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## Decision

**Matter of:** Inquiries, Inc.

**File:** B-417415.2

**Date:** December 30, 2019

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Craig A. Holman, Esq., and Michael E. Samuels, Esq., Arnold & Porter Kaye Scholer, LLP, for the protester.

Jonathan T. Williams, Esq., Kathryn V. Flood, Esq, Patrick T. Rothwell, Esq., and Samuel S. Finnerty, Esq., Piliero Mazza PLLC, for iWorks Corporation, the intervenor. SoCheung Lee, Esq., Department of Defense, for the agency.

Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that the awardee had disqualifying organizational conflicts of interests is sustained where the record does not show that the agency meaningfully considered the potential conflicts arising from the awardee's subcontractor's prior and ongoing work on other contracts.
2. Protest challenging the evaluation of the awardee's proposed program manager is denied where there record shows that the agency reasonably evaluated the individual's experience.
3. Protest challenging the evaluation of the awardee's staffing plan is denied where the agency reasonably found that the awardee proposed efficiencies as compared to the workload assumptions in the independent government estimate.
4. Protest challenging the agency's price realism analysis is denied where the protester does not demonstrate that the agency's standard deviation calculation affected the reasonableness of the analysis.
5. Protest challenging the agency's evaluation of the awardee's professional compensation is sustained where the agency's evaluation relied on a comparison of the offerors' burdened labor rates, rather than salary ranges and fringe benefits offered.

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## DECISION

Inquiries, Inc., a small business, of Chevy Chase, Maryland, protests the award of a contract to iWorks Corporation, also a small business, of McLean, Virginia, by the Department of Defense, Defense Security Service (DSS)<sup>1</sup>, under request for proposals (RFP) No. HS0021-19-R-0003, which was issued for support of the Defense Vetting Directorate (DVD). Inquiries argues that the award to iWorks was improper because the awardee had disqualifying organizational conflicts of interest (OCIs), and the agency unreasonably evaluated the awardee's technical and price proposals.

We sustain in part and deny in part the protest.

## BACKGROUND

The DVD is an entity within DSS that is responsible for conducting security, suitability, and credentialing background investigations, and clearance adjudications for Department of Defense (DOD) personnel. Contracting Officer's Statement (COS) at 2; Agency Report (AR), Tab 4, Performance Work Statement (PWS), at 1.<sup>2</sup> As relevant here, the DVD operates the Vetting Risk Operations Center (VROC), which is a "centralized entity" within the DVD responsible for vetting personnel for access, continuously evaluating eligibility information, and integrating and sharing information to identify and mitigate insider threats. PWS at 1. The DVD also operates the Consolidated Adjudications Facility (CAF), which is responsible for adjudication of personnel background information for DOD, as well as for Congressional personnel and the Supreme Court of the United States. Id. at 2.

DSS issued the solicitation as a small business set-aside on November 30, 2019, to provide support for the VROC and CAF. AR, Tab 3, Consolidated RFP, at 1, 50. The contractor will be required to provide personnel security support services for the DVD's background investigation and clearance adjudication activities. PWS at 3. The solicitation combines work from three existing contracts: Celerity Government Solutions, LLC (dba Xcelerate Solutions), a proposed subcontractor for iWorks, was the incumbent for two of the contracts; and Inquiries was the incumbent for the third contract. COS at 4-5.

The solicitation anticipated the award of a fixed-price contract with a base period of 1 year and four 1-year options. RFP at 12. The RFP advised offerors that proposals would be evaluated based on the following factors: (1) past performance, (2) technical capability, and (3) price. RFP at 81. The technical capability factor was to be evaluated

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<sup>1</sup> DSS was renamed the Defense Counterintelligence and Security Agency on June 20, 2019. Executive Order No. 13869, Apr. 24, 2019, 84 Fed. Reg. 18125. Because the record refers to the agency as DSS, we use that name in our decision.

<sup>2</sup> References to the agency report are to documents provided by the agency in response to the current protest (B-417415.2), unless otherwise noted.

on a pass/fail basis, and required offerors to address, as relevant here, a staffing plan and key personnel qualifications. Id. For purposes of award, the past performance factor was “significantly more important” than price.” Id. at 85. The RFP also explained that if the lowest-priced proposal received an acceptable rating under the technical capability factor and a substantial confidence rating under the past performance factor, the agency would select that proposal for award. Id. at 81. Other proposals were to be evaluated only for the purpose of determining adequate price competition. Id.

DSS received proposals from four offerors, including Inquiries and iWorks, by the closing date of December 14. The third offeror’s proposal was found unacceptable under the technical capability factor, and the fourth offeror’s proposal was not evaluated because the agency found iWorks’ and Inquiries’ proposals eligible for award. AR (B-417415.1), Tab 41, Initial Source Selection Decision Document (SSDD), at 2. The agency evaluated the protester’s and awardee’s proposals as follows:<sup>3</sup>

	<b>INQUIRIES</b>	<b>iWORKS</b>
<b>Past Performance</b>	Satisfactory Confidence	Substantial Confidence
<b>Technical Capability</b>	Acceptable/Pass	Acceptable/Pass
<b>Price</b>	\$53,122,564	\$49,999,560

Id. at 1-2.

DSS selected iWorks’ proposal for award on January 4, 2019. Id. at 3. The contracting officer, who was also the source selection authority, found that both offerors’ proposals were acceptable under the technical capability factor and that the offerors’ prices were fair and reasonable. Id. at 2-3. The contracting officer concluded that iWorks’ proposal merited award because it received the “highest possible rating” under the past performance factor and proposed the lowest overall price. Id. at 2.

Inquiries filed a protest with our Office on March 22, challenging the award to iWorks. On June 12, the GAO attorney assigned to the protest conducted an alternative dispute resolution (ADR) outcome prediction conference.<sup>4</sup> During the conference, the GAO attorney advised that he would likely draft a decision sustaining the protester’s arguments that the agency failed to reasonably assess whether the award to iWorks

<sup>3</sup> The agency assigned proposals one of the following ratings under the past performance factor: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). See RFP at 83.

<sup>4</sup> In an outcome prediction ADR conference, the GAO attorney assigned to the protest will inform the parties as to his or her views regarding whether the protest is likely to be sustained or denied. See Bid Protest Regulations, 4 C.F.R. § 21.10(e); First Coast Serv. Options, Inc., B-409295.4, B-409295.5, Jan. 8, 2015, 2015 CPD ¶ 33 at 3. The purpose of outcome prediction conferences is to facilitate the resolution of a protest without a formal decision on the merits by our Office. See id.

was tainted by OCIs, and that the agency’s evaluation of the awardee’s key personnel, proposed price, and professional compensation was flawed. The GAO attorney also advised that the record was inadequate concerning the agency’s evaluation of the awardee’s staffing plan, past performance, and compliance with the limitation on subcontracting under Federal Acquisition Regulation (FAR) clause 52.219-14. In response to the ADR outcome prediction conference, the agency advised that it would take corrective action to address the following issues raised in the protest: “[T]he Agency will re-evaluate the entire evaluation encompassing Technical, Past Performance, Price and OCI.” Agency Notice of Corrective Action, June 12, 2019, at 1.

DSS’s corrective action consisted of a reevaluation of iWorks’ and Inquiries’ proposals. Memorandum of Law (MOL) at 9-11. Additionally, as discussed below, the agency conducted exchanges with both offerors concerning their proposed key personnel. Agency Response to GAO Questions, Nov. 19, 2019, at 2-5. The agency’s reevaluation confirmed the ratings assigned for the technical capability factor, but increased Inquiries’ rating under the past performance factor to substantial confidence:

	<b>INQUIRIES</b>	<b>iWORKS</b>
<b>Past Performance</b>	Substantial Confidence	Substantial Confidence
<b>Technical Capability</b>	Acceptable/Pass	Acceptable/Pass
<b>Price</b>	\$53,122,564	\$49,999,560

AR, Tab 53, Revised SSDD, at 1.

On September 15, the agency again selected iWorks’ proposal for award. Id. at 3. The contracting officer<sup>5</sup> concluded that iWorks’ proposal merited award because it offered the lowest price and received an acceptable/pass rating for the technical capability factor and a substantial confidence rating for the past performance factor. Id. The agency provided a debriefing to Inquiries on September 24, and this protest followed.

## DISCUSSION

Inquiries challenges the award of the contact to iWorks based on five primary arguments: (1) iWorks and its proposed subcontractor Xcelerate have disqualifying OCIs; (2) the awardee’s proposed program manager does not meet the PWS requirements; (3) the agency unreasonably evaluated the awardee’s proposed staffing plan; (4) the agency unreasonably evaluated the realism of the awardee’s price; and (5) the agency unreasonably evaluated the awardee’s proposed professional compensation. For the reasons discussed above, we conclude that the protester’s first

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<sup>5</sup> The contracting officer responsible for the corrective action, new award decision, and response to this protest (B-417415.2) is a different individual than the contracting officer responsible for the original award and response to the initial protest (B-417415.1). See COS at 1; AR, Tab 53, Revised SSDD, at 3.

and fifth arguments have merit, and sustain the protest on these bases. We conclude the remainder of the protester's arguments do not provide a basis to sustain the protest.<sup>6</sup>

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5. Agencies must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's evaluation criteria. Cubic Applications, Inc., B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. Veterans Evaluation Servs., Inc. et al., B-412940 et al., July 13, 2016, 2016 CPD ¶ 185 at 8-9. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

#### Organizational Conflicts of Interest

Inquiries argues that the award to iWorks was tainted by OCIs arising from prior and ongoing work performed by the awardee and its proposed subcontractor. The protester contends that the agency's review of OCIs either failed to adequately address the potential significant conflicts or unreasonably concluded that they do not exist. For the reasons discussed below, we agree with the protester that the agency's OCI analysis was unreasonable.

The FAR requires contracting officials to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. A biased ground rules OCI exists where a firm, as part of its performance of a government contract, has in some sense set the ground rules for another government contract by, for example, writing the statement of work or the specifications. FAR §§ 9.505-1, 9.505-2; Systems Made Simple, Inc., B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 6. The primary concern in such cases is that the firm could skew the competition, whether intentionally

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<sup>6</sup> Inquiries also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest on grounds other than those specifically addressed herein.

or not, in favor of itself. Id. An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract. FAR §§ 9.505(b), 9.505-4; Cyberdata Techs., Inc., B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 6. An impaired objectivity OCI arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR § 9.505(a); Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5-6.

The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7; see also Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1382 (Fed. Cir. 2009). A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4. We review OCI investigations for reasonableness, and where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's absent clear evidence that the agency's conclusion is unreasonable. TISTA Sci. & Tech. Corp., Inc., B-408175.4, Dec. 30, 2013, 2014 CPD ¶ 17 at 6; TeleCommunication Sys., Inc., supra.

As discussed above, the successful contractor will be required to provide services to support two of the DVD's centers--the VROC and CAF. This work involves support of the DVD's background investigation and clearance adjudication processes. PWS at 3. The work to be performed under the VROC/CAF contract requires the use of the Defense Information System for Security (DISS). Id. at 2. DISS is the "system of record for personnel security, suitability and credential management of all DOD employees, military personnel, civilians and DOD contractors," which "provides secure communications between Adjudicators, Security Officers and Component Adjudicators in support of eligibility and access management." AR, Tab 49, DISS Frequently Asked Questions, Mar. 28, 2017, at 4. iWorks performed a contract for the Defense Logistics Agency where it provided support for the development, design, and implementation of DISS. AR, Tab 13, iWorks Past Performance Proposal, at 7-8; MOL at 46.

In addition, Xcelerate was awarded one of five indefinite-delivery, indefinite-quantity (IDIQ) contracts by DSS known as the Consultation, Facilitation, Leadership Alignment and Strategic Collaboration (ConFLASC) contracts. MOL at 42. The ConFLASC contracts were awarded in 2018 and require vendors to "provide general consultation, facilitation, leadership alignment and Strategic Collaboration support services" to DSS. Id.

Xcelerate was issued the DVD Program Management Office (PMO) task order under the ConFLASC contract on September 24, 2018. MOL at 42. As discussed above, the DVD was established as a new directorate to consolidate DOD's background investigation and adjudication functions. See PWS at 1. The task order requires the

contractor to provide the following assistance to the DVD in its role as the new entity responsible for DOD background investigations: “[I]mplement program management support to assist in the transition and transformation efforts to execute the DoD background investigative (BI) mission.” MOL at 42-43.

Inquiries first argues that iWorks’ performance of work developing and implementing DISS gave rise to a biased ground rules OCI because it allowed the contractor to have “a hand in shaping the work to be performed” under the VROC/CAF contract. Protest (B-417415.2) at 28-29. The contracting officer states that no contractor was involved in the development of the RFP requirements. AR, Tab 52, OCI Analysis, at 2. Although the protester cites parts of the awardee’s past performance proposal which discuss the work performed by iWorks in defining certain performance metrics for the adjudication process in connection with DISS, the protester does not explain why these general references show that the awardee was able to shape or skew the requirements of the RFP in its favor. On this record, we find no basis to conclude that the information cited by Inquiries constitutes hard facts that iWorks participated in activities which give rise to biased ground rules OCIs, or that the contracting officer’s review of the protester’s allegations was unreasonable. See TeleCommunication Sys. Inc., supra.

Next, Inquiries argues that iWorks’ and Xcelerate’s prior work gave rise to unequal access to information OCIs. With regard to iWorks, the protester notes that the awardee’s proposal states that its work in connection with DISS provided “broad and extremely rare knowledge of the processes and the current and future operating environments.” Protest at 28 (citing AR, Tab 13, iWorks Past Performance Proposal, at 2-3). With regard to Xcelerate, the protester cites references on that firm’s website which described its work on the ConFLASC IDIQ contract as providing, for example, “expert advice, assistance, guidance or counseling in support of the [DSS] mission-oriented business functions.” Id. at 30 (citing Xcelerate Website, [www.xceleratesolutions.com/about/contracts/dss-consultation-facilitation-leadership-alignment-and-strategic-collaboration-conflasc-support-services-indefinite-delivery-indefinite-quantity-idiq/](http://www.xceleratesolutions.com/about/contracts/dss-consultation-facilitation-leadership-alignment-and-strategic-collaboration-conflasc-support-services-indefinite-delivery-indefinite-quantity-idiq/) (last visited Dec. 23, 2019)). Apart from these general statements, however, the protester does not cite any specific information which reasonably constitutes non-public information that could provide a competitive advantage. We therefore find no basis to conclude that the protester has alleged hard facts that the awardee had unequal access to information OCIs. See TeleCommunication Sys. Inc., supra.

With regard to impaired objectivity, Inquiries argues that the award to iWorks gives rise to OCIs in two areas: (1) Xcelerate’s work under the DVD PMO task order creates conflicts with its work under the VROC/CAF contract; and (2) iWorks’ performance of the VROC/CAF contract will be affected by its prior work on DISS. Protester’s Comments, Nov. 7, 2019, at 30, 32. Here, we agree with the protester that the contracting officer’s analysis did not meaningfully consider whether the award to iWorks will give rise to impaired objectivity OCIs.

Our Office has explained that the concern associated with impaired objectivity situations is that a firm's ability to render impartial advice to the government will be undermined by its relationship to the product or service being evaluated. PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7. The fact that the agency retains final approval or decision-making authority does not absolve the agency of assessing whether a conflict can arise; in this regard, the FAR requires the agency to consider whether a contractor's advice to the government might be tainted by conflicting interests or obligations. Nortel Gov't Solutions., Inc., B-299522.5, B-299522.6, Dec. 30, 2008, 2009 CPD ¶ 10 at 6-7; Johnson Controls World Servs., Inc., B-286714.2, Feb. 13, 2001, 2001 CPD ¶ 20 at 12. Where, for example, an agency found a firm is only "participating" in certain activities, as opposed to having final responsibility for those efforts, we concluded that this did not excuse the agency from considering whether the awardee might have an impaired objectivity OCI. Booz Allen Hamilton, Inc.--Costs, B-414822.4, May 7, 2018, 2018 CPD ¶ 183 at 8.

Xcelerate is currently performing the DVD PMO task order under DSS's ConFLASC IDIQ contract. The task order is intended to provide "implementation and program management support" for the DVD, particularly with regard to the transfer of responsibility for background investigations to DSS. See AR, Tab 51, DVD PMO Task Order Justification & Approval (J&A), at 1. The task order was initially issued on September 26, 2018, and has a performance period with options that extends to September 25, 2022--which overlaps with the VROC/CAF contract. Id. at 1. The documentation provided by the agency in response to the protest included a J&A for the modification of the DVD PMO task order issued to Xcelerate. The J&A stated that the modification was made in accordance with the exception to the requirement for a fair opportunity to compete for task orders set forth at FAR § 16.505(b)(2)(ii) due to the need for additional services to support the DVD. Id. The J&A states that the scope of the DVD PMO task order would be expanded, in part, to encompass new work related to the VROC. Id. at 2. In this regard, the agency stated that "[t]he additional tasks/support will assist DSS DVD in furthering the transition and transformation efforts to execute the Department of Defense (DoD) background investigative (BI) mission." Id.

The J&A described the work to be provided as follows: "[S]pecialized Program Management Support to assist in the transition and transformation efforts to execute the Department of Defense (DoD) background investigative (BI) mission." Id. The J&A explained that Xcelerate was the only source capable of meeting the government's requirements for the task order because it is "currently on contract supporting [the DVD] in leading a coordinated effort to develop and integrate future-looking processes across the vetting enterprise. . . ." Id. at 5. The J&A further stated that this "ongoing initiative is a coordinated effort with key government agency stakeholders to fundamentally redesign and improve the aged investigation and vetting processes." Id.

The contracting officer's OCI analysis also described the DVD PMO task order as follows:

The DVD PMO operations work is geared towards integrating the background investigation mission into DoD with a focus on Program/Project management for the standup of the DVD organization, Strategic Communications, Strategic Planning, Facilities/Logistics, and Human Capital Management/Training.

AR, Tab 52, OCI Analysis, at 2.

Inquiries argues that Xcelerate's responsibilities under the DVD PMO task order will conflict with its role as a subcontractor to iWorks under the VROC/CAF contract. Xcelerate will be responsible for providing support and advice to the DVD regarding the "standup," "transformation" and "fundamental[] redesign" of DVD and its investigation and vetting process, at the same time it is serving as a subcontractor to iWorks to provide support for the DVD's background investigation and adjudication work under the VROC/CAF contract.

The contracting officer's OCI analysis found that Xcelerate's work on the DVD PMO task order does not give rise to an impaired objectivity OCI because it involved only "primarily high-level programmatic support to DVD leadership consulting on the overall operations and continued development of the directorate." Id. The contracting officer stated that this conclusion was based on a review of "Xcelerate's monthly reports for their work on the DVD PMO task order under the ConFLASC ID/IQ from the date of award (September 2018) through July 2019," and a "discuss[ion] Xcelerate's role within the DVD PMO with members of the DVD leadership team." Id. The contracting officer also found that there was no impaired objectivity OCI because Xcelerate would not be responsible for directly evaluating the performance of iWorks or Xcelerate in connection with their performance of the VROC/CAF contract. Id. at 3.

Although the contracting officer describes the work performed by Xcelerate under the DVD PMO task order as "primarily high-level programmatic support," the analysis does not detail the type of work performed. For example, neither the OCI analysis nor the agency's report responding to the protest includes, or meaningfully describes, the monthly reports relied upon by the contracting officer. Similarly, the OCI analysis cites, but provides no information about the discussions with "members of the DVD leadership team." Id. at 2.

As discussed above, the J&A described Xcelerate's existing and anticipated activities as providing advice to the DVD by "leading a coordinated effort to develop and integrate future-looking processes across the vetting enterprise," as part of the "coordinated effort with key government agency stakeholders to fundamentally redesign and improve the aged investigation and vetting processes." AR, Tab 51, DVD PMO J&A, at 5. In light of these shortfalls in the OCI analysis, we see no basis to conclude that the contracting officer reviewed and meaningfully considered whether Xcelerate's role under the DVD PMO task order would place it in a position to affect its performance under the VROC/CAF contract, or whether Xcelerate's role under the VROC/CAF contract would affect its ability to provide unbiased services under the DVD PMO task order.

Turning to iWorks' performance of the DISS contract, Inquiries argues that the awardee has an impaired objectivity OCI in connection with its prior work supporting the development and implementation of the DISS. Protest (B-417415.2) at 30. The protester notes that the PWS requirement for "business process analysis" will require the contractor to "analyze current business processes and . . . make recommendations for efficiencies" in connection with the personnel clearance process. PWS at 16. The protester argues that iWorks' objectivity would be impaired because it participated in the development and implementation of DISS--one of the information systems to be used under the VROC/CAF contract. The protester thus contends that the contractor would have a conflict in providing unbiased feedback concerning the performance of DISS.

The contracting officer's OCI analysis concluded that any advice provided by iWorks under the VROC/CAF contract about the DVD vetting process that concerns DISS would not give rise to an OCI because DISS is a system used by multiple DOD entities, rather than DSS, alone. AR, Tab 52, OCI Analysis, at 2. The contracting officer also found there were no potential OCIs because any advice by iWorks about this system would be made to DVD personnel: "[N]either iWorks nor Xcelerate would be in a position under the VROC/CAF contract to evaluate its technical performance [concerning DISS] outside of making recommendations in response to emerging policy and regulation changes to DVD government personnel." Id. at 3. The contracting officer concluded that there would not be an OCI because any such recommendations about or affecting DISS would need to be approved by government officials. Id.

We agree with the protester that the agency's OCI analysis relies on unsupported conclusions. Specifically, the agency does not reasonably explain why the fact that other agencies also use DISS avoids an impaired objectivity OCI, here. To the extent iWorks has an OCI arising from its performance of the VROC/CAF contract and its prior work on the DISS, that conflict would affect the advice received by DSS--regardless of whether other agencies also use DISS. Additionally, as explained above, the fact that agency officials must approve recommendations made by iWorks under the VROC/CAF contract does not inherently mitigate the risk that the advice received by the agency from the awardee could be biased. The purpose of an OCI review is to determine whether a firm's advice to the government would be impaired by conflicting duties or interests. See PURVIS Sys., Inc., supra. Here, iWorks has a requirement to provide business process analysis advice directly to the DVD about the specific tasks iWorks is performing using the system it developed. We conclude that the contracting officer's blanket reliance on the requirement that changes must be approved by government personnel does not reasonably show that the contracting officer gave meaningful consideration to the risk of impaired objectivity OCIs.

In sum, we conclude that the contracting officer's OCI analysis did not meaningfully or reasonably consider the significant potential impaired objectivity OCIs identified by the protester because it did not provide adequate details concerning the information reviewed and because the analyses relied on unreasonable assumptions concerning mitigating effects on potential bias arising from the contractor's conflicting obligations. We therefore sustain the protest.

## Key Personnel Evaluation

Inquiries argues that DSS should have assigned iWorks' proposal an unacceptable rating under the technical capability evaluation factor based on the resume of its proposed program manager. The protester primarily argues that this individual did not meet the minimum experience requirements for the position, and also argues that the agency conducted improper post-award discussions with the awardee. We find no basis to sustain the protest.

The PWS identified key personnel positions, including the program manager, and the RFP required offerors to provide resumes for each individual proposed. PWS at 8; RFP at 78. As relevant here, the program manager "[m]ust possess five (5) years of experience in personnel security clearance process and three (3) years of experience directly managing a staff of 40+ personnel." PWS at 8. The RFP stated that resumes would be evaluated as follows under the technical capability factor:

Does each resume demonstrate the qualifications required of the respective key person contained in PWS 1.6.10? Did the resumes demonstrate the full time ability and security clearance for each person being proposed in the following labor categories: Program Manager, Task Leads, and Quality Assurance Leads?

RFP at 83.

The resume for iWorks' proposed program manager identified the following primary entries for his employment history:

- 2010-present, [DELETED]
- 2010-2016, [DELETED]
- 2000-2010, [DELETED]
- 1996-1999, [DELETED]

AR, Tab 14, iWorks Technical Capability Proposal, at 48-49.

DSS's initial evaluation found that the resumes for all of iWorks' proposed key personnel met the PWS requirements. AR (B-417415.1), Tab 40, Initial iWork Technical Capability Evaluation, at 5. The evaluation, however, did not discuss any of the resumes, individually, or explain the agency's basis for finding them acceptable. Id.

Inquiries' initial protest argued that the agency's evaluation of the awardee's program manager was unreasonable because the individual did not possess the required 3 years of experience directly managing a staff of more than 40 people. Protest (B-417415.1), Mar. 22, 2019, at 21-23. In response to the protest, the agency explained that it found the proposed program manager's experience to satisfy the requirement for two reasons: (1) the "[p]roposed Individual managed a [DELETED] for 3 years," and (2) "in the current

role manages [DELETED] personnel security specialists (relevant to this action).” COS (B-417415.1) at 26.

Inquiries argued that the agency’s explanation for the evaluation was unreasonable for two reasons: (1) given the individual’s graduation from high school in 1996 and his [DELETED] from [DELETED], it was unreasonable to assume that he managed [DELETED] individuals for all 3 years [DELETED]; and (2) the time period for the “current role” described in the contracting officer’s statement is unclear because of overlapping dates in the resume, and that in any event the individual had only been managing more than [DELETED] individuals since February 2018, not 2016. Protester’s Comments (B-417415.1), May 2, 2019, at 14-17.

DSS took corrective action in response to Inquiries’ initial protest to address, in part, the protester’s challenge to the evaluation of iWorks’ proposed program manager. See Agency Notice of Corrective Action, June 12, 2019, at 1. During the corrective action the agency requested that the awardee clarify the timeframe for the first and second entries, which appeared to have overlapping times. AR, Tab 44, Agency Clarification Question, July 2, 2019 at 1. In response, the awardee explained that the resume should have stated that individual began work for [DELETED] in 2016, not 2010. Id., iWorks Clarification Response, July 2, 2019 at 1.

DSS’s revised evaluation of the resume for iWorks’ proposed program manager found that his work for [DELETED] under a contract for DSS satisfied the requirement for 3 years of experience directly managing a staff of more than 40 people.<sup>7</sup> AR, Tab 40, Revised iWorks Technical Evaluation, at 9. The agency’s evaluation also relied in part on the knowledge of evaluators who were personally familiar with the proposed program manager’s work for [DELETED]:

The panel also relied on its own personal knowledge that the Program Manager is currently with an incumbent company managing two of the contracts to the satisfaction of the customer. The panel was aware of the iWorks’ proposed Program Manager’s role including management of approximately 40-45 people for the DSS [Personnel Security Management Office]-I contract that began in August 2016. The panel was also aware of the iWork[s]’ proposed Program Manager[’s role] on a separate but overlapping DSS Continuous Evaluation contract of approximately 20-25 people that began in February 2018.

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<sup>7</sup> DSS’s revised evaluation acknowledged that the individual’s experience in the [DELETED] could not be reasonably viewed as providing the full experience because “[DELETED] would not be given the responsibility to lead a team of [DELETED].” AR, Tab 40, Revised iWorks Technical Evaluation, at 9. The agency nonetheless found that “the iWorks’ proposed Program Manager managed a [DELETED] at some point in the three years.” Id. The agency, however, did not ascribe any particular amount of time for the [DELETED] experience, or explain how much time could have been calculated, given the amount of information in the resume.

Id. at 10. Based on the resume, the clarification during corrective action, and the knowledge of evaluators, the agency concluded that the proposed program manager “[met] the three year requirement from August 2016 to September 2019.” Id.

Inquiries argues that DSS improperly credited the program manager with experience based on his performance after the submission of iWorks’ proposal. In this regard, the protester argues that the agency could only reasonably consider, at most, the time between August 2016 and the date of proposal submissions in December 2018. Protester’s Comments, Nov. 7, 2019, at 11. Based on this calculation of time, the awardee’s proposed program manager would fall short of the 3-year requirement.

DSS contends, however, that it was appropriate to consider the amount of experience the proposed program manager had at the time the evaluation was conducted--in this case, the September 2019 evaluation conducted as part of corrective action in response to the initial protest. Agency Response to GAO Questions, Nov. 19, 2019, at 1-2. The agency notes that the RFP did not state, as the protester suggests, that resumes would be evaluated for compliance with the PWS experience requirements based on a cutoff date of proposal submission.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. KDH Def. Sys., Inc., B-412951, July 12, 2016, 2016 CPD ¶ 182 at 4. To be reasonable, and therefore valid, an interpretation must be consistent with such a reading. McLaurin Gen. Maint., Inc., B-411443.2, B-411443.3, Jan. 14, 2016, 2016 CPD ¶ 41 at 3.

We agree with the agency that the terms of the solicitation did not state that resumes would be evaluated for compliance with the PWS criteria as of the date of proposal submission. Instead, the RFP stated that proposals would be evaluated based on the following question: “Does each resume demonstrate the qualifications required of the respective key person contained in PWS 1.6.10?” RFP at 83. We agree with the agency that the RFP is essentially silent as to the time at which the resume must reflect compliance. Accordingly, we find reasonable the agency’s conclusion that iWorks’ proposed program manager demonstrated the required qualification as of the date of the revised evaluation and award in September 2019. Additionally, because the PWS requires the contractor to provide during performance an individual that meets the minimum experience requirements, we cannot say that the agency unreasonably relied on the date of evaluation to conclude that the awardee’s proposed program manager met the PWS experience requirements.

Inquiries also argues that DSS improperly relied on the knowledge of evaluators with regard to the program manager’s work on the incumbent contract. An agency may reasonably rely on the personal knowledge of evaluators to verify or supplement information in a proposed key personnel candidate’s resume, provided the record supports the basis for that personal knowledge. See The OMO Grp., Inc., B-294328,

Oct. 19, 2004, 2004 CPD ¶ 212 at 7 (agency's evaluation reasonably relied on an evaluator's personal knowledge of specific work performed by proposed key personnel). In contrast, we have found that an agency is not required to consider information outside an offeror's proposal, aside from certain matters regarding past performance. See Enterprise Solutions Realized, Inc.; Unissant, Inc., B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 9.

The protester contends that the facts here are similar to those in VariQ Corp.; Octo Consulting Group, Inc., B-417135 et al., Mar. 18, 2019, 2019 CPD ¶ 124, where we sustained the protest because an agency evaluator did not rely on personal knowledge, and instead made an unsupported assumption that experience and capabilities listed on a key personnel candidate's resume likely meant that the individual also possessed experience and capabilities that were not listed on the resume. Id. at 6-7. Here, in contrast, the contemporaneous evaluation record shows that the agency's evaluation team responsible for the evaluation was aware of two specific facts about the proposed individual: (1) the dates of performance for the proposed program manager's work for the same agency, and (2) the number staff he supervised during that time. On this record, we find no basis to sustain the protest. See The OMO Grp., supra; see also Straughan Envtl., Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 8 n.6.

Inquiries also argues that DSS's exchanges with iWorks during the corrective action were discussions, rather than clarifications. The protester argues that the agency should therefore have conducted discussions with it as well. Protester's Comments, Nov. 7, 2019, at 12-15. Exchanges between a procuring agency and an offeror that permit the offeror to materially revise or modify its proposal generally constitute discussions. FAR §15.306(d); Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27. If an agency holds or reopens discussions with one offeror, it must hold discussions with all offerors whose proposals are in the competitive range. FAR § 15.306(d)(1); Environmental Quality Mgmt., Inc., B-402247.2, Mar. 9, 2010, 2010 CPD ¶ 75 at 6. In contrast, clarifications are limited exchanges that agencies may use to allow offerors to clarify certain aspects of their proposals or to resolve minor or clerical mistakes. FAR § 15.306(a)(2); Booz Allen Hamilton, Inc., B-405993, B-405993.2, Jan. 19, 2012, 2012 CPD ¶ 30 at 12.

Here, DSS contends that the question issued to iWorks during corrective action requested that the awardee "clarify" the overlapping periods of time in the proposed program manager's resume. MOL at 11-15. The agency's request stated as follows: "Within your proposal for the subject effort, there are conflicting/overlapping time frames for [the program manager's] employment for [DELETED] (2010 - present) and [DELETED] (2010 - 2016.) Please provide clarification of [his] employment during these time periods." AR, Tab 44, Agency Clarification Question to iWorks, July 2, 2019 at 1. iWorks responded as follows: "The conflicting/overlapping time frame for [the program manager's] employment was due to a typographical error. The correct period of [his] employment with [DELETED] should be 2016 to Present. He was employed by [DELETED] from 2010-2016." Id., iWorks Clarification Response, July 2, 2019, at 1.

On this record, we think that the exchanges were clarifications, rather than discussions. The references for the positions with [DELETED] and [DELETED] reflect the same start date of 2010; given the chronological listing of the positions and the end date of 2016 for the [DELETED] employment, it appears consistent with the overall resume that a start date of 2016 for [DELETED] was intended. See AR, Tab 14, iWorks Technical Capability Proposal, at 48-49. Additionally, as discussed above, the correction of this date was consistent with the personal knowledge of the agency evaluators. See AR, Tab 40, Revised iWorks Technical Evaluation, at 10. In sum, we find no basis to sustain the protest based on the agency's evaluation of the awardee's proposed program manager.<sup>8</sup>

### Staffing Plan Evaluation

Inquiries argues that DSS should have assigned iWorks' proposal an unacceptable rating under the technical capability evaluation factor based on its proposed staffing plan. The protester primarily argues that the agency should have found the awardee's staffing plan and its included "efficiencies," rendered the proposal unacceptable. We find no basis to sustain the protest.

The RFP advised that proposals would be evaluated under the technical capability factor based on whether they demonstrated an "understanding of the technical requirements as described in the PWS." RFP at 83. As relevant here, proposals were required to include a "staffing plan that explains how the contract will be staffed," and to address the labor mix and resources required to perform the PWS. Id.

Inquiries argues that iWorks' proposal should have been found unacceptable because of "discrepancies" between the awardee's estimate of the labor hours required for its proposed technical approach, and the hours in the agency's independent government cost estimate (IGCE), which was based on workload estimates set forth in the PWS. Protest at 24-26. The protester contends that the agency did not meaningfully consider the awardee's staffing plan, which included reductions to the workloads listed in the PWS estimates. See PWS at 28-29.

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<sup>8</sup> Even if this exchange constituted discussions rather than clarifications, the record shows that the protester was also provided a similar opportunity to respond to the agency's concerns regarding its proposed personnel during corrective action. As the agency notes, it requested that the protester address the resume of its proposed program manager, which also did not meet the requirement for 3 years of experience managing more than 40 persons. AR, Tab 45, Agency Clarification Question to Inquiries, Aug. 9, 2019, at 1. The protester provided a 2-page supplemental response outlining the duties associated with her role as an [DELETED], as well as three additional supporting documents. Based on the protester's response, the agency found the proposed program manager met the PWS requirements. AR, Tab 39, Revised Inquiries Technical Evaluation, at 6-7. We therefore conclude that even if the agency's exchanges were discussions, the agency treated offerors equally by providing both the opportunity to address the agency's concerns regarding the key personnel resumes.

The record here shows that DSS understood that iWorks proposed to achieve efficiencies in staffing as compared to the PWS estimates and the IGCE by consolidating numerous overlapping or similar tasks. The agency's evaluation explained that the agency expected "efficiencies and synergies" as a result of combining several existing contracts into the VROC/CAF contract. AR, Tab 40, Revised iWorks Technical Capability Evaluation, at 3. The agency noted that the proposed consolidation will alleviate the limitations under the existing multiple contract structure, which preclude "work[ing] across current contractual boundaries for more efficient daily operations." Id. The agency further explained that the IGCE was based on the "as is" requirements of the existing contracts, and that the RFP anticipated that offerors would propose more efficient approaches to the work by consolidating "complimentary tasks that are separated across the contracts." Id.

iWorks' proposal identified several areas where the awardee anticipated efficiencies that would reduce the required numbers of hours, as compared to the estimate in the PWS. See AR, Tab 14, iWorks Technical Capability Proposal, at 40-42. For example, the awardee stated that the requirement to "[DELETED]" under PWS ¶ [DELETED] would be combined with the requirement to "[DELETED]" under PWS ¶ [DELETED], resulting in a saving of effort. Id. at 41.

The agency's evaluation identified the proposed efficiencies in iWorks' proposal and found that all were consistent with the areas of the PWS that the agency expected could be consolidated. See AR, Tab 40, Revised iWorks Technical Capability Evaluation, at 4-5. Although the protester argues that the agency should not have accepted the awardee's proposed efficiencies, the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest. See Veterans Evaluation Servs., Inc. et al., supra. On this record, we find no basis to conclude that the agency's evaluation was unreasonable.

#### Price Realism Evaluation

Inquiries argues that DSS unreasonably evaluated the realism of iWorks' proposed price. For the reasons discussed below, we find no basis to sustain the protest.

A price realism review assesses whether proposed prices are too low, such that there may be a risk of poor performance. C.L. Price & Assocs., Inc., B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3; FAR § 15.404-1(d). For a solicitation that anticipates the award of a fixed-price contract, an agency may include a requirement to evaluate the realism of proposed prices for the limited purpose of assessing whether an offeror's price reflects a lack of technical understanding or risk. Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6; see FAR § 15.404-1(d)(3). The depth of an agency's price realism is a matter within the sound exercise of the agency's discretion and our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation and adequately documented. GiaCare & MedTrust JV, LLC, B-407966.4, Nov. 2, 2016, 2016 CPD

¶ 321 at 7; Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17.

The RFP provided that “a determination will be made if there is any significant performance risk to the Government because of unrealistically low or high prices.” RFP at 84. As part of the corrective action in response to Inquiries’ initial protest, the agency evaluated the realism of the offerors’ proposed prices and concluded that the awardee’s price was realistic. AR, Tab 41, Revised iWorks Price Evaluation, at 2-5.

Inquiries argues that the agency unreasonably relied on a standard deviation analysis to determine that iWorks’ price was realistic. As the protester notes, the agency’s standard deviation analysis of price included the IGCE, the proposed prices of iWorks and Inquiries, and the proposed prices of the two other offerors: (1) an offeror (Offeror C) whose proposal was found unacceptable under the technical capability factor, and (2) an offeror (Offeror D) whose proposal was not evaluated for acceptability.<sup>9</sup> AR, Tab 41, Revised iWorks Price Evaluation, at 1-2; COS at 7. The agency calculated a standard deviation for these prices and established a “low range limit” of one standard deviation from the average. AR, Tab 41, Revised iWorks Price Evaluation, at 1. The agency concluded that because the awardee’s proposed price of \$49,999,560 was higher than the low range limit of \$44,767,475, the price was realistic. Id. at 2.

Inquiries argues that the agency’s standard deviation calculation was flawed because it included the price of Offeror C, whose proposal was unacceptable. Protester’s Comments, Nov. 7, 2019, at 18. The protester contends that a standard deviation analysis omitting this offeror would mean that the awardee’s proposed price of \$49,999,560 was more than one standard deviation from the average price, i.e., a low range limit of \$51,481,962, and thus should have been found unrealistically low. Id.

Our Office has explained that agency’s price realism evaluation is not reasonable where it relies on the comparison of an offeror’s price to a calculated median price that includes the prices of proposals found unacceptable, ineligible for award, and/or unreasonably high. See Lifecycle Construction Servs., LLC, B-406907, Sept. 27, 2012, 2012 CPD ¶ 269 at 8. Nonetheless, even if we were to agree with the protester that the agency’s standard deviation calculation was flawed, the protester’s own calculation contained a similar error. Assuming the protester is correct that the price of the unacceptable proposal should not be considered (Offeror C), the same reasoning should also apply to the price of the proposal that was not evaluated for technical

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<sup>9</sup> Per the RFP’s award criteria, which provided for award to the offeror that submitted the lowest-priced proposal that was acceptable under the technical capability factor and had a substantial confidence past performance rating, the agency did not evaluate the highest-priced proposal (Offeror D) for the purposes of determining adequate price competition and fair and reasonable pricing. AR (B-417415.1), Tab 41, Initial SSDD, at 2.

acceptability (Offeror D). A calculation of the standard deviation that omits the proposed prices for Offeror C and Offeror D is as follows:

	<b>AGENCY'S CALCULATION (ALL PROPOSALS)</b>	<b>PROTESTER'S CALCULATION (OMIT PROPOSAL C)<sup>10</sup></b>	<b>REVISED CALCULATION USING ONLY ACCEPTABLE PROPOSALS</b>
IGCE	\$77,641,177	\$77,641,177	\$77,641,177
IWORKS	\$49,999,560	\$49,999,560	\$49,999,560
INQUIRES	\$53,122,564	\$53,122,564	\$53,122,564
OFFEROR C	\$40,994,014	-	-
OFFEROR D	\$79,377,814	\$79,377,814	-
AVERAGE PRICE	\$60,227,026	\$65,035,279	\$60,254,434
STANDARD DEVIATION	\$15,459,551	\$13,533,316	\$12,360,216
LOW RANGE LIMIT (ONE STANDARD DEVIATION FROM AVERAGE)	\$44,767,475	\$51,501,962	\$47,894,217

See AR, Tab 41, Revised iWorks Price Evaluation, at 1; Protester's Comments, Nov. 7, 2019, at 18.

Based on a standard deviation calculation using only the IGCE and the proposals found acceptable under the technical capability factor (iWorks and Inquiries), the average price is \$60,254,434, the standard deviation is \$12,360,216, and the low range limit is \$47,894,217--meaning the awardee's proposed price of \$49,999,560 is within one standard deviation of the average price. On this record, we find that the protester's challenge to the agency's calculation does not provide a basis to sustain the protest.

Inquiries also argues that the agency's price realism analysis was flawed because the agency unreasonably evaluated the awardee's staffing plan. Protester's Comments, Nov. 7, 2019, at 18. The protester contends that the agency's erroneous conclusion that the awardee's proposed staffing was technically acceptable demonstrates that the awardee's proposed price was unrealistic. Because, as discussed above, we find no basis to conclude that the agency's assignment of an acceptable/pass rating to the awardee's proposal under the technical capability factor was unreasonable, we similarly find no basis to conclude that the agency's price realism evaluation was unreasonable.

<sup>10</sup> The protester incorrectly calculated the standard deviation as \$13,553,316 and the low range limit as \$51,481,962. Protester's Comments, Nov. 7, 2019, at 18.

## Professional Compensation Analysis

Finally, Inquiries argues that DSS's evaluation of iWorks' proposed professional compensation was unreasonable because it examined the burdened labor rates proposed by the awardee, rather than the compensation and fringe benefits to be paid to employees. For the reasons discussed below, we agree with the protester and sustain this argument.

The RFP advised that "[t]he Government will evaluate Professional Employee Compensation under the provision at FAR 52.222-46." RFP at 79. This provision requires agencies to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed.

MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 6. The provision, in relevant part, states as follows:

(a) Recompensation of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As a part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation.

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(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

RFP provision 52.222-46 (emphasis added).

In the context of fixed-price contracts, our Office has explained that this FAR provision anticipates an evaluation of whether an awardee understands the contract requirements, and has proposed a compensation plan appropriate for those requirements--in effect, a price realism evaluation regarding an offeror's proposed compensation, as opposed to the overall proposed price. Apptis Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 9. As with all price realism analyses, the depth of an agency's analysis is a matter within the sound exercise of the agency's discretion and we review the analysis for reasonableness and the adequacy of the documentation. See GiaCare & MedTrust JV, LLC, supra.

DSS's evaluation of iWorks' proposed professional compensation considered two primary sources of information: (1) the narrative description of iWorks' staffing and recruitment plan, and (2) burdened labor rates. AR, Tab 41, Revised iWorks Price Evaluation, at 5-9. The agency concluded that the awardee's proposal adequately described its approach to "develop labor categories that align to the PWS," and also concluded that the proposed labor rates are "in line with rates of known competitor[s]' GSA 738X schedule rates." Id. at 6, 8.

Inquiries argues that DSS's analysis improperly relied on the burdened labor rates proposed by the awardee, rather than the compensation to be provided to professional employees. As discussed above, the purpose of the evaluation of professional compensation is to assess whether it is "unrealistically low or not in reasonable relationship to the various job categories," for the purpose of assessing performance risk. RFP provision 52.222-46(c).

Our Office has addressed three scenarios regarding the evaluation of labor rates in connection with FAR provision 52.222-46. First, we have explained that where an agency requests unburdened labor rates, i.e., the cost of labor, but evaluates only the burdened labor rates, the evaluation fails to meet the requirements of FAR provision 52.222-46. MicroTechnologies, supra, at 12. Burdened labor rates include cost elements such as profit and indirect costs that are not provided to employees in the form of salary or benefits; thus, evaluation of these cost elements could lead to a misleading conclusion regarding the realism of the awardee's professional compensation. Id. Second, in contrast, we have found that where a solicitation requests only burdened labor rates, the agency may reasonably evaluate the realism of these rates in the absence of other available data. See ENMAX Corp., B-281965, May 12, 1999, 99-1 CPD ¶ 102. Any post-award challenge to the solicitation's requirement for burdened labor rates, as opposed to unburdened labor rates that reflect the salaries to be paid to employees, is untimely. See id. at 10. Third, we have found that challenges to an agency's reliance on burdened rates in the evaluation of professional compensation do not provide a basis to sustain a protest where the agency also considered actual salary and fringe rate information. See Signal Corp., B-275502.3, B-275502.4, July 6, 1998, 98-2 CPD ¶ 86 at 9 n.13; BE, Inc.; PAI Corp., B-277978, B-277978.2, Dec. 16, 1997, 98-1 CPD ¶ 80 at 3-4.

This protest presents another scenario. Here, the RFP did not specify how offerors were to provide compensation information, and instead simply stated that compensation would be evaluated in accordance with the FAR provision. See RFP at 79. Both offerors, however, provided burdened labor rates as well as “salary ranges” for each professional position. See AR, Tab 15, iWorks Price Proposal, at 13; Tab 10, Inquiries Price Proposal, at 1-8. As discussed above, the purpose of an evaluation under FAR provision 52.222-46 is to assess the realism of the compensation to be paid to professional employees. In light of the assessment mandated by this FAR provision, we conclude that an agency cannot ignore compensation information provided in offerors’ proposals and evaluate only the burdened labor rates. We therefore sustain the protest on this basis.<sup>11</sup>

Additionally, Inquiries argues that DSS’s evaluation did not address offerors’ proposed fringe benefits. The FAR requires the agency to evaluate an offeror’s “total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract.” FAR provision 52.222-46(a). The protester contends that although the awardee’s proposal addressed a “[DELETED], the awardee’s proposal did not explain the terms of the plan or the details of the benefits offered. See AR, Tab 15, iWorks Price Proposal, at 14. In contrast, the protester notes that its proposal detailed specific amounts of leave and health coverage benefits. See AR, Tab 10, Inquiries Price Proposal, at 5-6. The agency’s evaluation of offerors’ professional compensation did not address fringe benefits. See AR, Tab 41, Revised iWorks Price Evaluation, at 5-9. For this reason, we also conclude that the agency’s evaluation of professional compensation was not reasonable.

## CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that DSS’s OCI analysis and its evaluation of professional compensation were not reasonable. We recommend that the agency conduct new evaluations consistent with our decision. If the agency concludes that the iWorks proposal is ineligible for award based on the reevaluation of these matters, we recommend that the agency terminate its contract and make a new award decision. We also recommend that the agency reimburse the protester’s reasonable costs associated with filing and pursuing its protest concerning the sustained protest grounds, including attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester’s certified claims for costs, detailing the time expended and costs incurred,

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<sup>11</sup> Inquiries notes that several salary ranges for iWorks are below those proposed by the protester, and contends that this shows the compensation is unrealistic. See AR, Tab 15, iWorks Price Proposal, at 13; Tab 10, Inquiries Price Proposal, at 7. The agency also notes, however, that certain salary ranges for Inquires are below those proposed by iWorks, and argues that there is no basis to conclude that the awardee’s proposed compensation is unrealistic. See id. Our Office does not independently evaluate proposals. We therefore recommend that the agency evaluate the actual salary data provided, consistent with the discussion herein.

must be submitted to the agency within 60 days after the receipt of this decision.  
4 C.F.R. § 21.8(f).

The protest is sustained in part and denied in part.

Thomas H. Armstrong  
General Counsel