U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Inmarsat Government, Inc.

File: B-422788

Date: October 23, 2024

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Colonel Nina R. Padalino, Erika Whelan Retta, Esq., Christian H. Robertson, Esq., and Major William M. Fuller, United States Air Force, and Allen B. Coe, Esq., United States Space Force, for the agency.
Michael Willems, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of proposals is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement law.

DECISION

Inmarsat Government, Inc., of Reston, Virginia, challenges the issuance of a task order to Global Enterprise Solutions, Inc. (GES), of Sterling, Virginia, pursuant to the General Services Administration's Complex Commercial Satellite Communications Solutions (CS3) indefinite-delivery, indefinite-quantity (IDIQ) contract by the United States Space Force for commercial Ku-band[1] satellite bandwidth and related equipment and services. The protester alleges that the agency erred in evaluating its technical proposal and in evaluating the awardee's price proposal.

We deny the protest.

[1] For purposes of this procurement, the Ku-band range refers to satellite communications with frequencies between 13.75 to 14.50 gigahertz from earth to space, and 10.95 to 12.75 gigahertz from space to earth. Contracting Officer's Statement (COS) at 1.

BACKGROUND

On February 2, 2024, the agency issued the fair opportunity proposal request (FOPR) to all CS3 IDIQ contract holders.[2] COS at 3. The FOPR contemplated issuing a single fixed-price task order with a 1-year base period and four 1-year option periods. AR, Tab 11, FOPR at 23. The FOPR also provided that the agency would award to the offeror that represented the best value to the government based on a tradeoff between technical and price. *Id.* at 116-118.

Relevant to this procurement, the FOPR required that satellite service proposed by offerors be "non-pre-emptible[3] commercial Ku-band (standard or extended) satellite bandwidth, which must be offered on satellites that are currently on-orbit, operational, and station-kept." *Id.* at 76. Additionally, the FOPR required offerors to furnish letters of supply "valid through the start date of the contracted services, or other contractual agreements that require space segment supplier to provide the identified services in support of the offeror's quote," and explained that proposals lacking such letters would not be considered. AR, Tab 12, Amended Instructions to Offerors at 9. Moreover, the FOPR further explained that the agency would specifically evaluate technical risk of offerors' technical approaches and defined an "unacceptable" technical proposal as one that had either one or more deficiencies or an unacceptable risk of unsuccessful performance. *Id.* at 19, 21. Concerning price, the solicitation explained that the agency would evaluate prices for reasonableness, completeness, and unbalanced pricing. *Id.* at 22.

Further, concerning interchanges, the solicitation explained that "[s]ource [s]election procedures, in accordance with FAR subpart 15.3 as supplemented, **will not be used**," and that the contracting officer "reserves the right to conduct information interchanges with none, one, some, or all offerors." *Id.* at 17. The FOPR further explained that such

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[2] We note that the solicitation and contemporaneous record inconsistently refer to the solicitation, sometimes describing it as a request for quotations conducted pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, and sometimes referring to the solicitation as a FOPR conducted pursuant to FAR part 16. *Compare* Agency Report (AR), Tab 11, Amended FOPR at 1 (referring to the solicitation as a request for quotations) *with* AR, Tab 21, Fair Opportunity Decision Document (FODD) at 1 (referring to the solicitation as a FOPR). However, in their pleadings, the parties consistently refer to the solicitation as a FOPR, and the CS3 IDIQ requires that purchasers use FAR part 16 procedures for task orders issued under it. *See* AR, Tab 3, CS3 Customer Ordering Guide at 9. Accordingly, we refer to the solicitation as a FOPR throughout for consistency.

[3] "Non-preemptible" refers to a requirement for services that may not be preempted for business reasons or for purposes of providing or restoring service to other customers of the space segment offeror. COS at 6.

interchanges may "address any aspects of the quote, including, but not limited to: technical/management, price and any other matter in the evaluation process." *Id.*

On March 18, 2024, the agency received three proposals, including one from Inmarsat and one from GES. COS at 13. Relevant to this protest, the agency found GES's technical proposal to be acceptable, but found both Inmarsat and the third offeror to be technically unacceptable. COS at 16. Specifically, the agency evaluators identified two deficiencies and six technical risks in Inmarsat's proposal principally concerning the adequacy of Inmarsat's letters of supply and the age of the satellites proposed by Inmarsat. *Id.* at 14-15. Because the agency concluded that Inmarsat's proposal contained deficiencies and an unacceptable level of risk, it was rated as technically unacceptable. *Id.* at 16.

After concluding that GES's proposal was the only technically acceptable proposal the agency evaluated GES's price proposal principally by comparing GES's prices to GES's GSA list prices as well as to an independent government cost estimate (IGCE). *Id.* at 17. As part of this process the agency identified a concern that GES's price proposal might be unbalanced or in error, in part because it included significant non-recurring costs in the option years, but the agency only anticipated significant non-recurring costs in the base year. *Id.* Accordingly, the agency issued interchange notices concerning a handful of price-related issues to GES, and GES submitted a revised proposal at a price of $114,594,296, which was approximately $1,000 higher than its originally submitted price. *Id.* The agency updated its price analysis and made award to GES on July 26, 2024. *Id.* This protest followed.[4]

DISCUSSION

Inmarsat challenges the agency's evaluation in several respects. First, Inmarsat challenges the agency's technical evaluation and conclusion that its proposal was technically unacceptable. Protest at 13-19. Second, Inmarsat alleges that the agency erred by entering into interchanges only with GES and not also providing Inmarsat an opportunity to correct the deficiencies in its proposal. *Id.* at 19-20. Finally, Inmarsat argues that the agency's price evaluation of price reasonableness and unbalanced pricing was unreasonable with respect to GES's proposal. *Id.* at 22-24; Comments at 22-31. We address these arguments in turn, and for the reasons addressed herein, find no basis on which to sustain the protest.[5]

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[4] The task order is valued at $114,594,296, and, accordingly, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency indefinite-delivery, indefinite-quantity contracts valued in excess of $10 million. 41 U.S.C. § 4106(f)(1)(B).

[5] The protester advances other collateral arguments. While we do not address them in this decision we have considered them and conclude they provide no basis to sustain the protest. For example, the protester advances numerous additional arguments about its technical proposal and the agency's best-value tradeoff. *See, e.g.*, Protest at 24-25.

(continued...)

Technical Evaluation

The agency identified two deficiencies and six distinct risks in the protester's technical proposal, two of which the evaluators characterized as posing a high or substantial risk to successful accomplishment of the requirements. AR, Tab 16, Inmarsat Technical Evaluation at 9-13. The protester challenges each of these findings. For example, the protester argues that the agency's finding that its letters of supply were not adequate was unreasonable, inconsistent with the solicitation, and inconsistent with customary commercial practice. Protest at 13-19. As an additional example, the protester argues that the agency's identification of the age of its proposed satellites as posing a high risk to performance was inconsistent with the terms of the solicitation and represented the application of an unstated evaluation criterion. *Id.*

When reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. Where a protester challenges the evaluation as unfairly utilizing unstated evaluation criteria, our Office will assess whether the solicitation reasonably informs vendors of the basis for the evaluation. *Raytheon Co.*, B-403110.3, Apr. 26, 2011, 2011 CPD ¶ 96 at 5. In that regard, procuring agencies are not required to list as stated evaluation criteria every area that may be taken into account; rather, it is sufficient that the areas considered in the evaluation be reasonably related to or encompassed by the stated criteria. *Id.*

Because we conclude below that the agency did not err in finding the protester's proposal to be technically unacceptable and therefore ineligible for award, the protester cannot establish any possibility of competitive prejudice arising from its other challenges to the evaluation of its own proposal or the best-value tradeoff because the protester would not be eligible for award even if the agency erred in those other respects. *See, e.g.*, *Interfor US, Inc.*, B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7 ("Competitive prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper.").

However, we note that, because GES was the only technically acceptable offeror, the protester can demonstrate competitive prejudice with respect to its challenges to the agency's conduct of interchanges and evaluation of GES's price proposal because if GES were also found to be ineligible for award, the agency would need to either open interchanges or resolicit the requirement and the protester would potentially then be in a position to either revise its proposal or participate in a resolicitation. *See, e.g., Root9B, LLC*, B-417801, B-417801.2, Nov. 4, 2019, 2020 CPD ¶ 4 at 7; *Wilcox Industries Corp.*, B-281437.2, *et al.*, June 30, 1999, 99-2 CPD ¶ 3 at 5.

Concerning the letters of supply, the agency concluded that Inmarsat's letters of supply were inadequate because several of them did not guarantee that the satellite providers would provide the required bandwidth or capacity, instead explaining that the bandwidth would be provided subject to availability or subject to other conditions. AR Tab 16, Inmarsat Technical Evaluation at 11-12. For example, one agreement agreed to make "the required Ku band satellite bandwidth capacity available to Inmarsat […] based on availability." *See* AR, Tab 14, Inmarsat Proposal at 57. Similarly, another of Inmarsat's agreements indicated that the supplier would "use commercially reasonable efforts to provide sufficient quantities" of bandwidth. *Id.* at 124.

The protester contends that the agency erred because the revised solicitation, unlike the initial solicitation, did not require that letters of supply guarantee any specific bandwidth or capacity be reserved for the effort, and accordingly its proposal should not have been assigned a deficiency. Protest at 13-19. The protester contends this represents the application of an unstated evaluation criterion. *Id.*

In response, the agency notes that while the revised solicitation was less prescriptive about the contents of the letters of supply than the initial solicitation,[6] the revised FOPR nonetheless specified that the letters of supply (or other contractual agreements) must "require" the satellite providers "to provide the identified services in support of the offeror's quote." AR, Tab 12, Amended Instructions to Offerors at 9. The agency notes that the letters of supply from the majority of Inmarsat's providers did not contain a firm commitment to furnish the services identified in Inmarsat's proposal, both because they contained caveats concerning availability and because they did not identify the amount of bandwidth that would be made available. Memorandum of Law (MOL) at 22. The agency contends that this represented a clear deficiency in Inmarsat's proposal. *Id.*

We find no basis to conclude that the agency's evaluation was unreasonable. The solicitation clearly required that letters of supply "require" providers to provide the services identified in the offeror's proposal, and the protester's letters of supply were indefinite concerning both the commitment of its suppliers and the bandwidth quantities to be supplied. While the protester cites prior decisions in which we declined to sustain protests where an agency accepted similarly indefinite commitments in satellite service procurements, those decisions are clearly distinguishable from the case at issue here.

For example, while the protester is correct that in our decision *Vizada Inc.*, B-405251, *et al.*, Oct. 5, 2011, 2011 CPD ¶ 235, we concluded that an agency did not err by accepting a commitment for satellite services that was "subject to space segment availability," we noted that such a proviso was reasonable in that context because that

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[6] The initial solicitation included a requirement for letters of supply for proposed satellites that covered "the entirety of the contract life cycle," and were also required to include an agreement between the offeror and the supplier confirming that, if the offeror wins the award under this solicitation, the bandwidth/capacity has been reserved for this effort. AR, Tab 11, FOPR at 108.

portion of the proposal specifically responded to a solicitation requirement that offerors be prepared to support optional increases in bandwidth usage where the agency did not identify any limit or upper bound on its potential increases. *Id.* at 8. In the context of such an unlimited bandwidth requirement more definite letters of supply would have been impossible to provide. *Id.* While the solicitation in this case did also provide for optional surge requirements, the protester's letters of supply failed to fully address even the clearly stated minimum bandwidth requirements of the solicitation. Accordingly, *Vizada* is inapposite, and we see no reason to conclude that the agency was unreasonable in assessing a deficiency because Inmarsat's letters of supply were insufficiently definite.

Turning to the agency's concern about the age of the protester's proposed satellites, the agency identified risk because several of Inmarsat's proposed satellites would reach the end of their useful lives before the end of the period of performance. AR, Tab 16, Inmarsat Technical Evaluation at 9. Specifically, the agency explained that satellites generally have a station-kept service life of 15 years. *Id.* The evaluators noted that while some satellites have extended station-kept service beyond this predicted service life, satellite service life is limited by the fuel included when the satellite is launched and several recent attempts to exceed the 15-year-service life of satellites ended in "catastrophic failure." *Id.* In that context, the evaluators explained that two of Inmarsat's proposed satellites were at or beyond 15 years of service at the time of evaluation, and another two of Inmarsat's proposed satellites, while currently not older than 15 years, would be beyond 15 years in service by the end of the period of performance. *Id.*

The protester argues that the solicitation only required that offerors propose satellites that were "currently" on orbit, operational, and station-kept, a requirement that Inmarsat's proposed satellites each met. Protest at 13-19. The protester contends that penalizing the protester for proposing older satellites that were currently operational amounts to the application of an unstated evaluation criterion that satellites must, in effect, have been in orbit less than 10 years at the time of proposal. *Id.*

In response, the agency notes that a significant portion of Inmarsat's satellites were nearing the end of their lives such that there was significant risk of malfunction or catastrophic failure during the period of performance. MOL at 20-21. Moreover, the agency notes that one of the protester's satellites, [DELETED], which accounted for approximately [DELETED] percent of the protester's proposed coverage, is already two years past the end of its anticipated useful life. *Id.* The agency argues that this represented an unacceptable risk to performance. *Id.*

The FOPR in this case explicitly provided for the consideration of technical risk and explained that an unacceptable level of risk was an independent basis for finding a

proposal to be unacceptable.[7] AR, Tab 12, Revised Instructions to Offerors at 18, 21. That is, either deficiencies or unacceptable risks could form the basis for finding a proposal unacceptable. In this case, satellites at or nearing their end of life clearly represent a potential risk to performance and the agency reasonably considered whether the protester's proposed satellites would continue to be available throughout the period of performance.

In response, the protester contends that two of the satellites the agency identified as posing a risk were only 11 years old, such that they would reach their projected end of life four years from now during the fifth option year. Comments at 8-12. The protester argues that such a risk was sufficiently remote that offerors could not have foreseen that the agency would express concerns about it. *Id.* Even assuming for the sake of argument that the protester is correct that such risk is sufficiently remote that the agency should not have considered it, which is not clear, this argument ignores the fact that the agency's concern primarily stemmed from two of the protester's proposed satellites that were already past the end of their anticipated useful lives, such that they posed a clear and immediate risk.

For example, the protester proposed a specific satellite, [DELETED], for nearly [DELETED] percent of its total coverage that was, at the time of evaluation, nearly two years past the end of its anticipated useful life. AR Tab 16, Inmarsat Technical Evaluation at 9. Moreover, this satellite was projected to lose the ability to maneuver in orbit in 2025 prior to the end of the base year of the task order and had already experienced one anomaly (*i.e.* a malfunction).[8] AR, Tab 26, Decl. of Technical Evaluator at 3-5. Crucially, the agency noted that the protester did not provide a plan to mitigate the risk posed by the potential loss of this satellite in its proposal. *Id.* Given the risk of "catastrophic failure" identified by the evaluators and the protester's failure to propose a mitigation plan, the agency's assessment of risk was clearly reasonable on these facts. *Id.*

Reinforcing this point, we note that, as discussed above, the agency reasonably found the protester's proposal to be technically unacceptable because its letters of supply did not actually commit the satellite providers to provide the bandwidth identified in the protester's proposal. Among the satellite providers that did not provide adequate commitments was the operator of the [DELETED] satellite. AR, Tab 14, Inmarsat

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[7] Additionally, even if performance risk was not specifically listed in the solicitation as an evaluation factor, we have routinely explained that an agency may always consider risk intrinsic to the stated evaluation factors, that is, risk that arises from an offeror's approach or demonstrated lack of understanding. *See, e.g.*, *Blue Origin Federation, LLC; Dynetics, Inc.-A Leidos Co.*, B-419783 *et al.*, July 30, 2021, 2021 CPD ¶ 265 at 46 n.23; *Equinoxys, Inc.*, B-419237, B-419237.2, Jan. 6, 2021, 2021 CPD ¶ 16 at 7-8.

[8] While the protester contends this anomaly was readily corrected and related to a different spectrum band entirely, the protester does not contest the fact that the specific satellite experienced a malfunction. Comments at 10.

Proposal at 124. That is, the satellite that the protester relied on for [DELETED] of its technical solution not only posed a high risk of failure due to its age, but there was also no firm commitment that its owner would provide the required bandwidth in any case.

We see no reason to conclude the agency erred in finding this constellation of concerns to pose an unacceptably high risk to performance, or in finding the protester's proposal to be technically unacceptable on these bases. Because any deficiency in the protester's proposal would render it ineligible for award, we need not reach the remainder of the protester's challenges to the agency's technical evaluation.

Interchanges

Next the protester alleges that the agency erred by entering into interchanges solely with GES. In this regard, although the protester acknowledges that FAR section 16.505 does not establish specific requirements for discussions in a task order competition, the protester argues that our decisions have consistently concluded that when exchanges with the agency occur in task order competitions, they must be fair. Protest at 19 (*citing MCR Fed., LLC*, B-416654.2, Dec. 18, 2018, 2019 CPD ¶ 335; *Vencore Servs. & Sols., Inc.*, B-412949, B-412949.2, July 18, 2016, 2016 CPD ¶ 346 at 5; *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 14). The protester contends it was unfair and unequal to allow GES to correct the agency's concerns with its proposal, but to not extend the same opportunity to Inmarsat. Protest at 19-20.

Preliminarily, we note that the solicitation in this case expressly explained that FAR part 15 does not apply to this procurement and that the agency might enter into interchanges with only one offeror and permit them to change any part of the offeror's proposal. AR, Tab 12, Amended Instructions to Offerors at 17. Our decisions have consistently concluded that post-award challenges to such clearly announced ground rules are untimely. *See, e.g.*, *Gulf Civilization Gen. Trading & Contracting Co.*, B-419754, B-419754.2, June 10, 2021, 2021 CPD ¶ 208 at 6-7 n.2 ("[E]ven assuming for the sake of argument that FAR part 15 principles did or should apply by analogy, as explained above, the protester's post-award objections to the RFP's unambiguous reservation of [the agency's] right not to evaluate proposals in a manner consistent with a FAR part 15 procurement are patently untimely."). Our Bid Protest Regulations contain strict rules for the timely submission of protests. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1); *International Bus. Machines Corp.*, B-417596.10, Mar. 17, 2021, 2021 CPD ¶ 127 at 15.

Additionally, we have routinely rejected as untimely post-award challenges alleging that an agency's scope or conduct of discussions violated applicable procurement law when the agency's discussions were consistent with the express, unambiguous ground rules set forth in the solicitation. For example, in *VariQ-CV JV, LLC*, B-418551, B-418551.3, June 15, 2020, 2020 CPD ¶ 196, we dismissed as untimely a post-award challenge alleging that the agency engaged in unequal discussions when it conducted exchanges

only with the apparent successful offeror, resulting in changes to the firm's staffing levels and price. Similar to the solicitation in this case, the solicitation in *VariQ-CV JV* reserved the agency's "right to communicate" only with the apparent successful offeror to "address any remaining issues," which may include technical or price. *VariQ-CV JV, LLC*, *supra*, at 18-19. Based on this unambiguous reservation of rights and the fact that the procurement was conducted pursuant to FAR subpart 16.5, we found in *VariQ-CV JV* that the agency's conduct was consistent with the terms of the solicitation and did not otherwise violate any applicable procurement law or regulation. We further concluded that, to the extent the protester objected to the agency's reservation of its right to conduct limited negotiations only with the apparent successful offeror, the protester's post-award objection raised an untimely challenge to the terms of the solicitation. *Id.* at 20-21; *see also Gunnison Consulting Grp., Inc.*, B-418876 *et al.*, Oct. 5, 2020, 2020 CPD ¶ 344 at 14 (reaching same result as *VariQ-CV JV, LLC*, *supra*).

Like *VariQ-CV JV*, here the solicitation unambiguously explained that the agency could enter into interchanges with only one offeror and permit them to change any part of its proposal, and the protester did not challenge that solicitation term prior to the time set for receipt of proposals. Accordingly, this protest ground is an untimely protest of the terms of the solicitation and is dismissed.

Awardee's Price Evaluation

The protester challenges the agency's price evaluation in two primary respects. First, the protester alleges that the agency failed to conduct an appropriate evaluation of price reasonableness. Protest at 22-24; Comments at 22-31. Inmarsat contends that GES's price was significantly higher than Inmarsat's price, but the agency unreasonably declined to compare the prices of the offers it received to assess price reasonableness. *Id.* Instead, the protester argues that the agency unreasonably relied on comparisons to GES's GSA list prices as a price evaluation technique, as well as a comparison to a flawed and unreasonable IGCE. *Id.* Second, the protester argues that the agency undertook no meaningful analysis of unbalanced pricing either before or after GES revised its proposal, even though GES's proposal revisions should have posed concerns for the agency. *Id.*

Turning first to the protester's price reasonableness arguments, a price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that we will question only where it is unreasonable. *The Right One Co.*, B-290751.8, Dec. 9, 2002, 2002 CPD ¶ 214 at 5. The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. *T&H Servs. LLC*, B-420458.7, *et al.*, Jan. 10, 2024, 2024 CPD ¶ 34. Moreover, in evaluating price reasonableness, agencies may use a variety of techniques, including comparison of the prices proposed with published commercial price lists and comparison of the prices received with an independent government estimate, and our Office will not disturb an agency's discretion to choose the most suitable price analysis

techniques. *See* Chugach Range & Facilities Servs. JV, LLC, B-420458.6, B-420458.10, Jan 10, 2024, 2024 CPD ¶ 33.

We note as a preliminary matter, that the protester compares GES's price to the protester's own price as part of its critique of the agency's price reasonableness evaluation. However, as discussed above, the agency reasonably found the protester's proposal to be technically unacceptable. The price of a technically unacceptable proposal cannot provide a reasonable basis of comparison for assessing price reasonableness. *See, e.g., Silynx Comm'ns, Inc.*, B-310667, B-310667.2, Jan. 23, 2008, 2008 CPD ¶ 36 at 7 (finding that "[t]he fact that [the protester's] proposed prices were significantly lower than [the awardee's] does not establish that [the awardee's] price was unreasonable, given that [the protester's] product was technically unacceptable, and thus did not meet the agency's requirements") (*citing Idaho Norland Corp.--Recon.*, B-230598.2, Aug. 1, 1988, 88-2 CPD ¶ 103 at 2-3)). Accordingly, the agency did not err in declining to consider the protester's price in its evaluation.

Moreover, while the protester is correct that, in some circumstances, comparison to GSA schedule list prices, without more, may not be an appropriate method to determine price reasonableness, here the agency did not stop its price reasonableness inquiry after making a comparison to GES's GSA list prices. *See* Comments at 23 (*citing CW Gov't Travel, Inc. d/b/a CWTSato Travel*, B-420412, B-420412.2, Mar. 23, 2022, 2022 CPD ¶ 8 at 9) (noting that Department of Defense agencies are subject to a class deviation that requires them to use the price analysis procedures of FAR section 15.404-1 to determine price reasonableness rather than relying solely on the fact that GSA schedule prices have already been determined to be reasonable as described in FAR section 8.404(d)). The contemporaneous record supports that, in addition to comparing GES's proposed prices to its GSA list prices, the agency also prepared an IGCE based on historical prices paid on other contracts and list prices of other firms. *See* AR, Tab 18, GES Price Evaluation at 8 (contemporaneously analyzing GES's price by making multiple comparisons to the IGCE); Tab 29, IGCE. The agency ultimately concluded that GES's proposed evaluated price was lower than both its GSA list prices ([DELETED] percent lower) and the IGCE (56 percent lower), which the agency attributed to discounts offered due to increased competition in the telecommunications market. AR, Tab 21, FODD at 12; AR, Tab 18, GES Price Evaluation at 8. We see no basis to conclude that the agency's selection of price analysis techniques or conclusion was inappropriate. *See Silynx Comm'ns, Inc.*, *supra* (concluding agency properly determined price reasonableness based on a comparison of the awardee's price to the awardee's commercial price list and an IGCE).

In the alternative, the protester also challenges the agency's reliance on the IGCE, noting that the IGCE itself acknowledged that it was incomplete, and also contained various alleged errors. Comments at 22-31. The protester mischaracterizes the IGCE. While the IGCE acknowledges, as part of documenting its assumptions, that it cannot be an exact representation of the costs involved, and that there are many details that would need to be more fully defined, it explains that this uncertainty results from market forces which can cause actual pricing to deviate significantly from historical pricing. *See*

AR, Tab 29, IGCE, IGCE Assumptions Tab. That is to say, the estimate was based on historical data from market sources and awarded contracts but acknowledged that it represented an estimate and not a certainty. This is unobjectionable. An IGCE is, definitionally, an estimate, and need not achieve scientific certainty; it merely needs to be a reasonable estimate of likely costs.

While the protester makes more specific allegations of error, we likewise find these to be without merit. Where, as here, our Office reviews a challenge to government estimates for reasonableness, a protester's disagreement with an agency's basis for developing a government estimate, by itself, provides no basis to sustain a protest. *Space Sys./Loral LLC*, B-413131, Aug. 22, 2016, 2016 CPD ¶ 242 at 12. For example, the protester notes that the IGCE identified large non-recurring costs in the base year, far larger than either the protester or GES ultimately proposed. Comments at 28-30. However, the IGCE calculated those estimated costs based on a historical contract for similar services. This does not establish that the estimate was necessarily unreasonable. *See, e.g.*, *NCI Info Sys.*, *Inc.*, B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 4 (denying protest that it was improper for the agency to rely on data from an incumbent's performance of the predecessor contract to develop its estimate). Put another way, the IGCE itself acknowledged that market forces can cause actual pricing to deviate significantly from historical pricing, but that does not establish that relying on available historical pricing in preparing an estimate was unreasonable.

As an additional example, the protester argues that the IGCE inappropriately used higher short term space segment rates, when offerors typically offer lower pricing for longer term contracts and higher bandwidth consumption that would potentially be applicable to certain regions in this contract. Comments at 26-27. To support this argument the protester compares selected rates included in the IGCE to comparable GSA list prices for higher bandwidth consumption or longer term arrangements. *Id.* However, we note that two of the four regions covered by this effort would not be eligible for the higher bandwidth pricing identified by the protester. More significantly, a third region only narrowly exceeds the cutoff for the lower pricing identified by the protester, such that if the agency's actual usage fell below the agency's estimated usage the better pricing for higher bandwidth usage would potentially no longer be applicable to that third region. On these facts, we do not think it was unreasonable for the IGCE to uniformly use the pricing the agency could be assured of for all four regions. *See also Space Sys./Loral LLC*, *supra* (denying protest that the government's estimate was flawed because it failed to account for potential efficiencies in the commercial marketplace). We see no reason to conclude that the IGCE was unreasonable in the ways suggested by the protester.

To summarize, because GES was the only technically acceptable offer, there was no meaningful price competition to establish price reasonableness and the agency had to employ other price evaluation techniques. The agency evaluated price reasonableness based on list prices and an IGCE that incorporated selected historical pricing. We see no basis to conclude that the agency's evaluation of price reasonableness was unreasonable on this record.

Turning to the protester's unbalanced pricing allegations, the protester contends that the agency conducted no meaningful unbalanced pricing analysis either before or after GES revised its proposal. Comments at 29-30. Additionally, the protester notes that GES, in response to the agency's interchange notices, merely migrated its non-recurring costs into its recurring costs and the agency did not meaningfully consider the impact of this recharacterization of GES's price elements. *Id.*

Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated. FAR 15.404-1(g)(1). With respect to unbalanced pricing generally, the FAR requires that contracting officer analyze offers with separately priced line items or subline items in order to detect unbalanced prices. FAR 15.404-1(g)(2). While both understated and overstated prices are relevant to the question of whether unbalanced pricing exists, the primary risk to be assessed in an unbalanced pricing context is the risk posed by overstatement of prices because low prices (even below-cost prices) are not improper and do not themselves establish (or create the risk inherent) in unbalanced pricing. *Desbuild Inc.*; *Framaco-Bozdemir Joint Venture, LLC*, B-421742 *et al.*, Sept. 19, 2023, 2023 CPD ¶ 218 at 8. Our Office will review for reasonableness both an agency's determination as to whether an offeror's prices are unbalanced, and an agency's determination as to whether an offeror's unbalanced prices pose an unacceptable risk to the government. *Id.*

First, we note that the protester's allegation that the agency did not perform any evaluation of unbalanced pricing is unsupported by the record. The record reflects that the agency evaluated unbalanced pricing by comparing specific cost elements of GES's proposal to its GSA list pricing for those elements, and this analysis ultimately led the agency to issue interchange notices to GES specifically questioning the composition of GES's option year prices relative to its base year prices as well as the composition of some cost elements. *See* AR, Tab 19, Interchange Notices to GES. Further, following GES's submission of its revised price proposal, the agency updated its price analysis comparing specific elements of GES's price proposal to GES's GSA list pricing.[9] *See* AR Tab 18, GES Price Analysis. This clearly demonstrates that, contrary to the protester's suggestion, the agency performed a meaningful assessment of unbalanced pricing both before and after GES's proposal revisions.

Further, while the protester correctly notes that following interchanges the awardee decreased non-recurring costs and made corresponding increases in monthly recurring costs, the awardee's total price did not change significantly as a result. While the protester suggests that this represents an improper motive on the part of the awardee--referring to the change in the composition of GES's price as a "shell game"--this

[9] While the analysis furnished by the agency is dated prior to the issuance of interchange notices, we note that the actual price elements evaluated in the analysis reflect the final prices in GES's revised proposal, not the prices from GES's initial proposal.

argument fails because the protester has not established that the awardee's price is meaningfully unbalanced or poses a significant risk that the government will ultimately pay unreasonable prices. Comments at 30.

Relevant here, the interchange notices asked GES to confirm: (1) that GES's proposed non-recurring and recurring costs were correct for the option years; (2) whether all equipment that GES was required to furnish was appropriately included in their pricing; and (3) that GES's non-recurring costs were consistent with their schedule prices. *See* AR, Tab 19, Interchange Notices to GES. In response, GES reduced its non-recurring costs for all contract periods, including the base year and transition period, and increased its recurring costs for all years, such that its total annual pricing was roughly the same for each year (with the exception of option year [DELETED]). AR, Tab 20, GES Revised Proposal. Of note, GES modestly increased its base year pricing relative to its overall option year pricing. *See Id.* at 16-17 (GES's total proposed price remained roughly the same, while the base year price increased by approximately [DELETED] percent).

These changes simply do not imply an improper motive or unbalanced pricing in the way the protester suggests. Rather, the fact that the awardee reduced their non-recurring costs in all periods, while modestly increasing its base year pricing is entirely consistent with GES correcting the errors that the agency identified in how GES's costs were characterized. That is, the record suggests that GES mischaracterized certain costs as non-recurring throughout its proposal, but, when prompted by the agency, GES recognized and corrected the error, while also moving some costs from the option years to the base year in response to the agency's concerns that GES had included some costs in option years that should only be present in the base year.

Following the revision, the record shows that the agency was clearly aware that GES moved some of its non-recurring costs into its recurring costs and updated its comparison of GES's line item prices to its GSA schedule rates based on the revised proposal. *See* AR, Tab 18, GES Price Analysis (analyzing GES's revised price elements); Tab 28, Agency Confirmation of GES Interchange Responses at 1 (acknowledging that GES moved some non-recurring costs into their recurring costs). In short, on the record before us, we cannot conclude that the agency was unreasonable in concluding that GES's price proposal as revised was not meaningfully unbalanced.

The protest is denied.

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