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# Decision

**Matter of:** Harmonia Holdings Group, LLC

**File:** B-417475.3; B-417475.4

**Date:** September 23, 2019

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W. Brad English, Esq., J. Dale Gipson, Esq., Emily J. Chancey, Esq., and Michael W. Rich, Esq., Maynard Cooper & Gale, PC, for the protester.  
Daniel J. Strouse, Esq., John J. O'Brien, Esq., and David S. Cohen, Esq., Cordatis Law LLP, for AttainX, Inc., the intervenor.  
Caleb Pearson, Esq., Department of Agriculture, for the agency.  
April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Consultant's application for admission to protective order is denied where the applicant represents that he is involved in competitive decisionmaking and, further, that he was involved in a GAO protest covered by a protective order under which he had not been admitted; subsequent consultant is admitted where the parties agreed on restrictions to mitigate risk of inadvertent disclosure of protected information.
2. Protest challenging the agency's cost/price evaluation is sustained where the agency's evaluation of optional contract line item numbers, based solely on a selective sample of hourly labor rates, was unreasonable.
3. Protest challenging the agency's evaluation of awardee's and protester's past performance is sustained where the evaluation is inadequately documented and inconsistent with the terms of the solicitation.
4. Protest challenging the agency's assessment of weaknesses to protester's quotation is sustained where the assessment of weaknesses was unreasonable, inconsistent with the terms of the solicitation, and inadequately documented.
5. Protest challenging the agency's best-value tradeoff decision is sustained when the decision was based on multiple evaluation errors, and when the selection official selected the awardee's higher-priced, technically superior quotation without

documenting any qualitative consideration of the competing quotations and whether any advantages of the awardee's quotation justified paying its higher price.

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## **DECISION**

Harmonia Holdings Group, LLC, of Blacksburg, Virginia, protests the issuance of a task order to AttainX, Inc., of Fairfax, Virginia, under request for quotations (RFQ) No. 12639519Q0036, issued by the Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), for information technology services. Harmonia challenges various aspects of the agency's source selection process, including the agency's cost/price evaluation, past performance evaluation, assessment of weaknesses to the protester's quotation, and best-value tradeoff decision.

We sustain the protest.

## **BACKGROUND**

On November 19, 2018, the agency issued the RFQ as a total small business set-aside pursuant to Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding contracts under the General Services Administration Federal Supply Schedule (FSS) No. 70 (Information Technology). Contracting Officer's Statement (COS), Attachment C, Revised RFQ, Dec. 18, 2018.<sup>1</sup> The RFQ contemplated the issuance of a task order for information technology services to support three APHIS software systems, referred to collectively as the "Phytosanitary Certificate Issuance & Tracking (PCIT) systems."<sup>2</sup> RFQ at 2, 13-20. The RFQ contemplated the award of a task order to be performed over a base year and four option years, with an estimated value of \$15 million and a ceiling value of \$19 million. *Id.* at 38; COS at 2.

The RFQ stated that award would be made on a best-value tradeoff basis, based on cost/price and four non-cost/price factors, listed in descending order of importance: technical approach, management approach, past performance, and experience.<sup>3</sup> RFQ

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<sup>1</sup> The agency issued a list of questions and answers and one amendment to the RFQ, resulting in a revised solicitation issued on December 18, 2018. The agency initially asserted that it did not include certain documents—including the revised RFQ—in its agency report because it did not want to "inundat[e] the GAO with documents that are not germane to the issues at hand." Supp. Memorandum of Law (MOL), Aug. 9, 2019, at 2. At GAO's request, the agency provided the revised RFQ, which it labeled as an attachment to the contracting officer's statement. All citations herein are to the revised RFQ.

<sup>2</sup> The three systems are: the PCIT system, the Lacey Act Web Governance System, and the Veterinary Export Health Certificate System. RFQ at 2.

<sup>3</sup> The RFQ refers to this fourth factor interchangeably as experience or key personnel. For simplicity, this decision refers to this factor as the experience factor.

at 44-45. The RFQ advised that “overall technical merit is more important than price[.]” Id. at 45.

With regard to cost/price, the RFQ contained the following contract line item numbers (CLINs): fixed-price CLINs for operations and maintenance services; optional unspecified CLINs for development, modernization, and enhancements (DME) and “other tasks that may be necessary during contract period of performance”; and optional cost-reimbursable CLINs for travel, training, and other direct costs.<sup>4</sup> RFQ at 2-6. The RFQ required vendors to propose total prices for the fixed-price CLINs. Id. at 3, 41. For the optional DME CLINs, the RFQ required vendors to provide “rate sheets detailing labor positions and hourly rates (but no total amounts)[,]” but also stated that “any work under [these] CLIN[s] will be priced separately at the time the option is exercised.”<sup>5</sup> Id. at 3, 41. Finally, the RFQ required vendors to provide cost/price-supporting documentation to “detail the labor categories to be used, labor hours proposed by category, and any additional costs to provide information on price reasonableness[.]” and provided that the agency would evaluate cost/price as follows:

The offeror’s written price quote will be evaluated to determine cost realism and reasonableness. Prices that are excessively high or low (without sufficient justification) may be considered unrealistic and unreasonable and may receive no further consideration.

Id. at 44.

Under the past performance factor, the RFQ required vendors to identify references for three projects performed<sup>6</sup> within the last three years that “should be as similar in size, scope, and complexity to the requirements identified in the statement of work as possible.” RFQ at 42. The RFQ provided that the agency would evaluate past performance based on, among other things, “the degree to which the[] past performance examples reflect performance of projects similar in size, scope and complexity to the requirements in the statement of work.” Id. at 44. The RFQ also

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<sup>4</sup> The RFQ required “no price submission” for the cost-reimbursable CLINs for travel, training, and other direct costs, and included an annual not-to-exceed (NTE) value of \$10,000 for these CLINs. RFQ at 3, 41.

<sup>5</sup> In this regard, the RFQ included an annual NTE value of \$2,250,000 for the optional DME CLINs. RFQ at 3. The RFQ also provided descriptions of tasks under the optional DME CLINs but cautioned that these tasks “may or may not be exercised and are provided simply as an example of the types of tasks which may be required.” Id. at 18.

<sup>6</sup> The RFQ also required that identified projects had to have been performed “by the business unit that will perform this effort.” RFQ at 42. In response to a vendor’s question, the agency clarified that past performance references from work completed as a subcontractor would be acceptable. COS, Attachment B, Questions and Answers, Dec. 18, 2018, at 1.

provided that the government “may use data obtained from other sources, as well as those provided in the quote[.]” to assess the vendor’s past performance. Id.

The RFQ provided general guidance about how the agency would evaluate the other three non-cost/price factors. For the technical approach, management approach, and experience factors, the RFQ advised that quotations would be evaluated based on the degree to which they met the requirements of the RFQ, including the “criteria” identified in the response submission instructions. See RFQ at 44-45, citing id. at 41-43.

On or before the January 8, 2019, closing date for initial quotations, the agency received quotations from four vendors, including Harmonia and AttainX. After an initial review, the agency eliminated one vendor from the competition based on an unreasonably high price; the remaining three vendors provided oral presentations, engaged in discussions, and submitted final revised quotations by March 21. Of relevance here, Harmonia proposed a total price for the fixed-price CLINs of \$5,092,398 and a total overall price of \$16,391,120, while AttainX proposed a total price for the fixed-price CLINs of \$5,547,838 and a total overall price of \$16,847,838.<sup>7</sup> Agency Report (AR), Tab 5, Harmonia Final Quotation, Mar. 21, 2019, at 91;<sup>8</sup> AR, Tab 4, AttainX Final Quotation, Mar. 21, 2019, at 13; see also AR, Tab 14, Award Determination, June 7, 2019, at 8 (referencing total price for the fixed-price CLINs only).<sup>9</sup>

The agency evaluated the revised quotations and selected AttainX for award. Harmonia then filed its first protest with our Office on April 11, challenging various aspects of the agency’s evaluation of quotations and award decision. The agency took corrective action, and we dismissed the protest as academic. Harmonia Holdings Grp., LLC, B-417475, B-417475.2, May 10, 2019, at 1 (unpublished decision).

The agency completed its corrective action in response to the first protest and, on June 7, reissued the task order to AttainX. As part of the corrective action, the technical evaluation board (TEB) reevaluated the quotations using a weighted rating system. First, each of the five TEB members assigned scores ranging from 0 to 5 for each of the

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<sup>7</sup> Although the RFQ instructed vendors not to include total pricing for the optional CLINs, both AttainX and Harmonia calculated a total proposed price by using the annual NTE amounts included in the RFQ of \$2,250,000 for the optional DME CLINs and \$10,000 for the cost-reimbursable CLINs for travel, training, and other direct costs.

<sup>8</sup> Citations to the quotations are to the pages in the PDF version of the documents provided by the agency.

<sup>9</sup> The agency asserts in the index to its AR that the award determination was dated June 7, 2019. We note, however, that the version provided for the record is undated and unsigned.

four non-cost/price factors.<sup>10</sup> Then, the TEB members added their scores to obtain a total raw score out of a possible maximum of 25 points for each of the four non-cost/price factors. Finally, the TEB calculated a final weighted technical score for each quotation by first multiplying the total raw scores under each of the four non-cost/price factors by a weighted percentage,<sup>11</sup> and then adding the results together to obtain a final weighted score out of a possible maximum of 25 points. Award Determination at 6. Using this methodology, the TEB evaluated the quotations as follows:

	Harmonia	AttainX
<b>Technical Approach</b>	17.5	24.0
<b>Management Approach</b>	17.5	24.5
<b>Past Performance</b>	16.0	23.5
<b>Experience</b>	16.0	21.0
<b>FINAL WEIGHTED SCORE</b>	16.98	23.6

AR, Tab 13, TEB Scoring Sheet, May 17, 2019, at 1.

The TEB also assessed “pros” and “cons”—that is, strengths and weaknesses—under each of the four non-cost/price factors for each quotation. For AttainX, the TEB identified several strengths under each of the factors, and did not identify any weaknesses. AR, Tab 11, AttainX Evaluation Board Summary, May 17, 2019, at 1-2. For Harmonia, the TEB identified a few strengths under the technical approach and management approach factors and one strength under the past performance factor; and did not identify any strengths under the experience factor. AR, Tab 12, Harmonia Evaluation Board Summary, May 17, 2019, at 1-2. The TEB also assessed, for Harmonia, a total of 12 weaknesses: two under the technical approach factor, six under the management approach factor, one under the past performance factor, and three under the experience factor. Id.

The selection official, who was also the contracting officer (CO), then reviewed the TEB’s findings and noted that the “results of the final technical scores was that AttainX was the most highly rated technical response . . . and Harmonia was third with a much lower score[.]” Award Determination at 6. The selection official then listed the 12 “[t]echnical weaknesses identified for Harmonia” as: four under the technical approach

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<sup>10</sup> The TEB members assigned the following points for each of the four non-cost/price factors: 5 points for excellent; 4 points for very good; 3 points for good; 2 points for satisfactory; 1 point for marginal; and 0 points for unsatisfactory.

<sup>11</sup> The TEB applied the following weights for the four non-cost/price factors to account for their descending order of importance: 35 percent for technical approach, 30 percent for management approach, 20 percent for past performance, and 15 percent for experience.

factor, three under the management approach factor, two under the past performance factor, and three under the experience factor.<sup>12</sup> Id. at 7.

The selection official also conducted a cost/price evaluation and additional past performance checks. With regard to cost/price, the selection official noted that Harmonia's proposed price was approximately 8.9 percent lower than AttainX's for the fixed-price CLINs (\$5,092,398 versus \$5,547,838), but that "the [fixed-price] CLINs are expected to represent only a small fraction of the total contract costs" and that the optional DME CLINs' "costs under this contract will be roughly double the [fixed-price] CLINs' costs." Award Determination at 8. The selection official then analyzed AttainX's and Harmonia's pricing for the optional DME CLINs by comparing the proposed hourly labor rates for five key personnel.<sup>13</sup> The selection official concluded that because AttainX offered a lower hourly rate for [REDACTED] of the five positions, "AttainX tended to offer lower hourly rates and thus would represent a lower cost for future DME tasks." Id. at 8. The selection official also concluded that AttainX proposed "nearly an identical overall price" and that the price difference between the two quotations was "negligible (if any)[.]" Id. at 9.

With regard to past performance, the selection official asserted that "[i]nitial past performance ratings were completed solely by the TEB based on the past performance information included in the offeror's proposals." Award Determination at 7. The selection official then noted additional information including, among other things: reference checks through which he found "glowing reviews" for AttainX; his review of information in the Past Performance Information Retrieval System (PPIRS); the TEB's first-hand knowledge of two of AttainX's proposed key personnel; and his first-hand experience as the CO for another contract that Harmonia had performed for APHIS. Id. at 7-8.

In making the best-value tradeoff analysis to affirm the award to AttainX, the selection official concluded:

[T]he final trade-off analysis decision was actually pretty obvious. The RFQ stated (page 45): "The government anticipated award utilizing a Best Value Method. The government will award based on the response that is deemed to be overall the most advantageous to the government, price and other factors considered. Technical responses will be evaluated based on the factors described above. They are listed in order of importance with technical approach being of the greatest importance. Overall technical merit is more important than price; therefore, award may

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<sup>12</sup> Several of these weaknesses identified by the selection official were either different from what the TEB had identified, or were listed under different factors from what the TEB had assessed.

<sup>13</sup> The RFQ listed six key personnel positions. RFQ at 29, 38.

be made to other than the lowest[-]priced technically acceptable response.”

In this case, AttainX offered the most highly rated technical response. Their technical response was rated higher than the incumbent’s response and much higher than the response from the protest[er] (Harmonia). The price analysis showed a negligible (if any) price difference between the awardee and protest[er]. The awardee (AttainX) represented the far superior technical response at nearly an identical overall price with much less contract risk. Given the trade-off instructions that technical merit was more important than price the decision was made to award to AttainX.

#### Award Determination at 9.

After receiving the notification affirming the award to AttainX, Harmonia filed this protest with our Office, again challenging various aspects of the agency’s evaluation of quotations and award decision. On July 18, Harmonia received a brief explanation from the agency regarding the revised award decision and, thereafter, filed a supplemental protest raising additional challenges.

#### CONSULTANT PROTECTIVE ORDER APPLICATIONS

As a preliminary matter, on June 19, our Office issued a protective order pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.4(a). Electronic Protest Docketing System (EPDS) Docket Entry No. 7, June 19, 2019. Counsel for the protester and intervenor were admitted to the protective order without objection. EPDS Docket Entry No. 12, June 24, 2019. The protester then filed protective order applications for two technical consultants; as discussed below, we denied the first consultant’s application and admitted the second consultant.

In considering the propriety of granting or denying an applicant’s admission to a protective order, we review each application in order to determine whether the applicant is involved in competitive decisionmaking and whether there is otherwise an unacceptable risk of inadvertent disclosure of protected information, should the applicant be granted access to protected material. See Robbins-Gioia, Inc., B-274318 et al., Dec. 4, 1996, 96-2 CPD ¶ 222 at 9-10, citing U.S. Steel Corp. v. United States, 730 F.2d 1465 (Fed. Cir. 1984). With regard to the applications of consultants to a protective order, we consider and balance a variety of factors, including our Office’s desire for assistance in resolving the specific issues of the protest, counsel’s need for consultants to pursue the protest adequately, the nature and sensitivity of the material sought to be protected, and whether there is opposition to an applicant expressing legitimate concerns that the admission of the applicant would pose an unacceptable risk of inadvertent disclosure. See Restoration and Closure Servs., LLC, B-295663.6, B-295663.12, Apr. 18, 2005, 2005 CPD ¶ 92 at 4; EER Sys. Corp., B-256383 et al., June 7, 1994, 94-1 CPD ¶ 354 at 9. An applicant’s involvement in competitive decisionmaking creates an unacceptable risk of inadvertent disclosure of protected

material, and an applicant can be involved in competitive decisionmaking by working with marketing, technical, or contracting personnel on procurements. See, e.g., Colonial Storage Co.; Paxton Van Lines, Inc., B-253501.5 et al., Oct. 19, 1993, 93-2 CPD ¶ 234 at 8-9. Our consideration of an applicant's involvement in competitive decisionmaking is not limited to the party an applicant represents in a given matter, and relates to both past and future activities.

### First Consultant Application

AttainX objected to Harmonia's first application for a technical consultant based on, among other things, the consultant's representations in his application and resume that he provides "marketing and proposal support" and that his work includes work for a company that provides proposal writing and management services for its clients. AttainX Objection to Consultant 1's Application, July 8, 2019, at 1. In response, Harmonia asserted, for example, that the consultant "is not engaged in competitive[] decisionmaking on Harmonia's behalf"; that he "has not provided proposal support services to Harmonia, and the proposal services he provides to other clients are limited in nature"; and that he "merely recommends how the offeror's own technical approach should be explained in a proposal to meet the requirements of a solicitation." Harmonia First Response, July 9, 2019, at 1-2; see Consultant 1 Declaration, July 9, 2019, at ¶¶ 3-4. The consultant also stated that he has "an 'as-requested' engagement with [a company] to provide proposal support services for their clients that would be broader than the services described above." Consultant 1 Declaration at ¶ 7.

Given these statements, we denied the first consultant's application for admission to the protective order. Notice of Denial of Admission to Protective Order, July 19, 2019. We noted that the consultant affirmatively represented that he "provides marketing and proposal support"; that we view these activities as competitive decisionmaking; and that the consultant's involvement in competitive decisionmaking was not mitigated by his claim that such activities are "limited." Id.; see U.S. Steel Corp. v. United States, supra.

Further, we noted that our concerns regarding the consultant's involvement in competitive decisionmaking extended not only to his activities on behalf of Harmonia in this procurement, but to any other firm he works for, or will subsequently work for, that could gain a competitive advantage from access to protected material. In this regard, in addition to the "marketing and proposal support" services as described above, we noted that the consultant stated that he has a "broader" and "as-requested engagement" to provide proposal support services for a company that is specifically engaged in proposal writing and management services. See Consultant 1 Declaration at ¶ 7.

As a final matter, other issues were raised during the development of the record on this consultant's application that, while not determinative, presented additional concerns affecting the propriety of granting him admission to the protective order. For example, the consultant represented in his resume that he provided "protest support work" for a GAO protest which was covered by a protective order, but we found no record of his involvement in that protest. In response to an initial inquiry from our Office, protester's



counsel first stated that the consultant “analyzed price and technical quotes to support the [ ] protest.” EPDS Docket Entry No. 28, July 9, 2019. In response to a second inquiry from our Office, protester’s counsel represented instead that, in essence, the consultant’s representation that he provided “protest support work” in a protest covered by a GAO protective order--to which he was not admitted--was “in error.” See Harmonia Second Response, July 11, 2019, at 1. Moreover, protester’s counsel contended that the reference in the consultant’s resume, regardless of how it appeared in writing, was to another protest where he had been granted protective order admission.

Although we drew no conclusion, based on this record, as to whether the consultant was involved in a protest--as he represented on his resume--that was covered by a protective order to which he was not admitted, the mere presence of such an “error” raised concern that the consultant was not addressing our protective order process with sufficient gravity and care. Pursuant to our Bid Protest Regulations, GAO issues protective orders to control the treatment of protected information, which may include proprietary, confidential, or source-selection-sensitive material, as well as other information, the release of which could result in a competitive advantage to one or more firms. 4 C.F.R. § 21.4(a). It is the responsibility of individuals admitted under a protective order to take all precautions necessary to prevent disclosure of protected material. When an applicant prepares documents advertising his or her activities, particularly with regard to protests before our Office, and when such documents contain errors, inconsistencies, or misrepresentations, we may consider these as factors in our decision to deny admission to a protective order. Therefore, on this record, we denied the admission of the first consultant to the protective order.

### Second Consultant Application

AttainX initially filed, but later withdrew, an objection to Harmonia’s second application for a technical consultant based on its concern that this consultant’s access to protected material could result in the inadvertent disclosure of information. AttainX Objection to Consultant 2’s Application, July 17, 2019, at 1. In our notice granting the admission of the second consultant to the protective order, we acknowledged the intervenor’s legitimate concern that the consultant would not be supervised in-person by protester’s counsel. We also noted that Harmonia had explained the various safeguards established by the consultant, including data encryption through a passcode known only to him and a virtual private network to secure his internet traffic; that Harmonia had represented that the consultant “will review all documents electronically and will not print them”; and that, based on these representations, AttainX stated that it withdrew its objection. Notice of Admission to Protective Order, July 24, 2019; see also Harmonia Response, July 17, 2019, at 1-2; EPDS Docket Entry No. 45, July 19, 2019.

Furthermore, we noted that the consultant’s application was accompanied by a certification signed by protester’s counsel, stating that the consultant will perform his duties in connection with this protest under her “direction and control.” Consultant 2’s Application, Attorney’s Certification, at 1. We view this certification as plainly applicable notwithstanding such circumstances where, as here, a consultant is not physically

located with the attorney who retained him. Finally, we noted that the consultant represented in his application that he had read the protective order issued by GAO in this matter, and that he would abide by its terms and conditions in handling any protected material that is filed or produced in this matter. We therefore admitted the second consultant to the protective order.

## DISCUSSION

Harmonia raises numerous challenges to the agency's evaluation of its and the awardee's quotations under the cost/price and all four of the non-cost/price factors. Based on these alleged evaluation errors, Harmonia also challenges the agency's best-value tradeoff analysis. We have reviewed all of the parties' arguments and the record; as discussed below, we sustain the protest.<sup>14</sup>

### Cost/Price Evaluation

Harmonia challenges various aspects of the agency's cost/price evaluation, arguing that "the agency's determination that Harmonia's price advantage was negligible was irrational, unreasonable, and undocumented." Protester's Comments, July 29, 2019, at 19. As noted above, Harmonia proposed a total price for the fixed-price CLINs of \$5,092,398 and a total overall price of \$16,391,120, while AttainX proposed a total price for the fixed-price CLINs of \$5,547,838 and a total overall price of \$16,847,838. AR, Tab 5, Harmonia Final Quotation at 91; AR, Tab 4, AttainX Final Quotation at 13; see also Award Determination at 8 (referencing total price for the fixed-price CLINs only). As discussed below, we sustain in part and dismiss in part Harmonia's challenges to the agency's cost/price evaluation.

Harmonia first challenges the agency's evaluation of Harmonia's and AttainX's proposed pricing for the optional CLINs for development, modernization, and enhancements (DME). Protester's Comments at 19-21; Protester's Supp. Comments at 6-10. Harmonia contends that the agency "relied on undocumented, unsound logic to conclude that Harmonia and AttainX proposed similar prices" for the optional DME

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<sup>14</sup> In its various protest submissions, Harmonia has raised arguments that are in addition to, or variations of, those specifically discussed below. We have considered all of Harmonia's arguments and, other than those discussed specifically below, find no other basis to sustain its protest. Harmonia also abandoned some of the arguments from its initial and supplemental protests, including allegations that the agency failed to reasonably identify additional strengths in its quotation and that the agency misevaluated or overemphasized the experience factor. Because Harmonia failed to address the agency's specific response to its arguments, we deem those arguments abandoned. Compare Protest at 18-19 and Supp. Protest at 2-4 with MOL at 10-11, 15-16 with Protester's Comments, July 29, 2019. Accordingly, we will not consider these arguments further. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

CLINs. Protester's Comments at 19. Harmonia also contends that the agency's evaluation of the optional DME CLINs cannot reasonably support "the agency's determination that Harmonia's overall price advantage was negligible." Id.

As noted above, the RFQ contemplated the award of a task order that would include optional unspecified CLINs for DME. RFQ at 2-3. For the optional DME CLINs, the RFQ required vendors to provide "rate sheets detailing labor positions and hourly rates (but no total amounts)[,]" and stated that "any work under [these] CLIN[s] will be priced separately at the time the option is exercised." Id. at 3, 41. The RFQ advised that the agency would evaluate the cost/price factor as follows:

The offeror's written price quote will be evaluated to determine cost realism and reasonableness. Prices that are excessively high or low (without sufficient justification) may be considered unrealistic and unreasonable and may receive no further consideration.

Id. at 44.

In response, the agency concedes that the optional DME CLINs "are CLINs to be defined as the needs/requirements arise and not an indication of what the final price will be." Supp. MOL at 9. Yet, the agency contends that it "reasonably considered . . . the lower hourly rates offered by the awardee," MOL at 12, and that "the intent of the solicitation was clear, which was to review the hourly rates for the [optional] DME CLINs." Id. at 14. The record shows that, for the 5-year performance period, AttainX proposed flat hourly labor rates for [REDACTED] positions, while Harmonia proposed escalating hourly labor rates for [REDACTED] positions. The record also shows that the selection official compared AttainX's and Harmonia's proposed base-year hourly labor rates for five key personnel positions and found that AttainX offered a lower rate for [REDACTED] of the positions. Based on this comparison, the selection official determined that "AttainX tended to offer lower hourly rates and thus would represent a lower cost for future DME tasks." Award Determination at 8. The selection official also concluded that AttainX proposed "nearly an identical overall price" and that the price difference between the two quotations was "negligible (if any)[.]" Id. at 9.

Agencies are required to consider cost or price to the government in evaluating competitive proposals. 10 U.S.C. § 2305(a)(3)(A)(ii); see Kathpal Techs., Inc.; Computer & Hi-Tech Mgmt., Inc., B-283137.3 et al., Dec. 30, 1999, 2000 CPD ¶ 6 at 9. It is up to the agency to decide upon the appropriate method for evaluation of cost or price in a given procurement, although the agency must use an evaluation method that provides a basis for a reasonable assessment of the cost of performance under the competing proposals. Alliant Techsys., Inc., B-410036, Oct. 14, 2014, 2014 CPD ¶ 324 at 10.

We reject the agency's assertion that its evaluation of the optional DME CLINs was reasonable. As a preliminary matter, the agency concedes that the optional DME CLINs are "not an indication of what the final price will be." Supp. MOL at 9. Moreover,

we find that the methodology used by the agency to evaluate the optional DME CLINs--as documented in the contemporaneous record<sup>15</sup>--did not provide a basis for a reasonable assessment of the total cost of performance for the competing quotations. The record shows that, in short, the selection official concluded that AttainX's pricing "was lower on most positions" simply because AttainX's base-year hourly labor rates were lower on [REDACTED] out of the five positions that he chose to compare. Award Determination at 8. In our view, this methodology defies logic--using a selectively chosen sample of five hourly rates to draw any conclusions about the total cost of performance of a 5-year task order is plainly unreasonable. But see, e.g., AdvanceMed Corp.; TrustSols., LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25 at 14-16 (methodology for sampling labor rates was based on certain parameters and resulted in "a sufficiently large amount" of the proposed positions and costs "so as to permit the CO to conclude that they were representative of the likely costs that the government would incur").

Moreover, we have several other concerns about the agency's methodology, as follows: first, neither the contemporaneous record nor the agency's response explains why it selected the rates for five key personnel to compare, given that the RFQ listed six key personnel positions. See RFQ at 29, 38. Second, the agency's reliance on AttainX's lower rates for [REDACTED] out of five positions to conclude that its pricing "was lower on most positions" is misleading, given that this sample of five positions represents fewer than half of the [REDACTED] positions proposed by AttainX or of the [REDACTED] positions proposed by Harmonia. Award Determination at 8. Third, the agency's methodology fails to take into account other factors present in the vendors' quotations that would materially alter the outcome, including but not limited to: the differing numbers of proposed positions; the difference between AttainX's flat hourly labor rates and Harmonia's escalating hourly labor rates over the 5-year period of performance; and the total prices quoted by AttainX (\$16,847,838) and Harmonia (\$16,391,120).<sup>16</sup> Fourth, the agency concedes that the optional DME CLINs are "to be defined as the needs/requirements arise." Supp. MOL at 9. In this regard, its evaluation lacks any consideration of estimated level of effort--such as the number of hours it expected to need for each of the proposed labor categories, or any specifics of the tasks it expected would be performed under these CLINs--which could have

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<sup>15</sup> The parties primarily base their arguments on an analysis of Harmonia's "blended" rates--that is, because Harmonia proposed escalating hourly rates over the 5-year period of performance, the parties in their pleadings have calculated average rates for Harmonia as a point of comparison to AttainX's flat hourly rates. See Protester's Comments at 19-21; Supp. MOL at 5-9. Because these average rates do not appear in Harmonia's quotation or in the contemporaneous award determination, we decline to address the parties' arguments in this regard.

<sup>16</sup> As noted above, although the RFQ instructed vendors not to include total pricing for the optional CLINs, both AttainX and Harmonia calculated a total proposed price by using the annual NTE amounts included in the RFQ.

informed its assessment of the cost of performance. Under these circumstances, we fail to see how the agency could reasonably draw any conclusions about total pricing based on its comparison of just five base-year hourly labor rates for the optional DME CLINs.

We also reject the agency's position that its "intent" to use this flawed methodology to evaluate the optional DME CLINs was "clear" from the RFQ. MOL at 14. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4. Here, the plain language of the RFQ provided for a general evaluation of the cost/price factor and did not prescribe any specific methodology for evaluating the optional DME CLINs. See RFQ at 44. In this regard, while the RFQ required vendors to propose hourly labor rates for these CLINs, it did not state how these rates would be evaluated. In addition, the plain language of the RFQ indicated that the agency would not use these rates to assess total pricing--the RFQ instructed vendors not to provide total amounts for the optional DME CLINs and stated that "any work under [these] CLIN[s] will be priced separately at the time the option is exercised." See RFQ at 3, 41. Under these circumstances, we find that the RFQ did not notify vendors of the agency's intended methodology for evaluating the optional DME CLINs, nor did it provide for the agency to be able to use these CLINs to derive any reasonable evaluation of total pricing.

In sum, we conclude that the agency's evaluation of the optional DME CLINs was not reasonable. The agency has failed to explain any reasonable basis for its chosen methodology for evaluating the optional DME CLINs. Moreover, the agency's evaluation of the optional DME CLINs does not reasonably support its conclusions that AttainX "would represent a lower cost" on these CLINs and that the overall price difference between the two quotations was "negligible (if any)[.]"<sup>17</sup> Award Determination at 8-9. Accordingly, we sustain this protest ground.

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<sup>17</sup> We note that our Office requested that "[t]he agency should also provide additional documents for the record, should they exist, that are relevant to Harmonia's challenges to the agency's past performance evaluation and price evaluation; if such documents do not exist, the agency should so affirmatively state." GAO Notice of Supplemental Briefings and Schedule, July 30, 2019, at 1. The agency provided two additional documents, including one labeled "pricing analysis" that appears to be simply a compiled list of the rates for every position proposed by AttainX, Harmonia, and the third vendor in the competitive range. See Supp. AR, Tab 2, PCIT Pricing Analysis, May 16, 2019. This "pricing analysis" document does not appear to contain any substantive analysis, and is not referenced in, nor does it provide support for, the cost/price evaluation documented in the award determination. Moreover, the agency does not meaningfully explain how either document supports a conclusion that its cost/price evaluation was reasonable.

Harmonia next alleges that the agency conducted an improper price realism analysis on its quotation. We dismiss this allegation. Harmonia bases its allegation on the following section of the award determination:

Another key item the price analysis showed is that the slightly lower [fixed-price] CLINs [were] based on Harmonia offering fewer positions and fewer hours for those positions than any discounted hourly rates. AttainX offered [REDACTED] annual [full-time equivalents] FTEs for their [fixed-price] CLINs of program management and operations and maintenance and help desk support. In contrast[,] Harmonia only offered [REDACTED] FTEs for those same CLINs. The difference of [REDACTED] FTEs per year would easily account for the small annual price difference.

Award Determination at 9. Harmonia interprets this section, and the agency's identification of risks in Harmonia's quotation, to mean that the agency conducted a price realism evaluation. Protester's Comments at 17.

As noted above, the RFQ contemplated the award of a task order that would include fixed-price CLINs for operations and maintenance services. RFQ at 2-3. The RFQ required vendors to propose total prices for the fixed-price CLINs. *Id.* at 3, 41. In response to Harmonia's protest, the agency does not address whether it performed a price realism analysis on the fixed-price CLINs. Instead, the agency asserts that it performed a "cost realism" analysis. Supp. MOL at 4-5.

A cost realism analysis is required when an agency evaluates proposals for the award of a cost-reimbursement contract. Under such a contract, an offeror's proposed costs are not considered controlling because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1), 15.404-1(d). Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. FAR § 15.404-1(d)(2); *Hanford Env'tl. Health Found.*, B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8-9.

In contrast, where a solicitation contemplates the award of a fixed-price contract, or fixed-price portion of a contract, an agency may also provide in the solicitation for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal. *Puglia Eng'g of California, Inc.*, B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33 at 6-7. In the absence of an express price realism provision, we will conclude that a solicitation contemplates such an evaluation only where it expressly states that the agency will review prices to assess the offerors' understanding of the requirements, and where the solicitation states that an offeror's submission may be rejected on the basis of its low price. *DynCorp Int'l LLC*, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision providing for a price realism evaluation, agencies

are neither required, nor permitted, to conduct such an evaluation in awarding a fixed-price contract. Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6.

Here, we cannot conclude that the agency improperly performed a price realism analysis on Harmonia's pricing for the fixed-price CLINs. We are concerned that the agency did not differentiate between price realism and cost realism analyses in conducting its cost/price evaluation, based on the agency's assertion, in response to the protest, that it performed a "cost realism analysis." Supp. MOL at 4-5. In this regard, we also note that the selection official, in his award determination, misquotes the RFQ to say that "[t]he offeror's written quote will be evaluated to determine price realism and reasonableness." Award Determination at 4 (emphasis added).

However, the relevant inquiry for our Office is whether the solicitation here notified offerors that a price realism analysis would be conducted; we conclude that it did not. See, e.g., Bauer Techs., B-415717.2, B-415717.3, June 22, 2018, 2018 CPD ¶ 217 at 6-7 (dismissing protest where the record shows that a price realism analysis was neither required by the solicitation nor conducted). As noted above, the RFQ provided that the agency would evaluate the cost/price factor based solely on the following:

The Offeror's written price quote will be evaluated to determine cost realism and reasonableness. Prices that are excessively high or low (without sufficient justification) may be considered unrealistic and unreasonable and may receive no further consideration.

RFQ at 44 (emphasis added). The RFQ also required vendors to provide cost/price supporting documentation to "provide information on price reasonableness," and did not require documentation to support realism. Id. at 41 (emphasis added).

Moreover, this record does not establish that the agency performed a price realism analysis. The record shows that the selection official compared Harmonia's and AttainX's pricing for the fixed-price CLINs, and that the selection official found that Harmonia's quotation presented risks under the management approach and experience factors. Award Determination at 9. We note that the comparative analysis of pricing on fixed-price CLINs, and the finding of risk alone--without any conclusion that the agency found Harmonia's price to be unrealistically low--does not establish that a price realism analysis was performed.

In short, we cannot conclude that the agency acted improperly when the solicitation did not notify offerors that a price realism analysis would be conducted and when the record does not establish that the agency performed such an analysis. Because Harmonia's challenge is based on the unsupported assertion that the agency performed a price realism analysis, we dismiss this allegation for failure to state a valid basis of protest.<sup>18</sup>

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<sup>18</sup> Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the  
(continued...)

## Past Performance Evaluation

Next, Harmonia challenges the agency's past performance evaluation, in which the agency assigned an exceptional score to AttainX (23.5 out of 25 points) and a good score to Harmonia (16.0 out of 25 points). Harmonia argues that the agency's past performance evaluation was unreasonable and inconsistent with the RFQ. Protest at 19; Protester's Comments at 21-26; Protester's Supp. Comments at 11-18. We have considered all of the parties' arguments and the record, and we sustain the protest as discussed below.<sup>19</sup>

As noted above, the RFQ required vendors to identify references for three projects performed within the last three years that "should be as similar in size, scope, and complexity to the requirements identified in the statement of work as possible." RFQ at 42. The RFQ provided that the agency would evaluate past performance based on, in part, "the degree to which the[] past performance examples reflect performance of projects similar in size, scope and complexity to the requirements in the statement of work." Id. at 44. Also, as noted above, the RFQ provided for a performance period of five years with an estimated value of \$15 million and a ceiling value of \$19 million. Id. at 2, 38; COS at 2.

Here, the record establishes that "[i]nitial past performance ratings were completed solely by the TEB based on the past performance information included in the offeror's proposals." Award Determination at 7. AttainX identified the following three references: (1) a 4-year contract for the Executive Management System Office support for the

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(...continued)

grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

<sup>19</sup> We deny the protest with regard to other challenges to the agency's past performance evaluation that are not addressed in this decision. For example, Harmonia complains that the agency should have disqualified AttainX's quotation as "materially noncompliant with the RFQ" because AttainX did not identify past performance references similar in size, scope and complexity to the requirements identified in the statement of work. Protester's Comments at 25-26; see also Protester's Supp. Comments at 17-18. Based on the plain language of the RFQ--which instructed vendors to provide references that "should be as similar in size, scope, and complexity to the requirements identified in the statement of work as possible," RFQ at 42 (emphasis added)--we find no basis to conclude that the agency was required to disqualify AttainX's quotation.



USDA Farm Services Agency, valued at \$8.5 million;<sup>20</sup> (2) a 5-month contract for the Farm Loan Program Information Delivery System for the USDA Farm Services Agency, valued at \$2.7 million; and (3) a 3.5-year contract for a facilities services branch for the United States Marine Corps--for which AttainX performed as a subcontractor--valued at \$2.4 million. AR, Tab 4, AttainX Final Quotation at 49-57. The TEB assigned a raw score of 23.5 points to AttainX and assessed the following two strengths: (1) "prior experience with APHIS and other USDA agencies" and (2) "worked on larger better systems before." AR, Tab 11, AttainX Evaluation Board Summary at 2.

Harmonia identified the following three references: (1) a 5-year contract for the Public Health Information System for the USDA Food Safety and Inspection Service, valued at \$24 million; (2) a 5-year contract for business center shared services for the USDA Farm Production and Conservation, valued at \$77 million; and (3) a 4-year contract for web application support for the Small Business Administration, valued at \$14 million. AR, Tab 5, Harmonia Final Quotation at 40-48. The TEB assigned a raw score of 16.0 points to Harmonia and assessed one strength and one weakness.<sup>21</sup> AR, Tab 12, Harmonia Evaluation Board Summary at 2.

Harmonia primarily protests that AttainX's past performance references were not "similar in size, scope and complexity" to the requirements of the RFQ and, therefore, that the agency unreasonably "gave AttainX the highest past performance score of any offeror." Protester's Comments at 22. In response, the agency agrees that AttainX's quotation "had two past performance references that had lower dollar amounts than the current award." Supp. MOL at 15. The agency contends that AttainX's references, however, "were reasonably related to the solicited requirements." Id.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. American Env'tl. Servs., Inc., B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5; AT&T Gov't Sols., Inc., B-406926 et al., Oct. 2, 2012, 2013 CPD ¶ 88 at 15. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. Conley & Assocs., Inc., B-415458.3,

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<sup>20</sup> For its first reference, AttainX also listed what appears to be a [REDACTED] contract for the same requirements, for a 1-year period of performance, valued at \$3.5 million. Neither the contemporaneous record nor the agency's filings in response to the protest explain this apparent identification of a fourth prior reference.

<sup>21</sup> The strength was assessed for "experience working with [REDACTED] and [a named software] tool." The weakness was assessed for "no understanding of PCIT or similar system needs were demonstrated." AR, Tab 12, Harmonia Evaluation Board Summary at 2.

B-415458.4, Apr. 26, 2018, 2018 CPD ¶ 161 at 5. It is a fundamental principle of government accountability that an agency must prepare a record sufficient to allow for a meaningful review when its procurement actions are challenged. See e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 8 (even for procurements conducted under simplified acquisition procedures, an agency must have a sufficient record to allow for a meaningful review). When an agency fails to document or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source selection decision. Global Aerospace Corp., B-414514, July 3, 2017, 2017 CPD ¶ 198 at 10.

On this record, we are unable to conclude that the agency's evaluation of AttainX's and Harmonia's past performance was reasonable. The evaluation documents do not contain any discussion about whether and how the TEB evaluated--as required by the RFQ--"the degree to which" any of the references identified by AttainX or Harmonia were "similar in size, scope, and complexity to the requirements" of the RFQ. See AR, Tab 11, AttainX Evaluation Board Summary at 2; AR, Tab 12, Harmonia Evaluation Board Summary at 2; see also AR, Tab 13, TEB Scoring Sheet at 1. We note that the agency's award determination expressly states that "[i]nitial past performance ratings were completed solely by the TEB based on the past performance information included in the offeror's proposals." Award Determination at 7. Yet, the evaluation documents do not mention either of the quotations and do not reflect that the evaluators conducted any analysis of the references against the requirements of the RFQ.<sup>22</sup>

Further, while we draw no conclusions based on this record as to "the degree to which" AttainX's and Harmonia's references compare to the task order contemplated by the RFQ, we note that the record shows--and the agency concedes--that the awardee identified past performance references that had lower dollar amounts than the current award. Supp. MOL at 15. We also note that at least one of AttainX's references--the contract performed over five months--had a significantly shorter period of performance than the 5-year period of performance contemplated by the RFQ. Additionally, while the TEB assessed a strength for AttainX having "worked on larger better systems before[.]" AR, Tab 11, AttainX Evaluation Board Summary at 2, the record contains no documentation to explain the basis for this strength or to connect this strength to any of AttainX's identified references. In short, at least some aspects of AttainX's references appear facially inconsistent with the agency's assignment of such a high rating, where the RFQ required the agency to evaluate past performance "based on the degree to which the[] past performance examples reflect performance of projects similar in size,

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<sup>22</sup> As noted above, our Office requested that "[t]he agency should also provide additional documents for the record, should they exist, that are relevant to Harmonia's challenges to the agency's past performance evaluation and price evaluation; if such documents do not exist, the agency should so affirmatively state." GAO Notice of Supplemental Briefings and Schedule, July 30, 2019, at 1. The agency did not provide any additional documents with regard to its past performance evaluation, nor did the agency affirmatively state that such documents do not exist.

scope and complexity to the requirements[.]” See, e.g., Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int’l, Inc., B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 7-8, 12 (sustaining protest of agency’s past performance evaluation where the awardee’s references were “fractions” of the estimated value of the effort required by the solicitation, and therefore appeared inconsistent with the rating assigned by the agency).<sup>23</sup>

We also are unpersuaded by the agency’s assertion that its evaluation was reasonable because it was based on additional information from other sources. Supp. MOL at 9-10, citing RFQ at 44 (“[i]n conducting the past performance assessment, the government may use data obtained from other sources, as well as those provided in the quote”). The selection official asserts that this additional information included reference checks; review of PPIRS; the TEB’s first-hand knowledge of two of AttainX’s proposed key personnel; and his first-hand knowledge of a prior APHIS contract performed by Harmonia. Award Determination at 7.

An agency is generally not precluded from considering any relevant information, regardless of its source, and is not limited to considering only the information provided within the “four corners” of a vendor’s quotation when evaluating past performance. FAR § 15.305(a)(2)(ii); Paragon Sys., Inc., B-299548.2, Sept. 10, 2007, 2007 CPD ¶ 178 at 8. Under these circumstances, however, we fail to see how any of this additional information--which speak to the substance/quality of prior efforts--would be relevant to evaluating the issue that the protester contests--that is, “the degree to which the[] past performance examples reflect performance of projects similar in size, scope and complexity to the requirements,” which was required by the RFQ and is predominantly an objective analysis.<sup>24</sup>

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<sup>23</sup> In its response to the protest, the agency attempts to use an average of the awardee’s proposed contract values (which the agency calculates as [REDACTED])--rather than addressing its evaluation of each individual reference--to argue that “the awardee’s proposed average contract value [ ] would still be considered [ ] similar in size to the [ ]fixed price of the current award[.]” Supp. MOL at 13. However, the contemporaneous record does not reflect that this measure was used; the RFQ did not provide for the use of this measure; and the RFQ provided for a ceiling value of \$19 million. Accordingly, we find the agency’s contentions on this topic unpersuasive. See Celta Servs., Inc., B-411835, B-411835.2, Nov. 2, 2015, 2015 CPD ¶ 362 at 9 (finding post-protest defense unpersuasive where not supported by the contemporaneous record); see also VariQ Corp., B-414650.11, B-414650.15, May 30, 2018, 2018 CPD ¶ 199 at 6-7 (affording little weight to post-hoc statements that are inconsistent with the contemporaneous record).

<sup>24</sup> Moreover, the substance of this additional information considered by the agency is inadequately documented. For example, the record contains no documentation of the reference checks and the information reviewed in PPIRS.

In sum, we are unable to conclude on this record that the agency's past performance evaluation was reasonable. Based on inadequate documentation, as well as objective differences between at least some of the identified references and the requirements, which appear to be inconsistent with the ratings, we sustain this protest ground.<sup>25</sup>

#### Weaknesses Assessed to Harmonia's Quotation

Finally, Harmonia contends that the agency unreasonably assessed weaknesses to its quotation under all four of the non-cost/price factors. Protest at 5-15; Protester's Comments at 9-16, 18-19, 23-24; Protester's Supp. Comments at 2-4. The agency responds by asserting that it reasonably evaluated Harmonia's quotation and that Harmonia has not demonstrated that it was prejudiced by any alleged evaluation errors. MOL at 3-10; Supp. MOL at 2-3. We have considered all of the parties' arguments and

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<sup>25</sup> As a final point of contention, Harmonia argues that the agency's past performance evaluation reflects unequal treatment based on the TEB's assessment of a strength for AttainX--but not for Harmonia--for "prior experience with APHIS and other USDA agencies." See AR, Tab 11, AttainX Evaluation Board Summary at 2. In this regard, Harmonia complains that the agency did not explain "why AttainX received credit for '[p]rior experience with APHIS and other USDA agencies' when it was Harmonia that had submitted an APHIS contract as a past performance reference." Protester's Comments at 25. As a preliminary matter, we note that this strength appears to be contradicted by AttainX's quotation--that is, none of the prior contracts identified by AttainX was performed for APHIS. See AR, Tab 4, AttainX Final Quotation at 49-57.

To the extent the agency contends that this strength was based on the TEB's first-hand knowledge of two of AttainX's key personnel who had worked on APHIS projects, Supp. MOL at 10, we note that this is not documented in the TEB report, which provides no evidence to support its assessment of this strength. Therefore, we do not see how the assessment of this strength to AttainX was reasonable. We also cannot conclude that the TEB's assessment of this strength to AttainX reflects unequal treatment for Harmonia, because the record shows that Harmonia also did not identify its prior APHIS contract as one of the three references in its quotation. See AR, Tab 5, Harmonia Final Quotation at 40-48.

Moreover, the record shows that the selection official was aware that Harmonia had a prior contract with APHIS and that he, having served as the CO for that contract, knew that Harmonia was "able to retain very few employees from the incumbent contract" and that "the transition took much longer than originally planned." Award Determination at 8. Therefore, even if Harmonia demonstrated that the agency erred by not considering the APHIS contract that the protester decided not to include in its quotation, we could not conclude that Harmonia was competitively prejudiced by such an error. See, e.g., Information Sys. and Networks Corp., B-415720.3, B-415720.4, Apr. 30, 2018, 2018 CPD ¶ 165 at 10 (aspects of the evaluation that were unreasonable did not result in competitive prejudice to the protester).

the record, and we sustain the protest with regard to the weaknesses specifically discussed below.<sup>26</sup>

In reviewing protests of an agency's evaluation and source selection decision in procurements conducted under FSS procedures, as here, we do not conduct a new evaluation or substitute our judgment for that of the agency. Harmonia Holdings Grp., LLC, B-413464, B-413464.2, Nov. 4, 2016, 2017 CPD ¶ 62 at 7; Research Analysis & Maint., Inc., B-409024, Jan. 23, 2014, 2014 CPD ¶ 39 at 5. Rather, we examine the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Harmonia Holdings Grp., LLC, *supra*; U.S. Info. Techs. Corp., B-404357, B-404357.2, Feb. 2, 2011, 2011 CPD ¶ 74 at 8-9. For procurements conducted pursuant to FAR subpart 8.4, an agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. Harmonia Holdings Grp., LLC, *supra*. In this regard, and as noted above, it is a fundamental principle of government accountability that an agency must prepare a record sufficient to allow for a meaningful review when its procurement actions are challenged. See e-LYNXX Corp., *supra*, at 8. When an agency fails to document or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source selection decision. Global Aerospace Corp., *supra*, at 10.

Here, the record shows that the assessment of several of the weaknesses to Harmonia's quotation was unreasonable, inconsistent with the terms of the solicitation, and inadequately documented. Moreover, the agency's responses are generally vague and do not meaningfully explain the assessment of these weaknesses.

First, Harmonia challenges the assessment of a weakness under the technical approach factor and a weakness under the management approach factor, which both read as follows: "While the technical approach met the requirements of the RFQ, it did not show how [Harmonia's] approach was the best." Award Determination at 7; *see* Protester's Comments at 16; Protester's Supp. Comments at 2. Harmonia contends that these weaknesses were not reasonably related to the RFQ's requirements--specifically, that "[n]othing in the RFQ required any sort of comparative analysis by which an offeror would show that its proposal was 'the best.'" Protester's Comments at 16. In response, the agency simply asserts: "The TEB agreed that this statement

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<sup>26</sup> We have considered, and rejected, all of Harmonia's assertions about other weaknesses not specifically addressed below. As a representative example, Harmonia alleges that the agency improperly assigned a weakness to Harmonia's quotation for being "weak on Azure migration" (*i.e.*, the brand name for Microsoft's cloud system). Protest at 5-6; Supp. Protest at 12-13. The record shows that, after the agency took corrective action in response to Harmonia's first protest, this weakness was no longer assessed in Harmonia's quotation. Because this alleged weakness does not appear in the contemporaneous record, we dismiss Harmonia's complaints in this regard for failure to state a valid basis of protest. 4 C.F.R. § 21.1(c)(4), (f).

applied to both the technical approach and management [approach factors].” Supp. MOL at 3.

Neither the contemporaneous record nor the agency’s response explain how “not show[ing] how their approach was the best” is reasonably related to the requirements under either the technical approach or the management approach factors. Moreover, we agree with the view shared by Harmonia and AttainX that, in the intervenor’s words, “this was not a weakness of failing to meet a requirement, but a . . . comparative assessment.” Intervenor’s Supp. Comments, Aug. 14, 2019, at 3. Accordingly, we sustain this protest ground.

Second, Harmonia contends that the agency’s assessment of a weakness under the technical approach factor for lacking “soft skills’ that are needed for help desk, presentations, and other meetings (communication/interaction/presentation)” was based on unstated evaluation criteria. Protester’s Comments at 15; see Award Determination at 7. The record shows that the TEB assessed this weakness under the management approach factor, while the selection official assessed this weakness under the technical approach factor. See AR, Tab 12, Harmonia Evaluation Board Summary at 1; Award Determination at 7. In this regard, Harmonia also argues that “language discussing the evaluation of [an] offeror’s management approach does not rationally relate to the assignment of a weakness in an offeror’s technical approach.” Protester’s Comments at 16.

The agency contends that its assessment of this weakness was “reasonably related to the requirements” and explains that the RFQ--under the management approach factor--required vendors to explain their “management methodology for handling lines of authority and communication, organizational structure, and problem resolution methodologies.” MOL at 5. However, the agency’s response fails to explain how this weakness is reasonably related to the requirements under the technical approach factor. Moreover, the agency fails to address how the selection official came to assess this weakness under the technical approach factor instead of--as the TEB identified--the management approach factor. In this regard, we note that a source selection official may disagree with the evaluation ratings of lower-level evaluators, and may make an independent evaluation judgment, provided that the basis for that judgment is reasonable and documented in the contemporaneous record. Halfaker & Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 10. However, because the record reflects an undocumented discrepancy between the selection official and the TEB, and because the record does not support any conclusions as to whether this assessed weakness for “lack of soft skills” was reasonably related to either factor, we sustain this protest ground.

Third, Harmonia challenges the assessment of a weakness under the experience factor for, as described by the selection official, the following: “Help desk only staffed by [REDACTED] vs. [REDACTED] personnel. Overall staffing projections provide fewer positions and hours for [fixed-price] CLINs.” Award Determination at 7. In this regard, Harmonia asserts that “[t]he agency did not mention ‘overall staffing projections’ or help

desk FTEs as a concern in its discussions, and it did not provide Harmonia with its own estimate of necessary hours.” Protester’s Comments at 18. In response, the agency asserts that it determined that [REDACTED] FTEs was “not sufficient to meet the needs of the help desk,” but does not acknowledge the issue of overall staffing projections. MOL at 10.

While an agency may rely on its own estimates of the staffing levels necessary for satisfactory performance in evaluating proposals for the award of a fixed-price contract, it is improper for an agency to downgrade a proposal simply because the offeror’s overall proposed FTEs differ from the government’s estimate, when the government’s estimate was not disclosed to the offerors; the agency failed to conduct discussions with the offeror concerning the discrepancy; and the agency did not look beyond the bottom-line numbers to determine whether there were specific areas in which the offeror’s proposed staffing was inadequate. See Olympus Bldg. Servs., Inc., B-285351, B-285351.2, Aug. 17, 2000, 2000 CPD ¶ 178 at 10; see also NCI Info. Sys., Inc., B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 7.

Here, while the agency did identify a specific area where it found Harmonia’s proposed staffing to be inadequate (*i.e.*, the help desk), neither the record nor the agency’s response support the assessment of this weakness based on “overall staffing projections.” Award Determination at 7. The record shows that the agency did not disclose an estimate of overall staffing--if one existed--to offerors, and that the agency did not raise the issue of overall staffing with Harmonia during discussions. Additionally, we note that the concern about “overall staffing projections” appears only in the selection official’s award determination and does not appear in the TEB report. See Award Determination at 7; AR, Tab 12, Harmonia Evaluation Board Summary. As noted above, a source selection official may disagree with the evaluation ratings of lower-level evaluators, and may make an independent evaluation judgment, provided that the basis for that judgment is reasonable and documented in the contemporaneous record. Halfaker & Assocs., LLC, supra, at 10. Under these circumstances, we sustain this protest ground.

Fourth, Harmonia challenges the assessment of a weakness under the management approach factor for, as described by the selection official, the following: “Revised proposal did show a better understanding of the PCIT systems. However, this also showed a lack of diligence in initial proposal . . . .” Award Determination at 7; see Protester’s Comments at 10. In this regard, the protester asserts that “the agency punished Harmonia by assigning a weakness for the content of its initial proposal, instead of the revised proposal which admittedly addressed the agency’s concerns.” Protester’s Comments at 10.

In its initial and supplemental reports to our Office, the agency does not address or explain this contention. Moreover, the record shows that: the agency raised the issue of Harmonia’s understanding of PCIT systems during discussions; Harmonia revised its quotation; and the agency found that Harmonia’s revised quotation “did show a better understanding” but still deserved a weakness in part for having shown “a lack of

diligence in initial proposal.” Award Determination at 7; see also AR, Tab 5, Harmonia Final Quotation at 1. Under these circumstances, the agency’s assessment of this weakness, based on the preparation of an initial quotation--after the agency conducted discussions and the vendor revised its quotation--is plainly unreasonable. See, e.g., Winstar Fed. Servs., B-284617 et al., May 17, 2000, 2000 CPD ¶ 92 at 8, citing Marylou’s Transp. Serv., B-261695, Sept. 28, 1995, 95-2 CPD ¶ 154 at 3 (best and final offer supersedes prior proposal).

As a final matter, we reject the agency’s assertion that Harmonia has not demonstrated that it was prejudiced by any alleged evaluation errors. Here, we cannot say with certainty whether the selection official would have determined that Harmonia’s lower-priced quotation would have represented the best value if the source selection process and evaluation results were adjusted to account for the flaws discussed in this decision. In such circumstances, we resolve doubts regarding prejudice in favor of a protester, since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. AT&T Corp., B-414886 et al., Oct. 5, 2017, 2017 CPD ¶ 330 at 8. Accordingly, we reject the agency’s complaint that Harmonia has not established prejudice, and we sustain the protest with regard to the weaknesses discussed above.

#### Best-Value Tradeoff Decision

Finally, Harmonia argues that the agency’s best-value tradeoff decision--and award to AttainX as the higher-priced, technically superior vendor--was unreasonable and inadequately documented. Protest at 21. We sustain this protest ground based on the numerous evaluation errors, as discussed above. As a separate matter, we also sustain this protest ground based on the agency’s failure to adequately document its decision, as discussed below.

Where, as here, a solicitation provides for issuance of a task order on a best-value tradeoff basis, it is the function of the selection official to perform a price/technical tradeoff, that is, to determine whether one proposal’s technical superiority is worth its higher price. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 24; Alliant Enter. JV, LLC, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 13. In this regard, an agency evaluation may assign adjectival ratings and point scores, but those are guides to--not substitutes for--intelligent decisionmaking. Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61 at 4.

Here, the record contains no evidence that the selection official meaningfully looked behind the numerical ratings, and beyond the numbers of strengths and weaknesses, to determine that AttainX’s higher-rated, higher-priced quotation was the best value. Specifically, the award determination contains no discussion of any of the qualitative aspects of the quotations, apart from a purported transcription of the weaknesses assessed by the TEB to Harmonia’s quotation. The award determination also contains no evidence that the selection official compared the qualitative aspects of the quotations, or justified why any advantages of AttainX’s quotation were worth the price premium. Such a mechanical best-value tradeoff does not provide a reasonable basis



for a source selection decision. Castro & Co., LLC, B-412398, Jan. 29, 2016, 2016 CPD ¶ 52 at 10; Shumaker Trucking and Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 6. Accordingly, we sustain the protest on this basis as well.

## RECOMMENDATION

We recommend that the agency reevaluate quotations and document its evaluation in a manner consistent with this decision and the solicitation. Upon completion of this evaluation, the agency should conduct a new best-value tradeoff analysis, and document a new source selection decision, in a manner consistent with this decision and the solicitation. If, after performing the reevaluation, the agency determines that a firm other than AttainX represents the best value to the government, we recommend that the agency terminate the task order awarded for the convenience of the government and make award to the firm selected, if otherwise proper. Finally, we recommend that Harmonia be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Harmonia should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong  
General Counsel