; AR, Tab 3, RFP Sections L&M at 1; RFP at 2.

Although the RFP included both cost-reimbursement and fixed-price contract line item numbers (CLINs), it is primarily a cost-plus-award-fee (CPAF) contract vehicle. COS at 2-3. The Air Force anticipated awarding five individual task orders with the basic contract. AR, Tab 3, RFP Sections L&M at 1.

The solicitation provided that award would be made on a best-value tradeoff basis, considering the following evaluation factors in descending order of importance: (1) technical capability; (2) mission capability; and (3) cost. *Id.* at 28. The technical capability factor comprised three equally important subfactors to be assessed an adjectival technical rating and an adjectival risk rating: (1) test anomaly root cause; (2) systems engineering; and (3) digital engineering.<sup>2</sup> *Id.* The mission capability factor comprised four subfactors: (1) workforce management; (2) operational capability; (3) transition approach; and (4) small business participation. *Id.* Within this evaluation factor, subfactors one to three would also be assessed with adjectival ratings and were listed in descending order of importance; subfactor four (small business participation) would only be rated on an acceptable/unacceptable basis. *Id.* Ratings for the non-cost evaluation factors would be assigned only at the subfactor level; no rating would be provided for the individual non-cost factors. When combined, all non-cost factors were significantly more important than cost. *Id.*

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<sup>1</sup> All citations to the record are to the documents’ Adobe PDF pagination.

<sup>2</sup> The available technical ratings were blue/outstanding, purple/good, green/acceptable, yellow/marginal, and red/unacceptable. AR, Tab 3, RFP Sections L&M at 29. For ease of reference, we refer only to the adjectival ratings without the corresponding color names. Risk ratings were low, moderate, high, and unacceptable. *Id.* at 30.

Relevant here, the solicitation advised offerors that FAR provision 52.222-46, Evaluation of Compensation for Professional Employees, was incorporated into the solicitation, and offerors were to submit professional employee compensation plans (PECPs) that would be evaluated under the workforce management subfactor. *Id.* at 32. The solicitation also provided that the agency would evaluate cost proposals for reasonableness, realism, and balance. *Id.* at 34-35.

The Air Force received proposals from five offerors by the January 22, 2021, deadline for receipt of proposals. RFP at 1; AR, Tab 306, Source Selection Evaluation Board (SSEB) Report at 11. After establishing a competitive range and conducting discussions, the Air Force requested final proposal revisions from BAE, Guidehouse, and Jacobs Technology, Inc. *Id.* at 16.

In June 2022, the Air Force made award to BAE. *Guidehouse LLP, supra* at 4. Guidehouse and Jacobs protested the award to our Office. On October 13, we sustained the protests, finding that the agency's evaluation of professional employee compensation and cost realism was unreasonable. *Id.* at 19. Specifically, we found that the Air Force did not reasonably determine whether offerors were proposing to compensate their professional employees at levels lower than the levels of compensation under the incumbent contract, as required by FAR provision 52.222-46 in recompetitions like the procurement here. *Id.* at 6-12. We also found that, in the evaluation of cost proposals, the Air Force's cost realism analysis did not compare costs on a common basis. *Id.* at 12-13. Finally, we found that the Air Force departed from the solicitation's requirement for nationally competitive compensation in the evaluation of direct labor rates, and misunderstood BAE's proposed approach to recruiting and retaining personnel in the evaluation of the narrative section of BAE's professional compensation plan. *Id.* at 14-15. We recommended that the Air Force reevaluate proposals. *Id.* at 19.

Following our decision, the agency notified offerors of its decision to take corrective action, which included, among other actions, requesting the submission of updated cost volumes of their proposals from the offerors within the competitive range. AR, Tab 13, Implementation of Corrective Action Memorandum at 1. In that notification, the Air Force advised that it would "not accept any updates to other portions of proposals at this time." *Id.* After reviewing the revised cost proposals, the agency issued new evaluation notices, providing the firms with an opportunity to submit responses and then a final proposal revision of the cost volume of their proposals by October 16. AR, Tab 20, Final Cost Volume Request Letter at 1-2.

The agency then summarized its evaluation of BAE's and Guidehouse's proposals as follows:<sup>3</sup>

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<sup>3</sup> Jacobs Technology did not protest the current award.

	Guidehouse	BAE
<b>TECHNICAL CAPABILITY</b>		
<b>Test Anomaly Root Cause</b>	Good	Acceptable
<b>Systems Engineering</b>	Outstanding	Outstanding
<b>Digital Engineering</b>	Outstanding	Outstanding
<b>MISSION CAPABILITY</b>		
<b>Workforce Management</b>	Acceptable	Acceptable
<b>Operational Capability</b>	Acceptable	Acceptable
<b>Transition Approach</b>	Acceptable	Good
<b>Small Business Participation</b>	Acceptable	Acceptable
<b>COST</b>	\$3,801,977,791	\$3,528,689,091

AR, Tab 309, Source Selection Decision (SSD) at 4. The evaluators assessed an adjectival risk rating of low under every subfactor for both offerors. *Id.*

The source selection authority (SSA) agreed with the analysis and recommendations of the SSEB and the source selection advisory council that Guidehouse’s proposal represented the best value. *Id.* at 11. The SSA found Guidehouse’s proposal to be superior under the most important factor, technical capability, and determined that Guidehouse’s “technical superiority” was worth the “small premium” as compared to BAE. *Id.* at 12. The agency therefore made award to Guidehouse. *Id.* at 13.

This protest followed.

## DISCUSSION

The protester raises a number of challenges to the agency’s evaluation and best-value tradeoff. Many of these challenges focus on the exchanges between the offerors and the Air Force during corrective action and the resulting evaluation of professional employee compensation and cost realism.<sup>4</sup> As discussed below, we find that the Air

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<sup>4</sup> BAE raised numerous additional arguments in its protests. While we do not address all of the arguments in this decision, we have reviewed them and conclude that none of these additional arguments provide a further basis to sustain the protests, especially given our analysis and recommendation below. For example, BAE challenges the agency’s evaluation under the technical capability factor, asserting that the Air Force treated offerors disparately by assigning a strength to Jacobs (another unsuccessful offeror), but not BAE, when both proposals featured the same approach. 1st Supp. Protest at 13-17. As the protester itself acknowledges, however, our Office has recognized that generally no competitive prejudice can flow from alleged disparate treatment with respect to other unsuccessful offerors. *Id.* at 13-14 n.6; see also

(continued...)

Force's evaluation in those regards was inconsistent with the solicitation and the best-value decision premised on those evaluations was therefore unreasonable and sustain the protest on that basis.<sup>5</sup>

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*Operations Servs., Inc.*, B-420226, Jan. 4, 2022, 2022 CPD ¶ 21 at 5 n.4. Competitive prejudice is an essential element of any viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even if a protester may have shown that an agency's actions arguably were improper. *Id.*

<sup>5</sup> The protester also alleged that the agency failed to investigate an organizational conflict of interest (OCI) resulting from Guidehouse's reliance on a subcontractor that had a role on another contract that might affect Guidehouse's judgment or objectivity in the performance of this work, and that the agency failed to evenhandedly apply the OCI restrictions in the solicitation. 1st Supp. Protest at 3-13. Prior to the submission of the agency report, the Air Force requested we dismiss these allegations as untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests. 4 C.F.R. § 21.2. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4.

As a general rule, a protester is not required to protest that another firm has an impermissible OCI until after that firm has been selected for award. *REEP, Inc.*, B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 at 1-2. A different rule applies, however, where (1) a solicitation is issued on an unrestricted basis; (2) the protester is aware of the facts giving rise to the potential OCI; and (3) the protester has been advised by the agency that it considers the potential offeror eligible for award. *Abt Assocs., Inc.*, B-294130, Aug. 11, 2004, 2004 CPD ¶ 174 at 2. In such cases, an allegation that another firm has an impermissible OCI is akin to alleged improprieties in a solicitation, which must be filed prior to the time set for receipt of proposals; similarly alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1). In other words, in those circumstances, the protester cannot wait until an award has been made to file its protest of an impermissible OCI, but instead must protest before the closing time for receipt of proposals. *Abt Assocs., Inc., supra.*

Here, there was no dispute that the first two prongs of the exception to the general rule were met. Notice of Partial Dismissal at 2. As to the third prong, we found that BAE became aware of the facts giving rise to the potential Guidehouse OCI based on reviewing documents from the agency report filed in the protest of the first award under this solicitation. *Id.* at 4-5. We also found that those same documents simultaneously advised BAE that the agency nonetheless considered Guidehouse to be eligible for award. *Id.* In short, Guidehouse was obligated to raise these OCI allegations before the next deadline for receipt of proposals in March 2023. Accordingly, we dismissed the protester's OCI allegations as untimely where BAE waited until after award was made to Guidehouse before raising its concerns.

## Evaluation of Professional Employee Compensation and Cost Realism

BAE challenges the agency's reevaluation of costs in response to our decision resolving the earlier protests of Guidehouse and Jacobs. The protester alleges that Guidehouse submitted a revised cost proposal that contradicted and abandoned material aspects of what Guidehouse included in its technical capability and mission capability volumes-- areas the agency had not allowed offerors to revise when it implemented its corrective action. Comments at 5-21. The protester argues that Guidehouse violated the "corrective action ground rules" and Guidehouse's proposal, thus, should have been found to be unacceptable. *Id.* at 5-6. In addition, the protester contends that the agency's professional employee compensation and cost realism evaluations were unreasonable because they failed to consider the fact that Guidehouse's cost proposal was inconsistent with its technical capability and mission capability proposals. *Id.* at 22-32.

### Corrective Action

BAE, relying on our decision in *Resource Consultants, Inc.*, B-293073.3 *et al.*, June 2, 2004, 2005 CPD ¶ 131, argues that Guidehouse violated the ground rules for the agency's corrective action by revising its technical proposal. In this regard, the RFP required the submission of proposals in four volumes: (I) technical capability; (II) mission capability; (III) cost; and (IV) contract documentation. AR, Tab 3, RFP Section L&M at 4. For the technical capability volume, offerors were required to describe their proposed approaches to three hypothetical scenarios that represented specific parts of the work of task order nos. 1, 4, and 5. *Id.* at 9-10. For example, offerors were required to address "use of digital engineering tools and processes to support a Government acquisition program," work that is identified in the performance work statement for task order no. 5. *Id.* at 10. Proposed approaches were to address, among other things, "[m]anagement processes and resources required to support" the scenario, including personnel and team structure. *Id.* at 9-11.

The mission capability volume of proposals was to "focus[] on the Offeror's approach to effectively and efficiency accomplish the requirements of the contract, thereby demonstrating understanding of those requirements, and the risk of the proposed approach." *Id.* at 11. The first subfactor under the mission capability factor was workforce management, which required the offeror to "describe the approach to provide and manage a qualified, stable workforce." *Id.* Among the required elements of this workforce description was a PECP "meeting the requirements of FAR 52.222-46, *Evaluation of Compensation for Professional Employees.*" *Id.* at 12. The RFP specified that the PECP should address "how compensation remains competitive when compared nationally and regionally, as well as other forms of compensation/motivation that will be used to recruit and retain high quality employees" as well as "proposed benefits." *Id.* The solicitation stated that "[i]t is required that salaries and fringe benefits be included in the labor rates provided in Volume III, Cost/Price." *Id.*

For the cost volume submission, offerors were required to provide, among other things, a completed labor rate matrix (LRM). *Id.* at 16-19. The Air Force provided the LRM as a spreadsheet with the solicitation, and it specified the labor categories, hours, other direct costs, and travel for each task order.<sup>6</sup> AR, Tab 7, LRM. To complete the LRM, offerors were to “populate the indicated pricing and cost cells specified in the LRM worksheets, [in accordance with the RFP’s instructions] and in the worksheets themselves.”<sup>7</sup> AR, Tab 3, RFP Sections L&M at 17. The LRM included a separate worksheet that offerors were to populate with a fixed price rate for each labor category; the agency expected the fixed-price rates to be the same as the fully burdened rates for the CPAF CLINs. AR, Tab 3, RFP Sections L&M at 18. The cost cells for each labor category were to be populated with a direct labor rate, fringe benefits, overhead, general and administrative burden, and cost of money. AR, Tab 7, LRM. Offerors were also required to populate a labor category mapping workbook, also provided with the solicitation. AR, Tab 3, RFP Sections L&M at 19. Within that workbook, offerors were required to identify, among other things, the member of the offeror’s team proposed to fill each labor category provided within the LRM. *Id.*; *see also, e.g.*, AR Tab 29, Guidehouse Labor Category Mapping Workbook.

As discussed above, after the issuance of our decision resolving the earlier protests, the agency issued a memorandum to all offerors regarding the implementation of its corrective action. AR, Tab 13, Implementation of Corrective Action Memorandum at 1. That memorandum instructed offerors to “submit an updated Volume III (Cost/Price)” of their proposals, with rate updates “based on current conditions” and an adjustment to the expected years of performance. *Id.* It also clarified how offerors should calculate direct labor rates to exclude indirect costs. *Id.* Relevant here, the agency specified that it would “not accept any other proposal updates at this time.” *Id.*

There is no dispute that, when Guidehouse submitted its updated cost volume, the updated volume included direct labor rates that were not based on what Guidehouse had proposed in the mission capability volume of its proposal. *See, e.g.*, AR, Tab 27, Guidehouse Cost Volume Summary of Changes at 9-16 (detailing a description of the changes to the proposal Guidehouse undertook in “analyzing and optimizing every cost element input and the indirect rate structure to support the requirements of the solicitation, while reducing or eliminating costs that do not impact recruitment, retention, or quality of delivery”). For example, Guidehouse proposed, in its mission capability

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<sup>6</sup> As discussed above, the Air Force anticipated awarding five individual task orders with the basic contract. AR, Tab 3, RFP Sections L&M at 1. The solicitation provided that the agency would use the cost of these task orders to calculate the total evaluated cost for each offeror. *Id.* at 17.

<sup>7</sup> The LRM also included worksheets for the total evaluated costs and for each task order that did not require any input from offerors; instead, the worksheets would “auto-populate” from the “cost elements worksheets” and from the award fee and indirect rates worksheet. *Id.* at 17-19.

volume, to pay high demand/low density (HD/LD)<sup>8</sup> personnel at high percentiles of salary survey data, but, in the revised cost volume submission, the firm proposed HD/LD rates based on lower percentiles of salary survey data.<sup>9</sup>

Similarly, Guidehouse also proposed to rely on certain subcontractors in task orders nos. 1, 4, and 5 in its technical capability volume, but reduced or eliminated the labor categories those subcontractors were identified to provide within the labor category mapping workbook of the updated cost proposal. MOL at 51-53 (asserting both Guidehouse and BAE “changed their subcontractor allocations”); Intervenor Comments at 19-23 (“Guidehouse repeatedly disclosed in its [final revised] Cost proposal that it was reallocating workshare among subcontractors.”). For example, Guidehouse identified a team member, [DELETED], throughout its explanation of its technical approach to digital engineering under task order no. 5, characterizing [DELETED] as offering “tremendous experience building and integrating software tools with [product lifecycle management] to make them even more powerful and user friendly.” AR, Tab 23, Guidehouse Technical Capability Proposal at 69-93. Guidehouse, however, did not identify [DELETED] for any task order no. 5 labor categories in the labor category mapping workbook in its updated cost proposal. AR, Tab 29, Guidehouse Labor Category Mapping Workbook, Guidehouse Data Mapping Tab, Lines 358, 361-62 (listing [DELETED] only for task order no. 4 labor categories).

BAE asserts that, as a result of these changes, Guidehouse violated the “corrective action ground rules” by effectively revising the technical capability and mission capability portions of its proposals through changes made to its updated cost proposal. Comments at 5-6. According to BAE, the circumstances of this procurement are similar to those in *Resource Consultants*. Comments at 8. In *Resource Consultants*, as part of its corrective action in response to a protest, the agency limited proposal revisions to only price proposals. *Resource Consultants, supra* at 3. In that decision, our Office sustained a protest of the award based on the reopened competition because the awardee’s revised price proposal was based on a staffing level and staffing mix that was materially different from the staffing level and staffing mix proposed in the non-price proposal. *Id.* at 7-10. In other words, the awardee “effectively altered its technical

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<sup>8</sup> The RFP included an attachment, listing a subset of the labor categories identified in the LRM with “limited labor pools, which makes recruiting and hiring fully qualified personnel challenging,” *i.e.*, HD/LD labor categories. AR, Tab 3, RFP Sections L&M at 11; AR, Tab 6, Labor Categories and Qualifications.

<sup>9</sup> See MOL at 49 (“Guidehouse explained in its Cost Proposal and [evaluation notice] responses that since the Air Force determined pre-corrective action that it was not worth the premium, it ‘reduced the percentile from [DELETED]th and [DELETED]th (for HD/LD) and applied corresponding [DELETED]th and [DELETED]th (for HD/LD) percentile wage from the salary survey tools, and in instances specific to twenty-four [labor categories] we raised the salary benchmark based on the most current [Bureau of Labor Statistics] data.’”); Intervenor Comments at 14-19 (acknowledging that Guidehouse “rebaselin[ed] its labor rates to lower percentiles”).



approach, even though [it] did not submit a revised technical approach.” *Id.* at 17. Ultimately, the awardee was able to reduce its price because it “did not follow the ground rules set by the agency” limiting proposal revisions, placing the other offerors at an unfair disadvantage. *Id.* at 10.

The Air Force responds by simply arguing that Guidehouse “followed the agency’s instructions,” because Guidehouse submitted “only a new Volume III proposal,” which was exactly what was requested by the agency. MOL at 47. The Air Force’s position, essentially, is that Guidehouse could not alter its non-cost approach through the submission of a revised cost proposal, because the solicitation specified particular labor categories and hours (for each potential task order) to calculate the total cost for each offeror, removing any link between non-cost and cost proposals. *Id.*

Our review of the record finds that the facts in *Resource Consultants* do not support BAE’s argument that Guidehouse violated the corrective action ground rules. Unlike the circumstances in *Resource Consultants*, the RFP here did not require offerors to address every element of the task orders under their technical capability proposals and did not require offerors to propose their own labor hours or labor mixes. AR, Tab 3, RFP Sections L&M at 18-20. Within the technical capability and mission capability proposal volumes, offerors were required to describe their approaches to identified elements of the work, but the Air Force specified the labor categories, hours, other direct costs, and travel included in the calculation of the total evaluated cost based on all five task orders. *Id.*; AR, Tab 7, LRM. The offerors input to the total evaluated cost was limited to direct and indirect rates and award fee. AR, Tab 3, RFP Sections L&M at 18-19. In other words, here, unlike in *Resource Consultants*, offerors did not submit an all-encompassing technical or cost solution of labor hours and labor mix for the task orders that could be adjusted by changes to the cost proposal. Thus, we do not find the protester’s reliance on *Resource Consultants* to be persuasive. That, however, does not end our inquiry.

#### Professional Employee Compensation

The protester asserts that, even if Guidehouse’s proposal complied with the ground rules of the corrective action, the agency unreasonably evaluated the awardee’s professional employee compensation. Comments at 22-29. Specifically, BAE argues that the Air Force limited its evaluation “to a mechanical comparison of the offerors’ estimated direct labor rates against a common threshold,” which was inconsistent with the RFP’s requirements for consistency between the narrative PECP and the cost proposal. *Id.* at 22.

The Air Force disagrees. In the agency’s view, “BAE argues that the agency erred by not comparing technical proposals against cost proposals, but that is exactly the evaluation methodology set up by the RFP.” MOL at 12. Citing our decision in *Logistics Management Institute*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311, the Air Force argues that because the solicitation dictated the labor categories and hours, there was “no unique technical approach for the agency to compare cost proposals against.” MOL

at 14; *see also* Contracting Officer's Resp. to GAO Questions at 3 ("Although offerors had flexibility in proposing labor rates, the RFP did not afford offerors flexibility in structuring their cost proposals to be specifically tailored to the unique approaches that each offeror provided."). According to the agency, the solicitation was clear that the PECP evaluation and cost realism evaluation would be limited to analyzing labor rates. *Id.* at 2-4.

The purpose of FAR provision 52.222-46 is to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. *Obsidian Sols. Grp., LLC*, B-416343, B-416343.3, Aug. 8, 2018, 2018 CPD ¶ 274 at 7. The provision requires that the agency evaluate an offeror's total compensation plan (salaries and fringe benefits) by considering its impact on recruiting and retention, its realism, and its consistency with a total plan for compensation. FAR 52.222-46(a).

Here, the RFP specifically committed the agency to evaluating PECPs in accordance with FAR provision 52.222-46 "to assure it reflects a sound management approach and understanding of the contract requirements." AR, Tab 3, RFP Sections L&M at 32. The solicitation also advised that "[p]rofessional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements." *Id.* at 32-33. According to the RFP, PECPs would be evaluated for "consistency with a total plan for compensation" by comparing information in the PECP "and rate/pricing information as provided in Volume II, Cost/Price," including direct labor rates and fringe benefit rate. *Id.* at 33.

Despite these provisions, the Air Force denies that its evaluation of professional employee compensation could be faulted for failing to identify and resolve any differences between the non-cost approach and the cost approach. MOL at 15-16. The agency defends its professional employee compensation analysis as appropriately limited to a comparison "against a market rate baseline" rather than based on any information provided in the PECP. *Id.* at 14-15. We disagree.

The record reflects that the RFP specified the agency would evaluate PECPs by, among other things, comparing the costs proposed in the cost proposal with the approach set forth in the management approach proposal. AR, Tab 3, RFP Section L&M at 32-33. The agency has admitted that it did not conduct that evaluation. For example, the record does not contain any analysis of the distinction between the awardee's strategy for recruitment and retention of HD/LD personnel in the management capability proposal--that included paying above-average compensation--and the awardee's updated labor rates in its cost proposal, which were based on average (or even below average) compensation. Under the circumstances here, we cannot find reasonable the agency's evaluation of professional employee compensation plans with the solicitation's stated evaluation scheme. *See Target Media Mid Atlantic, Inc.*, B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 6-7 (sustaining protest

of professional employee compensation because it was inconsistent with the solicitation's approach).

Our Office will not sustain a protest, however, unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. We resolve any doubts regarding prejudice in favor of a protester. *Intelsat Gen. Corp.*, B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 19-20.

The record demonstrates that the SSA made the decision to select Guidehouse for award based on, among other things, Guidehouse's superiority under the technical capability evaluation factor and the determination that both Guidehouse and BAE met the requirements for workforce management with "overall low risk." AR, Tab 309, SSD at 4-8. The SSA ultimately determined that the difference between the offerors' total evaluated costs was "not significant" and the "technical superiority of Guidehouse's proposal" merited the price premium over BAE. *Id.* at 12 ("I believe that the additional cost paid for the Guidehouse proposal is worth the benefits that the Government will receive by selecting the superior technical proposal.").

With respect to the protester's own revised cost proposal, BAE contends--and the agency has not argued otherwise--that it made no changes in its cost proposal that were flatly inconsistent with its professional employee compensation narrative. See Comments at 12. Thus, we cannot know how the agency would have evaluated where, for example, Guidehouse (in its non-cost proposal) proposed to recruit and retain HD/LD personnel by paying them significantly more than market salaries, but did not include the costs of that approach in the firm's cost proposal. See Intervenor Comments at 15 (conceding that "[f]ollowing the announcement of corrective action, Guidehouse reasonably decided to rebaseline its proposed professional compensation to make it more competitive and consistent with actual incumbent rates."). We therefore conclude that there is a reasonable possibility that BAE was prejudiced by the agency's actions and sustain the protest.

### Cost Realism

The protester also contends that the agency's cost realism analysis was similarly unreasonable. Comments at 22-29. Again, BAE argues that the Air Force failed to consider whether there were any inconsistencies between the approach described in the technical and management proposals and the labor rates included in the cost proposal. *Id.* at 22.

The Air Force asserts that the agency's evaluation was justifiably limited. Citing our decision in *Logistics Management Institute*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311, the Air Force argues that because the solicitation dictated the labor categories and hours, there was "no unique technical approach for the agency to compare cost proposals against." MOL at 14; *see also* Contracting Officer's Resp. to GAO Questions at 3 ("Although offerors had flexibility in proposing labor rates, the RFP did not afford offerors flexibility in structuring their cost proposals to be specifically tailored to the unique approaches that each offeror provided."). According to the agency, the solicitation was clear that the cost realism evaluation would be limited to analyzing labor rates. *Id.* at 2-4.

When an agency evaluates proposals for the award of a cost-reimbursement contract, it 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 15.305(a)(1); FAR 15.404-1(d); *National Gov't Servs., Inc.*, B-412142, Dec. 30, 2015, 2016 CPD ¶ 8 at 8. In that analysis, agencies are required to consider the realism of a firm's proposed costs in light of its unique technical approach. *Metro Mach. Corp.*, B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6.

Our Office has recognized that where a solicitation provides a cost model that specifies the labor mix and level of effort for offerors' proposals--thereby making offerors responsible for proposing costs based on their own rates, but not differing technical approaches--an agency may reasonably evaluate the rates proposed for those established labor categories based on other data such as the rates proposed by other offerors. *CSI, Inc.; Visual Awareness Techs. & Consulting, Inc.*, B-407332.5 *et al.*, Jan. 12, 2015, 2015 CPD ¶ 35 at 10. For example, in *Logistics Management Institute*--cited by the agency--our Office found unobjectionable the agency's use of a standard deviation analysis as a means of determining the realism of the proposed labor rates where the solicitation specifically provided the labor mix and level of effort for proposals. *Logistics Management Institute*, *supra* at 13. In those circumstances, however, our conclusions relied on the understanding that the structure of the agency's solicitation "preclud[ed] the opportunity for a creative technical approach to affect costs." *Sabre Sys.*, B-420090.3, June 1, 2022, 2022 CPD ¶ 137 at 4 n.1.

Here, by contrast, the agency does not deny that there were differences between the offerors' approaches to the work. Rather, the agency specifically invokes Guidehouse's alleged superiority under the technical capability factor as the "core rationale of the Government's source selection decision"--meaning the agency selected Guidehouse based on its unique approach. *See* Contracting Officer's Resp. to GAO Questions at 11-13. In this context, the agency's identification of Guidehouse's alleged technical superiority undercuts the agency's reliance on GAO decisions that recognize circumstances where agencies need not evaluate technical approaches where offerors cannot propose unique technical approaches.

Further, the solicitation specifically provided with respect to realism that the Air Force explained it would "evaluate the realism of each Offeror's proposed labor rates for all

Cost CLINs” using the analysis techniques “found in FAR 15.404-1.” *Id.* at 34. The RFP continued that “[c]osts shall be reflective of a clear understanding of the requirements and consistent with the unique methods of performance and materials described in the offeror’s technical proposal.” *Id.* at 35.

In short, the RFP specified the agency would evaluate cost realism by, among other things, comparing the costs proposed in the cost proposal with the approach set forth in the technical approach and management approach proposals. AR, Tab 3, RFP Section L&M at 32-35. The agency has admitted that it did not conduct that evaluation. A foundational requirement for a reasonable evaluation is consistency with the solicitation; where a cost realism evaluation departs from the approach promised in the RFP, the evaluation is not reasonable. *See, e.g., Sayres & Assocs. Corp.*, B-418374, Mar. 30, 2020, 2020 CPD ¶ 115 at 6 (sustaining protest where agency’s cost realism analysis was inconsistent with the solicitation); *Valkyrie Enters., LLC*, B-415633.3, July 11, 2019, 2019 CPD ¶ 255 at 8 (sustaining protest of agency’s cost realism analysis where the agency analysis was inconsistent with the solicitation).

The agency argues that the protester cannot demonstrate prejudice because, according to the agency, both Guidehouse and BAE reduced certain labor rates and “changed their subcontractor allocations,” but “both offerors’ proposed resources remained available to perform the contract and both offerors remained accountable for successful performance.”<sup>10</sup> MOL at 51. In addition, the agency also argues that the protest should not be sustained because BAE cannot establish prejudice stemming from the cost evaluation when BAE had a lower cost overall than Guidehouse. *Id.* at 23. We disagree.

As we have explained, “a proper cost realism evaluation” like the one contemplated by the solicitation here “prevents an offeror from improperly ‘having it both ways’--that is, from receiving a technical evaluation rating based on its proposed performance but failing to propose costs that reasonably reflect that performance.” *Target Media Mid Atlantic, Inc.*, *supra* at 5. We cannot know how the agency would have evaluated where, for example, Guidehouse proposed a technical approach by reference to specific resources like experienced subcontractors, but did not include the costs of that

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<sup>10</sup> The agency’s contention, here, is based on an analysis the Air Force prepared in response to the protest, rather than any contemporaneous evaluation. In reviewing an agency’s procurement actions, we do not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties’ arguments and explanations. *AllWorld Language Consultants, Inc.*, B-414244, B-414244.2, Apr. 3, 2017, 2017 CPD ¶ 111 at 4 n.3. Our Office will, however, accord lesser weight to *post hoc* arguments or analyses because judgments made “in the heat of an adversarial process” may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process. *Conti Fed Servs., LLC*, B-422162 *et al.*, Feb. 1, 2024, 2024 CPD ¶ 31 at 6.

approach in the firm's cost proposal. We therefore conclude that there is a reasonable possibility that BAE was prejudiced by the agency's actions.<sup>11</sup>

### Best-Value Tradeoff

The protester also challenges the agency's best-value tradeoff, contending, among other things, that the agency's best-value tradeoff necessarily was flawed because the underlying price evaluation was flawed. Comments at 51-54. In reviewing an agency's source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Tyonek Eng'g & Agile Mfg., LLC*, B-421547, B-421547.2, May 26, 2023, 2023 CPD ¶ 135 at 12. In light of our determination that the agency's professional employee compensation and cost realism evaluations were unreasonable, we find the source selection based on those evaluations to be itself unreasonable. *Weston-ER Fed. Servs., LLC*, B-418509, B-418509.2, June 1, 2020, 2020 CPD ¶ 311 at 16 (“[A]n agency's best-value determination is flawed when one or more of the underlying evaluations upon which that tradeoff analysis is based are unreasonable, erroneous, or improper.”).

### RECOMMENDATION

We recommend that the agency, at a minimum, reevaluate offerors' entire proposals, consistent with the solicitation, and make a new source selection decision. To the extent that the solicitation no longer reflects the agency's intended evaluation, we recommend that the Air Force amend the solicitation and obtain revised proposals as appropriate.

We also recommend that BAE be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and costs incurred, to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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<sup>11</sup> On the whole, these arguments from the agency only serve to underscore the nature of the agency's departure from the solicitation, which provided that offerors direct labor rates would be measured against their own proposals under FAR provision 52.222-46 and a cost realism evaluation. See AR, Tab 3, RFP Section L&M at 32-35. In short, the solicitation committed to analyzing offerors' cost proposals for consistency with their own approaches, and costs that were consistent with one offeror's approach to recruiting and retention or technical approach could be inconsistent or unrealistic for another. Here, had the Air Force properly evaluated according to the solicitation, it is possible that the agency may have found sufficient risk in Guidehouse's proposal to result in BAE's proposal being the best value to the government.

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