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Decision

Matter of: GVI Inc.

File: B-419397; B-419397.2

Date: February 3, 2021

Christopher J. Slottee, Esq., and Kainui M. Smith, Esq., Schwabe, Williamson & Wyatt, for the protester.

James J. McCullough, Esq., Anayansi Rodriguez, Esq., Michael J. Anstett, Esq., and Christopher Bell, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for the intervenor. Richard C. Dale, Esq., and Diana Murphy, Esq., Department of the Navy, for the agency.

Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably assigned a weakness and failed to assign strengths to protester's technical proposal is denied where record shows that evaluation was consistent with the solicitation and protester has done no more than demonstrate its disagreement with the evaluation.
2. Protest that agency unreasonably rated protester limited confidence for past performance is denied where agency reasonably concluded there were performance issues on a past performance reference that was very relevant, and a second past performance reference was only somewhat relevant.
3. Protest that in conducting best-value tradeoff agency should have considered that protester offered [DELETED] percent small business participation, while awardee offered only [DELETED] percent small business participation, is denied where small business participation factor was evaluated as acceptable or unacceptable, and did not contemplate a comparative evaluation.
4. Protest that during cost realism evaluation agency unreasonably increased protester's escalation rate for employees covered by service contract labor standards is denied where protester did not justify proposed escalation rate of zero percent.

DECISION

Gateway Ventures, Inc. (GVI), of Anchorage, Alaska, protests the award of a contract to Leidos, Inc., of Reston, Virginia, under request for proposals (RFP) No. N66604-19-R-0182, issued by the Department of the Navy, Naval Undersea Warfare Center Division, to support towed array SONAR programs. GVI complains that the agency unreasonably evaluated its proposal.

We deny the protest.

BACKGROUND

The Naval Undersea Warfare Center Division operates the Naval Array Technical Support Center (NATSC) whose mission is to provide lifecycle support (diagnostic testing, troubleshooting, refurbishments, upgrades and repairs) for all Navy towed arrays including surface ship and submarine applications. Agency Report (AR), Tab 1, Contracting Officer's Statement (COS) at 1. The solicitation was issued to support this mission. *Id.* The solicitation provides for contractor support services to manufacture, upgrade, repair, refurbish, diagnose, troubleshoot, test, evaluate, salvage and scrap towed arrays, towed array modules, towed array component parts, tow cables, tow cable component parts, towed array outboard cable assemblies, hoses, hose component parts, ancillary equipment and ancillary equipment component parts for all United States Navy and Foreign Military Sales towed array systems currently in service, recently taken out of service, and others that may be put into the fleet. AR, Tab 4, RFP at 30. The RFP's statement of work (SOW) included multiple tasks and subtasks that offerors were required to perform, as well as multiple reports that offerors were required to file.

The solicitation was issued on May 22, 2019, with proposals due on August 30. RFP at 2. The solicitation anticipated award of an indefinite-delivery, indefinite-quantity contract with a cost-plus-fixed-fee contract line item for labor, a cost line item for other direct costs, and a fixed-price line item for material. *Id.* at 22, 23, 25. The solicitation included four pass/fail evaluation factors: transition plan, plan for obtaining clearances, facility clearance, and organizational conflict of interest mitigation plan. *Id.* at 146. The solicitation anticipated the award of a contract based on a best-value tradeoff conducted among those offerors with proposals that were evaluated as pass for all pass/fail factors. The evaluation factors considered in the best-value tradeoff were: technical capability (with subfactors listed in descending order of importance for technical approach, technical and operational management scenarios, and personnel); small business participation; past performance; and cost/price. *Id.* at 146-149. The technical capability and past performance factors were of equal importance, and more important than the small business participation factor. *Id.* at 145. The non-price factors, when combined, were significantly more important than cost/price. *Id.*

The agency assigned the technical capability factor and each subfactor an adjectival rating, the small business participation factor an acceptable or unacceptable rating, and

the past performance factor a confidence rating.¹ *Id.* at 150-152. The cost-plus-fixed-fee and cost items were evaluated for realism, the potential quality of services shortfalls as a result of the unbalanced distribution of uncompensated overtime among skill levels, and the use of uncompensated overtime for key personnel. *Id.* at 148-149. The fixed-price line item was subjected to a price analysis. *Id.* at 148. The costs as evaluated for realism, and the proposed fee for the cost-plus-fixed-fee line item were added to the fixed-price item to arrive at the total evaluated price. *Id.*

Four offerors, including Leidos and GVI, submitted proposals which were evaluated by a source selection evaluation board (SSEB). Leidos and GVI were rated pass for all pass/fail criteria and assigned the following ratings for the best-value tradeoff criteria:

Factor/Subfactor	GVI	Leidos
Technical Capability	Acceptable	Acceptable
Technical Approach	Acceptable	Acceptable
Technical and Operational Management Scenarios	Acceptable	Acceptable
Personnel	Acceptable	Acceptable
Small Business Participation	Acceptable	Acceptable
Past Performance	Limited Confidence	Substantial Confidence
Proposed Cost/Price	\$136,214,529	\$149,238,311
Evaluated Cost/Price	\$141,354,736	\$154,630,419

AR, Tab 2, SSEB Report at 2; Tab 11 Source Selection Advisory Council (SSAC) Report at 8, COS at 21. GVI was assigned one weakness under the technical approach subfactor and no other strengths or weaknesses. AR, Tab 11, SSAC Report at 4. Leidos was awarded one strength under the technical approach subfactor, and one strength and one weakness under the technical and operational management scenarios subfactor. *Id.* The SSAC reviewed the findings of the SSEB, and the evaluation documents, and recommended the proposal of Leidos as offering the best-value to the government. *Id.* at 12-16. The source selection authority reviewed the evaluation documents, assessed the relevant merits of all proposals, and selected Leidos for contract award. AR, Tab 9, Source Selection Decision at 1-7. Following a debriefing, GVI submitted its protest to our Office.

DISCUSSION

¹ The potential ratings for the technical factor and subfactors were outstanding, good, acceptable, marginal, or unacceptable. RFP at 150. The potential past performance confidence ratings were substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.* at 152.

GVI protests that the agency unreasonably evaluated its proposal under the technical capability factor. GVI specifically asserts that the agency unreasonably assigned its proposal a weakness and unreasonably failed to assign its proposal multiple strengths. GVI further complains that the agency unreasonably evaluated its past performance, failed to properly consider the small business participation factor in the best-value tradeoff, and improperly increased its proposed cost. Finally, GVI complains that the agency disparately treated it in the evaluation when compared to Leidos.

In reviewing protests of alleged improper evaluations, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. *CACI Techs., Inc.*, B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. A protester's disagreement with an agency's evaluative judgments, without more, is insufficient to establish that the agency acted unreasonably. See *VT Griffin Servs., Inc.*, B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4; *Citywide Managing Servs. of Port Washington, Inc.*, B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10. We have reviewed all of GVI's challenges and find no basis to question the evaluation of its or Leidos's proposal. We discuss several examples below.

Technical Approach Subfactor

GVI challenges the evaluation of its proposal under the technical approach subfactor. GVI argues that the agency unreasonably assigned its proposal a weakness and failed to assign its proposal multiple strengths.

Automated Materials Management Tool

The SOW set forth numerous tasks, including task 4.3 which concerns logistics and configuration control. RFP at 39. One requirement under the logistics and configuration control task is subtask 4.3.7 for parts inventory planning. As relevant here, task 4.3.7.1 (inventory) required the contractor to identify, maintain, and replenish inventory levels using the NATSC Depot Application (NDA) to meet NATSC's operational requirements. *Id.* at 40. Offerors were instructed that "the contractor shall maintain the NDA system for accurate inventory quantity, location and status of material in accordance with [] NATSC Depot Application (NDA) Policy and Procedure."² *Id.* The contractor was required to provide a recommended list of material and parts required to replenish inventory stock levels which the agency would use to order material and parts. *Id.* GVI proposed to implement an automated materials management tool. AR, Tab 3, GVI Technical Proposal at 31. According to its proposal, the tool would [DELETED]. *Id.*

² The NDA is a custom government-owned and controlled website that provides three primary functions: (1) an inventory database for all of NATSC's part and products, which includes a history of all parts transactions; (2) a tracking system for all open and completed jobs (repair and manufacturing) within NATSC; and (3) the purchase of materials to replenish inventory or to establish new stock items. RFP at 32.

GVI noted in its proposal that it had successfully implemented a similar tool on the Naval Undersea Warfare Center's hull and sensors system program. *Id.*

The agency assigned GVI's proposal a weakness under the technical approach subfactor for its proposed automated materials management tool. The agency noted that GVI's proposal indicated that the tool would be created within the first 30 days of contract award so it did not currently exist. AR, Tab 2, SSEB Report at 5. The agency concluded that the introduction of an unvetted, unvalidated, and unverified algorithm as the primary material planning tool increases the risk of unsuccessful contract performance by potentially impacting the repair schedule. *Id.* The agency further noted that there were currently methods in place to incorporate improvements and functionality to the database that is in place and required to be used. *Id.* In the agency's view, it would not benefit from having a secondary system implemented when the current system is capable of being upgraded and improved. *Id.* Finally, the evaluators found that the proposal did not adequately detail how the proposed tool would function or its benefits. *Id.*

GVI protests that the agency unreasonably assigned its proposal a weakness for the introduction of the automated materials management tool. Protest at 16-17; Comments & Supp. Protest at 10. We find that the agency reasonably assigned a weakness to GVI's proposal for its proposed automated materials management tool.

First, GVI disputes that the tool is unvetted, unvalidated, and unverified. Protest at 17-18; Comments & Supp. Protest at 12. To the contrary, according to GVI, in its proposal it noted that it has successfully operated and maintained a similar tool for the Naval Undersea Warfare Center hull and sensors system program. *Id.* While GVI states that its tool is not unvetted because GVI is using a similar tool on the hull and sensors system contract, in its proposal, GVI stated that it would create and implement the tool ([DELETED]) in the first 30 days of contract performance. AR, Tab 3, GVI Technical Proposal at 31. Thus, the tool being proposed here has yet not been created or tested.

Second, GVI disagrees that it proposed this tool as the primary material planning tool. Rather, according to GVI, it did not propose it as a primary tool because the solicitation requires contractors to use and maintain the NDA as the database of record. Protest at 18; Comments & Supp. Protest at 10-11. GVI, however, has not indicated where in its proposal it detailed its use of the required NDA as the primary tool once it created and implemented the automated materials management tool. As indicated above, the solicitation required offerors to "identify, maintain and replenish inventory levels using the [NDA] to meet NATSC's operational requirements" and to "maintain the NDA system for accurate inventory quantity, location and status of material in accordance with [] NATSC Depot Application (NDA) Policy and Procedure." RFP at 40, SOW 4.3.7.1. GVI's proposal states it will use NDA to manage, track and replenish depot inventory. AR, Tab 3, GVI Technical Proposal at 31. GVI's proposal, however, then discusses in detail its use of the automated materials management tool to [DELETED]. *Id.* at 31-32. Instead of using the existing NDA to provide a "recommended list of material and parts

required to replenish inventory stock levels to the Government” as mandated by the solicitation, RFP at 40, GVI proposed to use the [DELETED], GVI Technical Proposal at 31. While GVI may have been using data from the NDA, GVI’s proposal shows that it intended to use its new tool as the primary material planning tool.

Finally, GVI disagrees that it did not adequately detail how the tool will function or its benefits. GVI asserts that in its proposal it clearly stated that it will [DELETED]. Protest at 18; Comments & Supp. Protest at 11-12. GVI explains that the users of the tool can [DELETED]. *Id.* GVI notes that while it did not explain the exact coding and algorithms, they are in practice at the agency depot where material coordinators download and analyze data from the NDA. *Id.*

As the agency explains, the proposal does not include details on the tool or how it would benefit the government. It did not expand on how the tool worked, why it was successful, how long it had been in operation, or the number or types of items it was responsible for tracking. Memorandum of Law (MOL) at 8. While GVI asserts that it indicated in its proposal that the tool was currently being used on the Naval Undersea Warfare Center hull and sensors system program, this did not substitute for explaining how the system would work and why it was a benefit in light of the fact that the agency already has the NDA, which the contractor was required to maintain. Given that the solicitation already required offerors to use the NDA, the agency could reasonably conclude that given the importance of maintaining inventory so that repairs could be timely performed, using a system that had not been yet created and that was not adequately explained created a performance risk and assign the proposal a weakness.³ For these reasons, we have no basis to sustain this protest allegation.

Earned Value Reporting

The statement of work required the contractor to receive assets and troubleshoot and evaluate them in accordance with specified documents for purposes of deciding whether the asset should be repaired, upgraded, or refurbished. RFP at 37, SOW 4.2.1. Among other things, the contractor was required to compare the estimated time to repair, refurbish or upgrade the item to the government’s historical mean time to repair. *Id.*, SOW 4.2.1.1, 4.2.1.2. The contractor was required to repair, refurbish or upgrade the asset, if based on the comparison, the work could be completed within a normal hourly range. *Id.*, SOW 4.2.1.1. If the work could not be completed within a normal hourly range, the contractor was required to repair, refurbish or upgrade the item only after requesting and receiving government approval. *Id.*, SOW 4.2.1.2. The contractor was required to submit a monthly labor analysis report which included a

³ GVI also protests that it should have been assigned a strength for its automated materials management tool. Protest at 16; Comments & Supp. Protest at 11-12. Since we conclude that the agency reasonably assigned the proposal a weakness for proposing this tool, we further conclude that there is no basis to conclude that the agency should have assigned the proposal a strength for the tool.

breakdown of the total hours by labor category worked for each completed module type and serial number for the performance period. *Id.* at 49, SOW 5.1.3

In addressing these requirements, GVI proposed an earned value reporting system. AR, Tab 3, GVI Technical Proposal at 28. GVI explained:

[DELETED]

Id.

GVI protests that its proposal should have been assigned a strength for the proposed earned value reporting system because it was not required by the solicitation. Protest at 14-16; Comments & Supp. Protest at 20-21. In the agency's view, GVI's earned value management system was simply the tool GVI planned to use to meet its data reporting requirements, and did not exceed the requirements of the solicitation, or benefit the government. MOL at 6.

We conclude the agency reasonably did not assign GVI's proposal a strength for its earned value reporting system. According to GVI, its earned value reporting system would [DELETED]. Protest at 14-16; GVI Comments, Dec. 21, 2020 at 1. In addition, GVI states its proposed system will [DELETED]. Comments & Supp. Protest at 9. GVI asserts that this [DELETED]. Protest at 14-16; GVI Comments, Dec. 21, 2020 at 1. In addition, it will allow GVI to proactively act without waiting for government feedback on the monthly report.

As the agency reports, however, the solicitation required reports for all completed modules, which means the agency required cumulative reporting. Agency Resp. to Req. for Additional Information, Dec. 15, 2020, at 2 (*citing* RFP at 48). Further, GVI does not indicate where in the proposal for this subfactor it offered to collect data [DELETED]. AR, Tab 3, GVI Technical Proposal at 28 (The proposal also states: [DELETED]). *Id.* The government reasonably concluded that GVI's proposal did not offer more than the monthly report required, and did not warrant a strength.⁴ For these reasons, we find no basis to sustain this protest allegation.

⁴ In a supplemental protest, GVI complains that the agency treated Leidos and GVI disparately in evaluating the technical capability factor. GVI specifically complains that Leidos was assigned a strength because it proposed [DELETED]. Comments & Supp. Protest at 20. GVI complains that in contrast, the agency failed to assign GVI a strength for its proposal to [DELETED]. *Id.*

Since, as discussed above, GVI's proposal does not discuss tracking [DELETED], we find no basis to conclude that the agency engaged in disparate treatment. We also note that Leidos was assigned the strength in response to scenario 3, under the technical and operational management scenarios subfactor where the offeror was required to explain the steps it would take to investigate and identify the root cause of a product line chronically exceeding the normal hourly ranges, and to restore the product line

Past Performance

The solicitation instructed offerors to provide up to three relevant past performance examples that were recent (performed within three years of the solicitation's closing date) and relevant (demonstrated efforts similar to the solicitation requirements). RFP at 132. Offerors were required to indicate whether they performed the contract as the prime contractor, or as a subcontractor. *Id.* at 133. Offerors were instructed to describe the work performed and how it was relevant to the work being proposed in the solicitation. *Id.* Offerors were also required to provide the name and phone number for the procuring contracting officer, the contracting officer's representative, or the government program manager. *Id.*

The solicitation explained that the agency would evaluate relevancy by considering the extent of similarity between the effort, complexity, dollar value, contract type, subcontract/teaming and other comparable attributes of the past performance examples and the solicitation requirements. *Id.* at 151. Contracts were assigned a relevancy rating of very relevant, relevant, somewhat relevant, or not relevant. *Id.* The agency would also evaluate performance quality. *Id.* The solicitation advised offerors that sources of past performance information included information provided by the offeror, information obtained from questionnaires, and information from sources available to the government including databases such as the contractor performance assessment reporting system (CPARS), and interviews with relevant government officials.⁵ *Id.* at 152. Based on the assessment of relevancy and quality for recent contracts, past performance would be assigned an overall rating of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.*

GVI submitted three recent past performance contract references: N00178-10-D-6066-FG01-Naval Surface Warfare Center Indian Head Explosive Division Logistics Support (FG01); N00178-12-D-7126-N401-Naval Array Technical Support (N401); N00178-10-D-6066-N402-Towed Hull and Sensor Systems Technical Support (N402). AR, Tab 2, SSEB Report at 14. The agency evaluated contract reference FG01 as somewhat relevant. *Id.* at 15. However, the agency could not assess quality because there was no information in the CPARS for the contract and the listed point of contact did not

performance to the required level. AR, Tab 2, SSEB Report at 20 (*quoting* RFP at 128). The agency assigned Leidos a strength because it proposed to [DELETED]. *Id.* In contrast, the agency did not find the GVI proposal provided for [DELETED]. Agency Resp., Dec. 18, 2020, at 4.

⁵ The solicitation stated that past performance information could be obtained from the past performance information retrieval system, but that system was retired and has merged with CPARS. See <https://interact.gsa.gov/blog/update-cparsppirs-merger> (last visited on January 25, 2021).

respond to the agency's request for information.⁶ The agency therefore did not consider contract reference FG01 in its assessment of GVI's past performance. *Id.* at 15.

The agency evaluated contract reference N401, for which GVI performed as a subcontractor, as very relevant. *Id.* at 14. The total contract was valued at \$35,841,480, and GVI's subcontract was valued at [DELETED]. *Id.* The agency recognized that the value of this contract was less than the value of the current solicitation, which was estimated as \$160 million over 5 years. *Id.* at 16. The agency considered that GVI's performance directly correlated with SOW task 4.2 (troubleshoot, evaluate, test, diagnose, upgrade, repair, refurbish, and manufacture towed array sets), which was the most important and complex task with the highest percentage of effort. *Id.* In this regard, GVI indicated in its proposal that it:

provided complete operational oversight for Normal Repairs, Above Normal Repairs, New Product Introduction, Non-Standard Repairs, Tow Cables, Hose Assemblies, and Towed Array Cable Assemblies. Additionally, GVI was responsible for planning, and scheduling all troubleshooting, evaluation, testing, diagnosis, upgrading, repair, refurbishment and manufacturing-related tasks considering labor, facility, material, incompatibilities with other tasks, and provisions for 'spike' or surge requirements.

Id. at 14-15 (*quoting* GVI Technical Proposal at 80). The report in CPARS for this contract rated the prime contractor satisfactory for performance quality, but did not rate GVI because it was a subcontractor. *Id.* at 15. The agency therefore contacted the point of contact provided by GVI for information specific to GVI's performance. *Id.* The point of contact rated GVI's performance satisfactory for quality, marginal for schedule due to excessive maintenance and tasks not addressed in a timely manner, and marginal for management due to insufficient staffing and presence of production and program management personnel. *Id.*

The agency evaluated contract reference N402, on which GVI performed as a prime contractor, as somewhat relevant. *Id.* The agency found that the value of the contract, \$31 million, was lower than the expected value of the solicitation. *Id.* at 14-15. The agency additionally found that GVI's performance on the contract was relevant to only 3

⁶ The protester argues that there was a report in CPARS for this reference, which rated GVI's performance as very good in all categories. Protest at 27. The agency explains that the one report from CPARS was for performance for the period covering April 2015 through May 2016, and that this performance period was not recent (performed within 3 years of the RFP's August 2019 closing date) and therefore not considered. MOL at 18. The protester's only response was that the report in CPARS was issued in 2019. Comments & Supp. Protest at 9. We find that GVI has failed to substantively respond to the agency's argument and therefore has abandoned this issue. *Federal Conference.com.*, B-418465.2, B-418465.3, Nov. 16, 2020, 2020 CPD ¶ 379 at 6,

of the 12 SOW tasks--4.3 (logistics and configuration control), 4.6 (general NATSC support), and 4.7 (technical services). *Id.* at 15. GVI's performance on this contract was rated satisfactory in the CPARS report. *Id.*

The agency assigned GVI a rating of limited confidence for past performance based on its review of contract references N401 and N402. AR, Tab 2, SSEB Report at 15-16. The agency further considered that while contract reference N401 was for essentially the same work as the solicitation, GVI was a subcontractor on that effort and performed only a small portion of the tasking. *Id.* at 16. The agency also considered that contract reference N401 was the only contract which demonstrated that GVI had performance relevant to SOW task 4.2 (troubleshoot, evaluate, test, diagnose, upgrade, repair, refurbish, and manufacture towed array sets), the most complex and important task with the highest percentage of effort, and that GVI's performance as a subcontractor for that effort was rated marginal for schedule and management. *Id.* The agency considered that contract reference N402 was relevant to only 3 of the 12 tasks in the SOW, and was smaller in value. *Id.* Given these factors, the SSEB had a low expectation in GVI's ability to successfully perform the required effort. *Id.*

GVI protests that the agency unreasonably rated its past performance as limited confidence. With respect to contract N401, GVI complains that the agency unduly relied on a verbal report for its performance. The solicitation specifically provided, however, that the agency could obtain past performance information through interviews with relevant government personnel. RFP at 152.

GVI also complains that the prime contractor's ratings of satisfactory for contract reference N401 should have been considered in evaluating GVI's past performance. Comments & Supp. Protest at 24. GVI further complains that since the value of the subcontract was so small, it was unreasonable to ascribe so much importance to it. *Id.* GVI did not raise these later two challenges to the agency's evaluation of its past performance under contract reference N401 until December 10 in its comments on the agency report. GVI knew, however, from the written debriefing that was completed on October 27, 2020, how the agency evaluated its past performance under contract reference N401. See Protest, Exh. 2, Agency Debriefing at 4. Accordingly this argument, submitted more than 10 days after October 27, is untimely and will not be considered further. See 4 C.F.R. § 21.2(a)(2).

With respect to contract reference N402, GVI complains that it was unreasonable for the agency to consider this contract as only somewhat relevant. Protest at 29; Comments & Supp. Protest at 22-23. According to GVI, its performance on this contract is relevant to all tasks in the SOW, not just three tasks. Protest at 29. In its protest, GVI references two pages of its proposal, which describes GVI's performance of contract N402, to demonstrate that its past performance under this contract was relevant to more than three tasks. *Id.* GVI's discussion of its performance under contract reference N402 describes performance that it believes were relevant to SOW tasks 4.2 (troubleshoot, evaluated, test, diagnose, upgrade, repair, refurbish and manufacture towed array assets), 4.4 (utilization and management of databases), and 4.8 (quality

management system). AR, Tab 3, GVI Technical Proposal at 107-108. We find that the agency reasonably concluded that GVI's performance under contract reference N402 was not relevant to these SOW tasks.⁷

SOW task 4.2 requires the contractor to repair, upgrade, and/or refurbish towed array assets. RFP at 37. The agency states that GVI's proposal indicated that in performing contract N402 it was responsible for testing, evaluation and analysis, but not for repair. Agency Resp to Req. for Additional Information. Dec. 15, 2020, at 4-5; Agency Resp. to Req. for Additional Information, Jan. 8, 2021, at 1-3. The agency concludes that GVI's performance under contract reference N402 was therefore not relevant to SOW task 4.2 (troubleshoot, evaluated, test, diagnose, upgrade, repair, refurbish and manufacture towed array assets). In discussing its past performance under contract reference N402, the protester cites to the following paragraph to demonstrate that its performance was relevant to SOW task 4.2:

GVI tests, analyzes, and evaluates electro-optical sensors and systems to assess system effectiveness . . . GVI develops and evaluates design approaches for optical sensor detection, networking, telemetry, modeling and simulation. GVI performs electro-optical analysis . . . GVI analyzes hardware faults, performance loss, degraded performance, intermittent operational anomalies, non-recurring faults, requirement deviations, insufficient operability, and failed requirements checks to determine the root cause, producing recommend[ed] courses of action. GVI evaluates any alternative solutions, proposed upgrades and recommended courses of action to determine and compare the associated risks, as well as performance, cost and schedule impacts and trade-offs. *GVI returns degraded equipment, to include Towed Array Handling Equipment, to operational status and validates that the equipment is operating [in accordance with (IAW)] system specifications and technical manuals. . . .*

Resp. to Agency's Resp. to GAO Req. for Additional Explanation, January 8, 2021, at 1 (*quoting* GVI Technical Proposal at 107).

We find that the agency reasonably concluded that GVI's performance under contract reference N402 was not relevant to SOW task 4.2 (troubleshoot, evaluated, test, diagnose, upgrade, repair, refurbish and manufacture towed array assets). According to GVI, the statement that "GVI returns degraded equipment, to include Towed Array

⁷ In discussing performance under contract reference N402, GVI's proposal specifically addresses only SOW tasks 4.2 (troubleshoot, evaluated, test, diagnose, upgrade, repair, refurbish and manufacture towed array assets), 4.4 (utilization and management of databases), 4.8 (quality management system), and the three tasks for which the agency found the performance relevant. AR, Tab 3, GVI Technical Proposal at 107-108. Therefore, there is no basis in the record to consider whether the agency should have found GVI's performance under contract N402 relevant to any additional tasks.

Handling Equipment, to operational status and validates that the equipment is operating IAW system specifications and technical manuals” demonstrates that its performance under contract N402 included repairing arrays. Resp. to Agency, January 11, 2021, at 1.

First, as the agency states, the proposal does not actually state that GVI had responsibility for repairing towed assets. Agency Resp. to GAO Req. for Additional Information, Jan. 8, 2021, at 2. In the agency’s view, returning an item to operational status does not demonstrate the complexity required to repair towed arrays. *Id.*

Second, the agency states that the towed array handling equipment facility associated with contract N402 consists of two large mechanical winch systems which replicate the submarine’s towed array handling equipment used to deploy and retrieve towed arrays from the towing platform. *Id.* The agency states that GVI’s role in maintaining this equipment is not similar to the repair required for a towed array system. *Id.* GVI argues that its past performance is much more extensive than providing repairs to the two winches. Resp. to Agency Resp. to GAO Req. for Additional Information, January 11, 2021, at 2. According to GVI, its performance included work on developmental and in-service towed arrays, tow cables, and other systems. *Id.* The section of GVI’s proposal addressing the return of degraded equipment to operational status, however, did not specifically reference any systems other than towed array handling equipment. Accordingly, the agency reasonably concluded that GVI’s performance under contract N402 was not relevant to SOW task 4.2 (troubleshoot, evaluate, test, diagnose, upgrade, repair, refurbish and manufacture towed array assets). In this regard, it is an offeror’s responsibility to submit an adequately written proposal, including adequate information relating to the offeror’s past performance. *Mission Services, Inc.*, B-415716.22, Apr. 1, 2019, 2019 CPD ¶ 302 at 6.

With respect to SOW task 4.4 (utilization and management of databases), the agency explains that this task calls out inventory management, job order management, and purchase order management. Agency Resp. to GAO Req. for Additional Information, Dec. 15, 2020, at 5. The purpose of the task is to ensure the accuracy of the data held in the databases and act as a system administrator for the NDA and master control. *Id.* SOW task 4.4 (utilization and management of databases) also requires the use and management of the tailored commercial off-the-shelf software suite master control. *Id.* The agency states that in its proposal, GVI did not address these requirements and therefore the agency reasonably concluded that its performance under contract N402 was not relevant to SOW task 4.4 (utilization and management of databases). *Id.*

In discussing its performance under contract N402, as relevant to SOW task 4.4 (utilization and management of databases), GVI states:

GVI designs and develops databases to track programmatic and technical information. GVI created databases with search fields and report generation capabilities. GVI maintains existing databases, as well as databases developed under this task order, recommends database

improvements, analyzes trends, resolves inconsistencies, and produces reports. GVI monitors database performance and identifies work-around or enhancement recommendations based on data flow and network interface issues. GVI documents user problem resolution via the problem tracking function of the Towed, Hull, and Sensor System database.

AR, Tab 3, GVI Technical Proposal at 108. GVI's proposal discusses developing and maintaining databases. GVI's proposal, however, does not address inventory management, job order management or purchase order management and does not address the use and management of the master control software suite. Accordingly, we will not question the agency's finding that GVI's performance under contract N402 was not relevant to SOW task 4.4 (utilization and management of databases).

The agency notes that SOW task 4.8 (quality management system), concerns the requirement for a quality management system. RFP at 47. The agency asserts, and GVI does not dispute, that in discussing its performance under contract N402 with respect to SOW task 4.8 (quality management system), GVI does not address the required quality management system. See GVI Resp., Dec. 16, 2020. We therefore have no basis to question the agency's conclusion that GVI's performance under contract N402 was not relevant to task 4.8 (quality management system).

GVI also argues that in evaluating its performance under contract N402, the agency should have considered CPARS reports which were issued for the periods September 2018 through September 2019, and September 2019 through September 2020, which rated GVI's performance very good. Protest at 29; Comments & Supp. Protest at 9, 23.

The agency explains, and GVI does not dispute, that these reports were not available when it completed its past performance evaluation. MOL at 19 n.3. We find nothing unobjectionable in the agency's failure to review CPARS information that was not available at the time of proposal evaluation. See *CMJR, LLC d/b/a Mokatron*, B-405170, Sept. 7, 2011, 2011 CPD ¶ 175 at 8; *Affordable Eng'g Servs.*, B-407180.4 *et al.*, Aug. 21, 2015, 2015 CPD ¶ 334 at 12-13 (agencies are not required to update past performance evaluations even where new CPARS reports are made available before the source selection decision is made).⁸ Further, as the agency states, its ratings for GVI's past performance would not have changed even if this most recent report in CPARS was considered. MOL at 19. Accordingly, we deny this protest allegation.

Small Business Participation

⁸ GVI also states that while the value of contract reference N402 was smaller than the value of the solicitation, it was still significant. Contract reference N402 had a 5-year total dollar value of \$31 million. AR, Tab 3, GVI Technical Proposal at 107. The value of the solicitation at issue here is \$150 million. The agency reasonably considered the smaller dollar value in its assessment of the relevance of contract reference N402.

For the small business participation factor, which applied to all offerors regardless of size and was separate from the small business subcontracting plan requirements, offerors were required to provide the names, small business classifications, and roles of small business concerns that would participate in performing the contract, and the rationale for selecting the particular small business subcontractors. RFP at 131-132. Offerors were also required to provide the percentage of the contract that the small business concerns would perform. *Id.* at 132. Offerors were required to provide an approach for how it intended to meet the small business participation percentage. *Id.* The agency established 10 percent as the goal for participation by small business concerns. *Id.*

The solicitation advised the agency would evaluate the realism of the offeror's proposed small business participation in the following areas: (a) the extent of small business participation as compared to the 10 percent objective; (b) the approach to meeting the small business participation objective; (c) the rationale for the allocation of meaningful tasks to small business concerns; and (d) the rationale for the involvement of various small business concerns. *Id.* at 148. The solicitation set forth the following ratings for this factor: acceptable--proposal indicates an adequate approach and understanding of the small business objectives; and unacceptable--the proposal does not meet the small business objectives. *Id.* at 150.

GVI, a small business, provided that [DELETED] of the contract would be performed by small businesses. AR, Tab 3, GVI Technical Proposal at 104. Leidos, a large business, proposed that [DELETED] percent of the contract would be performed by small businesses. AR, Tab 2, SSEB Report at 26. Both offerors were rated acceptable for small business participation. *Id.* at 2. The evaluation explained that GVI proposed a small business participation percentage of [DELETED] percent, which exceeded the minimum 10 percent objective. *Id.* at 13. Further, GVI demonstrated an adequate and acceptable approach and understanding of the small business participation requirement, and its list of subcontractors was appropriate. *Id.* The evaluation stated that Leidos proposed a small business participation percentage of [DELETED] percent, which exceeded the minimum 10 percent objective. *Id.* at 26. Further, Leidos demonstrated an adequate and acceptable approach and understanding of the small business participation requirement, and its list of subcontractors was appropriate. *Id.* at 25-26.

In the best-value tradeoff, the agency considered that GVI proposed a small business participation percentage of [DELETED] percent, which was higher than Leidos's proposed small business participation percentage of [DELETED] percent. AR, Tab 11, SSAC Report at 14. The agency also considered, however, that small business participation is the least important non-cost/price factor and the higher percentage proposed by GVI did not substantially offset the technical advantages of the Leidos proposal or the past performance superiority of the Leidos proposal. *Id.* In addition, since both proposed to exceed the minimum 10 percent objective set forth in the solicitation and were rated acceptable, the ratings offset each other and did not impact the best-value tradeoff decision. *Id.*

GVI protests that the agency unreasonably failed to consider that it proposed a significantly higher percentage of small business participation in conducting its tradeoff. We disagree. As the agency notes, the solicitation specifically advised offerors that the small business participation factor would be evaluated as acceptable or unacceptable. RFP at 150. The solicitation did not provide for the assignment of weaknesses or strengths or otherwise suggest that there would be a comparative evaluation regarding this factor. *Id.* Therefore, the agency properly, and in accordance with the solicitation, did not assign extra weight to GVI's proposal because it proposed a higher percentage of small business participation.

Cost Realism

The solicitation provided that the agency would conduct a cost realism evaluation of the cost and cost-plus-fixed-fee items. RFP at 148. Costs that were considered unrealistic would be adjusted upward for purposes of determining the total evaluated price/cost. *Id.* at 149. As relevant to this protest, the solicitation provided that in conducting the cost realism evaluation for the option years, the agency would compare the proposed escalation rate to the current Global Insight escalation rate in effect at the time of proposal submission.⁹ *Id.* The agency would apply the higher of the two rates unless the proposed lower rate was supported by an explanation that the evaluator considered reasonable. *Id.* The solicitation advised that the burden of proof for cost credibility rested with the offeror. *Id.*

GVI proposed an escalation rate of [DELETED] for its employees that are covered by the service contract labor standards. AR, Tab 5, GVI Price Proposal at 12. GVI explained that it has a long standing policy of [DELETED]. *Id.* GVI included a table which showed the history of covered employees from 2013-2018 to demonstrate that [DELETED]. *Id.* at 33-40.

The agency did not accept GVI's explanation as reasonable. The agency considered that historically, the standards are revised with higher rates multiple times per year. AR, Tab 6, Cost Evaluation at 11. The agency further considered that while GVI submitted data to demonstrate that it has [DELETED]. *Id.* The agency therefore applied an escalation rate of 3.5 percent, the applicable Global Insight rate, and upwardly adjusted GVI's proposed costs by over \$2.9 million. *Id.*

GVI protests that the agency unreasonably refused to accept its explanation, and therefore unreasonably escalated the rates of its employees covered by the service contract labor standards by 3.5 percent.¹⁰ Protest at 33-36; Comments & Supp. Protest

⁹ Global Insight is an annual forecast of various labor markets. See *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 20 n.19.

¹⁰ To the extent GVI believes that the agency should have used an escalation rate lower than 3.5 percent, the solicitation advised offerors that the agency would use the Global

at 24-26. The agency maintains that its analysis was reasonable and in accordance with the terms of the solicitation. MOL at 21-25.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 15.305(a)(1); see *Logistics Mgmt. Institute*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 6. In this regard, the solicitation incorporated by reference Federal Acquisition Regulation clause 52.222-41, Service Contract Labor Standards. RFP at 92. This clause provides that the contract is subject to the Service Contract Labor Standards and that each service employee employed in the performance of the contract must be paid not less than the minimum wages and fringe benefits determined by the Department of Labor in an attached wage determination. FAR clause 52.222-41(b), (c). GVI acknowledges that if the wage rate for a covered employee was increased it would be required to pay the increased rate. Resp., Dec. 18, 2020, at 2.

We conclude that the agency reasonably applied the Global Insight 3.5 percent escalation rate to the rates of the GVI employees covered by the service contract labor standards. The agency was not required to accept the risk that the labor rates that GVI would be required to pay its service contract labor standards covered employees would not increase. GVI asserts that there is no indication that the agency examined the frequency with which the wage determinations applicable to the labor categories included in GVI's proposal or the contract increased. GVI asserts that they have not increased in years. Resp., Dec. 18, 2020, at 2.

The fact that rates have not increased in the past, however, is no guarantee that they will not increase in the future. GVI itself notes that in the most recent table that is required to be used for this solicitation, the rates increased for 9 of the 16 proposed labor categories, when they had not increased in multiple years. Protest at 35.¹¹ While GVI argues that the rates for the engineering technician category which encompasses the preponderance of contract hours did not increase in that standard, the agency was not applying the escalation rate labor category by labor category or considering the

Insight rate in effect at the time of proposal submission. RFP at 149. Its protest is therefore an untimely challenge to the solicitation terms as it should have been filed prior to the closing date for the receipt of proposals. See 4 C.F.R. § 21.2(a)(1).

¹¹ Offerors were required to prepare their proposals using wage determination table 2015-4089, revision 11 (July 16, 2019). See RFP at 109.

justification for escalation rates labor category by labor category. Moreover, and again, the agency is not required to accept the risk that the rates will not increase.

The protest is denied.

Thomas H. Armstrong
General Counsel