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## Decision

**Matter of:** Innovative Technology Solutions JV, LLC

**File:** B-422731.2

**Date:** October 4, 2024

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Colonel Patricia S. Wiegman-Lenz, Josephine R. Farinelli, Esq., Major Craig M. Brunson, Ryan Lambrecht, Esq., and Kevin Stiens, Esq., Department of the Air Force, for the agency.

Michael Willems, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging the agency's price realism evaluation is denied where the agency's use of a standard deviation methodology was reasonable and consistent with the terms of the solicitation.
  2. Protest alleging that agency misevaluated technical proposals and made an unreasonable source selection decision is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
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### DECISION

Innovative Technology Solutions JV, LLC (ITS), a small business of Dayton, Ohio, protests the issuance of a task order to Gemini Industries, Inc., a small business of Fairfax, Virginia, pursuant to fair opportunity proposal request (FOPR) No. FA714624R0002 issued under General Services Administration's (GSA) One Acquisition Solution for Integrated Services (OASIS) multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract by the United States Air Force for a variety of mission support services. The protester alleges that the agency erred in its evaluation of proposals in several respects.

We deny the protest.

## BACKGROUND

The Air Force published the FOPR on November 29, 2023, and it contemplated the issuance of a single task order primarily on a labor-hour basis with fixed-price labor rates, with an 8-month base period and four 1-year option periods. Agency Report (AR), Tab 3, Conformed FOPR at 1.<sup>1</sup> The FOPR contemplated making the award based on a best-value tradeoff between two factors: technical and price. *Id.* at 6. The technical factor comprised three subfactors: (1) experience, organizational structure, and teaming arrangements; (2) management approach and staffing plan; and (3) transition plan. *Id.* The solicitation further provided that the technical factor was more important than the price factor. *Id.* Additionally, the solicitation explained that the first and second technical subfactors were equally weighted, but that the transition plan subfactor would be evaluated on an acceptable/unacceptable basis and would not be considered in the tradeoff. *Id.*

The solicitation provided that technical subfactors one and two would receive one of the following ratings: excellent; good; acceptable; or unacceptable. FOPR at 7. Relevant to this protest, the solicitation explained that a proposal would receive an excellent rating if it, among other things, indicated an exceptional approach and understanding of the requirements of the solicitation, contained multiple strengths, and had no deficiencies. *Id.*

Also relevant to this protest, the solicitation provided that the agency would compute each offeror's evaluated price on the basis of an agency established staffing level for various positions multiplied by the labor rates furnished by the offerors in their price proposals. *Id.* at 9. The solicitation also provided that price would be evaluated for reasonableness, realism, and completeness. *Id.* The solicitation explained the price realism evaluation as follows:

The Government evaluation of price realism will consider the extent to which proposed labor rates indicate a clear understanding of FOPR requirements and determine whether they reflect a sound approach to satisfying those requirements and whether the proposed escalation factors are realistic. For each labor category, the Government will compare the proposed rates to established "benchmark" rates (comprised of an average of proposed rates and industry indexes) and determine if the proposed rates are within -2 Standard Deviations of the benchmark rates. Any rates below -2 Standard Deviations of the benchmark may<sup>2</sup> be determined unrealistic.

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<sup>1</sup> The FOPR was amended twice. All citations are to the conformed FOPR supplied by the agency.

<sup>2</sup> When the solicitation was originally issued, the solicitation explained that rates below two standard deviations "will" be determined unrealistic. See FOPR at 9. An

(continued...)

FOPR at 9.

The agency received six proposals, including from ITS and Gemini. Contracting Officer's Statement (COS) at 11. The agency conducted a preliminary evaluation, including an evaluation of price. *Id.* Specifically, the agency compiled the labor rates for all six offerors as well as index rates from the Bureau of Labor Statistics and used them to prepare benchmark rates for each labor category. *Id.* at 12. The agency then compared each offeror's labor rates to the benchmark rates. *Id.*

Based on this analysis, on May 28, the agency issued interchange notices to both ITS and Gemini. COS at 12-13. Gemini's interchange notices explained that as part of the agency's price realism analysis, the agency determined that seven of Gemini's labor rates were lower than two standard deviations below the benchmark rates and invited Gemini to revise its rates. *Id.* By contrast, ITS's interchange notices explained that as part of the agency's assessment of price reasonableness, the agency determined that nine of ITS's proposed labor rates were higher than two standard deviations above the benchmarks and invited ITS to revise its labor rates. *Id.* Both offerors elected to revise the identified rates and brought them within two standard deviations of the benchmarks. *Id.*

Following proposal revisions, the agency evaluated the proposals of the protester and awardee as follows:

	ITS	Gemini
<b>Technical</b>		
Experience, Organizational Structure, and Teaming Arrangements	Good	Good
Management Approach and Staffing Plan	Good	Good
Transition Plan	Acceptable	Acceptable
<b>Total Evaluated Price</b>	\$340,159,535	\$253,396,638

COS at 15, 24.

Because the offerors received similar technical ratings and had underlying strengths of similar value to the agency, the agency ultimately concluded that Gemini's lower price was the distinguishing factor between the two proposals and made award to Gemini.

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amendment changed "will" to "may," indicating that the agency would not necessarily exclude proposals containing rates below that threshold. *Id.*

AR, Tab 19, Fair Opportunity Decision Document (FODD) at 36-37. This protest followed.<sup>3</sup>

## DISCUSSION

The protester challenges the agency's evaluation in several respects. First, the protester alleges that the agency's price realism evaluation was unreasonable and deviated from the terms of the solicitation.<sup>4</sup> Protest at 13-16. Second, the protester argues that the agency erred in its technical evaluation of Gemini's proposal by failing to consider the awardee's low labor rates in evaluating the awardee's management approach. *Id.* at 16-18. Finally, the protester contends the agency erred in evaluating the protester's technical proposal, which should have received an excellent rating rather than a merely good rating. *Id.* at 18-21. We address these arguments in turn.<sup>5</sup>

### Price Realism Evaluation

The protester argues that the agency's price realism evaluation was unreasonable and deviated from the terms of the solicitation for several reasons. Protest at 13-16; Comments at 1-4. First, the protester notes that the solicitation provided that the agency would consider the extent to which the proposed labor rates indicate a clear understanding of the requirements and determine whether they reflect a sound approach to satisfying those requirements. *Id.* The protester contends that the contemporaneous record includes nothing more than a conclusory statement that "[a]ll Offerors' proposals indicated a clear understanding of the requirements and were considered to have realistic pricing," with no supporting analysis or discussion. Comments at 2 (*citing* AR, Tab 19, FODD at 20). Second, the protester argues that the 25 percent price difference between the two proposals should have alerted the agency to the possibility that Gemini's proposal was unrealistic and prompted additional scrutiny, especially because ITS is the incumbent contractor. *Id.* at 3. Finally, the protester argues that the agency failed to consider the incumbent labor rates in conducting its price realism analysis as required by the Federal Acquisition Regulation (FAR). *Id.* at 4.

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<sup>3</sup> The value of the protested task order exceeds \$10 million and was placed under GSA's OASIS multiple award IDIQ. Accordingly, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B).

<sup>4</sup> In the initial protest the protester also challenged the agency's price reasonableness evaluation. However, following the submission of the agency report, the protester withdrew this protest ground. See Comments at 2.

<sup>5</sup> The protester also raises a challenge to the best-value tradeoff, arguing that, because the agency's evaluation was allegedly flawed, the best-value tradeoff was also necessarily flawed. See Comments at 8-9. Because, for the reasons discussed below, we do not agree that the evaluation was flawed, the protester's derivative challenge to the best-value tradeoff provides no independent basis to sustain the protest. *Id.*

In response, the agency argues that the solicitation explained that the agency's price realism analysis would use a defined methodology involving benchmark rates and an assessment of whether labor rates were within two standard deviations of those benchmarks. Memorandum of Law (MOL) at 36-45. The agency contends that it performed an analysis based on the standard deviation methodology announced in the solicitation, and that the awardee's final rates all fell within two standard deviations from the benchmark rates. *Id.* Further, the agency notes that the awardee's price was only 10 percent lower than the average price of all six offerors, while the protester's price was 21 percent higher, which suggests that the awardee's price was not unusually low. *Id.*

The agency also argues that it was not appropriate to consider historical or incumbent rates in this context because this solicitation represents the consolidation of numerous separate requirements. *Id.* Accordingly, the contracting officer concluded it would be misleading to consider historical rates as part of the price analysis. *Id.* Further, the solicitation expressly stated that only proposed rates and industry indices would be used to establish the benchmark rates. See FOPR at 9.

The nature and extent of an agency's price realism analysis are matters within the agency's discretion. See *Tec-Masters, Inc.*, B-416235, July 12, 2018, 2018 CPD ¶ 241 at 7. In this regard, we have explained that agencies are not required to conduct a price realism analysis based on a comparison of an offeror's prices to the incumbent rates or the prices proposed by the incumbent contractor. See *The Arcanum Group, Inc.*, B-413682.2, B-413682.3, Mar. 29, 2017, 2017 CPD ¶ 270 at 6; *RELI Grp., Inc.*, B-418005, Dec. 23, 2019, 2020 CPD ¶ 53 at 5.

Further, while a realism analysis must include consideration of an offeror's proposed technical approach, we have concluded that where a solicitation specifies the labor mix and level of effort for proposals, there is essentially no unique technical approach for purposes of realism, and an agency may reasonably evaluate the rates proposed for established labor categories based on other available data, such as the rates proposed by other offerors. See *Logistics Mgmt. Inst.*, B-417601, *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 13 (concluding that where the agency provided a labor mix and level of effort comparison of the awardee's labor rates to the rates of other offerors was sufficient to establish realism); *Booz Allen Hamilton Inc.*, B-414283, B-414283.2, Apr. 27, 2017, 2017 CPD ¶ 159 at 10 (same). Additionally, our decisions have specifically concluded that a standard deviation methodology for a price realism evaluation can be a reasonable methodology. See *Sprezzatura Mgmt. Consulting, LLC*, B-420858.2, Mar. 6, 2023, 2023 CPD ¶ 100 at 7.

On the facts presented here, we see no reason to conclude that the agency's price realism analysis was unreasonable or inconsistent with the solicitation. Preliminarily, we do not agree with the protester that the solicitation necessarily contemplated a separate analysis of whether an offeror's labor rates indicate an understanding of the requirements. Here, the solicitation provided that the agency would evaluate whether

an offeror's labor rates reflected a clear understanding of the requirements, but then provided a specific methodology by which the agency would assess that understanding. See FOPR at 9. That is, we do not read the solicitation as providing that an assessment of whether an offeror's labor rates reflect an understanding of the requirements and the standard deviation analysis were two separate analytical steps, but rather that the standard deviation analysis was an explanation of how the agency intended to assess whether an offeror's labor rates reflect an understanding of the requirements in the first instance, with a further assessment if an offeror fell below that standard. *Id.*

Specifically, the FOPR explained that rates below two standard deviations "may" be found unrealistic. *Id.* This solicitation language implies both that rates below two standard deviations would be subject to additional scrutiny, but also that rates within two standard deviations of the benchmarks would be considered realistic. Indeed, where the solicitation provided that the price evaluation would be based on an agency-selected labor mix and hours, and the only aspect of the offerors' pricing proposed by the offerors were their labor rates, it is not unreasonable that the solicitation provided for a relatively limited evaluation of price realism principally based on a comparison of labor rates. See *Logistics Mgmt. Inst., supra; Sprezzatura Mgmt. Consulting, LLC, supra.*

Here, the agency conducted a reasonable and well-documented standard deviation analysis, and the awardee's rates fell within two standard deviations, and therefore did not require additional scrutiny. We see no reason to conclude that the agency erred by performing precisely the methodology announced in the solicitation. Likewise, we see no reason to conclude that the agency was required to consider historical labor rates as the solicitation did not contemplate the consideration of historical labor rates and there is no independent requirement for the agency to consider historical rates in the context of a price realism analysis.<sup>6</sup> See *The Arcanum Group, Inc., supra.*

Moreover, contrary to the protester's arguments, the fact that the awardee's price was 25 percent lower than ITS's price does not establish that the agency's evaluation was intrinsically unreasonable. We note that during the initial evaluation, the awardee's price was at risk of being assessed as unrealistically low with respect to certain rates, while the protester's price was at risk of being evaluated as unreasonably high, and the agency issued interchange notices to both offerors. While both offerors revised their rates to bring them closer to the benchmarks, the awardee's final price was 10 percent

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<sup>6</sup> To the extent that the protester objects that the specific methodology established by the solicitation for evaluating price realism failed to account for incumbent rates in the establishment of the benchmarks, such objection constitutes an untimely challenge to the terms of the solicitation. We have explained that post-award challenges to an agency's cost or price evaluation scheme are not timely, if, as here, the challenged scheme was set forth in the solicitation, because a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial quotations or proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1); *Ball Aerospace & Techs. Corp.*, B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 4.

lower than the average of the prices for the six offers the agency received, while the protester's price was 21 percent higher than the average.

That is to say, the awardee's price was on the lower end of the spectrum of offered prices, while the protester's price was on the higher end, so the fact that there was a significant price difference between them does not, without more, suggest that either offerors' price is unrealistic or unreasonable. Moreover, the awardee's price was significantly closer to the average price offered, which suggests that it was the protester's price, not the awardee's price, that is the outlier in this case. Accordingly, this protest ground is denied.

#### Awardee's Technical Evaluation

Next the protester contends that the agency erred by assigning the awardee a rating of "[g]ood" for its management approach and staffing plan. Protest at 16-18. In this regard, the protester argues that our decisions have concluded that offerors should be prevented from "having it both ways" by proposing a technical proposal that is not commensurate with their proposed pricing. Comments at 5 (*citing Ohio KePRO, Inc.*, B-417836, B-417836.2, Nov. 18, 2019, 2020 CPD ¶ 47 at 5). The protester contends that the awardee's technical approach and labor rates are fatally inconsistent. *Id.*

In response, the agency contends that the awardee proposed a comprehensive management and retention plan that was not in any way inconsistent with its proposed labor rates. MOL at 45-49. For example, the agency notes that Gemini's proposal did not specifically rely on being able to retain incumbent personnel from the consolidated contracts, and provided substantial detail about how it would manage, hire, and retain personnel that was consistent with its proposed labor rates. *Id.* The agency contends that the protester simply disagrees with the agency's evaluative judgment.

The evaluation of technical proposals is generally a matter within the agency's discretion, which our Office will not disturb unless they are shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. *American Systems Corp.*, B-413952.3, B-413952.4, June 23, 2017, 2017 CPD ¶ 204 at 6-7; *NCI Information Systems, Inc.*, B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 4; *ORBIS Inc.*, B-408033.2, June 3, 2013, 2013 CPD ¶ 140 at 4. A protester's disagreement with the agency's evaluative judgment, without more, does not provide a basis for us to conclude that an evaluation was unreasonable. See *DynCorp International, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 7-8; *Jacobs Tech., Inc.*, B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 10-11.

We do not agree that the awardee's technical proposal was necessarily inconsistent with its proposed labor rates or that the agency's evaluative findings are unreasonable. In this regard, the agency concluded that the awardee proposed a detailed approach to management, hiring, and retention, but also proposed labor rates that were slightly lower than the average prices offered. As discussed above, the agency reasonably concluded that the awardee's prices were realistic using the methodology outlined in the

solicitation, and there is no clear inconsistency between the strengths the agency found in Gemini's proposed management approach and its proposed labor rates.

For example, one of the three strengths the agency found in Gemini's management approach was that Gemini proposed [DELETED]. See AR, Tab 19, FODD at 30. There is no obvious reason why this proposed management approach would be inconsistent with the awardee's labor rates, and the protester provides no specific argument as to why this (or any other) technical strengths are unreasonable in light of Gemini's labor rates.

The protester's argument, in effect, seeks to impose a more rigorous price realism assessment than the solicitation contemplated. However, as discussed above, the solicitation contemplated a very specific and limited price realism analysis. Here, the protester has provided no reason to conclude that the awardee's technical approach is inconsistent with its modestly lower labor rates or that the agency's evaluation is otherwise unreasonable.

#### Protester's Technical Evaluation

Finally, the protester contends that the evaluation of its proposal is unreasonable principally because its proposal should have received a rating of excellent, rather than good, for two technical subfactors. Protest at 18-21. Specifically, the protester notes that its proposal received two strengths and no deficiencies for two technical subfactors, and therefore, because its proposal contained multiple strengths and no deficiencies, should have been rated excellent. *Id.* The protester also argues that the strengths the agency identified in its proposal also indicated an objectively excellent approach. *Id.*

In response, the agency contends that the definition of excellent in the solicitation required more than just receiving multiple strengths and no deficiencies. MOL at 49-57. Among other things, the solicitation required that a proposal must indicate an exceptional approach to or understanding of the requirements of the solicitation as well as containing multiple strengths. *Id.* The agency contends that the protester's proposal did not demonstrate such an exceptional approach or understanding for either subfactor and that the agency acknowledged the positive features of the protester's proposal by assigning technical strengths for them. *Id.*

Here, we concur with the agency. We do not read the solicitation as suggesting that all offerors who received multiple strengths and no deficiencies would be rated excellent, but rather the solicitation imposed additional requirements to have demonstrated an exceptional approach to or understanding of the requirements. Moreover, adjectival ratings are simply guides to rational decision-making, and the record suggests that the agency reasonably considered the protester's proposal and assigned strengths for the very features the protester contends were not adequately acknowledged as excellent. See *Harmonia Holdings Grp., LLC*, B-417475.3, B-417475.4, Sept. 23, 2019, 2019 CPD ¶ 333 at 24; *KPMG Consulting LLP*, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13. In short, the protester simply disagrees with the agency's evaluation of its



proposal, which is not sufficient to establish that the agency erred. See *DynCorp International, LLC, supra*.

Additionally, we note that, even were the protester correct in its reading of the solicitation, the protester could not establish competitive prejudice on these facts. Competitive prejudice is an essential element of a viable protest; when the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. *Up-Side Mgmt. Co.*, B-417440, B-417440.2, July 8, 2019, 2019 CPD ¶ 249 at 7. Of note, while the protester received two strengths and no deficiencies for each of these subfactors, the awardee received three strengths and no deficiencies for the same subfactors. Accordingly, if the protester were correct that it should have received a rating of excellent for these subfactors, the awardee should also receive precisely the same improvement of its adjectival rating, and therefore both offerors would remain equally technically rated. Thus, where the record shows that the agency's evaluation was reasonable and even-handed, the protester's objection to its assigned adjectival ratings provide no basis to object to the agency's evaluation and resulting award decision.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel