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## Decision

**Matter of:** IBM U.S. Federal, a division of IBM Corporation;  
Presidio Networked Solutions, Inc.

**File:** B-409806; B-409806.2; B-409806.4; B-409806.5

**Date:** August 15, 2014

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Glenn G. Wolcott, Esq., Lois A. Hanshaw, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging the establishment of a blanket purchase agreement with Agilex Technologies, Inc. is sustained where Agilex's quotation took exception to material solicitation terms, violated the solicitation's page limit provisions, and the source selection authority's decision overruling the technical evaluation committee's determination regarding the technical unacceptability of Agilex's quotation was inadequately documented.
2. Protest challenging the establishment of a blanket purchase agreement with Leidos, Inc. on the basis of its low price is denied where solicitation sought fixed labor rates and the solicitation did not provide for a price realism evaluation.
3. Protest challenging agency's evaluation of Leidos' quotation with regard to staffing of incumbent personnel is denied where protester has not shown that the agency's evaluation of Leidos' staffing plan was unreasonable.

4. The corporate reorganization of Science Applications International Corporation (SAIC) prior to establishing the BPA at issue here did not render improper the agency's selection of Leidos, Inc., as SAIC's successor in interest.

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## **DECISION**

IBM U.S. Federal, a division of IBM Corporation, of Bethesda, Maryland, and Presidio Networked Solutions, Inc., of Greenbelt, Maryland, protest the award of blanket purchase agreements (BPA)<sup>1</sup> by the Department of Homeland Security, U.S. Customs and Border Protection (CBP) to Agilex Technologies, Inc., of Chantilly, Virginia, and to Leidos, Inc., of Reston, Virginia,<sup>2</sup> pursuant to request for quotations (RFQ) No. 20069324 to provide enterprise data center support services for CBP's Office of Information Technology (OIT).

The protesters challenge the award to Agilex on the basis that its quotation took exception to the solicitation's performance requirements; its quotation exceeded the solicitation's page limitations; and the source selection authority's (SSA) ultimate determination that Agilex's quotation was technically acceptable was inadequately documented and unreasonable. The protesters challenge the award to Leidos on the basis that SAIC/Leidos' quotation reflected an unrealistically low price; the quotation reflected an unrealistic intent to hire incumbent personnel; the quotation contained provisions contrary to the solicitation's requirements; and SAIC's corporate reorganization rendered award to Leidos improper.

We sustain the protests challenging the award to Agilex, and deny the protests challenging the award to Leidos.

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<sup>1</sup> We recognize that BPAs are not contracts, and are frequently referred to as being "established" rather than "awarded." See Crewzers Fire Transport, Inc., B-406601, July 11, 2012, 2012 CPD ¶ 204 at 1-3, 5-6. Nonetheless, throughout the record here, the parties have generally referred to the "award" of BPAs and, for the sake of consistency, our decision adopts the usage of that term.

<sup>2</sup> The quotation resulting in award to Leidos, Inc. was submitted by Science Applications International Corporation (SAIC) in July 2013. In September 2013, a portion of SAIC's assets were transferred to SAIC Gemini, Inc., which was then renamed Science Applications International Corporation ("new" SAIC); at that time the organization previously identified as SAIC ("old" SAIC) was renamed Leidos, Inc. IBM Protest, May 7, 2014, exh. 2, SAIC Press Release, Sept. 9, 2013, at 1. Thereafter, Leidos was awarded the BPA as "old" SAIC's successor in interest.

## BACKGROUND

The solicitation was issued in June 2013 and contemplated BPA awards to two or more vendors holding contracts under the General Services Administration's Federal Supply Schedule (FSS) 70. Agency Report (AR), Tab B1, RFQ.<sup>3</sup> The scope of the solicitation contemplated a wide variety of tasks and was generally described as "services to support the engineering and operations of all data center hardware and infrastructure software platforms including mainframes, server platforms, databases, application servers, operating systems (OS), management tools and Internet Protocol (IP)-based/wireless networks with the primary, mandatory objective to provide 24 hours a day, seven days a week, 365 days a year (24x7x365) systems availability and reliability." AR, Tab B2, BPA Statement of Work (SOW), at 5. The solicitation provided that task orders pursuant to the BPAs will subsequently be issued on either a fixed-price, labor-hour/time and materials, or hybrid basis. RFQ at 1.

Award was to be made on a best-value basis considering the following four evaluation factors, listed in descending order of importance: technical,<sup>4</sup> management,<sup>5</sup> past performance,<sup>6</sup> and price. RFQ at 6-11. Vendors were advised

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<sup>3</sup> The agency provided separate reports responding to IBM's and Presidio's protests; these reports contained many of the same documents, but used differing tab numbers to identify them. This Office subsequently consolidated the protests and authorized counsel for both protesters to review all of the documents in both agency reports. For the sake of simplicity, our decision refers only to the tab numbers used in the agency report responding to IBM's protest.

<sup>4</sup> With regard to the technical evaluation factor, the solicitation listed 15 required tasks, and established each task as an evaluation subfactor. Vendors were directed to submit their proposed technical solutions for each task as Part I of their quotations, and technical responses were limited to 30 pages. RFQ at 2-3. The 15 tasks/subfactors, listed in descending order of importance, were: (1) mainframe operations & technical support (operating system); (2) mainframe operations and technical support (customer information control system); (3) enterprise middleware; (4) ACE (automated commercial environment) operations; (5) UNIX/LINUX services; (6) network services; (7) enterprise storage; (8) enterprise virtualization services; (9) database services; (10) Windows server & electronic messaging services; (11) enterprise OT&E (operational test & evaluation) support; (12) mission resumption support; (13) IT continuity management; (14) program management/infrastructure delivery services; and (15) data engineering services. Id. at 3, 7.

<sup>5</sup> With regard to the management factor, the solicitation established 3 subfactors: management/staffing; quality control; and incoming transition. Id. at 8-9. Vendors were directed to provide their staffing approach, quality control approach, and  
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that the non-price factors, when combined, were significantly more important than price. Id. at 11.

With regard to price, the solicitation provided pricing spreadsheets that identified the historic labor categories and associated labor hours for performing each of the 15 required tasks. AR, Tab B6, RFQ attach. 5; AR, Tab B8, RFQ attach. 7. Vendors were required to submit their pricing spreadsheets in Part IV of their quotations and, on those spreadsheets, to provide their proposed labor categories, applicable fixed labor rates, and the associated levels of effort, for each of the 15 tasks during each performance period.<sup>7</sup> Vendors were advised that total evaluated prices would be calculated by multiplying the fixed labor rates by the proposed levels of effort for each labor category for all performance periods. RFQ at 10. While vendors were not bound by the agency's historical labor categories or labor hours, the solicitation provided: "To the extent that the Contractor deviates from the Government's historical labor categories and historical labor hours of effort, the Contractor shall explain the basis of its proposed labor categories and/or hourly estimates . . . and the benefits to be derived by the Government." RFQ at 10-11. The solicitation further directed that "[a]ll deviations must be described as footnotes below the spreadsheet." RFQ attach. 5.

Quotations were received from 7 firms, including IBM, Presidio, SAIC/Leidos, and Agilex, by the July 31, 2013 closing date.<sup>8</sup> In performing its initial evaluation under the technical factor, the agency's technical evaluation committee (TEC) identified various strengths and weaknesses in the quotations, and assigned all of the quotations technical ratings of satisfactory.<sup>9</sup> Following the agency's initial evaluation, the adjectival ratings and evaluated prices were as follows:

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transition plan as Part II of their quotations, and management responses were limited to 20 pages. Id. at 3-5.

<sup>6</sup> With regard to the past performance factor, vendors were required to submit a maximum of three past performance references as Part III of their quotations, and each reference was limited to 2 pages. Id. at 5.

<sup>7</sup> The solicitation contemplated a 90-day transition period, a 12-month base period, two 1-year option periods, and one 6-month option period. Id. at 1.

<sup>8</sup> The proposals of the three other unsuccessful vendors, and the agency's evaluations thereof, are not relevant to these protests and are not further discussed.

<sup>9</sup> The TEC employed a rating scheme under which adjectival ratings of exceptional, very good, satisfactory, or unsatisfactory were assigned. AR, Tab A3, TEC Chair's Statement of Facts, at 4-5. A rating of satisfactory was defined as: "The Technical quotation **meets** the technical requirements of the RFQ and SOW but **DOES NOT** exceed any of the requirements. There are few strengths, no deficiencies, and any  
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	Technical	Management	Past Performance	Price
<b>Presidio</b>	Satisfactory	Satisfactory	Neutral	\$178,891,344
<b>IBM</b>	Satisfactory	Satisfactory	Superior	\$144,280,741
<b>Agilex</b>	Satisfactory	Very Good	Neutral	\$111,966,095
<b>SAIC/Leidos</b>	Satisfactory	Satisfactory	Satisfactory	\$107,450,574

AR, Tab F, Source Selection Decision, Apr. 4, 2014 at 7.

In evaluating the price quotations, the price evaluation team considered, among other things, the total hours and full time equivalent (FTE) personnel reflected in each quotation, comparing those totals to the totals in other vendors' quotations and to the independent government cost estimate (IGCE). The vendors' total hours and FTEs were as follows:

	Total Hours	FTEs <sup>10</sup>
<b>IGCE</b>	1,330,560	792
<b>Presidio</b>	[redacted]	[redacted]
<b>SAIC/Leidos</b>	[redacted]	[redacted]
<b>IBM</b>	[redacted]	[redacted]
<b>Agilex</b>	[redacted]	[redacted]

AR, Tab D12, Price Analysis Report, Jan. 27, 2014, at 2-6, 2-7, 2-10, 2-12.

In performing its initial evaluation, the TEC did not consider any information from the vendors' price submissions. Accordingly, following its initial evaluation, the TEC performed a "technical/labor crosswalk," in which it reviewed the labor categories and associated levels of effort proposed by each vendor on their respective pricing spreadsheets. TEC Chair Statement of Facts, at 8-9; AR, Tab A2, Source Selection Authority's (SSA) Statement of Facts, at 2. Specifically, the TEC's crosswalk evaluation considered the validity and adequacy of the labor categories and levels of effort quoted by each vendor, noted the deviations from the agency's staffing estimates, and considered the vendors' explanations for the deviations as reflected in their spreadsheet footnotes. AR, Tab D13, Initial TEC Crosswalk Report,

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significant weaknesses or weaknesses are correctable without a major rewrite of the Technical quotation. The offeror's Technical quotation, when implemented, is expected to result in achievement of the Government's requirements with **acceptable risk.**" *Id.* at 4 (bolding and capitalization in original).

<sup>10</sup> FTEs are rounded to the nearest whole number.

Jan. 23, 2014, at 2; AR, Tab D14, Final TEC Crosswalk Report, Apr. 16, 2014, at 2.<sup>11</sup> Where the quotations reflected deviations from the historical labor categories and/or labor hours, the TEC sought advice from a panel of technical advisers with specific expertise in performance of the various tasks. TEC Chair Statement of Facts at 8. Although several of the vendors submitted pricing narratives in addition to the spreadsheets and explanatory footnotes,<sup>12</sup> the TEC did not review any of those additional narratives in its evaluation.

Upon completing the crosswalk evaluation with regard to SAIC's, Presidio's and IBM's quotations, the TEC concluded that each of those vendors "understands the requirements of the Enterprise Data Center Support Services contract and has accurately estimated the labor categories and labor hours for the work to be performed." Initial TEC Crosswalk Report at 9; Final TEC Crosswalk Report at 9. Accordingly, these vendors' technical ratings of satisfactory were not changed.

In contrast, upon completing the crosswalk evaluation for Agilex's quotation, the TEC concluded:

Agilex did not accurately estimate the labor categories and labor hours in their proposal. Overall, the TEC finds that Agilex has provided an inadequate approach that questions their ability to perform the work

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<sup>11</sup> The agency states that "[b]ased on [the agency's] internal review process," the TEC revised its initial (January 23, 2014) crosswalk report, issuing its final report on April 16, 2014. Contracting Officer's Statement, June 5, 2014, at 3. As relevant to the issues discussed here, the two reports appear to be virtually identical; nonetheless, our decision's references to the substance of the TEC's crosswalk evaluation provides applicable citations to both versions of the report.

<sup>12</sup> The RFQ's instructions regarding price quotations did not refer to any vendor pricing submissions other than the pricing spreadsheets and accompanying footnotes; however, the solicitation included the words "No page limit" with regard to the Part IV price submissions. RFQ at 6.

required. Taking the crosswalk analysis into consideration . . . the overall rating must be reduced to unsatisfactory.<sup>[13]</sup>

Initial TEC Crosswalk Report at 10; Final TEC Crosswalk Report at 10.

More specifically, in performing the crosswalk evaluation, the TEC considered both (1) Agilex's proposed labor categories and (2) the number of hours proposed for each category. Under the heading "Analysis of Each Offeror's Labor Categories," the TEC elaborated on its assessment that Agilex's quotation was unsatisfactory, stating:

Upon review, the TEC determined that the validity of Agilex Technologies, Inc.'s proposed labor categories are in question and are inadequate. The TEC determined that in all tasks, there were deviations from the government IGCE and that these deviations were not documented/described in a manner that would justify the deviation. For example, several key technical positions were blended down in an effort to "align skill sets," while other positions were "blended up to accommodate incumbent rebadging." In the opinion of the TEC, the offeror's approach does not provide efficiency and potentially introduces unnecessary risk that the task would not be properly staffed or that the offeror doesn't understand the work to be performed.

Initial TEC Crosswalk Report at 2; Final TEC Crosswalk Report at 3.

Similarly, under the heading "Analysis of Each Offeror's Labor Hours," the TEC elaborated on its assessment that Agilex's quotation was unsatisfactory, stating:

Upon review, the TEC determined that the validity of Agilex's proposed labor hours are in question and are inadequate. The TEC determined that in several subtasks, there were deviations from the government IGCE and that these deviations were not documented/described in a manner that would justify the deviation. For example, three positions were not accounted for in the Government estimate; however, these positions appear to be for the transition period and to be of a project management nature. For

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<sup>13</sup> A rating of unsatisfactory was defined as: "The Technical quotation **fails to meet** the technical requirements of the RFQ and SOW. Strengths contained in the technical quotation are offset by significant weaknesses or deficiencies. The offeror's Technical quotation, when implemented, is expected to result in **unacceptable (high)** risk." TEC Chair's Statement of Facts, at 5 (bolding in original).

Task 1 & 2, the proposal does not include senior staffing levels, which were estimated in the IGCE. There appear to be unnecessary labor categories (e.g. Functional Analyst I) and there is no plan for OY3 [option year 3] if task 1 migrations fails or falls behind. For task 6, Agilex does not list a System Architect, which is a critical technical position. For task 7, high level positions were estimated in the IGCE; however, the Agilex proposal cuts these positions in favor of lower level engineers. In addition, the task leader position that was estimated is cut and partial hours added for project manager. For task 5, the Agilex proposal eliminates positions after two years with the justification that servers will be virtual and administration will be more efficient. Currently, the CBP data center server environment is over 75% virtual and this was taken into account when the IGCE was created. In the opinion of the TEC, the Agilex proposal does not provide efficiency and introduces risk that the task would not be properly staffed and/or that the offeror doesn't understand the work to be performed.

Initial TEC Crosswalk Report at 4-5; Final TEC Crosswalk Report at 5.

Following the TEC's determination that Agilex's technical quotation was unsatisfactory, the price evaluation team stated: "Agilex's total evaluated price of \$111,966,095 is not considered reasonable due to the TEC finding related to Agilex's labor skill mix (labor categories) and level of effort (labor hours)." Price Analysis Report at 3-17.

Thereafter, the SSA reviewed the vendors' submissions and the various evaluation reports. The SSA states that, in connection with his review, he determined that the TEC had not considered all of Agilex's Part IV price submission. Source Selection Decision at 1. Specifically, the record shows that Agilex submitted a 306-page price narrative, in addition to its pricing spreadsheets and accompanying footnotes. AR, Tab C4, Agilex Price Narrative. Among other things, this document contained more than 230 pages addressing Agilex's performance of the 15 required tasks, id. at E-7 through E-241, including sections titled "Proposed Technical Approach" for each of the 15 tasks. Id. at E-7, E-20, E-31, E-49, E-96, E-112, E-127, E-145, E-153, E-168, E-182, E-201, E-211, E-222, E-231. Based on his review of Agilex's 306-page price narrative, the SSA concluded that Agilex's quotation should have been rated satisfactory, overruling the TEC's determinations that Agilex did not accurately estimate the labor categories and labor hours in its proposal, that Agilex had provided an inadequate approach, and that Agilex's technical rating was unsatisfactory.<sup>14</sup> Source Selection Decision at 1, 19-20. At the GAO hearing in this

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<sup>14</sup> The SSA acknowledges that the Final TEC Crosswalk Report, dated April 16, 2014, was issued after his April 4 source selection decision, but states that he

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matter,<sup>15</sup> the SSA testified that his decision overruling the TEC was based on his understanding that the TEC had not reviewed Agilex's 306-page price submission.<sup>16</sup> Hearing Transcript (Tr.) at 31-32. Nonetheless, in overruling the TEC's evaluation, the SSA created virtually no contemporaneous documentation.<sup>17</sup>

Thereafter, the SSA concluded that SAIC/Leidos' and Agilex's quotations represented the best value to the government, and selected those vendors for BPA awards. Source Selection Decision at 23. IBM's and Presidio's protests followed.

## DISCUSSION

IBM and Presidio challenge multiple aspects of the agency's evaluations and source selection decisions leading to the BPA awards to Agilex and Leidos. Where, as here, an agency has elected to award BPAs under FSS contracts, and uses an approach more akin to a competition in a negotiated procurement than to a simple FSS buy, GAO will review the record to ensure that the procurement was conducted

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reviewed the final report and confirmed that it did not alter his determination. SSA Statement of Facts at 2.

<sup>15</sup> In resolving this protest, GAO conducted a hearing, on the record, during which testimony was provided by the SSA and the TEC Chair.

<sup>16</sup> In his source selection decision, the SSA similarly stated that he believed the TEC's determination of unacceptability "was caused by [the TEC] not reviewing all the pricing documents [Agilex] submitted." Source Selection Decision at 19.

<sup>17</sup> At the GAO hearing, the SSA testified as follows:

GAO: You're going through 15 different tasks and . . . comparing two quantities of numbers and looking at deviations. It sounds fairly complicated.

SSA: And it was a 300-page document.

GAO: How long did it take you to do that?

SSA: At least two to three weeks.

GAO: You never created a single document during this two to three weeks on that complicated task?

SSA: I worked from the volumes that I had, me and my little pencil.

GAO: Your little pencil . . . so [does] that mean you wrote stuff down?

SSA: Just, you know, looking at things like total quantity, identifying the IGCE versus the total quantity that's in the price proposal.

Tr. at 23-24.

on a fair and reasonable basis and consistent with standards generally applicable to negotiated procurements. CourtSmart Digital Systems, Inc., B-292995.2, B-292995.3, Feb. 13, 2004, 2004 CPD ¶ 79; KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196. As discussed below, we sustain the protests challenging the award to Agilex and deny the protests challenging the award to Leidos.<sup>18</sup>

## Award to Agilex

IBM and/or Presidio protest the award to Agilex asserting that: (A) Agilex's quotation contained assumptions that conflicted with various aspects of the solicitation's requirements; (B) Agilex's quotation exceeded the solicitation's specific page limitations; and (C) the SSA's decision to overrule the TEC's evaluation was inadequately documented and unreasonable.

### A. Agilex's Assumptions

First, the protesters assert that Agilex's quotation included various "assumptions" that effectively took exception to the solicitation's specific performance requirements and, therefore, that Agilex's quotation was ineligible for award. We agree.

A quotation that takes exception to a solicitation's material terms and conditions should be considered unacceptable and may not form the basis for an award. CHE Consulting, Inc., B-406639, June 28, 2012, 2012 CPD ¶ 190 at 2-3; Solers, Inc., B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 3-7; CAMS, Inc., B-292546, Oct. 14, 2003, 2003 CPD ¶ 191 at 2. Material terms of a solicitation are those which affect the price, quantity, quality, or delivery of the goods or services being provided. Seaboard Elecs. Co., B-237352, Jan. 26, 1990, 90-1 CPD ¶ 115 at 3.

Here, as discussed above, the solicitation's SOW included 15 required tasks that were to be evaluated under the technical evaluation factor. For each of these tasks, the SOW listed specific performance requirements that the contractor "shall perform." See, e.g., BPA SOW at 8. Nonetheless, in describing the basis for its proposed staffing levels, Agilex's quotation took exception to several of these performance requirements.

For example, with regard to task 5, UNIX/LINUX services, the SOW listed 18 specific requirements. BPA SOW at 34-37. Among other things, the solicitation

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<sup>18</sup> In their various protest submissions, IBM and Presidio have presented arguments that are in addition to, or variations of, those specifically discussed below. We have considered all of the protesters' assertions and find no bases to sustain the protests beyond those discussed below.

stated that the contractor “shall perform” virtualization “that includes server consolidation”; automation “that includes seamless server/software/storage provisioning”; “server hardware/software patching”; and “documentation of server and software system changes.” Id.

In responding to task 5, however, Agilex’s quotation stated:

This task is required to support 2500 servers. . . . Our ratio of FTEs to servers is [redacted]. . . . Our ratio of FTEs to servers assumes [redacted]. . . . **Additionally, we assume . . . some of the workload is being performed by Government employees.**

Agilex Price Narrative at E-97 (emphasis added).

Similarly, with regard to task 7, enterprise storage, the solicitation advised vendors that “[a]vailability and resiliency of our storage is critical to CBP meeting its mission,” noted that CPB “operates close to 16 petabytes of enterprise class storage across multiple data centers,” and listed 35 specific performance requirements. BPA SOW at 42-45. Among other things, the solicitation stated that the contractor “shall perform”: “storage management support services for the enterprise infrastructure”; “technical management for related hardware devices”; “monitor[ing of] storage consumption”; and “audit remediation support.” Id.

In responding to task 7, however, Agilex’s quotation stated:

Our adjusted labor estimate assumes [redacted]. . . . **Additionally, we assume some of the workload is being performed by Government employees.**

Agilex Price Narrative at E-128 (emphasis added).

That is, in calculating its staffing requirements, Agilex’s quotation assumed that some of the performance requirements the solicitation directed the contractor to perform would, instead, be performed by government employees.

Additionally, Agilex’s quotation took exception to the terms of the solicitation governing the acceptance of deliverables. In this regard, the solicitation identified numerous specific deliverables, stating “[t]he work products shall be delivered in accordance with the schedule below.” See, e.g., AR, Tab B4, Base Services SOW, at 11. Under the heading “Government Acceptance Period,” the SOW provided that an agency representative will review submitted deliverables “prior to acceptance.” Id. at 92-93. The SOW further provided that, in the event the agency representative determines a deliverable is not acceptable, the representative “will document and provide reason(s) to the contractor.” Id. Finally, the solicitation established a limited period during which the contractor must “make corrections and redeliver,” at

which point the government will again review the submission and make an acceptability determination. Id. In short, the solicitation established that “acceptance” of deliverables would not occur upon delivery, but only upon the government’s affirmative determination of the deliverable’s compliance with the contract requirements.

Contrary to these provisions, Agilex’s quotation stated: “Deliverables will be considered ‘accepted’ in terms of timeliness, upon submission.” Agilex Price Narrative at 28. We have specifically recognized that a solicitation’s provisions regarding inspection and acceptance are material requirements. CAMS, Inc., supra; Rel-Tek Sys. & Design, Inc., B-280463.3, Nov. 25, 1998, 99-1 CPD ¶ 2 at 3.

In sum, Agilex’s quotation, and the level of staffing on which that quotation was based, was conditioned on “assumptions” in its quotation that were directly contrary to the solicitation’s requirements. That is, Agilex’s quotation took exception to the requirement that the contractor—not government personnel--“shall perform” the requirements specified under each task. Similarly, Agilex’s quotation took exception to the solicitation’s specific provisions regarding when deliverables will be considered “accepted.” Accordingly, award to Agilex on the basis of its nonconforming quotation was improper. We sustain the protests on this basis.

#### B. Page Limitations

The protesters also assert that Agilex’s quotation violated the solicitation’s explicit provisions regarding page limitations. Accordingly, the protesters maintain that Agilex was afforded an unfair competitive advantage. We agree.

As noted above, the vendors were required to submit their proposed technical solutions for each of the 15 required tasks. In this regard, the solicitation provided that “[t]he Contractor’s Technical response is limited to 30 pages in length,” adding “[a]ny information submitted beyond the 30 page limit will not be evaluated.” RFQ at 3.

As a general matter, firms competing for government contracts must prepare their submissions in a manner consistent with the format limitations established by the agency’s solicitation, including any applicable page limits. See TechSys Corp., B-278904.3, Apr. 13, 1998, 98-2 CPD ¶ 64 at 10; see also All Star Maintenance, Inc., B-244143, Sept. 26, 1991, 91-2 CPD ¶ 294 at 3-4; Infotec Dev., Inc., B-238980, July 20, 1990, 90-2 CPD ¶ 58 at 4-5. Consideration of submissions that exceed established page limitations is improper in that it provides an unfair competitive advantage to a competitor that fails to adhere to the stated requirements. TechSys Corp., supra.

Here, Agilex submitted a 30-page technical response as Part I of its quotation. AR, Tab C1, Agilex Technical Quotation. In addition, Agilex submitted a 306-page price

narrative which included 15 sections titled “Proposed Technical Approach.” Agilex Pricing Narrative at E-7, E-20, E-31, E-49, E-96, E-112, E-127, E-145, E-153, E-168, E-182, E-201, E-211, E-222, E-231. Consistent with the title of these sections, Agilex discussed its technical approach to performing each of the 15 tasks in its pricing narrative. These sections clearly fall within the scope of the solicitation’s 30-page limitation on technical quotations--and, accordingly, violated that limitation. The fact that the solicitation placed no page limitation on the pricing portion of the quotation did not authorize Agilex to, effectively, circumvent the 30-page limitation on technical quotations through its submission of a 306-page pricing narrative.<sup>19</sup>

As noted above, consideration of submissions that exceed established page limitations is improper in that it provides an unfair competitive advantage to a vendor who fails to adhere to the stated requirements. Here, the SSA’s decision to overrule the TEC’s determination regarding the technical unacceptability of Agilex’s quotation was specifically based on the SSA’s consideration of Agilex’s additional 306-page submission--significant portions of which included discussion of Agilex’s technical approach. Accordingly, we sustain the protest on this basis.

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<sup>19</sup> During a conference call following submission of the initial agency reports, GAO questioned whether the protesters’ challenges to Agilex’s submission of the price narrative elevated form over substance, since the solicitation contemplated the vendors’ explanations of deviations to historical staffing in footnotes to the pricing spreadsheets and placed no page limits on such footnotes. Thereafter, the agency included this argument in its response to the protesters’ supplemental protests. Supp. AR, July 7, 2014, at 4-5. Upon consideration of the solicitation as a whole, specifically including the solicitation’s page limitations on technical and management responses, we reject this argument. See HP Enterprises LLC, B-409169.3, July 16, 2014, 2014 CPD ¶ 179 at 7 (solicitations must be read as a whole in a manner giving effect to all provisions). Specifically, we do not view the terms of this solicitation as permitting a vendor to effectively augment its page-limited technical quotation by merely including such augmentation in the non-page-limited portion of its quotation. Further, the solicitation expressly stated: “[a]ll deviations [from the historical labor categories and hours] must be described as footnotes below the [pricing] spreadsheet.” RFQ attach. 5.

### C. SSA's Decision to Overrule the TEC

Finally, the protesters assert that the SSA's decision overruling the TEC's determination regarding the technical unacceptability of Agilex's quotation was inadequately documented and otherwise improper. We agree.

In reviewing an agency's evaluation of proposals, GAO examines the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria and adequately documented. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. Although source selection officials may reasonably disagree with the ratings and recommendations of lower-level evaluators, they are nonetheless bound by the fundamental requirement that their independent judgments be reasonable, consistent with the provisions of the solicitation, and adequately documented. Earl Indus., LLC, B-309996, B-309996.4, Nov. 5, 2007, 2007 CPD ¶ 203 at 7; see also AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 8. Further, the independence granted to source selection officials does not equate to a grant of authority to ignore, without explanation, those who advise them on selection decisions. Univ. Research Co, LLC, B-294358 et al., Oct. 28, 2004, 2004 CPD ¶ 217 at 8.

Here, as discussed above, the SSA's decision to overrule the TEC's conclusion regarding the technical unacceptability of Agilex's quotation was based on the SSA's consideration of Agilex's 306-page price narrative which improperly augmented Agilex's page-limited technical quotation. Further, the SSA created virtually no contemporaneous documentation supporting his decision.<sup>20</sup> Following submission of the protests, the SSA created and submitted a "Statement of Facts" which included approximately 3 pages discussing some of the TEC's stated concerns. SSA Statement of Facts at 3-5. Since this document was created in

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<sup>20</sup> In concluding that Agilex's price narrative justified its deviation from the historical staffing, the SSA included in the source selection decision a conclusory assertion that the Agilex pricing narrative contained "extensive process, methodology and case study" and copied a small portion of Agilex's submission regarding a single task (task 4). Source Selection Decision at 19-20. During the hearing, the SSA testified that he also made written notations directly on a copy of Agilex's pricing submission. Accordingly, GAO sought production of the copy of the Agilex submission bearing the SSA's notations. This document reflects nothing more than circles or underscores of various numbers and highlighting of various quotation sections. More specifically, the annotated document contains no explanation or discussion regarding the substance of any of the TEC's multiple concerns.

response to the protests, we do not view it in the same context as documentation created during the source selection process.<sup>21</sup>

Even if we were to give weight to the SSA's post-protest statement, that document, in large part, merely repeats portions of Agilex's price submission and does not meaningfully explain the SSA's bases for overruling the TEC's stated concerns. For example, with regard to tasks 1 and 2, the TEC expressed specific concerns that Agilex's quotation reflected a lack of senior staffing levels and the absence of a plan for option year 3 "if task 1 migrations fail or fall behind." Initial TEC Crosswalk Report at 4-5; Final TEC Crosswalk Report at 5. The SSA's post-protest statement fails to meaningfully explain why Agilex's staffing approach renders the TEC's concern regarding senior staffing levels invalid, nor does it address the TEC's option year concerns in any way. SSA's Statement of Facts at 3-4.

With regard to task 7, the TEC expressed concern that Agilex's quotation did not reflect a system architect, which the TEC characterized as "a critical technical position." Initial TEC Crosswalk Report at 4-5; Final TEC Crosswalk Report at 5. While the SSA's post-protest statement notes that Agilex's quotation included "new labor categories," it offers no substantive explanation as to how these new labor categories rendered the "critical" system architect position unnecessary. SSA's Statement of Facts at 5.

On this record, we conclude that the SSA's decision to overrule the TEC's determination regarding the technical unacceptability of Agilex's quotation improperly considered portions of Agilex's quotation that exceeded the solicitation's page limitation, was inadequately documented, and failed to explain the basis for

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<sup>21</sup> It appears that this document reflects the SSA's post-protest analysis--rather than subsequently-prepared documentation of an analysis performed prior to award. At the hearing, the SSA stated that he had not compared Agilex's price narrative to Agilex's technical approach, testifying as follows:

Counsel: And in your evaluation of the Agilex price narrative, did you compare the price narrative to the technical proposal?

SSA: No, I did not.

Tr. at 133. Accordingly, this document appears analogous to the type of protest documentation we have concluded should be accorded little weight due to its creation in the heat of the adversarial process. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15 (post-protest documentation is properly afforded little or no weight); see also Alliant TechSystems, Inc.; Olin Corp., B-260215.4, B-260215.5, Aug. 4, 1995, 95-2 CPD ¶ 79 at 10 n.8.

the SSA's decision. Accordingly, award on the basis of the SSA's decision was improper and we sustain the protests on this basis.

#### Award to Leidos

The protesters assert that the agency's evaluation of the SAIC/Leidos quotation was improper on the basis that: (A) the quotation reflected an unrealistically low price; (B) the quotation reflected an unrealistic intent to hire incumbent personnel; (C) the quotation included provisions contrary to those of the RFQ; and (D) SAIC's corporate reorganization rendered award to Leidos improper. We find that none of these arguments warrant questioning the award to Leidos.

#### A. SAIC/Leidos' Low Price

First, the protesters assert that the agency's award to Leidos failed to properly consider what the protesters assert was SAIC/Leidos' unrealistically low price.<sup>22</sup> In this regard, the protesters primarily assert that SAIC/Leidos' quotation should have been rejected for unrealistically low labor rates.<sup>23</sup> IBM Comments/Supp. Protest, June 19, 2014, at 11-12; Presidio Comments/Supp. Protest, June 19, 2014, at 47-54.

As a general rule--that applies to issuing BPAs as well as awarding contracts--when awarding a fixed-price contract, an agency is only required to determine whether the offered prices are fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). An agency's concern in making a price reasonableness determination focuses on whether the offered prices are too high, rather than too low. Vital Link, Inc., B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 6. Where there is no evaluation factor providing for consideration of price realism, a determination that an offeror's price is too low generally concerns the offeror's responsibility. PAE Gov't Servs., Inc., B-407818, Mar. 5, 2013, 2013 CPD ¶ 91 at 6. While an agency may conduct a price realism analysis in awarding a fixed-price contract for the limited purposes of assessing whether an offeror's low price reflects a lack of

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<sup>22</sup> As noted above, Presidio quotation reflected a total price of \$178,891,344; IBM's quotation reflected a total price of \$144,280,741; and SAIC/Leidos' quotation reflected a total price of \$107,450,574. Source Selection Decision at 7.

<sup>23</sup> The protesters initially asserted that SAIC/Leidos' quotation reflected both inadequate levels of effort and unrealistically low labor rates. IBM Protest at 9; Presidio Protest at 41. Upon review of the agency report disclosing the vendors' relative levels of effort, which undercut the protesters' arguments regarding inadequate levels of effort (Presidio--[redacted] FTEs; Leidos--[redacted] FTEs; IBM--[redacted] FTEs), the protesters' complaints focused on SAIC/Leidos' labor rates.

technical understanding or risk, see FAR § 15.404-1(d)(3), offerors must be advised that the agency will conduct such an analysis. Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. Our Office has held that, in the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where it expressly states that the agency will review prices to determine whether they reflect a lack of technical understanding, and where the solicitation states that a vendor/offeror's submission may be rejected on the basis of low prices. DynCorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required, nor permitted, to conduct one in awarding a fixed-price contract. Emergint Techs., Inc., supra.

Here, we agree with the agency that the solicitation did not contemplate a price realism evaluation. Specifically, the solicitation did not contain an express provision for price realism analysis, nor did it advise vendors that their quotations could be rejected on the basis of low prices; accordingly, a price realism analysis was neither required nor permitted.

#### B. Hiring of Incumbent Personnel

Next, the protesters assert that SAIC/Leidos' quotation under the management factor reflected an intent to hire incumbent personnel,<sup>24</sup> and that the agency should have deemed this approach unrealistic. IBM Protest at 7-9; Presidio Protest at 36-38. In pursuing this argument, IBM submitted a declaration from its program manager asserting that "[w]hen [IBM employees] are no longer needed for a particular customer project . . . IBM's practice is to reassign those personnel to other projects," adding that "IBM's reassignment of an individual to a new project is not a basis for reduction of compensation or benefits, regardless of what customer rates may apply to the new project."<sup>25</sup> Declaration of IBM Program Manager, July 2, 2014 at ¶ 3. Echoing the arguments discussed above regarding SAIC/Leidos' allegedly unrealistic levels of compensation, IBM asserts that, in light of IBM's and its subcontractor's policies towards employee retention, the agency should have concluded that Leidos will be unable to hire IBM's incumbent personnel.

The evaluation of quotations, like the evaluation of proposals, is within the discretion of the procuring agency, since it is responsible for defining its needs and the best method of accommodating them. Orion Research, Inc., B-253786, Oct. 21, 1993,

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<sup>24</sup> IBM maintains that it is currently the incumbent for 11 of the 15 tasks and Presidio asserts that it is the incumbent for 8 of the tasks. IBM Protest at 2; Presidio Comments/Supp. Protest at 75.

<sup>25</sup> IBM submitted a similar declaration, with virtually identical wording, from a representative of its proposed subcontractor.

93-2 CPD ¶ 242 at 3. In reviewing an agency's evaluation, we will not reevaluate quotations, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Integrity Private Sec. Servs., Inc., B-255172, Dec. 17, 1993, 93-2 CPD ¶ 332 at 3. A protester's mere disagreement with the agency's conclusions does not render them unreasonable. Id.

Here, under the heading "Management and Staffing Approach," the solicitation directed each vendor to submit a staffing plan showing "how the Contractor will obtain the required staff." RFQ at 4. In response to this requirement, SAIC/Leidos' quotation stated, [redacted]. AR, Tab C7, SAIC/Leidos' Management Quotation, at 8. SAIC/Leidos elaborated that [redacted] and noted its past success in that regard. Id. at 9. With regard to hiring the incumbents' qualified personnel, the quotation indicated that SAIC/Leidos would offer [redacted].<sup>26</sup> Id. In addition to incumbent personnel, SAIC/Leidos' quotation specifically referenced multiple other staffing resources, including [redacted]. Id.

Overall, the agency rated SAIC/Leidos' quotation satisfactory under the management evaluation factor. Source Selection Decision at 7. More specifically, in evaluating SAIC/Leidos' proposed staffing plan, the agency evaluators noted that, "SAIC has a detailed plan to hire required staff and maintain staffing during the period of performance." AR, Tab D7, Consensus Management Worksheet, at 4. The evaluators further noted: [redacted]. Id. at 9.

We find no basis to question the agency's evaluation of SAIC/Leidos' staffing plan. As noted above, the agency considered the plan in its entirety, specifically noting the elements that were aimed at attracting incumbent personnel. While the protesters assert that the agency's evaluation was unreasonable, due primarily to the labor rates reflected in SAIC/Leidos' quotation,<sup>27</sup> their arguments reflect mere disagreement with the agency's judgment, and provide no basis to sustain their protests.<sup>28</sup>

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<sup>26</sup> [redacted]

<sup>27</sup> Consistent with the fact that the solicitation did not contemplate a price realism evaluation, none of the vendors' quotations disclosed the actual compensation levels that will be paid to their employees. Rather, the quotations merely reflected the fully-loaded fixed labor rates at which the agency will be billed. Accordingly, the record does not establish the extent to which SAIC/Leidos' comparatively lower rates reflect lower employee compensation, lower overhead, or lower profit.

<sup>28</sup> In considering this issue, we find unpersuasive IBM's post-protest declarations and their assertions that the corporate policies of IBM and its subcontractor will effectively preclude Leidos from hiring incumbent personnel. In this regard, although the terms of the solicitation expressly put the protesters on notice that the

(continued...)

### C. SAIC/Leidos' Assumptions

Next, Presidio asserts that SAIC/Leidos' quotation contained "assumptions" that were contrary to the terms of the solicitation. Presidio Comments/Supp. Protest at 21-26. For example, Presidio refers to the following provision in SAIC/Leidos' quotation:

[redacted]

AR, Tab C9, SAIC/Leidos' Price Quotation, at 69.

Presidio asserts that SAIC/Leidos' assumption regarding [redacted] effectively "takes exception" to the terms of the solicitation. We disagree.

Specifically, under the heading "Government/Contractor Furnished Equipment and Information," section 6 of the BPA SOW stated: "The Government will furnish equipment and information in conjunction with the completion of work addressed in this BPA." BPA SOW at 81 (emphasis added). That section of the SOW further listed examples of hardware and software that would be provided, adding that the list was "not all-inclusive." Id. at 82.

Here, we view SAIC/Leidos' assumption that it would have access to CBP subject matter experts as being reasonably within the scope of the solicitation's statement that the agency would "furnish . . . information in conjunction with completion of the work." That is, this provision of SAIC/Leidos' quotation was consistent with the terms of the solicitation. Rather than taking exception to the solicitation's stated requirements, SAIC/Leidos' quotation stated that it assumed the agency would, in fact, provide equipment and information, as the solicitation stated it would.<sup>29</sup>

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(...continued)

agency would consider a vendor's stated intent to hire incumbent personnel, IBM's post-protest declarations were not provided to the agency prior to award. Accordingly, even if we were to view the substance of the declarations as credible and/or relevant, we find nothing unreasonable about the agency's failure to consider in its evaluation information that IBM did not provide with its quotation.

<sup>29</sup> In this regard, SAIC/Leidos' quotation stands in stark contrast to Agilex's quotation, discussed above, wherein Agilex assumed it would not be required to perform all of the SOW's stated requirements or be bound by the terms of the solicitation governing acceptance of deliverables.

Presidio also complains that various portions of SAIC/Leidos' quotation improperly "assume that Leidos will be awarded multiple tasks" under the BPA.<sup>30</sup> Presidio Comments/Supp. Protest at 23. Noting that the solicitation advised vendors that tasks "may be split between the successful contractors awarded BPAs," RFQ at 11, Presidio argues that SAIC/Leidos' assumption of receiving multiple tasks was contrary to that provision. We disagree.

While the solicitation warned that tasks "may be split" between BPA awardees, nothing precluded one awardee from being awarded a significant portion of the tasks. Indeed, the solicitation stated, "[t]he Government retains the authority to determine which and how many tasks (1-15) will be awarded to each BPA contractor." Id. In evaluating quotations, the SSA expressly recognized this issue, stating:

I always understood the risk to this multiple award BPA acquisition strategy was that some of the competing contractors would submit price proposals based on the potential of receiving award of all 15 tasks. The cost efficiencies of consolidating tasks and resources may be impacted by not receiving award of all the 15 tasks.

Source Selection Decision at 21.

Accordingly, it is clear the SSA considered the risk associated with SAIC/Leidos' assumption regarding receipt of multiple task orders in making his source selection decision. Further, where, as here, the solicitation provided for award to two or more vendors, and the agency in fact awarded two BPAs, SAIC/Leidos' assumption that it would receive a significant number of the awarded tasks was not unreasonable. On the record here, we find no merit in Presidio's assertion that SAIC/Leidos' quotation contained assumptions that were contrary to the provisions of the solicitation.

#### D. SAIC's Reorganization

Finally, the protesters assert that SAIC's reorganization in September 2013 rendered improper the selection of, and award to, Leidos.

As noted above, SAIC submitted a quotation responding to this solicitation in July 2013. In September 2013, a portion of SAIC's assets were transferred to SAIC Gemini, Inc., which was subsequently renamed Science Applications International Corporation ("new" SAIC); at that time, "old" SAIC was renamed Leidos, Inc. IBM Comments/Supp. Protest, exh. 2, SAIC Press Release, September 9, 2013;

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<sup>30</sup> In making this assertion, Presidio refers to portions of SAIC/Leidos' quotation that refer to [redacted] of personnel across tasks and [redacted] between tasks. Presidio Comments/Supp. Protest at 23.

exh. 3, Information Statement for SAIC Gemini, Inc. In April 2014, a BPA was awarded to Leidos as “old” SAIC’s successor in interest. As the BPA awardee and holder of the FSS contract on which the BPA is based, Leidos has stated that it will subcontract performance of subsequently issued task orders to “new” SAIC.

IBM first asserts that it is improper for Leidos to subcontract performance of task orders subsequently issued under the BPA to “new” SAIC. We disagree. Here, the solicitation placed no restriction on subcontracting. Further, subcontracting to “new” SAIC does not appear to reflect a significant change in the technical approach contemplated by the quotation since, at the time the quotation was submitted, “new” SAIC was part of the entity submitting the quotation and, in fact, the resources contemplated for performance appear to be those of “new” SAIC.<sup>31</sup> Further, there is nothing impermissible in an FSS contract holder/prime contractor using a subcontractor to provide services that are included on the prime contractor’s schedule contract. AINS, Inc., B-400760.2, B-400760.3, June 12, 2009, 2009 CPD ¶ 142 at 8. On this record, Leidos’ intent to subcontract performance to “new” SAIC does not provide a basis to sustain the protest.

IBM also complains that in evaluating “old” SAIC’s quotation under the past performance factor, the agency should have assigned a neutral rating because the past performance references the agency considered were performed by the portion of “old” SAIC that is now “new” SAIC. Since the solicitation provided that the agency would consider only the past performance of the entities submitting quotations, not their subcontractors, IBM asserts that the evaluation was flawed. We disagree.

Here, at the time the past performance references were submitted and evaluated, they did, in fact, reflect the past performance of the entity submitting the quotation--that is, “old” SAIC. The fact that some or all of the resources performing the prior contracts subsequently became “new” SAIC, (the entity that will be performing the work to be performed) does not invalidate the agency’s past performance evaluation. IBM’s complaints regarding the past performance of SAIC/Leidos’ quotation provide no basis for sustaining the protest.

Finally, IBM refers to our decisions in Wyle Laboratories, Inc., B-408112.2, Dec. 27, 2013, 2014 CPD ¶ 16, and National Aeronautics and Space Administration--Recon., B-408112.3, May 14, 2014, 2014 CPD ¶ 155, asserting that the facts presented here are “nearly identical” to the facts that led us to sustain Wyle’s protest and to deny the agency’s request for reconsideration. IBM Comments/Supp. Protest, June 19, 2014, at 31. We disagree.

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<sup>31</sup> The resources transferred to “new” SAIC include its “technical, engineering and enterprise information technology services business.” IBM Comments/Supp. Protest, exh. 2, SAIC Press Release, Sept. 9, 2013, at 1.

As we have stated, our protest decisions regarding matters of corporate status and restructuring are highly fact-specific, and turn largely on the individual circumstances of the proposed transactions and timing. Consortium HSG Technischer Service GmbH and GeBe Gebäude-und Betriebstechnik GmbH Südwest Co., Management KG, B-292699.6, June 24, 2004, 2004 CPD ¶ 134 (change in ownership of one of two entities comprising a joint venture did not render the agency's evaluation of the joint venture's proposal unreasonable, where the entity remained intact and the resources offered by the entity remained available); AIU North America, Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 (evaluation of corporate resources was unreasonable where the agency failed to consider a change in the offeror's corporate ownership).

In Wyle, the agency issued a solicitation for a cost-reimbursement contract in July 2012. SAIC submitted a proposal responding to that solicitation while its corporate reorganization was pending. Although SAIC's proposal reflected the costs and technical approach of SAIC's organization prior to the restructuring, it advised the agency that it intended for the then-nonexistent "new" SAIC to be the prime contractor, and that performance of this cost-reimbursement contract would be divided between "new" SAIC and Leidos. Id. at 3-4. During discussions, SAIC recognized that the actual costs to the government pursuant to the cost-reimbursement contract could be affected by the then-pending reorganization, and suggested that a rate cap would be appropriate. Id. at 4. The agency rejected SAIC's suggestion, concluding that a rate cap was "not necessary," and directed SAIC not to include any cap in its final proposal submission. Id. In August 2013, the agency awarded the cost-reimbursement contract to SAIC, based in part on SAIC's "strikingly lower probable costs." Id. at 6. In September 2013, SAIC's corporate reorganization took place and, thereafter, Leidos sought to novate the

contract at issue.<sup>32</sup> We sustained the protest concluding that substitution of a new prime contractor for performance of that cost-reimbursement contract could impact costs to the government, noting that “new” SAIC was not bound by the terms of “old” SAIC’s proposal, and concluding that there was inadequate support for the agency’s assessment of projected cost savings. Id. at 8-11.

Here, rather than challenging the award of a cost-reimbursement contract, the protesters challenge the establishment of a BPA that is based on “old” SAIC’s submission of fixed labor rates. Those rates are applicable to both Leidos, as the BPA awardee and to “new” SAIC, as Leidos’ subcontractor. See AINS, Inc., supra. Further, as noted above, it appears that the resources reflected in “old” SAIC’s quotation are, in fact, those of “new” SAIC. Accordingly, in contrast to the facts presented in Wyle, it does not appear that SAIC’s corporate restructuring is likely to have any significant cost or technical impact on performance of the requirements. In sum, we find the facts here distinguishable from those in Wyle. Accordingly, we reject IBM’s assertion that SAIC’s corporate restructuring rendered the BPA award to Leidos improper.

For the reasons discussed above, the protests challenging the award to Agilex are sustained and the protests challenging the award to Leidos are denied.

## RECOMMENDATION

Based on our conclusion that award to Agilex was improper, we recommend that the agency either terminate the award to Agilex, reevaluate quotations and make a new award decision based on the quotations that have been already been submitted or, alternatively, that the agency open discussions with Agilex and the

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<sup>32</sup> As we noted in Wyle, the Federal Acquisition Regulation (FAR) states:

(a) 41 U.S.C. 15 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party’s interest in the contract arises out of the transfer of--

(1) All the contractor’s assets; or

(2) The entire portion of the assets involved in performing the contract.

FAR § 42.1204. In Wyle, the record indicated that neither condition for novation had been met.

unsuccessful vendors, obtain quotation revisions from those vendors, and make a new award determination based on those submissions. We also recommend that the agency reimburse the protesters' for their costs associated with filing and pursuing their protests, including reasonable attorneys' fees, to the extent those protests challenged the award to Agilex. Bid Protest Regulations, 4 C.F.R. § 21.8(d) (2014). The protesters' certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at § 21.8(f).

Susan A. Poling  
General Counsel