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# Decision

**Matter of:** Science Applications International Corporation

**File:** B-419961.3; B-419961.4

**Date:** February 10, 2022

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## DIGEST

1. Protest that the awardee gained an unfair competitive advantage based on a consulting agreement with a former government official is denied where the record does not support the allegation.
  2. Protest that the awardee's proposal failed to meet a material solicitation requirement when it proposed a fringe benefit rate below the rate required in a Service Contract Act (SCA) wage determination is denied where the awardee's proposal expressly indicated an intent to comply with the SCA.
  3. Protest of the agency's cost realism evaluation is denied where the agency reasonably concluded that the awardee's proposed direct labor rates were realistic, even though some rates were below the incumbent's rates.
  4. Protest that the agency failed to conduct a cost realism evaluation of the awardee's minor subcontractors' proposed direct labor costs is denied where the record shows that the agency's cost realism analysis was conducted in accordance with the solicitation.
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## DECISION

Science Applications International Corporation (SAIC), of Reston, Virginia, protests the award of the Advanced Enterprise Global Information Solutions (AEGIS) contract to

Leidos, Inc., of Reston, Virginia, under request for proposals (RFP) No. 80JSC020R0039, issued by the National Aeronautics and Space Administration (NASA) for information technology (IT) services supporting NASA's communications infrastructure. SAIC contends that Leidos gained an unfair competitive advantage by engaging a former NASA official as a consultant to assist Leidos with proposal preparation. SAIC also challenges the agency's evaluation of proposals and resulting award decision.

We deny the protest.

## BACKGROUND

AEGIS is a "follow-on" procurement of the current NASA Integrated Communication Services (NICS) contract and will continue to provide the general requirements for IT communication services, as well as new requirements for cloud services, data center services, and cybersecurity support services. Agency Report (AR), Tab 37, RFP amend. 10 at 167, 169.<sup>1</sup> The contractor will support the Office of the Chief Information Officer (OCIO) in "advancing NASA's communications services to provide secure enterprise network management and flexible communications services for NASA." *Id.* at 167. The communications services provided under AEGIS assist NASA staff, scientists, engineers, and mission support personnel, located globally, in their ability "to advance NASA's mission to the moon, Mars, and beyond." *Id.* at 169.

NASA is awarding the AEGIS contract while undergoing a significant transformation to the agency's operating model pursuant to the Mission Support Future Architecture Program (MAP) initiative. *Id.* at 166. MAP will transform mission support services from local operation and management by each NASA center and headquarters to an enterprise system that provides the abilities for individualized services and capabilities. *Id.* At the time NASA issued the RFP, the OCIO was in the design phase of the MAP effort, and when NASA awarded AEGIS, the OCIO was in the MAP implementation phase. *Id.* at 166-67.

The solicitation explained that "[w]hile the timing of the AEGIS acquisition does not allow full integration of the output from NASA OCIO's MAP implementation, there are two elements of the AEGIS performance work statement [PWS] that anticipate the OCIO MAP end-state." *Id.* at 166. First, the AEGIS PWS includes three new requirements--cloud and data center services and cybersecurity support services--that allow for broader technology integration where appropriate. *Id.* at 166-67. Second, AEGIS includes contract language and methods that will allow NASA centers to use the

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<sup>1</sup> Citations to the record are to the Adobe PDF page numbers of documents or to the relevant worksheet and cell number for Microsoft Excel documents produced in the agency report. Furthermore, the RFP was amended ten times; all references to the RFP are to the final version in amendment 10, unless otherwise noted.

services and capabilities AEGIS offers more efficiently to support specific center requirements. *Id.* at 167.

On September 25, 2020, NASA issued the AEGIS solicitation on an unrestricted basis pursuant to Federal Acquisition Regulation (FAR) part 15 procedures. AR, Tab 11, RFP at 1, 5. The solicitation contemplated award of a single indefinite-delivery, indefinite-quantity contract consisting of cost-plus-award-fee contract line item numbers (CLINs) and fixed-price CLINs. AR, Tab 37, RFP amend. 10 at 20. The RFP provided for a 10-year maximum period of performance, including base and option years and award terms, with a maximum value of \$2.5 billion. *Id.* at 29-30; Contracting Officer's Statement (COS) at 1.

The RFP provided that award would be made on a best-value tradeoff basis, considering mission suitability, past performance<sup>2</sup> and cost/price.<sup>3</sup> RFP amend. 10 at 145. With regard to the relative weight of the factors, the RFP provided that mission suitability was more important than past performance, which was more important than cost/price. *Id.* at 146. The RFP further provided that mission suitability and past performance, when combined, were significantly more important than cost/price. *Id.*

Mission suitability included the following four subfactors, which were assigned the following maximum point values: (1) management approach (400 points); (2) technical approach (400 points); (3) safety and health approach (100 points); and (4) small business participation (100 points). *Id.* The RFP provided that NASA would evaluate proposals and make findings of significant strength, strength, weakness, significant weakness, and deficiency. *Id.* at 146-47. Based on the findings, NASA would assign a numerical score--and a corresponding adjectival rating of excellent, very good, good, fair, or poor--for each subfactor.<sup>4</sup> *Id.* at 147.

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<sup>2</sup> The RFP provided that recency, relevance, and performance would be considered in NASA's determination of the past performance confidence rating. AR, Tab 37, RFP amend. 10 at 152. The adjectival ratings for past performance included a performance and relevance component; the ratings were: very high level of confidence, high level of confidence, moderate level of confidence, low level of confidence, very low level of confidence, and neutral. *Id.* at 153-54.

<sup>3</sup> The RFP specified that the agency would conduct both price and cost analyses to ensure fair and reasonable pricing. *Id.* at 154. The RFP provided that the evaluators would develop a probable cost estimate based on adjustments made during the cost/price analyses. The solicitation noted that the probable cost estimate might differ from the offeror's proposed price based on the evaluators' best estimate of resources proposed as part of the offeror's technical approach. *Id.* at 155.

<sup>4</sup> The RFP explained that point scores in the following percentile ranges corresponded to the following adjectival ratings: excellent (91%-100%); very good (71%-90%); good (51%-70%); fair (31%-50%); and poor (0%-30%). *Id.* at 147.

Three offerors, including SAIC (the NICS incumbent) and Leidos, submitted proposals. COS at 14. NASA established a competitive range, conducted discussions and received timely final proposal revisions (FPR) from the protester and Leidos. *Id.* at 14-17. NASA evaluated the proposals follows:

	SAIC	LEIDOS
<b>Mission Suitability Score</b> (1,000 points)	826	902
Management Approach (400 points/adjectival)	292/Very Good	360/Very Good
Technical Approach (400 points/adjectival)	372/Excellent	376/Excellent
Safety and Health Approach (100 points/adjectival)	70/Good	70/Good
Small Business Participation (100 points/adjectival)	92/Excellent	96/Excellent
<b>Past Performance Confidence Rating</b>	Very High	Very High
<b>Proposed Cost/Price</b>	\$(DELETED)	\$(DELETED)
<b>Estimated Cost/Price</b>	\$1.941 billion	\$1.835 billion

AR, Tab 43, Final Briefing to the Source Selection Authority (SSA) at 21, 110.

The source evaluation board (SEB) briefed the SSA, who then reviewed the SEB’s evaluation charts and the final cost/price analysis report. AR, Tab 44, SSA Statement at 10. The SSA noted that this was a very close competition between the offerors and then focused on identifying distinctions between the proposals. *Id.* at 11. While the agency rated both proposals as very good under the management approach subfactor, the SSA viewed Leidos’s proposal as superior based on discriminators pertaining to IT service management and cost control/risk management. *Id.* at 11-12. Similarly, while NASA rated both proposals as excellent under the technical approach subfactor, the SSA viewed Leidos’s proposal as superior based on discriminators pertaining to its cybersecurity approach and its approach to improved service quality and overall customer experience. *Id.* at 12-13. The SSA found no discriminators under the other mission suitability subfactors, the past performance factor, or the cost/price factor.

The SSA concluded that Leidos’s proposal represented the best value to the government based on the discriminators identified under the mission suitability factor. *Id.* at 13. On June 25, 2021, the agency awarded the AEGIS contract to Leidos. COS at 18.

On July 6, 2021, SAIC filed a protest with our Office challenging NASA’s evaluation and award decision. *Id.* at 8; Protest at 9. On July 12, SAIC raised supplemental protest grounds challenging the integrity of the source selection process and asserting that Leidos gained an unfair competitive advantage through access to, and use of,

non-public, competitively useful information, as a result of a consulting agreement between Leidos and a former NASA official. COS at 9; Protest at 9. On July 26, the agency stated that it would take corrective action by investigating SAIC's allegations. On August 12, 2021, we dismissed SAIC's July 6 and 12 protests based on the agency's proposed corrective action. *Science Applications Int'l Corp.*, B-419961, B-419961.2, Aug. 12, 2021 (unpublished decision).

By letter dated October 26, 2021, NASA notified counsel for the parties that it had completed its investigation and determined that there was no unfair competitive advantage and no impact on the AEGIS procurement because the information to which the former NASA official had access was either publicly available and/or stale at the time proposals were due on November 20, 2020. AR, Tab 54, Unfair Competitive Advantage Contracting Officer (CO) Determination at 52. This protest followed.

## DISCUSSION

SAIC makes the following arguments: (1) Leidos gained an unfair competitive advantage from engaging a former NASA official as a consultant to assist Leidos with proposal preparation; (2) Leidos failed to comply with solicitation requirements pertaining to employee benefits and was therefore ineligible for award; (3) NASA's cost realism evaluation was unreasonable; and (4) NASA's technical evaluation was unreasonable. We discuss the principal allegations below, but find no basis to sustain the protest.<sup>5</sup>

### Unfair Competitive Advantage

SAIC disputes the conclusions of the agency's investigation, arguing that Leidos had an unfair competitive advantage that merits its disqualification from the competition. More specifically, SAIC protests that Leidos gained access to non-public, competitively useful information by executing a consulting agreement with a former NASA official (subsequently referred to as X), who assisted Leidos in preparing its proposal for the AEGIS procurement, shortly after the official retired from NASA. Protest at 11-18; Comments & Supp. Protest at 6-57; Supp. Comments at 3-19. SAIC asserts that X had access to its proprietary information because X "presided over SAIC's performance of the incumbent [NICS] contract, which SAIC has performed since 2011"; SAIC also asserts that its proprietary information is not public and is not outdated or stale. Protest at 13-14. SAIC further contends that X had access to internal agency source selection information that was also non-public and not outdated because X worked at NASA during the development of most of the AEGIS requirements, and was serving in a leadership role for the procurement, as the SSA, until a month before retiring from NASA. *Id.* at 14-16. Additionally, SAIC argues that the agency's investigation of whether Leidos had an unfair competitive advantage improperly relied in part on a

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<sup>5</sup> SAIC raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find that none provides a basis to sustain the protest.

review of whether Leidos's proposal incorporated any non-public, competitively useful information. SAIC contends that Leidos's use of such information should have been presumed once hard facts establish the evidence of unfair advantage, and should not be determined by whether non-public and competitively useful information can be found within the proposal. *Id.* at 16-18.

Contracting agencies are to avoid even the appearance of impropriety in conducting government procurements. FAR 3.101-1; *Perspecta Enter. Sols.*, B-418533.2, June 17, 2020, 2020 CPD ¶ 213 at 7. Where a firm may have gained an unfair competitive advantage through its hiring<sup>6</sup> of a former government employee, the firm can be disqualified from a competition based on the appearance of impropriety that results.<sup>7</sup> *Health Net Fed. Servs., LLC*, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 29. This is true even if no actual impropriety can be shown, so long as the determination of an unfair competitive advantage is based on hard facts and not mere innuendo or suspicion. *Verisys Corp.*, B-413204.5 *et al.*, Oct. 2, 2017, 2017 CPD ¶ 338 at 9. Thus, a person's familiarity with the type of work required, resulting from the person's prior position in the government, is not, by itself, evidence of an unfair competitive advantage. *Perspecta Enter. Sols.*, *supra*; *Dewberry Crawford Grp.; Partner 4 Recovery*, B-415940.11 *et al.*, July 2, 2018, 2018 CPD ¶ 298 at 24-25.

In determining whether an offeror obtained an unfair competitive advantage by hiring a former government employee with knowledge of non-public information, our Office has considered a variety of factors, including whether the non-public information was in fact available to the firm, whether the non-public information was proprietary information, and whether the non-public information was competitively useful. *Sigmatech, Inc.*, B-415028.3, B-415028.4, Sept. 11, 2018, 2018 CPD ¶ 336 at 9. Whether the appearance of impropriety based on an alleged unfair competitive advantage exists depends on the circumstances in each case, and, ultimately, the responsibility for determining whether an appearance of impropriety exists, and whether an offeror should be allowed to continue to compete, is a matter for the contracting agency, and we will not disturb the contracting agency's determination in this regard unless it is

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<sup>6</sup> We note that although the facts here involve a consultant agreement executed between Leidos and the former government employee, rather than Leidos's employment of X, this is a distinction without a difference in our review of the protester's unfair competitive advantage allegations. For consistency with our previous decisions, however, we use language that refers to the hiring of a former government official where appropriate.

<sup>7</sup> The standard for evaluating whether a firm has an unfair competitive advantage under FAR subpart 3.1 stemming from its hiring of a former government employee is virtually indistinguishable from the standard for evaluating whether a firm has an unfair competitive advantage arising from its unequal access to information as a result of an organizational conflict of interest under FAR subpart 9.5. *Health Net Fed. Servs.*, *supra* at 28 n.15.

shown to be unreasonable. *Unisys Corp.*, B-403054.2, Feb. 8, 2011, 2011 CPD ¶ 61 at 5.

As explained below, based on our review of this record, we find that the agency reasonably concluded that X did not have access to any non-public, competitively useful information related to the AEGIS procurement, and thus that Leidos did not gain an unfair competitive advantage as a result of its consulting agreement with X. As a result, we deny this argument.

After SAIC raised its protest allegations on July 12, the contracting officer launched an extensive investigation into whether X had access to non-public, competitively useful information. For instance, the contracting officer: (1) examined the emails and calendar entries from X's final year of employment at NASA (April 2019 through April 30, 2020); (2) requested the AEGIS SEB review Leidos's proposal to determine whether non-public, competitively useful agency information was included in the proposal; (3) requested additional information from SAIC regarding its allegations; (4) requested responses to SAIC's allegations, issued questions, and requested declarations from X, Leidos's staff and subcontractors, and NASA employees; and (5) requested all post-employment ethics opinions issued to X from the agency.<sup>8</sup> AR, Tab 54, Unfair Competitive Advantage CO Determination at 3-4. The contracting officer, with assistance from the SEB, reviewed and analyzed the information collected in the investigation using the three-step analysis quoted below to determine if X provided an unfair competitive advantage to Leidos:

Question 1: Did [X] have access to non-public proprietary or competition sensitive information? If "no" then no unfair competitive advantage can be found and the inquiry stops. If "yes", then go to Question 2;

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<sup>8</sup> NASA issued one post-employment opinion to X regarding the AEGIS contract in which the ethics official concluded that X had no post-employment restrictions. AR, Tab 54.21, NASA X Post-Employment Ethics Opinions at 12-16. The ethics official cautioned

that this ethics advice is not intended to address potential issues in procurement processes, such as organizational conflicts of interest or other concerns based on appearances of impropriety. Agency opinions provided on the applicability of Federal ethics statutes are generally not conclusive with respect to allegations of "unfair competitive advantage" in the context of a procurement. See, e.g., *Holmes and Narver Services, Inc.*], GAO Op. B-235906, B-235906.2, 89-2 CPD 379, (1989) [sic].

*Id.* at 15. The contracting officer determined that although the ethics opinion found X had no post-employment restriction on AEGIS, the opinion was "not conclusive with respect to allegations of an 'unfair competitive advantage.'" AR, Tab 54, Unfair Competitive Advantage CO Determination at 38-39.

Question 2: Was the non-public information competitively useful? If “no” then no unfair competitive advantage can be found and the inquiry stops. If “yes” then we proceed to Question 3;

Question 3: Do the facts and circumstances establish that it is likely that this information was disclosed to the offeror? If not, then there is no competitive advantage. If yes, then there is an unfair competitive advantage.

*Id.* at 3-4, 40-45.

In response to this inquiry, the contracting officer first concluded that X had access to non-public proprietary information and source selection information due to the high-ranking position the individual held at NASA before retiring. *Id.* at 40-41. The contracting officer found, however, that the non-public proprietary and source selection information to which X had access was not competitively useful because the information had either become public or was outdated by the time initial proposals were due on November 20, 2020. *Id.* at 41-45. The contracting officer also found that there was no evidence that any of the agency’s non-public, competitively useful information made its way into Leidos’s proposal. *Id.* at 43. The contracting officer concluded that even if competitively useful information was available to X, the information was not disclosed because X’s contributions to Leidos’s approach were general and did not include non-public information. *Id.*

In its protest to our Office, SAIC argues that X had access to four broad categories of non-public, competitively useful information. Comments & Supp. Protest at 29-45. First, the protester alleges that X had access to AEGIS source selection information including internal policies and goals related to NASA’s MAP initiative. *Id.* at 30-35. Second, the protester contends that X had access to SAIC’s proprietary information about its incumbent performance of the NICS contract, particularly SAIC’s cybersecurity issues. *Id.* at 30, 35-40. Third, the protester maintains that X was the SSA for the AEGIS procurement and was involved in developing the solicitation, including the scope of the requirement, until X’s retirement from NASA. *Id.* at 30, 40-43. And fourth, the protester asserts X had access to SAIC’s and other offerors’ proprietary information from non-public responses to NASA’s requests for information (RFI). *Id.* at 30, 43-44.

In addressing these contentions, we note at the outset that X’s access to non-public, proprietary or source selection information is undisputed. The issue here centers on the competitive usefulness of the information. Below, we address the contracting officer’s investigation with respect to the categories of non-public information accessible by X.

#### AEGIS Source Selection Information

The contracting officer explained that relevant information about MAP was publically available prior to the deadline for proposals in November 2020. AR, Tab 54, Unfair



Competitive Advantage CO Determination at 40-41, 43; see also AR, Tab 54.23, X Decl. at 24 (detailing publically available MAP information).<sup>9</sup> Moreover, the contracting officer found that while X was involved in what the agency terms the MAP Phase A, Stakeholder Engagement, until retirement on April 30, 2020, once NASA moved to MAP Phase B, Development, the information to which X had access was no longer competitively useful. *Id.* at 40-41, 43; see also AR, Tab 54.7, MAP Public Info. at 199 (showing that the MAP initiative moved into Phase B in July 2020). Accordingly, the contracting officer concluded that any information about the AEGIS procurement and the MAP initiative policies and goals to which X had access was not competitively useful because such information was publically available and outdated. *Id.*

### SAIC's Proprietary Information

With respect to SAIC's proprietary information from its incumbent performance of the NICS contract, the contracting officer determined that SAIC's information also was either public or outdated. The contracting officer confirmed that X received information about SAIC's cybersecurity performance issues in X's role as the NICS award fee determining official (FDO) for the period between June 1, 2018 and May 31, 2019. AR, Tab 54, Unfair Competitive Advantage CO Determination at 8-9. As the FDO, X would have reviewed performance evaluation information prior to signing SAIC's award fee letter. *Id.* at 8, 37. The letter specified that there seemed to be a "disconnect" between SAIC and NASA regarding cybersecurity requirements during SAIC's development of a pilot program for the agency. AR, Tab 54.33, Award Fee Determination at 19.

The contracting officer did not find this information to be competitively useful, however, because there are a number of publically available news articles and NASA Office of Inspector General (OIG) reports that document NASA's cybersecurity challenges.<sup>10</sup> AR, Tab 54, Unfair Competitive Advantage CO Determination at 13-16, 42. Furthermore, the contracting officer explained that because X was the FDO for only one award fee term, and did not have access to subsequent award fee letters or performance evaluation reports after July 2019, SAIC's cybersecurity performance information was outdated at the time proposals were due in November 2020. As a result, the contracting officer concluded that the information was not competitively useful. *Id.* at 9-10, 42.

### X's Role as the SSA for the AEGIS Procurement

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<sup>9</sup> References to the exhibits included in AR, Tab 54, Unfair Competitive Advantage CO Determination are cited as Tab 54.1, where "1" is the exhibit number.

<sup>10</sup> Furthermore, Leidos's AEGIS team lead declared she compiled a data library that included over 100 public documents, including OIG reports, which provided insight into NASA cybersecurity problems. AR, Tab 54.27, Leidos's AEGIS Capture Team Lead Decl. at 17

Next, the contracting officer analyzed X's role as the AEGIS SSA through March 8, 2020, and whether the information to which X had access was competitively useful. The following table of events is illustrative:

December 11, 2019	AEGIS sources sought synopsis and RFI issued for follow-on contract to NICS, otherwise known as NICS 2.0.
January 17, 2020	NICS 2.0 RFI responses due.
February 21, 2020	X decides to add new requirements--cloud services, data center services, and cybersecurity support services--to NICS 2.0 procurement.
February 26, 2020	Name change from NICS 2.0 to AEGIS.
March 3, 2020	Requirements RFI issued.
March 9, 2020	X emails recusal from the AEGIS procurement and relinquishes position as SSA
March 11, 2020	AEGIS Industry Day
March 18, 2020	Requirements RFI responses due.
April 30, 2020	X retires from NASA
July 1, 2020	Procurement strategy meeting
July 28, 2020	X executes consultant agreement with Leidos
July 31, 2020	Draft RFP issued
September 25, 2020	RFP issued
November 20, 2020	Initial Proposals Due

*Id.* at 1-2, 23. The contracting officer recognized that while X was involved with the early AEGIS acquisition strategy planning and requirements development, the major procurement milestones occurred after X retired from NASA. *Id.* at 42. For example, NASA held its procurement strategy meeting, and released both the draft RFP and the final RFP, after X retired. *Id.* at 42. While the draft RFP, issued on July 31, 2020, used

essentially the same PWS as the predecessor NICS contract, NASA added new requirements to the final RFP released on September 25, in particular cloud services, data center services, and cybersecurity support services. *Id.* at 42.

The contracting officer concluded that the procurement changed significantly in the period between X's retirement and the proposal deadline, and consequently, any non-public source selection information X possessed before retirement was outdated. *Id.* at 42-43. In addition, the contracting officer found that other source selection information to which X may have had access would have been released in the RFP and the technical library and, thus, was in the public domain. *Id.* at 42. Accordingly, the contracting officer concluded that any information X may have had about AEGIS requirements or strategy before leaving NASA was either publically available or outdated or both, and was not competitively useful. *Id.* at 43.

#### X's Access to SAIC's and Other Offerors' Proprietary Information

The last category of information the contracting officer considered was X's access to SAIC's and other offerors' proprietary information from non-public responses to NASA's RFI. Related to the contracting officer's findings discussed above, the contracting officer concluded that while X may have had access to non-public proprietary information from the RFI responses, the procurement was not completed until after X left NASA. In addition, the procurement underwent a dramatic change after X left the agency, so the contracting officer concluded the information was outdated and not competitively useful. *Id.* at 42-43.

Even though the contracting officer determined that X did not have access to competitively useful information, she also reviewed X's input on Leidos's proposal. As an example, in commenting on Leidos's overall management approach and the experience the Leidos Team would bring to the AEGIS contract, X suggested that Leidos "[a]dd security mindset to this. This is an issue with SAIC--security is always an afterthought." *Id.* at 7 (internal citation omitted). When the contracting officer questioned X about this comment, X replied that the statement was based on knowledge obtained in X's position at NASA and "cultivated over years in the industry." AR, Tab 54.23, X Decl. at 28. X explained further that NASA's security challenges, which naturally reflect SAIC's performance as NASA's IT service provider, were public knowledge and well-documented.<sup>11</sup> *Id.* at 28-29. The contracting officer therefore found that the "actual comments, edits, and inputs" X provided to Leidos about SAIC's performance were based on general public knowledge about NASA's cybersecurity challenges, "editorial in nature[,] and did not include any non-public information." AR,

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<sup>11</sup> Among other materials, X identified GAO's report, *NASA Information Technology: Urgent Action Needed to Address Significant Management and Cybersecurity Weaknesses*, GAO-18-337 (May 2018), in the list of publications critiquing NASA's cybersecurity shortcomings. *Id.* at 29.

Tab 54, Unfair Competitive Advantage CO Determination at 45; see also *id.* at 6-7, 10-13.

While SAIC contends that it is entitled to a presumption of prejudice from an unfair competitive advantage because it has alleged hard facts pertaining to X's involvement in the procurement, we do not agree that SAIC has alleged hard facts here.<sup>12</sup> Protest at 17-18; Comments & Supp. Protest at 7-8, 45-50. In our view, SAIC's allegations rely mainly on speculation and inference rather than hard facts. For example, SAIC asserts that it "appears [X] had access to SAIC pricing information" because X responded to a contracting officer question about X's "access to or knowledge of SAIC's proprietary pricing and rates" by noting that X "did not provide any proprietary rate information regarding SAIC to Leidos." Comments & Supp. Protest at 39 (citations omitted). SAIC also speculates that X's feedback on Leidos's proposal was "derived from proprietary source selection materials that [X] accessed at NASA," and that X's access to the offerors' RFI responses "appears to have bled over" into X's role on the Leidos proposal team.<sup>13</sup> *Id.* at 47-48. We find these assertions to be insufficient to meet the protester's burden of providing the hard facts necessary to support an unfair competitive advantage allegation.

In conclusion, we find the contracting officer performed a meaningful investigation and reasonably concluded that X did not have competitively useful information. In this regard, the contracting officer found that X did not have access to competitively useful information because any non-public proprietary or source selection information to which X had access was either publically available or was outdated and stale by the deadline

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<sup>12</sup> SAIC also argues that NASA failed to consider the appearance of impropriety posed by X's involvement with the preparation of Leidos's proposal. Comments & Supp. Protest at 50. We find this argument unavailing because our decisions make clear that where, as here, an agency has conducted a meaningful investigation and determined there is no unfair competitive advantage, we will not consider claims of an "appearance of impropriety or apparent conflict of interest." See *Ramcor Servs. Grp., Inc.*, B-253714, Oct. 7, 1993, 93-2 CPD ¶ 213 at 5 (refusing to disqualify a firm from the competition for an apparent conflict of interest where the agency reasonably concluded after an investigation that no wrongdoing affecting the procurement occurred).

<sup>13</sup> It should be noted that although SAIC claims that X reviewed the RFI responses from industry while serving as the AEGIS SSA, the record does not demonstrate that X in fact accessed or reviewed these responses. At most, the record shows that X attended a briefing in which the RFI responses were summarized and discussed as part of proposed changes to the scope of the procurement. AR, Tab 54.26, NASA Program Manager Decl. at 10, 14-27. However, following the presentation, X decided to include cloud and data center services in the AEGIS contract. As a result, information from the briefing was incorporated into the final RFP and made available to all of the potential competitors.

for receipt of proposals.<sup>14</sup> GAO affords substantial deference to an agency's findings and we will not substitute our judgment for the agency's when the agency's conclusions are reasonable. See *Sigmattech, Inc., supra*. SAIC's disagreement with the agency's findings about the competitive usefulness of information, without more, cannot displace the agency's reasonable judgment that Leidos did not have an unfair competitive advantage. We therefore find no basis on which to sustain this protest ground.

## Evaluation Challenges

Turning next to SAIC's challenges to NASA's evaluation of proposals, we note first that it is well-established that the evaluation of proposals is a matter within the discretion of the contracting agency. *Vectrus Sys. Corp.*, B-412581.3 *et al.*, Dec. 21, 2016, 2017 CPD ¶ 10 at 3. In reviewing an agency's evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and with procurement statutes and regulations. *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5.

### Leidos's Compliance with the Service Contract Act (SCA)<sup>15</sup>

SAIC contends that Leidos's proposal did not comply with a material solicitation requirement when Leidos failed to provide the mandatory health and welfare fringe benefits required by the RFP and the SCA, which renders its proposal ineligible for

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<sup>14</sup> As part of her investigation, the contracting officer, with the SEB's assistance, also examined Leidos's proposal and the SEB's evaluation findings to identify any non-Leidos, non-public, competitively useful information in the proposal and found there was none. AR, Tab 54, Unfair Competitive Advantage CO Determination at 18-19, 43-45. While this finding does not establish the absence of an unfair competitive advantage, as noted above, the contracting officer had other bases for reasonably concluding that X did not have access to competitively useful information. We note that an unfair competitive advantage is presumed to arise where an offeror possesses competitively useful non-public information that would assist that offeror in obtaining the contract, without the need for an inquiry as to whether that information was actually utilized by the awardee in the preparation of its proposal. *Health Net Fed. Servs., LLC, supra* at 28 n.15; *Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc.*, B-254397.15 *et al.*, July 27, 1995, 95-2 CPD ¶ 129 at 18-19 n.16.

<sup>15</sup> The "Service Contract Labor Standards" statute codified at 41 U.S.C. chapter 67, is commonly referred as the McNamara-O'Hara Service Contract Act of 1965 or the Service Contract Act (SCA). We refer to the statute as the SCA throughout this decision. The SCA applies to federal contracts exceeding \$2,500 or having the principal purpose of using service employees to provide services to the government. See 41 U.S.C. § 6702(a).

award. Alternatively, the protester argues, Leidos's proposal should have been assessed a deficiency under the mission suitability factor. Protest at 18-21. In this regard, SAIC argues that Leidos included payroll taxes as part of its proposed fringe benefit rate, which the SCA does not allow. SAIC also argues that when the amounts for payroll taxes are subtracted from the amounts for fringe benefits, the actual benefit rate falls below the required SCA rate. *Id.* at 20. NASA responds that fringe benefit rates are not mandatory requirements, that the agency reasonably exercised its discretion in not removing Leidos from the competition, and that the agency reasonably assessed the Leidos proposal a weakness, rather than a deficiency, for improperly including payroll taxes in the fringe benefit rate. COS at 52-58; Memorandum of Law (MOL) at 16-22.

Where a firm offers hourly rates below those specified in an SCA wage determination, that firm is nonetheless eligible for a contract award provided the proposal does not evidence intent to violate the SCA and the firm is otherwise determined to be responsible. *Nirvana Enter., Inc.*, B-414951.2, B-414951.3, Dec. 19, 2017, 2018 CPD ¶ 5 at 3-4; see also *Allen-Norris-Vance Enters.*, B-243115, July 5, 1991, 91-2 CPD ¶ 23 at 4 (agency not required to find vendor ineligible to receive an order when the vendor inadvertently quoted a rate below the applicable SCA rate). On a fixed-price contract, a proposal that does not take exception to the solicitation's SCA provisions, yet offers labor rates that are less than the SCA-specified rates, may simply constitute a below-cost offer. An award to a responsible firm on the basis of such an offer is legally unobjectionable.<sup>16</sup> *Nirvana Enter., Inc.*, *supra*. That is, regardless of the wage rates used in calculating its proposed cost, an offeror will still be required to compensate its employees at the appropriate prescribed SCA wage rates. *Group GPS Multimedia*, B-310716, Jan. 22, 2008, 2008 CPD ¶ 34 at 4; *Free State Reporting Inc.*, B-259650, Apr. 14, 1995, 95-1 CPD ¶ 199 at 7. In contrast, where there is an indication that the offeror does not intend to be bound by the terms of the SCA, its offer must be rejected. *Nirvana Enter., Inc.*, *supra*.

As relevant here, the solicitation informed offerors that their total compensation plans (TCP), including Fringe Benefit Analysis of Compensation Plan (FBACP) spreadsheet template, would be evaluated under the management approach subfactor's assessment of staffing approach. AR, Tab 37, RFP amend. 10 at 117, 148. The solicitation directed offerors to calculate the fringe benefits for employees working on the contract and

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<sup>16</sup> We recognize that GAO decisions addressing SCA compliance allegations generally involve fixed-price proposals; however, a different standard for cost-type proposals need not be employed when examining whether an offeror takes exception to the SCA. Moreover, when the agency conducts its cost realism analysis under a cost-type procurement, as in this case, the agency can adjust upward any low cost proposals that include hourly rates below those specified in an SCA wage determination when appropriate. FAR 15.404-1(d)(2)(ii).

provided a template for calculating the average costs per hour per fringe benefit.<sup>17</sup> *Id.* at 791.

The RFP also incorporated FAR clause 52.222-41, Service Contract Labor Standards, which requires contractors to pay minimum wage and fringe benefits as set forth in any wage determination attached to the contract.<sup>18</sup> AR, Tab 37, RFP amend. 10 at 66. The minimum SCA wage determination for health and welfare fringe benefits attached to the solicitation was \$4.22 per hour.<sup>19</sup> AR, Tab 11, RFP at 430-646.

Leidos completed the FBACP template for the [DELETED] AEGIS workers covered by the SCA. AR, Tab 68, Leidos FPR Cost Vol., Leidos Electronic Pricing Model (EPM), FBACP FBT-FA NE tab. The template broke down the benefits into average costs per hour; for the health and welfare fringe benefits, Leidos's proposed average cost was [DELETED] per hour. *Id.* at Cell E33. Leidos also included payroll taxes as one of the fringe benefits in this rate, which were calculated at an average cost of [DELETED] per hour. *Id.* at Cell E31. Payroll costs however are required by law and are not allowable as fringe benefits under the SCA, pursuant to 41 U.S.C. § 6703(2). The agency therefore removed these costs from Leidos's proposed fringe benefits, which dropped the average rate below the rate required by the SCA wage determination.

In addition to the FBACP template, Leidos submitted a narrative explanation of its proposed costs, in which Leidos expressly committed to complying with SCA requirements. AR, Tab 39, Leidos FPR at 4423-24. Leidos stated that it "has a complete understanding and commitment to FAR 52.222-41 Service Contract Labor Standards." *Id.* at 4423.

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<sup>17</sup> Offerors submitted FBACP templates in their cost/price volumes even though the templates were evaluated as part of the TCP under the management approach subfactor. *Id.* at 117.

<sup>18</sup> The clause states:

Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

FAR clause 52.222-41(c)(1).

<sup>19</sup> The RFP includes multiple wage determinations but sets the same \$4.22 fringe benefit rate for all labor categories.

We find the agency's evaluation of Leidos's compliance with the SCA reasonable. Proposals that include below-SCA fringe rates are not legally objectionable so long as the proposal does not evidence an intent to violate the SCA. See *Nirvana Enter., Inc., supra*. Here, Leidos expressly committed to compliance with SCA requirements and its proposal dedicated a section to explaining how it proposed to fulfill its SCA obligations. AR, Tab 39, Leidos FPR at 4423-24. Accordingly, Leidos's proposed below-SCA fringe rates do not indicate an intent not to comply with a material solicitation requirement.

We also find unobjectionable the agency's assignment of a weakness to the Leidos proposal for its proposed fringe rates, rather than a deficiency, which SAIC argues was required. As discussed above, while one calculation in Leidos's proposal pointed to a possible SCA issue for a small group of workers on the AEGIS contract, the proposal also clearly indicated that Leidos agreed to be bound by and comply with the SCA requirements. Consequently, the agency considered the effect of this issue and assigned Leidos a weakness under the management approach subfactor. The agency assigned a weakness because including payroll taxes in the SCA rate was a proposal flaw which could lead to an increased risk of unsuccessful contract performance if the proposed SCA fringe benefit rate was not corrected. AR, Tab 43, SSA Final Briefing at 169-70. The agency recognized, however, that not fully following the SCA fringe benefit requirement was an easily correctable oversight that did not undercut the strength of Leidos's proposal overall under the management approach subfactor. AR, Tab 44, SSA Decision at 12; see also AR, Tab 43, SSA Final Briefing at 170. We conclude that the agency's evaluation conclusion in this area was reasonable and we deny this protest ground.<sup>20</sup>

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<sup>20</sup> SAIC also argues that NASA unreasonably failed to adjust upward Leidos's cost proposal to account for Leidos's non-compliant SCA rates. Protest at 22-23. We need not reach this issue, as we find SAIC has not established it was competitively prejudiced by NASA's alleged failure to make this cost adjustment to Leidos's proposal. Competitive prejudice is an essential element of every viable protest. *Armorworks Enters., LLC*, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Perspecta Enters., supra* at 28.

Leidos's FBACP template projects that the [DELETED] workers offered Fringe Package A will work approximately [DELETED] hours over the life of the 10-year contract. AR Tab 68, Leidos, FPR Cost Vol., Leidos EPM, FBACP FBT-FA NE tab at Cells E13:G14. The agency explains that multiplying these hours by the [DELETED] per hour for payroll taxes the agency removed from Leidos's proposed fringe benefits, implies a maximum increase of [DELETED] in fringe benefit costs. The agency also explains that this figure does not take into account that this maximum additional [DELETED] in fringe benefits would likely be recovered as indirect costs under multiple contracts, so that any probable increase to the proposed costs for the AEGIS contract would be smaller. MOL



## Cost Realism Evaluation

Next, SAIC argues that NASA's cost realism evaluation was unreasonable and failed to assess the risk of Leidos's proposed incumbent capture approach; the protester also complains that the agency did not upwardly adjust Leidos's most probable cost. Comments & Supp. Protest at 64-71. Specifically, SAIC contends that NASA failed to evaluate the realism of Leidos's proposal to capture incumbent staff while proposing labor rates below the incumbent rates. *Id.* at 65-67. SAIC also asserts that NASA failed to conduct a cost realism assessment of the labor rates of Leidos's minor subcontractors. *Id.* at 67-71. We have reviewed the record and find that these arguments provide no basis on which to sustain the protest.

When an agency evaluates a proposal for the award of a contract that includes cost-reimbursable CLINs, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. See FAR 15.305(a)(1), 15.404-1(d); *Palmetto GBA, LLC*, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 7. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. FAR 15.404-1(c); *Cascade Gen., Inc.*, B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. *Jacobs COGEMA, LLC*, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

### Prime Offeror and Major Subcontractor Direct Labor Rates

The RFP informed offerors that the agency would perform a cost realism analysis in accordance with the FAR and the agency's supplemental acquisition regulations. AR, Tab 37, RFP amend. 10 at 154-55 (citing FAR 15.305, Proposal Evaluation, FAR 15.404, Proposal Analysis, and NASA FAR Supplement 1815.305, Proposal Evaluation). The RFP also provided that the agency's cost realism analysis would assess whether the costs proposed were realistic for the work to be performed,

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at 25; AR, Tab 57, Hypothetical Cost Adjustment at 1 (estimating the cost impact as [DELETED] over the 10-year contract). Regardless of which of the agency's hypothetical amounts is used--[DELETED] or [DELETED]--SAIC cannot demonstrate that its competitive position would change because its most probable cost is approximately \$105 million more than Leidos's probable cost. In sum, neither cost adjustment would significantly reduce the cost differential.

reflected an understanding of the agency's requirements, and were consistent with the offeror's technical proposal. *Id.* at 155.

The RFP required the prime offeror and its major subcontractors to submit cost/price proposal electronic pricing model (EPM) worksheets as part of the offeror's TCP.<sup>21</sup> *Id.* Within the EPM worksheets, the agency included an Incumbency Retention and Pay (IRAP) template to facilitate developing direct labor rates for standard labor categories (SLC). *Id.* at 128-29. The agency also provided SLC position descriptions and average composite direct labor rates, using the current NICS contract and two other NASA contracts, to assist offerors in developing their direct labor rates.<sup>22</sup> *Id.* at 128, 131. The RFP stated that the historical data provided in the technical library was only a guide and "should not be construed as the Government's requirements or preference regarding proposed direct labor rates for contractor employees." *Id.* at 128.

NASA evaluated the IRAP templates Leidos and its major subcontractor, [DELETED], submitted. Together, Leidos and [DELETED] proposed to retain over [DELETED] incumbent work year equivalents (WYE) and to pay most of them at least the incumbent composite direct labor rate.<sup>23</sup> AR, Tab 68, Leidos FPR Cost Vol., Leidos EPM, IRAP tab at Cells G1065, F1070; AR, Tab 68, Leidos FPR Cost Vol., [DELETED] EPM, IRAP tab at Cells G1028, F1033. In this regard, the agency noted that Leidos anticipated retaining [DELETED] percent of incumbent workers and proposed compensating [DELETED] percent of those workers at the incumbent rate, so that [DELETED] percent of Leidos personnel would be paid the incumbent rate. AR, Tab 43, SSA Final Briefing at 132. Furthermore, the agency observed that [DELETED]'s incumbent retention methodology garnered similar results.<sup>24</sup> NASA found that Leidos and [DELETED] had each "properly supported its incumbent versus non-incumbent pay approach" and found their "proposed incumbent retention methodology to be reasonable and realistic." *Id.* at 132-33.

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<sup>21</sup> A major subcontractor is defined in the RFP as a subcontractor with an estimated annual contract value equal to or exceeding \$15 million. *Id.* at 128.

<sup>22</sup> The agency supplied average composite rates because the incumbent contractor, SAIC, refused to provide its incumbent direct labor rates for the RFP's technical library.

<sup>23</sup> A WYE is equivalent to the proposed hours of one full-time employee and may be performed by one employee or multiple part-time employees. *Id.* at 131.

<sup>24</sup> [DELETED] projected a [DELETED] percent retention rate and proposed to compensate [DELETED] percent of those workers at the incumbent rate; therefore, the agency concluded that [DELETED] percent of [DELETED] workers will be paid at the incumbent rate. *Id.* at 132-33.

The agency also reviewed both Leidos's and [DELETED]'s direct labor rates and noted that both firms developed their direct labor rates from a variety of sources. Leidos's rates were based on the following sources: (1) actual key personnel salary data; (2) Defense Contract Management Agency's (DCMA) Forward Pricing Rate Recommendation (FPRR) rates; (3) updated historical incumbent rate data; (4) SCA wage determination rates; or (5) a combination of these sources. AR, Tab 43, SSA Final Briefing at 133. [DELETED] used similar sources as the basis for its proposed rates. *Id.* (citing (1) DCMA's FPRR rates; (2) updated historical incumbent rate data; or (3) a combination of the two sources as the basis for [DELETED] direct labor rates). NASA concluded the rates were reasonable so no probable cost adjustment was required. *Id.* at 133-34.

SAIC argues that NASA failed to evaluate the impact of Leidos and [DELETED] proposing rates below the current incumbent direct labor rates and should have upwardly adjusted all the proposed rates that were lower than the incumbent rates. Comment & Supp. Protest at 67. As an initial matter, to the extent the protester argues that the agency was required to mechanically adjust all proposed direct labor rates that were below the level currently billed on the incumbent contract, we find no merit to this argument. An agency is not required to adjust an offeror's proposed labor rate simply because it does not mirror the government cost estimate or the incumbent's rates. *ABSG Consulting, Inc.*, B-407956, B-407956.2, Apr. 18, 2013, 2013 CPD ¶ 111 at 9. Moreover, the RFP specified that the composite incumbent rates provided were not an agency requirement or even a preference.

The record here shows that the number of WYE that Leidos and [DELETED] proposed to pay below the incumbent rates was less than [DELETED] of the workers targeted for incumbent retention, which is less than 10 percent of workers that Leidos and [DELETED] plan to retain. *See generally*, AR, Tab 68, Leidos FPR Cost Vol., Leidos EPM, IRAP tab; AR, Tab 68, Leidos FPR Cost Vol., [DELETED] EPM, IRAP tab. For these workers, Leidos's proposal demonstrates that the direct labor rates are based on FPRRs or SCA wage determinations. The record shows NASA reviewed the proposed direct labor rates and concluded they were reasonable. We find therefore that NASA reasonably evaluated Leidos's and [DELETED]'s proposed direct labor rates and concluded that no adjustment was required to calculate Leidos's most probable cost. Accordingly, we deny this protest ground.<sup>25</sup>

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<sup>25</sup> Notwithstanding our conclusion above, assuming for the sake of argument that the agency had made an upward adjustment of all the Leidos and [DELETED] proposed direct labor rates that were below the incumbent rate, the record again does not demonstrate that SAIC was competitively prejudiced. SAIC's own consultant calculates the cost of the upward adjustment to be [DELETED], Consultant Decl. at 10, which is based on adjusting rates for [DELETED] WYEs for Leidos and [DELETED] WYEs for [DELETED]. *Id.* at 5 & n.16. Even if NASA had increased Leidos's most probable cost to [DELETED], SAIC's most probable cost of \$1,941 million remains more than \$100 million more than Leidos's. Thus, we see no basis to conclude that a failure to make such an adjustment resulted in any competitive prejudice to SAIC.

## Price Analysis of Minor Subcontractors

SAIC also alleges that while minor subcontractors account for [DELETED] percent of Leidos's proposed hours, NASA failed to perform any cost realism evaluation of Leidos's minor subcontractors' labor rates. Comments & Supp. Protest at 67-71. Specifically, SAIC contends that NASA did not consider the significant risk to contract performance posed by the low fully burdened labor rates (FBLRs) offered by Leidos's minor subcontractors. In SAIC's view, these low FBLRs posed a risk that the minor subcontractors would be unable to retain incumbent personnel. SAIC contends that if NASA had properly made an upward adjustment to Leidos's most probable cost in this area, the adjustment would have eliminated Leidos's cost advantage over SAIC. *Id.*

The RFP stipulated that NASA's cost realism would also include an assessment of minor subcontractors' costs. AR, Tab 37, RFP amend. 10 at 155. The RFP however did not require minor subcontractors to submit detailed compensation or incumbent retention information. Instead, the prime offeror was required to evaluate the proposals submitted by its minor subcontractors and document its analysis in the cost/price volume narrative. *Id.* at 482.

As instructed by the RFP, Leidos performed a price analysis of each minor subcontractor's cost proposals and included this analysis in its proposal. Leidos examined the minor subcontractors' fully burdened labor rates and compared them to an average composite hourly rate for the respective labor category developed from data consolidated at salary.com in a similar labor category for the geographical location, qualifications, and years of experience.<sup>26</sup> See *generally*, AR, Tab 39, Leidos FPR at 2894-2991 (Leidos's price analysis for all subcontractors). Leidos found subcontractor rates within [DELETED] percent below or above the salary.com-based rates to be fair and reasonable. When a subcontractor rate was outside the [DELETED] percentile, Leidos then compared the rate to the average rate of all minor subcontractors that had proposed to provide personnel within that particular labor category. Nearly all subcontractors proposed labor rates that fell within [DELETED] percent of the salary.com-based rates or the all-subcontractor-based average rates. When, however, a subcontractor proposed two labor rates below [DELETED] percent of the all-subcontractor-based average for the labor category, Leidos contacted the subcontractor and verified its ability and commitment to provide qualified personnel at the proposed rates. *Id.* at 2941-42. Leidos deemed the subcontractor's assertions credible due to the status of the proposed candidates and concluded the rates were fair and reasonable. *Id.* at 2942.

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<sup>26</sup> Salary.com is a commercial website that provides employee compensation data, including salary reports, market data, and job listings. See salary.com website, salary.com/about-us (last visited February 8, 2022).

NASA considered Leidos's cost/price narrative in accordance with the RFP. AR, Tab 79, Cost/Price Analyst Decl. at 1. After verifying that the proposed hours were correct, the agency reviewed Leidos's price analysis documentation and noted that Leidos proposed time-and-materials (T&M) contracts with all minor subcontractors. *Id.* at 1-2; AR, Tab 43, SSA Final Briefing at 135. As result, NASA determined that TCP data was not required from the minor subcontractors and NASA "took no exception" to the minor subcontractors fully burdened rates because "the T&M contractual arrangement is in effect a 'fixed' price arrangement." AR, Tab 43, SSA Final Briefing at 135. In other words, the minor subcontractors' FBLRs were fixed costs under the T&M agreements with Leidos.

The agency also evaluated Leidos's price analysis set forth above and found that Leidos "performed the required price analysis, and based on the SEB's review of that documentation in which no significant issues were detected, the SEB takes no exception to the proposed FBLRs. . . ." *Id.* at 136. NASA concluded that no cost realism adjustments were required because Leidos's proposed minor subcontractors' rates were reasonable in light of Leidos's approach and the data provided, and that as a result of the T&M agreements, the minor subcontractors' FBLRs were fixed costs. *Id.*; AR, Tab 79, Cost/Price Analyst Decl. at 3.

Upon review of the record, we find that NASA's cost realism analysis of Leidos's minor subcontractors was reasonable. We note first that the RFP did not include a ceiling for proposed minor subcontractors, so Leidos's decision to propose a [DELETED] share of minor subcontractors is unobjectionable. Furthermore, the RFP instructed prime offerors to conduct and document a price analysis of the minor subcontractors' cost proposals in their cost/price volume for the agency to consider. As discussed above, Leidos included this analysis as required; and NASA considered the analysis, accepted the conclusions, and documented its review. In addition, Leidos's proposal included T&M agreements with all its minor subcontractors; therefore, NASA reasonably considered the subcontractors' FBLR rates to represent fixed costs. As we have stated in these cases, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. *SGT, Inc.*, B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. We therefore find no basis to question the adequacy of the agency's evaluation.

We are also unpersuaded by SAIC's argument that an upward adjustment to Leidos's minor subcontractors proposed rates would be either appropriate, or overcome Leidos's price advantage in a meaningful way. The minor subcontractor rates at issue here are T&M rates, where the rates are fixed and cannot be adjusted. AR, Tab 79, Cost/Price Analyst Decl. at 3. Moreover, NASA considered the risk of contract performance related to Leidos's approach in accordance with the RFP and detailed its findings under the management approach subfactor, where the RFP indicated the government would "evaluate the [o]fferor's [s]taffing and [t]otal [c]ompensation [p]lan and rationale for accomplishing overall management of contract requirements." AR, Tab 37, RFP

amend. 10 at 148. NASA's cost/price analyst also explained that he "considered the labor categories that NASA was seeking and noted that these positions are all primarily in the IT area. The applicant pool for IT positions is plentiful; therefore, in [his] opinion [he] did not deem this to be a concern." An additional risk assessment for Leidos's minor subcontractors based on their below-incumbent rates was unwarranted." AR, Tab 79, Cost/Price Analyst Decl. at 3.

As discussed above, however, the record shows that NASA conducted a reasonable cost realism analysis of both Leidos's major and minor subcontractors, and we conclude that none of SAIC's arguments show that NASA unreasonably evaluated Leidos's proposed costs in a manner that could have prejudiced SAIC. Accordingly, we find no basis to sustain SAIC's challenge to NASA's cost realism evaluation.

### Technical Evaluation

Finally, we note that SAIC made several complaints about NASA's evaluation of its proposal under the mission suitability subfactors of the management approach and technical approach. Although NASA responded to these arguments in its report on the protest, SAIC's comments on the agency report did not address them. See Supp. MOL at 21, 23; see *generally* Protester Comments on Supp. AR (showing no comments addressing NASA's response to SAIC's supplemental protest of NASA's management approach unequal evaluation). We consider these arguments abandoned and therefore dismiss them. Bid Protest Regulations, 4 C.F.R. § 21.3(i)(3) ("GAO will dismiss any protest allegation or argument where the agency's report responds to the allegation or argument, but the protester's comments fail to address that response.").

In SAIC's single remaining challenge to NASA's technical evaluation, SAIC protests that NASA evaluated offerors unequally under the mission suitability technical approach subfactor. Specifically, SAIC argues that the agency improperly bundled multiple SAIC strengths into one significant strength for its cybersecurity approach at the same time it assigned Leidos's proposal multiple strengths. Protest at 33-34; Comments & Supp. Protest at 71-74.

Agencies must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's evaluation criteria. *L3 Sec. & Detection Sys., Inc.*, B-417463, B-417463.2, July 8, 2019, 2019 CPD ¶ 248 at 4. Where a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. *Id.*

Here, SAIC failed to make such a showing. NASA explains that the different strengths assigned to Leidos and SAIC stem from the differences in their proposals and that Leidos's proposal provided more detail, which allowed the SEB more insight into Leidos's proposed cybersecurity approach, and in turn enabled the SEB to make more findings. Supp. COS at 7-9. Based on our review of the record, we agree.

More importantly, adjectival ratings are merely guides for intelligent decision-making in the procurement process, and the relevant inquiry is whether the agency's evaluation of the relative merits of each proposal was reasonable. *Centerra-Parsons Pac., LLC*, B-414686, B-414686.2, Aug. 16, 2017, 2020 CPD ¶ 249 at 8-9.

In response to the protest, NASA provided a detailed record of its evaluation and source selection decision. This analysis shows that the agency evaluated the relative merits of the proposals and assessed ratings in a fair and impartial manner, consistent with both the RFP and the source selection plan ratings definitions. Based on this reasonable discussion and assessment of the relative advantages and disadvantages associated with the specific content of the proposals, we find that the protester's disagreements with the actual ratings are meritless, given that they do not affect the reasonableness of the judgments made in the source selection decision. See *Centerra-Parsons Pac., LLC*, supra at 8-9 (stating that where the record shows the agency reasonably considered the underlying basis for the evaluator's ratings, a protester's disagreement over the actual ratings is essentially unimportant in that it does not affect the reasonableness of the agency's judgments). On this record, we have no basis to conclude that the agency's evaluation was unreasonable.

In summary, based on the record before us, we conclude that NASA reasonably determined that Leidos did not gain an unfair competitive advantage resulting from its consulting agreement with a former NASA official. Furthermore, we conclude that NASA's technical and cost realism evaluations were reasonable and that SAIC's allegations amount to nothing more than an incumbent protester's disagreement with the agency's decision.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel