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## Decision

**Matter of:** Veterans Evaluation Services, Inc.; QTC Medical Services, Inc.;  
VetFed Resources, Inc.

**File:** B-412940.26; B-412940.27; B-412940.28; B-412940.29. B-412940.30;  
B-412940.31

**Date:** January 5, 2017

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### DIGEST

Protests that agency miscalculated proposals, engaged in misleading discussions and made unreasonable source selection decisions are denied where record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations; agency did not mislead protesters during discussions; and agency's source selection decisions were rational and consistent with the solicitation's evaluation scheme.

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### DECISION

Veterans Evaluation Services, Inc. (VES), of Houston, Texas, protests the award of contracts to VetFed Resources, Inc., of Alexandria, Virginia; QTC Medical Services, Inc., of Diamond Bar, California; Logistics Health, Inc. (LHI), of La Crosse,

Wisconsin; and Medical Support Los Angeles, a Medical Corporation (MSLA), of Pasadena, California. QTC protests the award of contracts to VetFed, LHI and MSLA. VetFed protests the award of contracts to LHI and MSLA. All of the protests challenge the award of contracts by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. VA119A-15-R-0150, issued to acquire medical disability examination (MDE) services in various locations across the country. The protesters argue that the agency miscalculated proposals, engaged in misleading discussions and made unreasonable source selection decisions.

We dismiss the protests in part and deny them in part.

## BACKGROUND<sup>1</sup>

This is our second occasion to consider the propriety of the VA's actions in connection with this acquisition. Earlier, the agency awarded contracts under this solicitation and VES, LHI and MSLA filed protests challenging those awards. We sustained in part and denied in part those protests in a prior decision. Veterans Evaluation Services, Inc., et al., B-412940, et al., July 13, 2016, 2016 CPD ¶ 185. We recommended that the agency reopen its acquisition; engage in adequate discussions with the offerors; solicit, obtain and evaluate revised proposals; and make new source selection decisions. Id. at 23. The current protests relate to the propriety of the agency's actions in implementing corrective action in response to our earlier recommendation.

The RFP contemplates the award, on a best-value tradeoff basis, of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts to provide medical disability examination (MDE) services on a fixed-price basis for a base year and four 1-year options at locations throughout the United States, as well as various locations worldwide. RFP at 12366-12370.<sup>2</sup> The solicitation identified seven districts, and

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<sup>1</sup> The agency filed separate reports responding to the protests of VES, QTC and VetFed. All citations to the records in this decision identify the document being cited by name, followed by the page or pages being referenced. The agency assigned a numbering system to some, but not all, of the documents in the records. All citations are, first, to the numbers assigned by the agency or, where no numbers were assigned, to the page numbers appearing on the documents themselves.

<sup>2</sup> The agency issued a total of 10 amendments to the RFP. Proposals in response to amendment 10 were due on September 1, 2016. All references to the RFP in this decision are to the version of the solicitation conformed through amendment 10, unless otherwise noted.

these protests involve the award of contracts in districts 1 through 5.<sup>3</sup> Id. The agency awarded two contracts in each district.<sup>4</sup> Each contract has a guaranteed minimum value of \$3.7 million and a ceiling value of \$6.8 billion. Id. at 12366.

The RFP advised offerors that the agency would evaluate proposals considering price, and several non-price considerations. RFP at 12483. The evaluation factors were, in descending order of importance: technical approach, past performance, socioeconomic considerations and price.<sup>5</sup> Id. at 12483. The non-price considerations, in combination, were significantly more important than price.<sup>6</sup> Id.

In response to the solicitation, the VA received a number of proposals. After evaluating the proposals, engaging in discussions and soliciting, obtaining and evaluating final proposal revisions, the agency assigned adjectival ratings to the non-price proposals and established a total price figure for each offeror. Those evaluation results are presented in detail in our prior decision. Veterans Evaluation

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<sup>3</sup> VES's protest challenges the award of contracts in all five districts. QTC's protest challenges the award of contracts in districts 1, 2, 4 and 5. VetFed's protest challenges the award of contracts in districts 1 and 2.

<sup>4</sup> The agency awarded contracts to the following concerns: LHI and MSLA in District 1; LHI and MSLA in District 2; LHI and QTC in District 3; LHI and MSLA in District 4; and MSLA and VetFed in District 5. Business Clearance Memorandum (BCM) at 158-160 (references to the agency's BCM in this decision are to the revised BCM prepared in connection with its corrective action, as opposed to the BCM prepared in connection with the agency's earlier source selections, unless noted otherwise).

<sup>5</sup> In evaluating technical proposals, the agency assigned adjectival ratings of excellent, good, satisfactory, marginal, or unsatisfactory. Technical Consensus Evaluation Report at 3. The agency also assigned proposals strengths, weaknesses, significant weaknesses or deficiencies. Id. In evaluating past performance, the agency assigned adjectival ratings of excellent, good, satisfactory, marginal, unsatisfactory, or neutral/unknown. Past Performance Consensus Evaluation Report at 3.

In evaluating socioeconomic considerations, the RFP provided that the agency would give proposals full credit, partial credit, or no credit, depending on the status of the entity proposing (whether the concern was a service-disabled veteran-owned small business or a veteran-owned small business) and/or the status of the offeror's subcontractors, and the percentage of the total requirement that the offeror proposed to subcontract to those concerns. RFP at 12492.

<sup>6</sup> The protesters raise various allegations relating to the agency's evaluation of price in connection with its source selection decisions. We discuss the solicitation's provisions relating to the consideration of price in detail below.

Services, Inc., et al., supra. at 4-5. The agency awarded contracts to VES, VetFed and QTC on the basis of those evaluation results.

After learning of the agency’s award decisions, VES, LHI and MSLA filed protests in our Office and, as noted, we sustained those protests in part. Relevant to the current protests, we found in our prior decision that the agency’s price evaluation was unreasonable because the calculation of the offerors’ evaluated prices did not provide the agency with a meaningful measurement of the comparative cost to the government of awarding contracts to one concern versus another concern. Veterans Evaluation Services, Inc., et al., supra. at 14-19.

Our prior decision pointed out that, because the agency’s price evaluation methodology did not take into account the estimated quantities of the different types of examinations that might be performed under the contracts, the agency had no reasonable basis to project the likely comparative cost of making award to one versus another concern. We noted that, in evaluating price or cost in IDIQ-type contract settings, agencies in the past have employed a variety of evaluation methods, such as the use of sample tasks, hypothetical or notional plans that are representative of the anticipated requirements, and hypothetical pricing scenarios that reflect various cost or price eventualities.

In taking corrective action, the agency issued an amendment to the RFP that provided for evaluation of price using a sample task order, the details of which are discussed below. The agency advised offerors that they could submit revised proposals, but that the proposal revisions would be limited to price and past performance elements of the offerors’ proposals. After receiving and evaluating the revised proposals, the agency engaged in discussions with the offerors, and at the conclusion of those discussions solicited, obtained and evaluated final proposal revisions. The agency evaluated the proposals, assigned the following ratings under the non-price evaluation factors, and determined the following evaluated prices for the offerors:

<b>Offeror</b>	<b>Technical Approach</b>	<b>Past Performance</b>	<b>Socioeconomic</b>	<b>Price</b>
<b>District 1</b>				
VES	Excellent	Excellent	Partial	\$33,549,455
LHI	Excellent	Excellent	Partial	\$26,394,312
MSLA	Excellent	Good	Partial	\$30,173,456
QTC	Excellent	Excellent	Partial	\$35,546,945
VetFed	Excellent	Good	Partial	\$30,964,554
<b>District 2</b>				
VES	Excellent	Excellent	Partial	\$32,298,520
LHI	Excellent	Excellent	Partial	\$25,681,896
MSLA	Excellent	Good	Partial	\$28,922,977
QTC	Excellent	Excellent	Partial	\$33,935,843
VetFed	Good	Good	Partial	\$26,692,982
	<b>Technical</b>			

<b>District 3</b>	<b>Approach</b>	<b>Past Performance</b>	<b>Socioeconomic</b>	<b>Price</b>
VES	Excellent	Excellent	Partial	\$32,467,600
LHI	Excellent	Excellent	Partial	\$28,294,442
MSLA	N/A	N/A	N/A	N/A
QTC	Excellent	Excellent	Partial	\$33,936,638
VetFed	N/A	N/A	N/A	N/A
<b>District 4</b>				
VES	Excellent	Excellent	Partial	\$32,645,050
LHI	Excellent	Excellent	Partial	\$28,136,815
MSLA	Excellent	Good	Partial	\$29,578,153
QTC	Excellent	Excellent	Partial	\$33,936,638
VetFed	N/A	N/A	N/A	N/A
<b>District 5</b>				
VES	Excellent	Excellent	Partial	\$34,571,735
LHI	N/A	N/A	N/A	N/A
MSLA	Excellent	Good	Partial	\$28,922,977
QTC	Excellent	Excellent	Partial	\$35,546,945
VetFed	Excellent	Good	Partial	\$30,708,333

BCM at 13, 30, 46-47, 51. On the basis of these evaluation results, the agency awarded contracts to LHI, MSLA, QTC and VetFed, as described above. After being advised of the agency's source selection decisions and requesting and receiving debriefings, the protesters filed the current protests with our Office.

## PROTESTS

The protesters collectively raise a large number of issues challenging the agency's evaluation of proposals and source selection decisions. We have considered all of the allegations raised and find no basis to object to the agency's conduct of the acquisition for any of the reasons advanced by the protesters. We discuss the protesters' principal contentions below. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. ManTech Advanced Systems International, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. We discuss our conclusions below.

## Price Evaluation

QTC and VES raise several allegations relating to the agency's evaluation of prices.<sup>7</sup> VES principally takes issue with how the agency arrived at a total evaluated price for each offeror in each district. QTC principally takes issue with how the agency evaluated prices for reasonableness and balance. We discuss these allegations and our conclusions below.

By way of background, the RFP required offerors to submit two price-related spreadsheets with their proposals. The first, attachment L, required offerors to insert contract line item number (CLIN) and sub-CLIN unit prices for a wide variety of examination types for each year of the contract (for example, CLIN 0001 and its associated sub-CLINs was for performing varying quantities of comprehensive general medical examinations, CLIN 0002 and its sub-CLINs were for performance of various types of musculoskeletal system examinations, and so on). RFP Amendment 10, Attachment L.<sup>8</sup> This spreadsheet included a "worksheet" for each year of contract performance, and offerors were required to complete each worksheet for each district for which a proposal was being submitted.<sup>9</sup> This spreadsheet also included a separate worksheet entitled "sample task." This

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<sup>7</sup> All three protesters initially alleged that the VA failed to evaluate the awardees' proposed professional compensation for realism. VetFed and VES specifically withdrew these allegations after receiving the agency's reports. QTC did not expressly withdraw its contention, but made no further mention of it in its comments after the agency provided a detailed response to the argument. We conclude that QTC abandoned this aspect of its protest. Veterans Evaluation Services, Inc., et al., supra. at 5-6 n.10.

<sup>8</sup> Earlier versions of these spreadsheets were included in previous versions of the RFP, and the spreadsheets that are the subject of the current protests initially were provided in amendment 8 to the solicitation. In the reports provided to our Office, the spreadsheets included with amendment 8 were adobe pdf documents that were incomplete. Agency Reports (ARs), exh. 16. We cite to amendment 10, ARs, exh. 31 above because it includes the complete excel spreadsheets being described.

<sup>9</sup> As we pointed out in our prior decision, the pricing for CLIN 0017, which relates to the provision of ancillary diagnostic services, as opposed to the conduct of examinations, differed from the pricing for other CLINs. For CLIN 0017, offerors were required to provide prices expressed as a percentage of the national Medicare baseline of reimbursement for the test to be performed. For example, if an offeror proposed 100 percent of the national Medicare baseline, and the rate of reimbursement for the test in question was \$100, then the offeror's price for that test would be \$100.

worksheet was locked and could not be altered by the offerors.<sup>10</sup> The sample task worksheet included quantities for each CLIN and sub-CLIN, and was automatically populated with the base year unit prices inserted by the offerors in the base year worksheet.

The second, attachment M, was a spreadsheet that required offerors to insert the minimum hourly rates of direct and fringe compensation to be paid to the various types of physicians required to perform the MDE services to be provided during contract performance (for example, general physicians, ophthalmologists, audiologists, and so on). Amendment 10, Attachment M. Offerors were required to provide rates of compensation for each year of the contract in each district for which a proposal was submitted.

The RFP stated that the VA would evaluate the individual CLIN prices, as well as the total price calculated by the sample task order worksheet, for reasonableness, and also advised that individual prices would be evaluated for balance. Amendment 8 at 8611-8612. In connection with the evaluation of the individual CLIN prices, the record shows that the agency added together the individual CLIN prices proposed by all offerors for each CLIN and sub-CLIN, divided that figure by the number of prices considered to establish an “average” CLIN price, and then calculated a standard deviation value above and below that average CLIN price. These are referred to throughout the record and protest pleadings as the “benchmark” prices. For purposes of evaluating the reasonableness of the individual CLIN prices, the agency determined that any price that was above the benchmark price was unreasonable.<sup>11</sup> BCM, Attachment III, Price Evaluation Spreadsheet. The agency also examined prices across contract years of performance to ensure balance. Id., Price Evaluation Balanced Pricing Spreadsheet.

For purposes of evaluating the realism of the offerors’ proposed professional compensation, the agency relied on data gathered from a website known as salary.com to arrive at minimum and average rates of compensation for each type of medical professional called for under the RFP. E.g. QTC Contracting Officer’s Statement at 16. Where an offeror’s proposed rate of professional compensation

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<sup>10</sup> The spreadsheet also had two other worksheets entitled “price schedule” and “districts” that were locked and could not be altered by the offerors. RFP Amendment 10, Attachment L; see also RFP Amendment 8 at 8608.

<sup>11</sup> The record in the current protests shows that the agency made these calculations based on the prices submitted by the offerors in response to amendment 8. As we noted in our prior decision, during the last round of competition, the agency made similar calculations to evaluate the reasonableness of the proposed individual CLINs. Veterans Evaluation Services, Inc., et al., supra. at 20.

was equal to or in excess of the referenced minimum rate, it was determined to be realistic. Id.

#### Calculation of Total Price

VES argues that the agency calculated the offerors' total prices in an unreasonable manner. The record shows in this connection that the agency used the total prices from the sample task order worksheet to arrive at total prices for each offeror and, as noted, the sample task worksheet calculated total price using only the base year CLIN prices provided by the offerors in the base year worksheet. VES maintains that the RFP required the agency to calculate total prices using both the base and option year prices, and that the calculation relied on by the agency distorts the relative differences in the offerors' total prices.

We find this allegation untimely. The record shows that the RFP was patently ambiguous regarding how the agency would calculate total price. A patent ambiguity constitutes an impropriety apparent on the face of the solicitation and, as such, must be protested before the deadline for submission of proposals. 4 C.F.R. § 21.2(a)(1); Peoples Accident Information Service, Inc. d/b/a Securit, B-404211, Jan. 18, 2011, 2012 CPD ¶ 82 at 5.

As noted in our prior decision, the earlier version of the RFP did not expressly state how the agency would calculate total price. Veterans Evaluation Services, Inc., et al., supra at 16-17. We pointed out that, in evaluating price or cost in IDIQ-type contract settings, agencies in the past have employed a variety of evaluation methods, such as the use of sample tasks, hypothetical or notional plans that are representative of the anticipated requirements, and hypothetical pricing scenarios that reflect various cost or price eventualities to measure the relative cost to the government of making award to one concern versus another. Id. at 17-18.

The VA explains that, in response to our earlier decision, it determined that it would use a sample task to measure total price. To implement that decision, the record shows that the agency amended the RFP to include the sample task worksheet as part of attachment L to the RFP. As described above, that worksheet was locked and could not be altered by the offerors. Instead, it was automatically populated with the offerors' base year CLIN prices. The sample task order worksheet itself identifies the information to be automatically populated as the "Base Period of Performance Unit Price[s]," and identifies the resulting calculation (the worksheet automatically multiplied the inserted unit prices by the estimated quantity specified in the worksheet) as the "Total Proposed Price." RFP, Attachment L, Sample Task Worksheet at columns 6 and 7. The worksheet further identifies the "grand total" figure to be calculated as "TOTAL PRICE SAMPLE TASK ORDER." Id. row 148.



The VA also amended the RFP's instructions and evaluation criteria. The instructions explain what is required of offerors in connection with the sample task order:

A sample task order shall be submitted (see worksheet titled "Sample Task Order"). The sample task order is automatically populated using the unit prices for the base period of performance. The sample task order contains sample quantities for each line item. The sample task orders will be used for price evaluation purposes only and are representative of the volume of exams that might be expected for any of the Districts and periods of performance.

RFP at 12489 (emphasis supplied).

The price evaluation factor language also was amended and provided as follows:

The Offeror shall also confirm that the line item and total proposed price in the "Sample Task Order" has been correctly calculated. The Government shall evaluate individual line item prices for reasonableness and will also evaluate total proposed prices under the "Sample Task Order" for each District to determine price reasonableness.

RFP at 12492.

Against this backdrop, VES directs our attention to price evaluation language in the RFP that was not amended from the prior round of competition. That language was included in a paragraph relating to the evaluation of prices for CLIN 0017 (diagnostic tests and services) and provides as follows:

In order to evaluate the overall total proposed price for Ancillary Diagnostic Services (see CLINs 0017A-0017D), VA has provided a sample unit price for all Procedures, Tests, Laboratory Work, and X-rays on Excel Spreadsheet 1 (Attachment L). VA's unit price provided for all Procedures, Tests, Laboratory Work, and X-rays categories is for evaluation purposes only. The Offeror's proposed percentages will be multiplied by the estimated quantities and VA provided sample unit price to determine a total proposed price for each Procedures, Tests, Laboratory Work, and X-rays line item. These line items will then be added to the total proposed prices for all remaining line items to generate an overall total proposed price (including base and all option periods) for each Offeror.

RFP at 12492.

The agency describes this language as “vestigial language” left over from the prior solicitation, and points out that the calculations made during the prior competition pursuant to this language--the simple summation of base and option CLIN prices without consideration of varying quantities associated with each CLIN--were what led us to sustain the prior protests. Agency Motion for Partial Dismissal at 15.

It is clear that the language identified by VES is fundamentally inconsistent with the other RFP provisions discussed above. On the one hand, the language identified by VES contemplates some sort of calculation involving both the base year of contract performance, as well as the option years.<sup>12</sup> On the other hand, it is clear that, in amending the RFP, the VA intended to use the sample task order as a mechanism for evaluating total price; that the sample task order only contemplated calculations using the offerors’ base year CLIN prices; and that the VA considered the estimated quantities included in the sample task order as representative of the volumes of exams that might be expected in any district for any period of performance, and advised the offerors of this fact in the amended RFP.

This inconsistency was apparent on the face of the RFP and any protest relating to it, to be timely, was required to be filed no later than the deadline for submitting proposals established by amendment 10 of the RFP. We therefore dismiss this aspect of VES’s protest.

#### Evaluation of Prices for Reasonableness

QTC alleges that the agency’s method for evaluating the offerors’ individual CLIN and sub-CLIN prices for reasonableness created misleading benchmarks. According to the protester, the prices submitted by two offerors were dramatically higher than the prices proposed by all of the remaining offerors.<sup>13</sup> QTC reasons that these high prices had the effect of skewing the agency’s benchmark prices

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<sup>12</sup> All of the amended solicitation provisions quoted above clearly contemplate that the grand total calculated using the sample task order would be considered the “total price.” VES has not explained how, in light of the fact that the sample task worksheet was automatically populated using only base year CLIN prices, option year prices somehow would be used in any calculation of total price for the sample task. Nothing in the RFP states that the sample task order would employ the use of option year CLIN prices, and there was no representation on the part of the agency that it would perform some subsequent calculation using the option year CLIN prices in connection with calculating the total sample task prices for evaluation and source selection purposes.

<sup>13</sup> Although QTC specifically directs our attention to the allegedly high prices of two offerors in its pleadings, it submitted exhibits that present calculations relating to three offerors. QTC Comments and Second Supplemental Protest, exh. 1.

upward. QTC maintains that, because the agency's calculations were skewed, the agency failed to identify--and bring to QTC's attention during discussions--certain QTC-proposed CLIN prices that should have been found unreasonably high.

This allegation also is untimely. Protests based on alleged solicitation improprieties that are apparent prior to the deadline for submitting proposals must be filed before that deadline. 4 C.F.R. § 21.2(a)(1). A protest allegation that challenges the ground rules that the agency has announced for performing corrective action and recompetition is analogous to a challenge to the terms of a solicitation and also must be filed prior to the deadline for submitting revised proposals. Northrup Grumman Information Technology, Inc., B-400134.10, Aug. 18, 2009, 2009 CPD ¶ 167 at 10; Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 7.

The record shows that the agency used the same method for calculating its benchmark prices during the prior round of the competition--arriving at an average price for each CLIN using the individual CLIN prices of all offerors, and then establishing a standard deviation from that average CLIN price--that it used during this round of competition. Veterans Evaluation Services, Inc., et al., supra. at 20. The record also shows that the VA provided all offerors the total prices submitted by each firm during the prior round of competition. RFP Amendment 8 at 8598-8599. The "total price" information provided to the offerors was derived from a calculation performed by the agency during the prior competition; the agency added the CLIN prices of each offeror in each district for the base and option years. Although as noted in our prior decision, those "total prices" did not provide the agency with insight into what the likely comparative cost to the government would be of award to one concern versus another (because that calculation did not take into account varying quantities for each CLIN), Veterans Evaluation Services, Inc., et al., supra. at 18, the information nonetheless clearly showed that some of the offerors had proposed dramatically higher CLIN prices compared to other offerors.

For example, the record shows that in district 2, QTC's "total price" was \$144,242. Amendment 8 at 8598. In comparison, the total price offered by the highest-priced offeror for district 2 was \$431,965, or nearly three times higher than QTC's total price. Id. (The highest priced offeror in district 2 during the prior competition is one of the allegedly high priced offerors identified in QTC's current protest whose prices, according to QTC, unreasonably skewed the agency's benchmarks calculations.) The record shows that there were several other offerors that previously had proposed dramatically higher prices compared to QTC in all 5 districts. Id. at 8598-8599.

The record also shows that the VA told QTC--and all of the other offerors--during discussions for the current round of competition how it intended to calculate the benchmark prices for evaluation purposes. In this connection, the agency sent QTC an e-mail before a scheduled oral discussions conference call. That e-mail stated:

A benchmark price will be calculated for each contract line item number (CLIN). The benchmark price will be based on an analysis of competitive prices and will be used to determine the reasonableness of each proposed CLIN price. Separate benchmark prices will be calculated for each priced CLIN within each District (1-5) and for each of the base and all option periods. The benchmark price will be calculated as follows[:]

An average price will be calculated based on the average of the CLIN prices proposed by all Offerors for a given District and period of performance;

One standard deviation will be calculated based on the CLIN prices proposed by all Offerors for a given District and period of performance; and

The benchmark price for a given CLIN will be determined by adding one standard deviation to the average CLIN price.

Any proposed CLIN price that exceeds the benchmark price will be considered questionable for reasonableness.

QTC's Discussions Briefing, Aug. 9, 2016, at 10486-10487. Thus, QTC knew how the agency intended to calculate its benchmark prices--using the same method employed during the last round of the competition--and also knew that there had been wide variation in the pricing submitted. Logic dictates that, if the agency's calculations during this round of competition were misleading, they were similarly misleading during the last round of competition. (QTC did not object to the agency's method for arriving at its benchmark prices during the last round of competition.)

In the final analysis, if QTC had concerns about how the agency was calculating its benchmark prices, it should have raised those concerns before revised proposals were submitted in the wake of discussions; it had all of the information necessary to advance this contention at that time. Moreover, a protest at that time would have afforded the agency an opportunity to consider the propriety of its proposed evaluation methodology before soliciting revised proposals, engaging in discussions and evaluating final proposal revisions. We therefore conclude that this aspect of QTC's protest is untimely.<sup>14</sup>

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<sup>14</sup> In any event, we have no basis to object to the agency's evaluation methodology. Simply stated, it identified those CLIN prices--including some of QTC's prices, and virtually all of the prices submitted by the offerors that QTC argues should have been excluded from the calculation--that were true outliers in terms of being  
(continued...)

## Evaluation of Prices for Balance

QTC argues that the agency failed to evaluate proposed prices for balance, as required by the RFP. According to QTC, the awardees proposed comparatively high prices for certain CLINS that have small quantities under the sample task, and proposed comparatively low prices for CLINS that have large quantities under the sample task order. QTC maintains that, should the estimated quantities in the sample task prove inaccurate, the agency could end up paying more under the awardees' proposals than was shown by the agency's evaluation. In a similar vein, VES argues that the agency's evaluation failed to take into consideration the fact that the estimated quantities for performance of "record reviews" (CLINs 0019A-0019C) in the sample task are dramatically understated.<sup>15</sup> VES maintains that the agency's evaluation of prices for balance failed to account for this discrepancy.<sup>16</sup>

These allegations are premised on an underlying conclusion that the RFP's sample task quantities for various CLINs are under- or overstated. QTC's allegations are not supported by any specific evidence, and instead are based entirely on its speculation that the estimated sample task quantities for certain CLINs may be inaccurate. VES's allegation is based on record review quantities it has performed under its predecessor contracts. QTC Comments, Nov. 14, 2016, at 19-24; VES Comments, Nov. 14, 2016, at 21-29. Nonetheless, both allegations are based on a challenge to the accuracy of the estimated quantities included in the RFP sample task. However, any challenge to the accuracy of the solicitation's estimated quantities, to be timely, had to be filed no later than the closing date established for the submission of proposal revisions in response to amendment 8, which included the agency's estimated quantities. Accumark, Inc., B-310814, Feb. 13, 2008, 2008 CPD ¶ 68 at 4.

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(...continued)

unreasonably high. While QTC is correct that using a smaller, more closely-grouped data set for purposes of calculating the benchmark prices would have identified a larger group of CLIN prices as unreasonably high, we find nothing inherently unreasonable in the agency's evaluation here. Moreover, there was nothing preventing QTC from lowering its prices to increase its competitiveness, regardless of whether the agency identified certain of them as unreasonably high.

<sup>15</sup> A record review involves the review of medical records of varying sizes.

<sup>16</sup> VES also suggests that the incidence of record reviews will increase during the option years, and that the VA's failure to evaluate the option year pricing in connection with its calculation of total price fails to capture this fact. As discussed above, however, any challenge to the agency's failure to evaluate option pricing in connection with its calculation of total price is untimely.

In addition, and as pointed out by the agency, the record shows that the VA performed an extensive review of prices for balance as between the contract years. BCM, Attachment III Price Evaluation Worksheet for Balanced Pricing. The record also shows that the agency evaluated each CLIN for reasonableness. The agency states that, based on this review, it concluded that none of the prices proposed were materially overstated.

QTC has not alleged that any of the awardees' prices are materially overstated; rather it alleges that certain of the awardees' prices are comparatively low in relation to its own proposed pricing, and that the awardees' prices for some CLINS are lower than might be expected, while other CLIN prices are higher than might be expected.<sup>17</sup> For its part, VES does not allege that the awardees' prices are overstated, but only that they are higher than its prices for the same requirement. In order to show that prices are unbalanced, a protester must show, not only that certain prices are understated, but also that one or more prices in the allegedly unbalanced proposal are overstated. Marine Terminals Corp.-East, Inc., B-410698.9, Aug. 4, 2016, 2016 CPD ¶ 212 at 11; see also USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 6. Since neither protester has shown that any of the awardees' prices are materially overstated, there is no basis to object to the agency's evaluation for failing to identify unbalanced prices.

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<sup>17</sup> QTC's pleadings on this subject are, at best, confusing. On the one hand, in its first supplemental protest, QTC argued only that the evaluation failed to identify instances where the awardee's prices are low in relation to QTC's prices for the same requirements. QTC's First Supplemental Protest, Oct. 3, 2016, at 4-16. In its comments on the agency report, QTC appears to allege that the price evaluation failed to consider that the awardees' prices are higher than would be expected for certain CLINs, and lower than might be expected for other CLINs, even though its earlier pleadings made no mention of this. QTC Comments, Nov. 14, 2016, at 19-24. In any event, QTC has not shown that any of the prices that it has identified as allegedly unbalanced were higher than its own prices for the same requirements. It follows that, even if QTC were correct that the VA failed to perform an adequate evaluation for balanced prices, it was not prejudiced by the agency's action.

QTC also suggests that the agency's evaluation of prices may have overlooked the fact that some firms proposed extremely low prices for certain CLINs and may not have had an adequate understanding of the technical requirements associated with performing the services, or may have introduced an element of risk by offering such low prices. However, an evaluation that gives consideration to whether an offeror's low proposed prices reflect a lack of understanding or introduce a risk of unsuccessful contract performance amounts to a price realism evaluation; any such evaluation may not properly be performed, unless the RFP provides for such an evaluation. Metis Solutions, LLC, et al., B-411173.2, et al., July 20, 2015, 2015 CPD ¶ 221 at 15-16. As discussed in greater detail below, the RFP here did not contemplate an evaluation of the offerors' CLIN prices for realism.

## Evaluation of Technical Proposals

VES raises a large number of allegations in relation to the agency's evaluation of technical proposals. According to VES the agency committed a wide range of errors in connection with the evaluation of its technical proposal. The protester essentially alleges that the agency either gave one or another of the awardees--but not VES--a strength in its technical evaluation for a feature that also was included in the VES proposal; identified elements in one or another of the awardee's proposals as comparable to elements in the VES proposal, when in fact, those features were not comparable; or failed to give adequate weight to features in the VES proposal.

We dismiss these allegations as untimely. As noted above, a protest allegation that challenges the ground rules that the agency has announced for performing corrective action and recompetition is analogous to a challenge to the terms of a solicitation and also must be filed prior to the deadline for submitting proposals. Northrup Grumman Information Technology, Inc., supra.; Domain Name Alliance Registry, supra. Although couched in terms of a challenge to the agency's technical evaluation, these allegations actually are a challenge to the scope of the agency's proposed corrective action; VES is alleging that the agency miscalculated technical proposals, and requesting that we recommend that the agency reevaluate those proposals.

In taking its corrective action, the agency specifically advised offerors that it was not accepting revisions to any technical proposals, and that revised submissions were confined to the offerors' price and past performance proposals. RFP, Amendment 8, at 8597. In opening discussions, the VA clearly stated, not only that it was not accepting revisions to technical proposals, but also that it intended to use the results of its previous technical evaluation in making its new source selection decisions.

In this latter connection, the record shows that all offerors received a discussions briefing letter from the VA in advance of an initial oral discussions session. These letters included copies of the technical evaluation findings and ratings assigned to offerors' proposals. Discussions Briefings, Aug. 9, 2016. A review of the technical evaluation portion of the discussions briefing provided to VES shows that it was, word-for-word, the same as the technical evaluation findings that were made during the prior round of competition. Compare id. at 10526-10527 with the Agency Report in the Prior VES Protest, exh. 20, Technical Consensus Evaluation Report, Apr. 16, 2016, at 60-61. The record also shows that VES was aware of these findings, since

they had been provided to the firm during the debriefing it received after the first round of the competition. Id., exh. 26, VES Post-Award Debriefing, at 21-23.<sup>18</sup>

In addition, the record shows that the contracting officer was clear during oral discussions that the agency was relying on the earlier technical proposals and evaluation results. In this connection, VES has submitted a transcript of the oral discussion session it held with the contracting officer on August 9, 2016.<sup>19</sup> That transcript includes the following quote from the contracting officer:

We are not changing what we already have in the technical proposals. As you guys can see, we didn't ask for that, so that will still stand. It's taken into consideration, that is the number one consideration for us, and the best value, we stated that in the RFP.

Protester's Comments and Supplemental Protest, exh. 5 at 3. The record also shows that, for a follow-up discussion session scheduled for August 30, the agency again reiterated that it was not taking revised technical proposals and no change in the offerors' technical approach had been, or would be, permitted. Discussions Briefing, Aug. 25, 2016, at 12583.

In addition to the foregoing considerations, we point out that, during the prior protests, there were a large number of challenges to the propriety of the agency's technical evaluation (many of which were advanced by VES), and those allegations were, by and large, unsuccessful. Veterans Evaluation Services, Inc., et al., supra. at 6-12.

In the final analysis, as with QTC's allegation concerning the propriety of the agency's method for calculating the benchmark prices, a timely challenge to the scope of the agency's proposed corrective action relating to the solicitation and evaluation of revised technical proposals would have afforded the agency a timely opportunity to consider the propriety of its chosen course of action before soliciting

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<sup>18</sup> We also point out that VES's counsel had a complete copy of the agency's technical evaluation report showing the evaluation conclusions for all offerors from the previous round of competition. To the extent that VES thought there may have been a basis to challenge the scope of the agency's corrective action because it did not contemplate a reevaluation of technical proposals, protester's counsel had all of the information necessary to advance the allegations that are now being made. See Columbia Research Corp., B-247073.4, Sept. 17, 1992, 92-2 CPD ¶ 184.

<sup>19</sup> The agency notes that it was unaware that VES was transcribing its oral discussions sessions, which were held by teleconference.



revised proposals, engaging in discussions and evaluating final proposal revisions. We therefore dismiss these allegations as untimely.<sup>20</sup>

### Past Performance Evaluation

VES alleges that the agency misevaluated QTC's past performance in connection with awarding QTC a contract for district 3. The record shows that, during the prior round of competition, the agency assigned QTC a good past performance rating based on the firm's submission of three past performance examples, two of which were evaluated less favorably compared to the third example. E.g. Agency Report from VES's Prior Protest, exh. 20 Past Performance Consensus Report, at 21-24.

As noted, during the current round of competition, offerors were permitted to revise their past performance proposals. In submitting its revised proposal, QTC removed the two past performance examples that had been evaluated as comparatively less favorable, and instead chose to rely on the one example that had been evaluated more favorably. QTC Proposal as of Amendment 9, Past Performance Volume. Based on a review of this single reference, the agency assigned QTC an excellent rating under the past performance factor. BCM, Past Performance Consensus Report, at 11-12. VES maintains that it was unreasonable for the agency to have ignored the two comparatively less favorable past performance examples considered during the prior round of competition.

We have no basis to object to the agency's evaluation of QTC's past performance. The record shows that the contracting officer was well aware of the change in the QTC proposal that removed the other two references. Memorandum for the Record Concerning QTC's Past Performance (MFR). That same memorandum also documents the fact that, for the remaining past performance example, the contracting officer both reviewed an updated past performance questionnaire prepared by the cognizant Veterans Benefits Administration (VBA) reviewing official, and spoke to the reviewing official because of favorable changes in that questionnaire compared to an earlier version of the questionnaire that had been submitted with QTC's proposal during the last round of the competition. In

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<sup>20</sup> VES suggests that, while it may be untimely to raise challenges to the agency's technical evaluation, it properly may raise these same allegations in connection with the agency's source selection decisions. We disagree. Although VES characterizes these challenges as distinct, in fact, the protester is simply repeating its same challenges to the agency's technical evaluation in connection with its allegations concerning the propriety of the agency's source selection decisions. This is nothing more than a back-door attempt to have its untimely challenge to the agency's corrective action heard under the guise of a challenge to the agency's source selection decision.

memorializing that conversation, the MFR states as follows:

He [the VBA reviewing official] stated that, since completing the previous questionnaire, he realized that he had not adequately described QTC's performance when he completed the previous questionnaire. In reviewing QTC's performance on the contract in the Contractor Performance Assessment Reporting System (CPARS), it is debatable whether an Excellent rating would be justified, although it does reflect "very good" to "exceptional" performance in all measured criteria. However, no CPARS report was completed for the last year and a half of performance. VBA's representative confirmed that, had he completed a CPAR[S] report for the last year and a half of performance, the record would have been consistent with the most recent past performance questionnaire submitted and would support an Excellent rating for QTC's past performance.

MFR. The MFR concludes by stating that the contracting officer accepted the representations of the VBA representative and, based on the updated information obtained, and recognizing the change to the contents of the QTC proposal--with the other two past performance examples removed--concluded that QTC merited an excellent rating under the past performance factor. Id.

We think the agency's assignment of an excellent rating to QTC for past performance was reasonable in light of the totality of the circumstances described above. VES's protest amounts to no more than disagreement with the agency's judgment; such disagreement, without more, does not provide a basis for our Office to object to the agency's evaluation of QTC's past performance. Veterans Evaluation Services, Inc., et al., supra, at 12. We therefore deny this aspect of VES's protest.

#### Discussions

All three protesters allege that the agency engaged in misleading discussions with them in the area of price. Although each protester couches its argument in slightly different terms based on the particular facts of their respective discussions, all three protesters advance essentially the same argument.

The record shows that, during discussions, the agency identified various CLIN prices proposed by each offeror as involving significant reductions from the prices that the offeror previously had proposed during the prior round of competition. In some instances, the VA noted that the prices in question were either significantly lower than the prices for the same CLINs offered during the prior round of competition, and/or that those prices were more than 30 percent below the low benchmark price for the CLINs in question. In other instances, the VA pointed out that there appeared to be a "disconnect" between the firm's proposed CLIN price

and its proposed rates of professional compensation. Discussions Briefings, Aug. 9, 2016, at 10496-10497, 10530-10533, 10544-10545; Discussions Briefings, Aug. 25, 2016, at 12563-12564, 12583-12585.<sup>21</sup>

All three protesters maintain that the VA's discussion questions misled them because they believed that further reductions in their proposed prices could result in their proposals being found unacceptable or unrealistic. All three maintain that the contracting officer implied or otherwise suggested that there was a risk that their prices could be found unrealistic, and all three maintain that they would have substantially lowered their prices had they not been misled.

We find no merit to these allegations. When an agency engages in discussions, the agency may not mislead the offeror--through the framing of a discussion question or response to a question--into responding in a manner that does not address the agency's concerns, or misinform the offeror concerning a problem with its proposal, or about the government's requirements. Onyx-Technica, JV, B-412474, 412474.2, Feb. 26, 2016, 2016 CPD ¶ 65 at 3. On the other hand, agencies are not required to "spoon feed" offerors as to each and every item that could be improved in their proposals. Intelligent Decisions, Inc., et al., B-409686, et al., July 15, 2014, 2014 CPD ¶ 213 at 9-10.

Here, we note as a threshold matter that the RFP does not contemplate an evaluation of the CLIN prices for realism. Under such circumstances, an agency is not required or permitted to conduct such an evaluation. Lowe Campbell Ewald, B-411614, B-411614.2, Sept. 11, 2015, 2015 CPD ¶ 296 at 4-6. In addition, none of the agency's written discussions materials make any reference to conducting a realism evaluation or otherwise suggest that the agency would penalize the offerors for proposing prices that were too low.

For their part, the protesters all suggest that the contracting officer left them with the impression during oral discussions that the VA was concerned that proposed prices were too low, and that offerors would be penalized for lowering their prices too much. However they have not submitted any probative evidence to support their claim that the VA actually told them it would evaluate prices for realism. Instead,

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<sup>21</sup> The record shows that VetFed was asked a price-related discussions question during the first round of written discussions on August 9, but did not receive any additional price-related questions during the second round of written discussions on August 25. The record also shows that, although QTC was given price-related questions during both rounds of discussions, during the August 9 round of written discussions, QTC did not receive any questions concerning low proposed prices, but did receive such a question during the August 25 written discussions.

the protesters merely have suggested they were left with the impression that the VA would penalize them for proposing prices that were too low.<sup>22</sup>

The transcripts made by VES are the only contemporaneous evidence of what occurred during oral discussions with the contracting officer. Of note, the transcript from VES's August 30 oral discussion conference includes the following statement from the contracting officer: "For that discussion briefing that we provided [the written discussions briefing that included discussions questions and other materials dated August 25], a couple of things, one, first and foremost, I just wanted to remind everybody there is no personalism(?), that's not what we are trying to do." VES Supplemental Protest and Comments, exh.7, at 1. While obviously the word "personalism" is a transcription error, the contracting officer has represented to our Office that what he actually said was "price realism" and not "personalism." Contracting Officer's Supplemental Statement at 2. In its comments responding to the contracting officer's explanation, VES has not rebutted or contradicted the contracting officer's explanation.

The agency states that, throughout the discussions, it sought explanations from all three protesters (as well as the other competitors) that the significant price reductions that had been offered were not a result of changes to the offerors' proposed technical approaches. This is because, as discussed above, the agency did not seek revised technical proposals in connection with implementing its corrective action. The agency also explains that, in those instances where it made reference to the offerors' proposed rates of professional compensation in connection with its discussions question, it did so because an offeror's proposed CLIN price appeared inadequate to cover the cost of the professional services that would be required to provide the type of examination identified by the CLIN in question. The agency's explanations are borne out by the written discussions materials that appear in the record.

In the final analysis, as noted, the RFP did not contemplate a price realism evaluation in connection with the agency's evaluation of CLIN prices. The record

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<sup>22</sup> As noted, none of the VA's written discussion questions mention a realism evaluation for the CLIN prices, or otherwise suggest that the protesters would be penalized for proposing low prices. VetFed submitted an affidavit with its comments in which its president stated that the VA "suggested" that its reductions in price could result in a finding that those prices were unrealistic. VES submitted an affidavit from its president with its protest in which he states that he and other VES employees "thought" the contracting officer told them that VES's prices were so low as to put the firm at risk for award. QTC submitted an affidavit from its chief executive officer with its protest in which he states that the contracting officer "reinforced" QTC's concerns regarding the negative consequences of aggressive price reductions.

shows that, during discussions, the agency sought assurances that the offerors' revised--and significantly reduced--prices were consistent with their respective technical approaches, which the offerors could not change during corrective action. In these circumstances, it was unreasonable for any of the protesters to have concluded that the VA would penalize them for proposing low, or even below-cost prices, since in a fixed-price setting where no realism evaluation is contemplated, such prices are unobjectionable. Lowe Campbell Ewald, B-411614, B-411614.2, supra. at 6. It follows that there is no basis to find that the offerors were misled during discussions, and the agency was under no obligation to "spoon feed" the offerors by reminding them of the RFP's explicitly stated evaluation scheme.

Moreover, to the extent there is contemporaneous evidence of the agency's oral discussions, that evidence points to the conclusion that, although under no obligation to do so, the contracting officer appears to have reminded at least VES that the agency was not going to perform a price realism evaluation. In addition, none of the evidence submitted by the protesters--i.e., the affidavits prepared during the course of the protest--demonstrates conclusively that the contracting officer actually made statements that reasonably could have been interpreted as representations that the VA intended to perform a price realism evaluation in which the offerors would be penalized for offering CLIN prices that were too low. In light of these considerations, we deny these protest allegations.

#### Affiliation between LHI and MSLA

All three protesters allege that the award of contracts to LHI and MSLA in any single district was inconsistent with the terms of the RFP. As noted, the VA made award to LHI and MSLA in districts 1, 2 and 4. According to the protesters, these awards were improper because the RFP provided that the VA would award contracts to two vendors in each district. RFP at 12482. All three protesters maintain that the awards in districts 1, 2 and 4 are improper because LHI and MSLA are owned by a common parent.

We find no merit to these protest allegations. First, and most importantly, the RFP did not prohibit the agency from awarding contracts to just a single vendor in each district. The RFP expressly states as follows: "Following discussions VBA intends to award contracts to two vendors per District, including Districts 1-5, reserving the right to award to a single vendor per District." RFP at 12482 (emphasis supplied). Thus, even if we were to conclude that award to LHI and MSLA was tantamount to award to just a single vendor (because of the common ownership of the two firms), we would have no basis to object to the agency's awards for this reason; the RFP expressly contemplates the possibility of making award to just one concern.

Second, the record shows that the agency recognized that there was an affiliation between LHI and MSLA at the time it made its award decisions, and investigated the nature and extent of that affiliation. In this connection, once it became apparent

to the contracting officer that LHI and MSLA were the apparent best-value offerors in the three districts in question, he contacted the two concerns in order to understand the nature of their corporate relationship. Based on these conversations, along with a review of the firms' proposals, the contracting officer concluded that, although they shared common ownership, both firms relied on separate information technology assets and provider networks for performance of the contracts. Memorandum for the Record Regarding LHI's and MSLA's Ownership, at 1-2.

Finally, the protesters have not demonstrated that they were prejudiced by the awards to LHI and MSLA. Competitive prejudice is an essential element of every viable protest, and where none is shown, or otherwise is evident, we will not sustain a protest, even where the agency's actions arguably may be improper. Computer World Services Corp., B-410567.2, B-410567.3, May 29, 2015, 2015 CPD ¶ 172 at 7.

Both VES and QTC allege only that the interests of the government may not adequately be protected by making award to LHI and MSLA in both districts. However, neither concern has explained how its competitive interests were prejudiced by the VA's actions, and neither has explained what it would have done differently had it known the VA might make award to one concern in each district.

VetFed argues that it would have changed its proposal strategy if it had known that award to affiliated concerns was unobjectionable. However, VetFed's claim is that it would have proposed to perform using some of the assets of QTC in districts 1 and 2, such as QTC's exam providers. However, as noted, the record shows that the agency ensured that, in making award to LHI and MSLA, the agency would continue to enjoy the benefits of separate provider networks and information technology assets, something that VetFed would not have been able to offer.<sup>23</sup> In light of the discussion above, we deny these protest allegations.

### Best-Value Selections

VES and QTC also challenge the propriety of the agency's best-value selection decisions in each district. Both concerns essentially maintain that the agency's

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<sup>23</sup> VetFed also argues that it was misled during discussions to believe the VA would not make award to affiliated concerns. But, as discussed, even if VetFed had understood that award to affiliated concerns was unobjectionable--a conclusion it also could have reached by a reading of the RFP--it was unable actually to propose what the agency ultimately obtained; the separate provider networks and information technology assets offered by it and QTC.

selection decisions were based on misleading price and technical evaluation results. But as discussed at length above, we have no basis to object to the agency's evaluation of proposals for the reasons advanced by the protesters.

Both VES and QTC also challenge the agency's selection decisions, contending that the agency misapplied the relative weights of the evaluation factors in making the awards. We find no merit to these contentions. Agencies have broad discretion in making cost/technical tradeoffs; the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation factors. L-3 Communications, L-3 Link Simulations and Training, B-410644.2, Jan. 20, 2016, 2016 CPD ¶ 44 at 7. Here, both protesters essentially argue that the agency failed to give adequate weight to what they describe as their superiority under the non-price evaluation factors. However, a review of the agency's BCM shows that, in fact, the agency considered all of the comparative merits of each proposal, and made reasoned, rational selection decisions in each district.

VES maintains that the VA also failed to make award in a manner that was consistent with the terms of the RFP. VES argues that the RFP required the agency to make award to the firms whose proposals were rated technically superior, and that the agency could only consider price where proposals were found to be essentially equal under the non-price factors. VES's argument largely is a restatement of an argument that we considered and denied in our prior decision, and we have no basis to repeat or reconsider the conclusions we reached earlier. Veterans Evaluation Services, Inc., et al., supra. at 21-22.

Finally VES suggests that the source selection decisions reflect that the agency already had "preselected" the best-value offeror before conducting its cost/technical tradeoff, and that the tradeoff analysis was merely an exercise that affirmed the preselected offeror; VES characterizes the agency's selection decisions as "winner versus loser kabuki comparisons." Protester's Comments and Supplemental Protest at 106. But as already noted above, we have reviewed the agency's BCM and conclude the agency considered the comparative merits of each proposal, and made reasoned, rational selection decisions in each district. We therefore deny these protest allegations.

The protests are dismissed in part and denied in part.

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