



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: GOVCIO, LLC

File: B-421290.6; B-421290.7; B-421290.8

Date: September 11, 2024

James Y. Boland, Esq., Kyle T. McCollum, Esq., Lindsay M. Reed, Esq., and Kelly M. Boppe, Esq., Venable LLP, and Frank DiNicola, Esq., Winston & Strawn LLP, for the protester.

Noah B. Bleicher, Esq., Moshe B. Broder, Esq., Aime J. Joo, Esq., Andrew L. Balland, Esq., and Sierra A. Paskins, Esq., Jenner & Block LLP, for General Dynamics Information Technology, Inc., the intervenor.

John C. Huebl, Esq., and Alexander Jonathan Brittin Jr., Esq., Department of Veterans Affairs, for the agency.

Charmaine A. Stevenson, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's assessment of a significant strength based on awardee's capability to exceed requirements is sustained where the record shows that the evaluation finding was based on an erroneously inflated understanding of the awardee's ability to exceed the government's requirements.
2. Protest challenging agency's evaluation of the protester's past performance is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
3. Protest that agency failed to conduct meaningful discussions and engaged in unequal discussions is denied where the record shows that the agency reasonably tailored discussions to identify weaknesses in proposals and other areas where the proposals could be materially enhanced; an agency is not required to advise in discussions that an offeror's past performance received a rating of neutral.
4. Protest that agency should have found awardee nonresponsible is dismissed where the task order solicitation did not include a requirement that the agency determine responsibility and there is no other requirement that an agency determine responsibility

prior to issuing a task order when a responsibility determination was made at the time of award of the indefinite-delivery indefinite-quantity contract.

DECISION

GovCIO, LLC, of Fairfax, Virginia, protests the issuance of a task order to General Dynamics Information Technology, Inc. (GDIT), of Falls Church, Virginia, by the Department of Veterans Affairs (VA), under request for task order response (RTOR) No. 36C10D22Q0026, issued for file conversion services for the Veterans Benefit Administration (VBA). The protester raises multiple challenges to the agency's evaluation of proposals and the selection decision, and further contends that the agency should have found GDIT to be nonresponsible.

We sustain the protest in part and deny it in part.

BACKGROUND

In this procurement, the VA seeks to acquire file conversion services for the VBA to improve the veterans benefits and claims processes. Agency Report (AR), Tab 4, RTOR at 1061-1062.¹ This protest challenges the fourth and most recent award decision for this task order. Previously, our Office sustained a protest filed by GDIT of the agency's issuance of a task order to GovCIO. *General Dynamics Info. Tech., Inc.*, B-421290, B-421290.2, Mar. 1, 2023, 2023 CPD ¶ 60. Thereafter, the agency twice selected GDIT to perform the task order, but in both instances took corrective action in response to protests filed by GovCIO, rendering those protests academic. *GovCIO, LLC*, B-421290.3, Aug. 30, 2023 (unpublished decision); *GovCIO, LLC*, B-421290.4, B-421290.5, Jan. 26, 2024 (unpublished decision).

The agency issued the RTOR on September 20, 2022, using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, to holders of VA's Veterans Intake, Conversion, and Communication Services (VICCS) indefinite-delivery, indefinite-quantity (IDIQ) contracts. Contracting Officer's Statement (COS) at 1-2.² The RTOR requires that the contractor "extract, receive, control, and convert source material" from veterans' personnel records, service treatment records, and benefit claim files "to standardized, indexed, and searchable" electronic files in PDF form. RTOR at 1064-1065. The RTOR estimated required conversion services for approximately 437 million images annually but stated that the volume of source materials would be impacted by the following factors: VA's ability to ship certain files; ability of the National Archives and Records Administration (NARA) and the National Personnel Records Center (NPRC) to support retrieval of requested records; availability of funding; the number of

¹ The RTOR was amended eight times. Citations to the RTOR in this decision are to the compiled RTOR and amendments produced by the agency as tab 4 of the agency report.

² All citations in this decision are to Adobe portable document format (PDF) page numbers.

claims received from veterans and claimants; and the number of projected claims. *Id.* The period of performance will consist of a 12-month base period and two 12-month option periods. *Id.* at 1066.

The RTOR advised that proposals would be evaluated based on the following three factors: (1) technical; (2) past performance; and (3) price. RTOR at 42. The technical factor included assessment of the following equally important elements: (1) technical approach; (2) staffing approach; and (3) capability and experience. *Id.* at 43. Based on the significance of any strengths or weaknesses assessed in the proposals, the following ratings would be assigned under the technical factor: exceptional, good, acceptable, marginal, or unacceptable. See AR, Tab 7.1, GovCIO Technical Evaluation at 1, 9. The RTOR further stated that the technical factor was more important than the past performance factor, and combined, the non-price factors were more important than the price factor. RTOR at 42.

During its most recent corrective action, between February 26 and April 15, 2024, the agency engaged in multiple rounds of written discussions with GDIT and GovCIO, and solicited revised proposals that were evaluated by a newly assembled technical evaluation board (TEB). COS at 2-3, 15. The TEB identified two significant strengths, five strengths, and no weaknesses in its evaluation of GDIT’s proposal. AR, Tab 7, GDIT Technical Evaluation. The TEB identified two strengths and no weaknesses in its evaluation of GovCIO’s proposal. AR, Tab 7.1, GovCIO Technical Evaluation. In addition, the contracting officer states that on May 8, the TEB performed a new past performance evaluation; it had previously been performed by a contract specialist. The new evaluation resulted in a change in GovCIO’s past performance rating from “low risk” to “neutral.”³ COS at 4-5. The contracting officer also performed a price evaluation by comparing elements of the proposed prices to the independent government cost estimate⁴ and concluded that both offerors’ proposed prices were fair and reasonable. AR, Tab 10, Best-Value Decision at 7; see Tab 7.3, Price Evaluation. The final evaluation results were as follows:

	GDIT	GovCIO
Technical Factor	Exceptional	Good
Past Performance	Low Risk	Neutral
Price	\$344,993,676	\$258,745,490

AR, Tab 10, Best-Value Decision at 7.

The source selection authority (SSA), who also served as the contracting officer, concluded that GDIT’s proposal presented the best value to the government. On

³ The ratings for past performance were neutral, low risk, moderate risk, or high risk. AR, Tab 7.2, Past Performance Evaluation at 2.

⁴ The independent government cost estimate was \$534,167,187. AR, Tab 7.2, Past Performance Evaluation at 6.

May 16, the agency notified GovCIO that it had selected GDIT for award. AR, Tab 11, Unsuccessful Offeror Letter. GovCIO received a debriefing, and this protest followed.⁵

DISCUSSION

The protester raises numerous allegations challenging the evaluation of proposals and the selection decision. Specifically, GovCIO argues that the evaluation of technical proposals was unreasonable and disparate; the agency's evaluation of its past performance was unreasonable and reflects the application of unstated evaluation criteria; the agency failed to engage in meaningful discussions and conducted unfair and unequal discussions; and, because of the foregoing errors and the agency's failure to properly consider price, the selection decision is flawed. The protester further contends that the agency should have found GDIT to be nonresponsible because of its alleged noncompetitive behavior in, and improper interference with, the procurement.

For the reasons discussed below, we agree with the protester that the agency's evaluation of the awardee's conversion capability was unreasonable, and that this could have had a prejudicial effect in the final evaluation and award decision. We also find, however, that the protester's arguments regarding the remainder of the agency's evaluation and its allegations regarding GDIT's responsibility do not provide a basis to sustain the protest.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. *URS Fed. Servs., Inc.*, B-413333, Oct. 11, 2016, 2016 CPD ¶ 286 at 6. In reviewing protests of an agency's evaluation and source selection decision in a task or delivery order competition, we do not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Sapient Gov't Servs., Inc.*, B-412163.2, Jan. 4, 2016, 2016 CPD ¶ 11 at 4.

When a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.*; *SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. To prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably failed to assess strengths for aspects of its proposal that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Deloitte Consulting, LLP*, B-421801.2 *et al.*, Jan. 30, 2024, 2024 CPD ¶ 42 at 5. The evaluation of proposals is a matter within the agency's discretion, and a

⁵ The awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B).

protester's disagreement with the agency's judgment of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. *Battelle Mem'l Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5.

In addition, competitive prejudice is an essential element of a viable protest. *Coast to Coast Computer Prods., Inc.*, B-419116, B-419116.2, Dec. 18, 2020, 2020 CPD ¶ 370 at 10-11. 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. *Id.* Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect in the procurement is found. *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

Technical Evaluation

The protester argues that a variety of conclusions in the agency's evaluation of technical proposals were unreasonable and unequal, and the selection decision is flawed as a result of these errors and its failure to properly consider the price premium associated with an award to GDIT. While we do not address all of the protester's arguments, for the reasons discussion below, we agree with the protester that the agency did not reasonably evaluate GDIT's capability to exceed the estimated conversion requirements in the solicitation. We further conclude that this error was prejudicial to the protester because the agency's conclusions in this regard formed the basis of a significant strength identified in GDIT's proposal, which was cited in the best-value decision to justify the payment of the price premium associated with award to GDIT. We therefore sustain the protest on this basis; however, we deny or dismiss the protester's remaining allegations.⁶

Conversion Capability

The protester argues that the evaluation of offerors' approaches to accelerating conversion of source materials was unequal and unreasonable. Protest at 42-46. Specifically, the protester contends that the agency did not distinguish between calendar days and workdays with respect to the daily conversion capabilities proposed by both offerors in its evaluation, and the agency's faulty comparison of proposals

⁶ For example, GovCIO argues that the VA's recent issuance of a 3-month, \$30 million sole-source task order is unlawful and indicates the RTOR is flawed and contains inaccurate estimates that no longer reflect the agency's current requirements. Supp. Protest at 23-24. The agency argues that issuance of the sole-source task order was justified because the VA stayed performance of the protested task order pending resolution of the protest and the sole-source award was necessary to prevent a lapse in services. COS at 24-25; MOL at 38-39. Although the sole-source award to GDIT is ultimately for the same requirement, the issuance of this "bridge" or interim task order to GDIT nevertheless constitutes a separate and different procurement. Our regulations require that protests of different procurements be separately filed. 4 C.F.R. § 21.1(f). Accordingly, we dismiss this allegation.

makes the evaluation unreasonable. In support of its argument, the protester highlights the fact that the agency assessed a significant strength in GDIT's proposal because it demonstrated a capacity to convert [DELETED] million files per day, which the agency determined was [DELETED] percent higher than the solicitation's estimated 1.2 million daily conversion rate. GovCIO notes, however, that the 1.2 million daily rate from the solicitation was calculated based on calendar days whereas GDIT's [DELETED] million capacity value was calculated using workdays. Comments & 2nd Supp. Protest at 3-11.

According to GovCIO, when the two values are properly compared using workdays as a common basis of comparison, GDIT's estimated capacity does not come close to exceeding the required daily capacity by [DELETED] percent. The protester argues that as a result of this error, the significant strength GDIT received is based on a mistaken understanding of GDIT's claimed capacity to increase conversion rates in its proposal. Specifically, GovCIO argues the VA will not receive the benefit of the increased capacity at GDIT's proposed price, and while GovCIO proposed a conversion capability that was comparable to or even exceeds that proposed by GDIT, the agency failed to recognize this in its evaluation. *Id.* The agency argues that GovCIO misunderstands the RTOR requirements and GDIT's proposal, and its evaluation was fair and reasonable. MOL at 14-20; Supp. MOL at 4-11. We agree with the protester that the agency's evaluation in this regard was unreasonable.

Section E.1.5.1.1.2 of the RTOR required that offerors include in their technical proposals information to demonstrate that their "[a]pproach is workable and the end results achievable. Approach demonstrates methods and capacity in successfully meeting and/or exceeding the total estimated quantity of 1.20 million daily source material for the base and 1.20 million daily source material per option period in a timely manner." RTOR at 38. Regarding the agency's specific image conversion requirements, the performance work statement (PWS) stated:

VA requires document conversion services for an estimated 1.3 billion images split between approximately 437 million images in the base period and approximately 437 million images in each option period, if exercised. VA may alter the volume of source materials to the Contractor over the period of performance. The contractor can expect source material to consist of:

- Benefit Claim Files (C-files)
- Official Military Personnel Files (OMPFs)
- Service Treatment Records (STRs)
- Records from other Government or Military entities
 - Veterans Health Administration
 - National Guard Units
 - Adjutants General Offices

The volume of source materials requiring conversion will be impacted by several factors:

- VA's ability to ship

- NARA/NPRC ability to support retrieval of requested records by the Contractor
- Availability of funding
- Number of claims received from Veterans/claimants
- Number of projected claims

The maximum volume of images that may be ordered is 2.6 billion, 874 million images in the base period and approximately 874 million images in each option period, if exercised.

RTOR at 1064-1065. The PWS provided projections for OMPF active onsite volume, offsite OMPF volume, and C-file volume for the base and both option periods, as well as the assumptions on which the estimates were based, concluding that “[g]iven all sources of material, the total image count to be digitized per day is approximately 1.7 million images across all work locations.” *Id.* at 1066.

Regarding the meaning of “day” and the basis for the estimates and assumptions, the RTOR included the following question submitted by an offeror and the VA’s response:

Technical Question[: RTOR section] E.1.5.1.1.2 requests that Contractors demonstrate methods and capacity in successfully meeting and/or exceeding the total estimated quantity of 1.20 million daily source material for the base and option periods. Please confirm: a) that “source material” equates to per image; b) 1.2 million images per day is based on 437 million images divided by a 365-day work year. The federal work year usually is based on 264 days which would result in an average daily volume of 1.65 million images. Please clarify.

- a) Confirmed. Source material equates to per image[.]
- b) Confirmed. Image counts are estimates based on 21 workdays per month equating to 252 workdays per year, and are expected to [fluctuate] daily based on Vendor capacity, and VA/NARA ability to provide source materials. VA does not mandate daily image counts for offsite OMPF or C-file processing so long as [turnaround time] requirements are met [in accordance with] the PWS.

RTOR at 892 (Question and Answer 12).

The solicitation therefore provided two different estimates for the daily number of images to be converted. Section E.1.5.1.1.2 stated that offerors had to demonstrate their ability to convert 1.2 million images per day. The solicitation also stated that “the total image count to be digitized per day is approximately 1.7 million images across all work locations.” *Id.* at 1066. The agency reconciled the different figures when it confirmed in the question and response, that the 1.2 million estimate was derived by dividing the total estimated number of images in the base period (437 million) by the number of days in a calendar year (365). *Id.* When calculated based on workdays per

month (or 252 workdays per year), 1.2 million calendar day images equated to the 1.7 million images per workday stated in the PWS. *Id.*

In its evaluation of GDIT the TEB assessed a significant strength, finding that GDIT stated that it had the capacity to convert more than [DELETED] million images per day, which exceeds the RTOR estimate of 1.2 million images per day by [DELETED] percent. AR, Tab 7, GDIT Technical Evaluation at 1-2. This significant strength was based on the following statement in GDIT's proposal:

The GDIT Team digitizes over [DELETED] OMPFs per day onsite (~[DELETED] images). Proactive conversion is performed by [DELETED], with a current capacity exceeding [DELETED] Bulk OMPFs per day (~[DELETED] images). We also digitize about [DELETED] C-Files a day (~[DELETED] images), with a capacity for about [DELETED]% more than that if needed. Together, this capacity exceeds the Solicitation requirements [E.1.5.1.1.2] by [DELETED]% for files and images converted per day (~[DELETED] images a day compared to the 1,200,000 minimum required in the Solicitation [E.1.5.1.1.2]).

AR, Tab 5, GDIT Revised Proposal at 9. GDIT's proposal further detailed its recent experience performing the incumbent requirements during a 3-month period (June-September 2023) in which it was scanning an average of [DELETED] images per day, "[DELETED]% more than the required volumes (1,200,000) specified in the Solicitation [E.1.5.1.1.2]." *Id.* at 11.

GovCIO argues that in assessing the significant strength to GDIT's proposal, the agency compared "GDIT's per-workday scanning volume against the RTOR's per-calendar day estimate of 1.2 million images to incorrectly conclude that GDIT proposed a capacity that greatly exceeded the VA's estimated quantities by [DELETED] [percent]." Supp. Comments at 6. Based on our review of the record, we agree.

The record shows that the agency incorrectly concluded that GDIT's maximum daily conversion capacity exceeded the RTOR requirements by [DELETED] percent, and significantly exaggerated the amount by which GDIT's maximum capacity exceeded the estimated requirement. As noted, the RTOR stated that the agency would evaluate whether an offeror's approach "demonstrates methods and capacity in successfully meeting and/or exceeding the total estimated quantity of 1.20 million daily source material." RTOR at 38. However, we find that the agency's comparison of GDIT's proposed daily conversion capacity of approximately [DELETED] million images to the 1.2 million images in the RTOR was improper because the agency confirmed that its daily image estimate of 1.2 million identified in the evaluation criteria was computed based on calendar days (437 divided by 365 equals 1.197), whereas GDIT's estimated capacity of [DELETED] appears to be based on workdays. RTOR at 892 ("Please confirm: . . . b) 1.2 million images per day is based on 437 million images divided by a 365-day work year. . . . b) Confirmed."); see AR, Tab 5, GDIT Proposal at 11 ("Daily and weekly production can fluctuate based on number of workdays and factors outside of

our control[.]”). Neither the agency nor intervenor has refuted the protester’s statement that GDIT’s approximately [DELETED] million daily conversion capacity number was based on workdays.⁷ Therefore, the protester is correct that the agency performed an “apples-to-oranges” comparison when it concluded that GDIT could exceed the estimated requirement by [DELETED] percent.

A proper comparison of GDIT’s estimated capacity to scan [DELETED] images per workday to the PWS estimate of 1.7 million images per workday indicates that GDIT’s estimated capacity exceeded the agency’s estimated requirement, albeit by a much lower percentage than [DELETED] percent. Therefore, on this record, we cannot conclude that the agency would continue to consider this to be a significant strength, even if the absence of this significant strength would not change GDIT’s rating of excellent under the technical factor. Moreover, the selection decision identified the significant strength assessed for GDIT’s “proposed [DELETED]% overproduction” as one of the benefits offered in GDIT’s proposal that “merits a price premium.” AR, Tab 10, Best-Value Decision at 18. Accordingly, we conclude that GovCIO was prejudiced by this error in the agency’s evaluation of GDIT’s proposal, and during the best-value tradeoff, and sustain the protest on this basis.

However, the remainder of the protester’s challenges to the agency’s evaluation of the offerors’ conversion capability are without merit. GovCIO contends that the VA improperly considered GDIT’s stated maximum capacity of [DELETED] million images in its evaluation instead of the average of [DELETED] images per day from GDIT’s recent experience performing the incumbent requirements during a 3-month period. Supp. Comments at 10-12. GovCIO asserts that if the agency used this figure instead, GDIT would not even meet the estimated 1.7 million daily images per workday requirement. *Id.* GDIT’s proposal detailed its capability to convert approximately [DELETED] million images and explained how it could reach that capacity. GDIT’s proposal also included the figure of [DELETED] images per day based on its recent experience in a 3-month period in 2023. The information about its recent performance, however, did not negate its proposed capability for this procurement. AR, Tab 5, GDIT Revised Proposal at 9. We find that the agency reasonably evaluated the maximum capacity proposed by GDIT as opposed to its recent experience on the incumbent contract.

GovCIO also argues that the evaluation was unreasonable and disparate because its proposal indicated that it had the ability to scan a maximum annual volume of [DELETED] million images per day, which indicates a daily maximum scanning capacity of [DELETED] images that exceeds GDIT’s daily maximum capacity of [DELETED]. Comments & 2nd Supp. Protest at 4-5. GovCIO indicates: “This calculation is based on GovCIO’s yearly maximum divided by a 365-day work year, which is the same calculation the VA used in determining its 1,200,000 images per day estimate.” *Id.* at 5

⁷ The protester also points out that the agency’s discussions letter to GDIT referenced GDIT’s capacity to convert images “per workday.” Supp. Comments at 6 n.2; AR, Tab 4.1 GDIT Discussions Letter at 3.

n.1. However, in its proposal, GovCIO stated that it was “prepared to process the average estimated daily (workday) conversion volume [in accordance with] the PWS required timeline,” and “achieve estimated minimum volume of [DELETED] [million] images/workday” and “increase[] to the maximum annual volume of [DELETED] [million] images during the base year, if required.” AR, Tab 5.2, GovCIO Revised Proposal at 14-15. In its evaluation of GovCIO’s proposal, the TEB concluded that GovCIO’s proposal confirmed that it would meet the minimum requirements of the PWS and did not assess any strengths or weaknesses. AR, Tab 7.1, GovCIO Technical Evaluation at 1.

GovCIO’s proposal nowhere indicates a daily maximum scanning capacity of [DELETED] images. Rather, GovCIO’s proposal indicated it was prepared to achieve a minimum volume of [DELETED] million images per workday, which is consistent with the PWS estimate that “the total image count to be digitized per day is approximately 1.7 million images across all work locations.” RTOR at 1066; see AR, Tab 5.2, GovCIO Revised Proposal at 15. In this regard, GovCIO proposed to meet the minimum daily conversion requirements in the solicitation and therefore we find the agency’s evaluation of GovCIO’s proposal to be reasonable.

Key Personnel

GovCIO argues that the agency’s evaluation of offerors’ proposed key personnel was unreasonable and disparate, and assigned strengths to GDIT’s personnel for advanced degrees that exceeded the educational requirements while failing to assign strengths to GovCIO’s personnel for significantly exceeding experience requirements. Protest at 37-40. The protester argues this is disparate and unequal because the RTOR did not state that advanced degrees or education level would provide greater value to the government than work experience. Comments & 2nd Supp. Protest at 11-12.

As noted, the RTOR indicated that one element of the technical factor to be evaluated was staffing approach. RTOR at 39. Among other things, the RTOR required that proposals address the staffing approach element as follows:

Approach demonstrates the availability and degree of commitment of personnel with the required technical expertise for the successful completion of all required tasks. Key Personnel’s resumes demonstrate professional experience such as Education and Specialized Training, Work History, Employee Status as it relates to the requirements of the PWS.

Id. In accordance with the PWS, offerors were to propose the following key personnel: senior program manager; personnel functioning as the prime contractor’s onsite supervisor at each facility where activities occur on a full-time basis; lead data engineer; and quality lead. *Id.* at 1141.

In its evaluation of GDIT's staffing approach, the TEB assessed four strengths for its proposed key personnel. AR, Tab 7, GDIT Technical Evaluation at 4-5. Specifically, for two onsite supervisors, lead data engineer, and logistics manager, the TEB recognized that the proposed personnel exceeded the requirements for their respective positions by holding master's degrees (e.g., lead data engineer with a master's degree in software engineering) that would be advantageous to the government and increase the likelihood of successful contract performance. *Id.* Similarly, in its evaluation of GovCIO's staffing approach, the TEB assessed two strengths for its proposed quality lead and logistics manager because they possessed master's degrees and certifications that exceeded the requirements for these positions. AR, Tab 7.1, GovCIO Technical Evaluation at 4.

On this record, we find the agency's evaluation to be reasonable and not disparate because the protester has not demonstrated that the differences in the evaluation do not stem from differences in the proposals. For example, GovCIO argues that its lead data engineer has 25 years of work experience that is four times the PWS requirement. Comments & 2nd Supp. Protest at 12; see RTOR at 1142 (indicating minimum requirement for the lead data engineer is a bachelor's degree and 6 years work experience). However, the record shows that its proposed lead data engineer has a bachelor's degree in computer science and some specialized training but does not possess a master's degree. AR, Tab 5.2, GovCIO Revised Proposal at 78. By contrast, in addition to a master's degree and certification, GDIT's proposed lead data engineer comparably possesses over 20 years of work experience. AR, Tab 5, GDIT Proposal at 69-71.

In sum, neither GovCIO or GDIT were assessed strengths for personnel that only exceeded work experience requirements but not education requirements. As such, the record demonstrates that offerors were not treated disparately. While the protester may disagree with the weight the agency assigned proposals for advanced degrees or education levels, the record shows that the difference in the assessment of strengths was based on the qualifications of the individuals proposed, and the TEB did not find that a strength was warranted for GovCIO's proposed lead data engineer. In this regard, the premise for the protester's assertion of disparate or unequal treatment--the agency gave credit to the awardee for features in its proposal but failed to give credit to the protester for similar or indistinguishable features in the protester's proposal--is not supported by the record. Accordingly, we deny this allegation.

GovCIO also argues that the evaluation of key personnel was disparate, and the TEB should have assessed a strength for the level of commitment of its key personnel in accordance with the terms of the RTOR. Comments & 2nd Supp. Protest at 12-13. Specifically, GovCIO argues that while it provided signed letters of commitment for its proposed personnel, GDIT's proposal merely indicated at the top of the resumes that the personnel are "100% Available." *Id.*; compare AR, Tab 5.2, GovCIO Revised Proposal at 64, 67, 71, 74, 77, 82, 86, 91 with Tab 5, GDIT Proposal at 55, 58, 61, 64, 67, 69, 72, 74.

We also find no merit to this allegation. As noted, the RTOR required that offerors' approaches demonstrate the "availability and degree of commitment of personnel." RTOR at 39. The record shows that neither GDIT nor GovCIO received a strength or weakness related to the availability or commitment of their key personnel. While GovCIO provided letters of commitment compared to GDIT's statement of "100% Available" in its key personnel resumes, the protester does not demonstrate that providing such letters should have merited a strength or explain why a letter of commitment demonstrates a greater degree of commitment than a statement that each key person is "100% Available." In this regard, the intervenor states that nearly all GDIT's proposed key personnel are currently performing the incumbent requirements. Intervenor Supp. Comments at 11; see AR, Tab 5, GDIT Proposal at 55-76. On this record, we find no basis to conclude that the agency should have identified as a strength GovCIO's alleged superior commitment of its key personnel to perform the requirements. Accordingly, we deny this allegation.

Past Performance

The protester argues that the agency's assignment of a rating of neutral under the past performance factor was unreasonable and inconsistent with the RTOR. Specifically, GovCIO argues that both of its references were relevant as defined by the RTOR and any conclusion to the contrary constitutes the application of unstated evaluation criteria and is contradicted by the agency's prior evaluation, where the agency rated GovCIO's past performance as low risk. Protest at 21-27; Supp. Protest at 9-14. The agency argues that although GovCIO's rating changed from the prior evaluation, the TEB's conclusion is reasonable and consistent with the solicitation. MOL at 3-12.

The RTOR required that offerors submit no more than two recent and relevant projects, at least one of which was required to be performed by the prime contractor, and instructed offerors to clearly indicate whether the reference pertained to the prime or a proposed major subcontractor. RTOR at 40. The RTOR stated: "Relevancy is defined as a contract that is similar in size and scope of the requirements in the solicitation." *Id.* The RTOR further stated:

Similar in size means the total price of the contract, the number of staff, the number of users served, the number of locations served, etc. Scope compares how well the requirements in the PWS align with those of the past performance referenced. Quality is defined as performance which is satisfactory or better and will be used to assess the risk associated with successful contract performance.

Id. A major subcontractor was defined as "the subcontractor who received the highest percent of the value of the contract." *Id.* The RTOR further stated that determinations of recency and relevancy would not be separately rated, and that for a reference to be considered it must be both recent and relevant. *Id.* at 43. The RTOR explained: "While the Government may elect to consider data obtained from other sources, the

burden of providing current accurate and complete Past Performance information rests with the Vendor.” *Id.* Finally, the RTOR stated that an adjectival rating would be assigned by team consensus, and a vendor with no past performance would be rated as neutral. *Id.*

For its first reference, GovCIO submitted a mail management services (MMS) task order it started in 2022 for VBA’s Office of Business Integration. AR, Tab 5.2, GovCIO Proposal at 94-96. In its evaluation of this reference, the TEB concluded that the MMS task order was recent, but not relevant, stating in pertinent part as follows:

The task order scope presented is absent of prior logistics equivalent to the volumes and requirements in the [PWS]. The logistics component is estimated to make up 71% of this requirement which includes National Archives and Records Administration (NARA) compliance. Without logistics experience, this [reference] is found not relevant. Recency and relevancy on staffing size and total contract price size were met, however, relevancy in scope was not met for this [reference].

AR, Tab 7.2, Past Performance Evaluation at 4.

For its second reference, GovCIO submitted a reference for its proposed major subcontractor, Data Dimensions, for its performance from 2015 to 2020 as a major subcontractor to Leidos on the VBA’s intake, conversion, and mail handling services (ICMHS) task order with a total value of \$154,911,224. AR, Tab 5.2, GovCIO Proposal at 96-97. In its evaluation of this reference, the TEB concluded that the ICMHS task order was also recent, but not relevant. The TEB noted that, relative to the definition of major subcontractor in the RTOR, neither the past performance questionnaire submitted nor GovCIO’s proposal provided any information regarding the percentage of the referenced contract that was performed by Data Dimensions. AR, Tab 7.2, Past Performance Evaluation at 4. The TEB further stated:

The total contract price of this [reference] is less than a third when compared in size to the Government’s [estimate] and determined not to be relevant. For this [reference], the staffing “size of up to 400 [full-time equivalent employees]” was considered relevant in size. The TEB confirmed scope relevancy as the [reference] stated the task order scope to contain “support of front-end data collection, validation, and document conversion services for highly complex claims’ files and includes logistics for file bank extraction.” Recency and relevancy for staffing size and scope were met, however, relevancy in size was not met for total contract price.

Id. The TEB concluded: “With no relevant past performance record, GovCIO may not be evaluated favorably or unfavorably and is rated as Neutral.” *Id.*

In task order competitions conducted pursuant to FAR subpart 16.5, our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 10; *TeleCommunication Sys., Inc.*, B-413265, B-413265.2, Sept. 21, 2016, 2016 CPD ¶ 266 at 7. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. *Engility Corp.*, *supra* at 10; *Cape Envtl. Mgmt., Inc.*, B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8-9.

The protester argues that the conclusion that both of its past performance references are not relevant is unreasonable and contrary to the RTOR. Protest at 21-27; *see also* Supp. Protest at 9-14. Regarding its MMS task order, GovCIO argues that it is larger in value than the requirement and includes some logistics work that is otherwise relevant to the PWS. Protest at 23-25; Supp. Protest at 13. The agency responds that GovCIO's performance of the MMS contract was found to be not relevant because the TEB reasonably determined that although it requires conversion services, it does not include the performance of logistics associated with this requirement, which accounts for approximately 71 percent of the task order at issue. MOL at 6-9.

Here, the PWS requires that the contractor include a logistics plan in its overall program management plan. RTOR at 1071-1072. In addition, the PWS includes a logistics manager as a key person who "performs tasks required to develop and implement a logistics plan necessary to perform the requirements of this contract. They must ensure that all shipping and storage adheres to VA and NARA requirements. They shall oversee all logistics tasks required for the successful execution of this contract." *Id.* at 1142-1143; *see also id.* at 1076-1077 (describing requirements to achieve NARA compliance for receipt of files).

The TEB reviewed GovCIO's MMS task order reference and concluded that it "does cover conversion of physical source materials to standardized, indexed, and searchable PDFs however [the reference] does not include logistics. The contract scope presented is absent of prior logistics equivalent to the volumes and requirements in the PWS." AR, Tab 7.2, Past Performance Evaluation at 6. Although the protester argues that the MMS task order includes some logistics services, it has not demonstrated that the reference includes logistics comparable to the PWS. For example, the protester contends that the MMS contract included certain logistics such as mail intake, document retrieval, shipment, and interim storage, among other things, but does not explain how this is comparable to the logistics requirements related to NARA compliance.⁸ On this

⁸ In this regard, the contracting officer states: "While there are logistics in MMS, or any contract for that matter, the logistics of MMS are not 'equivalent' to the 'requirements in (continued...)"

record, we find no basis to conclude that the TEB's conclusion is unreasonable. We therefore deny this allegation.

Regarding the ICMHS task order reference for GovCIO's subcontractor, Data Dimensions, GovCIO argues that this work is the predecessor task order to the current file-to-file conversion services task order being performed by GDIT, and the agency has improperly elevated total contract value into a pass/fail criterion, contrary to the terms of the solicitation. Protest at 25-27; Supp. Protest at 13-14. The agency argues that Data Dimension's performance of the VA ICMHS task order was also reasonably evaluated as not relevant because the total value of the task order represented only 29 percent of the independent government estimate, and that GovCIO's disagreement is insufficient to render the evaluation unreasonable. The agency further argues that consistent with the RTOR, a rating of neutral for GovCIO's past performance was reasonable because both of its references were found to be not relevant. MOL at 9-12.

Again, we find the agency's evaluation to be reasonable. As noted, the RTOR stated that the determination of relevancy would include consideration of whether the reference was similar in size, which meant consideration of "the total price of the contract, the number of staff, the number of users served, the number of locations served, etc." RTOR at 40. Although the TEB concluded the ICMHS task order was similar in size to the number of required personnel and to the scope of work, the contract value represented less than a third of the value of the current requirement. In addition, the reference also related to the work performed by a "major subcontractor" but did not identify the percentage of work performed, indicating that the work performed by Data Dimensions necessarily was even less than the total contract value. See AR, Tab 7.2, Past Performance Evaluation at 6.

Moreover, similar to its evaluation of GovCIO's ICMHS task order, the record shows that the agency found one of the references submitted by GDIT to be not relevant because although the scope of the reference was similar in scope to the requirements, the total value of the contract was only 33 percent of the independent government estimate and did not include similar number of personnel. *Id.* GovCIO has not demonstrated that the TEB's consideration of "the total price of the contract" in its determination of relevancy for the ICMHS task order was unreasonable.⁹

the PWS.' Simply receiving media to scan (which is what the MMS contract involved) is not the same caliber of coordinating shipment, collection, chain of custody (all things included in NARA component), and tracking, etc., which is part of the current solicitation." COS at 22.

⁹ GovCIO also argues that because "nothing in the RTOR required GovCIO to identify the percentage of work that Data Dimensions performed, the VA's evaluation in this regard unreasonably held GovCIO to unstated requirements." Supp. Protest at 15. Although the RTOR did not explicitly instruct that a reference for a major subcontractor indicate the percentage of work performed, it did instruct vendors to "clearly state . . . whether the past performance information pertains to the prime/offeror or for the

(continued...)

We also find no merit to GovCIO's argument that the evaluation is unreasonable because it is contradicted by the agency's prior evaluation. The fact that a reevaluation varies, or does not vary, from an original evaluation does not constitute evidence that the reevaluation was unreasonable. *Oasis Systems, LLC*, B-407273.54 *et al.*, June 19, 2014, 2014 CPD ¶ 199 at 9. It is implicit that a reevaluation could result in different findings and conclusions. *Id.* (citing *IAP World Servs., Inc.*, B-406339.2, Oct. 9, 2012, 2012 CPD ¶ 287 at 3-4). The overriding concern for our purposes is not whether an agency's final evaluation conclusions are consistent with earlier evaluation conclusions (individual or group), but whether they are reasonable and consistent with the stated evaluation criteria, and reasonably reflect the relative merits of the proposals. *Perspecta Eng'g, Inc.*, B-420501.2, B-420501.3, Dec. 13, 2022, 2022 CPD ¶ 314 at 5; *CACI, Inc.-Federal*, B-418400.7, B-418400.8, Apr. 29, 2021, 2021 CPD ¶ 192 at 8.

Here, as noted, the agency assembled a new TEB to perform its corrective action. GovCIO argues that two of the three TEB members are the same, and the SSA is the same, yet the record does not explain the basis for the agency's differing conclusions. Protest at 22. GovCIO's argument is belied by the record, and the agency has credibly explained the basis for the rating of neutral. In this instance, the SSA also served as the contracting officer, and explains that the differences in GovCIO's past performance evaluation results were driven by the fact that the TEB performed the reevaluation, while the initial past performance evaluation had been performed by the contract specialist. In reviewing the revised evaluation, the SSA concluded that the TEB's evaluation was reasonable and consistent with the RTOR. COS at 4-5. As noted above, the record shows that the agency reasonably determined the two past performance reference to be not relevant. Accordingly, we find no basis to conclude that the agency's evaluation was unreasonable and deny this allegation.

proposed major subcontractor for this requirement" and defined major subcontractor as "the subcontractor who received the highest percent of the value of the contract." RTOR at 40. The RTOR also stated: "While the Government may elect to consider data obtained from other sources, the burden of providing current accurate and complete Past Performance information rests with the Vendor." *Id.* at 43.

We think such information was reasonably encompassed by the evaluation criteria as stated in the RTOR. *Nicholson/Soletanche J.V.*, B-297011.3, B-297011.4, Apr. 20, 2006, 2006 CPD ¶ 71 at 8 ("While agencies are required to identify the major evaluation factors, they are not required to identify all areas of each factor which might be taken into account, provided that the unidentified areas are reasonably related to, or encompassed by, the stated criteria."). Moreover, GovCIO does not explain why the agency should not have considered the percentage performed by Data Dimensions relative to the total contract value when GovCIO's proposal clearly indicated that Data Dimensions had performed as a major subcontractor to Leidos and provided details, but not the percentage of the contract value, regarding the work performed by Data Dimensions. AR, Tab 5.2, GovCIO Revised Proposal at 96-97.

Discussions

The protester argues that the VA failed to engage in fair and meaningful discussions because it did not advise GovCIO during discussions that its past performance rating changed. Supp. Protest at 14-17. The protester also contends that the agency engaged in unequal discussions because the VA provided multiple opportunities for GDIT to reduce its price, providing GDIT the opportunity to materially enhance its proposal while failing to provide GovCIO the same opportunity. Comments & 2nd Supp. Protest at 34-37. GovCIO argues that if the agency had notified it of the changed past performance rating in discussions, it could have revised its references or provided VA with any additional information it needed. *Id.* at 37.

The agency argues that GovCIO was not found to have adverse performance that required discussions, the VA was not required to raise in discussions that GovCIO's past performance rating changed from low risk to neutral, and in any event, the TEB did not perform its reevaluation of the past performance factor until after discussions were concluded. MOL at 32-33. The agency further argues that discussions were equal and fair, tailored to each offeror's proposal and included areas (such as price) where the offeror could improve. The agency further argues that although the VA did not engage in discussions regarding past performance with either offeror, both were provided the same opportunity to revise the past performance information included in their final proposal submissions. Supp. COS/MOL at 13-15.

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 for the task order here. See *Verizon Bus. Network Servs., Inc.*, B-419271.5 *et al.*, Apr. 26, 2021, 2021 CPD ¶ 191 at 10. In this regard, FAR section 16.505 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.*; *General Dynamics Info. Tech., Inc.*, B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 7 (finding that exchanges in the context of FAR section 16.505, like other aspects of such a procurement, must be fair). Discussions need not be identical, rather discussions must be tailored to each offeror's proposal. *Id.*

When an agency engages in discussions with an offeror in a task order procurement, the discussions must be meaningful, that is, they must lead the offeror into the areas of its proposal that require correction or amplification. See, e.g., *Peraton Inc.*, B-416916.5, B-416916.7, Apr. 13, 2020, 2020 CPD ¶ 144 at 7 n.5. For part 15 procurements, the FAR also states the contracting officer is encouraged, but not required, to discuss other aspects of an offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. FAR 15.306(d)(3). A contracting officer, however, is not required to discuss every area where the proposal could be improved in order for the discussions to be meaningful, and the precise content of discussions is largely a matter of the contracting officer's judgment. *Id.*; see *Skyline Ultd, Inc.*, B-416028, B-416028.2, May 22, 2018, 2018

CPD ¶ 192 at 6. As a general matter, there is no obligation to conduct discussions concerning a “neutral past performance rating, where the offeror’s past performance is not viewed as a deficiency or significant weakness, and the nature and relevance of the offeror’s past performance information is clear to the agency.” *Wolf Creek Fed. Servs., Inc.*, B-409187 *et al.*, Feb. 6, 2014, 2014 CPD ¶ 61 at 9.

Here, the agency engaged in multiple rounds of written discussions with GDIT and GovCIO during corrective action. COS at 2-3 (indicating that discussions letters were sent to both offerors on February 26, March 29, and April 11, 2024). All three of GDIT’s discussions letters advised that “its price is high” and that “a lower price would materially enhance this proposal[.]” AR, Tab 4.1, Discussions Letters at 3, 10, 16. GovCIO was also advised in its discussion letters that it could submit a revised price volume. *Id.* at 7, 18. However, the record shows that while none of the issues raised in discussions pertained to past performance, both offerors were asked to confirm that they wanted the agency to consider the past performance information included in their revised proposals. See *id.* at 16, 18-19 (“Past performance information provided was not requested in the revised discussion letter emailed March 29, 2024. Please confirm that your intent was for the government to consider this past performance information in the government’s final evaluation.”). GovCIO did not revise the past performance information included in its final proposal submission on April 15.

We find that the agency engaged in meaningful discussions with GovCIO and find no basis to conclude that discussions were unfair or unequal. Based on our review, the record shows that the agency informed GovCIO of the weaknesses in its proposal identified by the evaluators each time discussion letters were issued to offerors, and each time permitted both offerors to submit revised proposals. AR, Tab 4.1, Discussions Letters at 5-7, 12-14, 18-20. In this regard, the record also shows that GovCIO was able to resolve the weaknesses identified in its discussions letters and no weaknesses were assessed in its final evaluation. See AR, Tab 7.1, GovCIO Technical Evaluation at 9. And although GDIT was advised that its price was high, the record confirms that GDIT’s proposed price was higher than that proposed by GovCIO--in fact, approximately \$86 million more even after submission of final revised proposals. In addition, while the contracting officer recognized that GovCIO’s rating changed from the prior evaluation, the agency was not required to engage in discussions with GovCIO on this basis. *Wolf Creek Fed. Servs., Inc.*, *supra*. Accordingly, we deny these allegations.

Responsibility Determination

Finally, the protester contends that the agency should have found GDIT nonresponsible due to its attempt to gain an unfair competitive advantage in the procurement in violation of antitrust laws, or otherwise disqualified GDIT due to its attempt to influence the procurement. GovCIO alleges that GDIT improperly pressured one of GovCIO’s initially proposed subcontractors to disavow and rescind its commitment to support GovCIO in performance of the contract. Protest at 46-49. These allegations are premised on events that occurred after our Office sustained GDIT’s protest of the initial award to GovCIO, where we noted that after our Office conducted a hearing, GDIT

“withdrew its argument that the awardee’s proposal contained material misrepresentations regarding agreements with its proposed subcontractors.” *General Dynamics Info. Tech., Inc.*, B-421290, B-421290.2, *supra* at 4 n.5. GovCIO, states that its initially proposed subcontractor “Exela committed to supporting GovCIO’s performance of the task order after award and authorized GovCIO to include specific language in its original proposal representing that it had a commitment with this incumbent vendor.” Protest at 46-47. According to GovCIO, the following occurred:

On March 31, 2023, one month after the GAO issued its decision, Exela sent a letter to GovCIO falsely implying that it had never authorized GovCIO to represent that it had a commitment to support GovCIO in the event GovCIO won the task order, rescinding its previous commitment to support GovCIO, and requesting that GovCIO notify the VA that Exela would not support GovCIO after award. It is readily apparent, and should have been apparent to the VA, that GDIT orchestrated Exela’s letter, whether directly or through indirect corporate intimidation and pressure.

Id. at 47 (citations omitted).

GovCIO argues that GDIT’s improper interference with Exela working with GovCIO violates the FAR, and the VA should have investigated GovCIO’s allegations and reported GDIT to the Attorney General. *Id.* at 48. The agency argues that its determination of GDIT’s responsibility was made at the time the VA awarded the offerors’ IDIQ contracts and it was not required to conduct a new responsibility determination prior to issuing the task order. VA further contends that the facts presented by GovCIO evidence that there is a private dispute between the offerors but do not demonstrate that a violation of procurement law has occurred. MOL at 20-22.

Our Office has stated that there is no requirement that an agency conduct an additional responsibility determination when issuing a task order under an IDIQ contract, since a responsibility determination was already made at the time of award of the underlying IDIQ contract. See *Booz Allen Hamilton, Inc.*, B-409272 *et al.*, Feb. 25, 2014, 2014 CPD ¶ 84 at 5. Moreover, our Office generally does not review an affirmative determination of responsibility absent a showing of failure to properly apply definitive responsibility criteria, or where the protester identifies evidence raising serious concerns that, in reaching the responsibility determination, the agency unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c); *Bannum, Inc.*, B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 4.

Here, the RTOR did not provide for a responsibility determination, and the agency was not otherwise required to make a responsibility determination prior to issuing the task order to GDIT. Even so, the facts presented by the protester do not allege any improper action taken by the agency that relates to the dispute between GovCIO and GDIT regarding the availability of Exela to perform as a subcontractor for either offeror. In this instance, we view the allegations raised by GovCIO to pertain to a private dispute

between the parties that does not otherwise establish any violation of procurement law or regulation on the part of the agency. We find that this allegation fails to state a valid basis of protest, therefore it is dismissed. 4 C.F.R. § 21.5(f).

CONCLUSION AND RECOMMENDATION

We conclude that the VA unreasonably evaluated GDIT's proposed conversion capability because it was based on an erroneously inflated understanding of GDIT's capacity to exceed the government's requirements. We also conclude that this aspect of the agency's evaluation prejudiced GovCIO because the agency's erroneous conclusion was identified as a significant strength in the evaluation of GDIT's proposal and was cited in the best-value decision as a basis to justify the approximately \$86 million price premium associated with award to GDIT's technically superior but higher-priced proposal.

We recommend that the agency reevaluate GDIT's conversion capability using comparable metrics, consistent with the discussion above. We also recommend that the agency make a new award decision that adequately documents and ensures that the comparison of the offerors' proposals is consistent with the solicitation's award criteria. We also recommend that the agency reimburse the protester's reasonable costs associated with filing and pursuing the protest including attorneys' fees. 4 C.F.R. § 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. *Id.* at § 21.8(f).

The protest is sustained in part and denied in part.

Edda Emmanuelli Perez
General Counsel