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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Metro Machine Corporation

File: B-297879.2

Date: May 3, 2006

Michael R. Katchmark, Esq., Gary A. Bryant, Esq., Brett A. Spain, Esq., and Michael C. Laurence, Esq., Willcox & Savage P.C., for the protester. Robert M. Tata, Esq., Carl D. Gray, Esq., and Kevin J. Cosgrove, Esq., Hunton & Williams LLP, for Earl Industries, LLC, an intervenor. Rhonda L. Russ, Esq., Naval Sea Systems Command, for the agency. Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's cost realism evaluation of awardee's proposal was unreasonable where the awardee proposed to perform the solicitation requirements under a teaming arrangement whereby its proposed team members would perform almost [deleted] of the production work under the contract, but the agency failed to consider the impact of the team members' higher rates in determining the awardee's probable cost of performance under the contract.

DECISION

Metro Machine Corporation protests the award of a contract to Earl Industries, LLC under request for proposals (RFP) No. N00024-05-R-4401, issued by the Department of the Navy, Naval Sea Systems Command (NAVSEA), for maintenance and modernization work on Dock Landing and Amphibious Transport Dock class ships (i.e., LSD and LPD class ships) homeported in Norfolk, Virginia. Metro alleges that the agency's cost evaluation of Earl's proposal was improper and that the source selection decision was flawed.¹

We sustain the protest.

¹ Metro withdrew its allegation that the Navy's award decision failed to properly account for industrial mobilization considerations. See Protester's Comments at 46.

The RFP, issued on March 9, 2005, contemplated the award of a cost-plus-award-fee contract for execution planning and accomplishment of repair, maintenance, and alteration requirements of LSD 41/49 and LPD 4 class ships. The RFP provided for the award of a base contract including execution planning for the first scheduled availability² for the USS Gunston Hall, as well as non-scheduled repair and alteration requirements between scheduled availabilities as ordered on various LSD and LPD class ships.³ In addition, the RFP provided for 31 option items—the first option was for performance of the Gunston Hall availability, and the remaining options were for 15 additional scheduled availabilities and associated execution planning over a period of 7 years. RFP § B, Schedule of Supplies or Services and Prices.

The RFP indicated that the agency would make award to the offeror whose proposal represented the best value to the government based on a consideration of two factors: technical and cost. Overall technical merit was considered more important than cost; however, the importance of cost would increase “as the differences in overall Technical merit among competing proposals decreas[ed].” RFP at 171. Under the technical category, the RFP listed three evaluation factors in descending order of importance: (1) management capability; (2) resource capabilities; and (3) past performance. RFP at 177-78. In evaluating proposals under the management capability and resource capabilities factors, the agency assigned adjectival ratings of outstanding, very good, satisfactory, marginal, and unsatisfactory. The adjectival scheme used to rate offerors’ past performance differed slightly, with the agency assigning ratings of outstanding, good, satisfactory, neutral, marginal, or unsatisfactory.

As it relates to the protest, under the management capability factor, offerors were required to “provide a systematic approach that demonstrates a comprehensive understanding and application of management techniques, methods and procedures required to efficiently execute the requirements of this solicitation.” RFP at 172. In this regard, offerors were to describe corporate management and organizations, the formation, function and responsibilities of project teams, the proposed management organization and functions, including all teaming partners and/or significant subcontractors, a plan for managing subcontractors, and lines of communication and

² The agency explains that the availability work involves “relatively short, labor-intensive Chief of Naval Operations (CNO) maintenance, repair and modernization periods, generally scheduled at specific times throughout a ship’s operating cycle.” Agency Report (AR) at 3 n.3.

³ The solicitation indicated that the following LSD 41/49 and LPD 4 Class ships would be homeported in Norfolk, VA during all or part of the contract: (1) USS Whidbey Island; (2) USS Gunston Hall; (3) USS Fort McHenry; (4) USS Ashland; (5) USS Carter Hall; (6) USS Oak Hill; (7) USS Nashville; and (8) USS Ponce. RFP at 48.

authority with the Navy as well as significant subcontractor key personnel. Offerors were also required to provide resumes for key personnel. RFP at 172-73.

Under the past performance factor, the RFP identified the following four subfactors (of equal weight) for evaluation: (1) technical (quality of product); (2) schedule; (3) management; and (4) cost. With regard to the cost subfactor, the RFP stated that the Navy would evaluate “the expected risk that an Offeror will effectively forecast, manage and control cost based upon an Offeror’s past performance of previously awarded contracts, relevant contracts, and the effectiveness of any implemented or proposed corrective actions.” RFP at 178. The solicitation indicated that the Navy intended to evaluate past performance by reviewing “Contractor Performance Assessment Reporting System ratings (CPARS) and other existing past performance information on relevant contracts . . . ” and that “[t]rends showing improving or deteriorating performance will also be considered.” RFP at 173-74.

With regard to the cost evaluation, the RFP advised offerors to submit proposed estimated cost data based on two notional work item packages (one for LSD class ships and a second for LDP class ships) included within section L of the solicitation. As clarified by the agency in response to questions from the offerors, the notional work packages included sample work items—not to be construed as actual work items under the contract. See Request for Clarification, Ref. No. EC027, Mar. 21, 2005. The LSD package consisted of 28 work items while the LPD package consisted of 9 work items.

In proposing their estimated costs, the RFP required offerors to use government estimated labor hours and material costs for performance of the notional work items. Offerors were permitted, however, to deviate from the government’s estimates, provided their proposed deviations were supported by “clear and compelling evidence.” RFP at 165. Specifically, the RFP stated as follows:

Offerors are to use the Government-provided manhour and material estimates for each notional package and propose these amounts. An Offeror may provide evidence to support an adjustment to these amounts by proposing and supporting revised man-hour and/or material dollar amounts per individual work item. If an Offeror provides clear and compelling evidence that an adjustment is warranted, the Government will adjust that Offeror’s man-hour and/or material dollar estimates for the individual work item(s) addressed, to the extent it is determined that the offered rationale supports such an adjustment. If support of an Offeror’s proposed adjustment to an individual work item is less than clear and compelling, the Government estimate will be used to calculate an estimated cost to the Government for that work item.

RFP at 165.

According to the RFP, the government would perform a cost realism analysis of the offerors' cost proposals based on each offeror's proposed estimated costs for performing the notional work. In performing the cost realism analysis, the Navy would consider:

the Offerors' proposed labor hours, labor rates, material costs, burden rates and other costs in light of information available to the Contracting Officer, including Government estimates for: (1) direct labor hours; (2) material costs; (3) direct labor costs; (4) overhead and G&A costs; and (5) any other costs which are likely to be incurred by the Offeror in performance of the requirements of the RFP.

RFP at 168.

Moreover, the RFP expressly provided that, if an offeror proposed to deviate from the government's labor hour and material estimates, the Navy's cost realism analysis would consider the evidence supporting the proposed adjustment in determining the offeror's projected cost to government. Specifically, the RFP stated as follows:

The government will analyze and review the Offerors' cost estimates and supporting cost data, including comparison to the Government estimate for the notional work items in Section L. This analysis will be performed for work items defined in Section L, as well as on the Offeror's total proposal, including all options. Also, if the Offeror submits evidence to support an adjustment to the Government-provided estimates, the Government will review such evidence in deriving the cost realism for the Offeror's projected cost to the Government. As a result of this analysis, the Government may make adjustments to the Offeror's proposed costs to develop an estimate of the projected cost to the Government for each Offeror's proposed approach.

Id.

On the basis of this analysis, the RFP stated that "the [cost analysis panel] will develop a 'projected cost to the Government' which represents, in the Government's judgment, the overall cost . . . which will result from the Offeror's actual performance of the contract requirements" Id.

Offerors were also warned not to propose unrealistically low estimated costs. In this regard, the RFP stated as follows:

Unrealistically low cost estimates . . . may be grounds for eliminating a proposal from competition either on the grounds that the Offeror does

not understand the requirement or that he has made an improvident proposal. The burden of proof of cost credibility rests with the Offeror. If the Government determines an Offeror's estimates to be inexplicably low, that Offeror may be eliminated from the competition without further discussion.

RFP at 162-63.

Four offerors, BAE Systems Norfolk Ship Repair, Marine Hydraulics International, Inc. (MHI), Earl, and Metro submitted proposals by the April 18 closing date. In competing under the solicitation, [deleted] and Earl had entered into a "resource agreement"—in essence, a teaming agreement.⁴ Metro was not party to the teaming agreement. As a general matter, the resource agreement provided for [deleted] and Earl to each independently submit a proposal for award, while drawing upon the capabilities of the team members to act as subcontractors for varying levels of effort depending upon which, if any, of the team members received award as the prime contractor. According to the terms of the resource agreement, [deleted] and Earl agreed to [deleted]. AR, Tab 8, Earl Cost Proposal, Encl. P, at 3, 4.

Under the terms of the agreement, each team member will receive the following percentages of "production work":

Assignment of Production Work				
Contractor		[deleted]	[deleted]	[deleted]
Percentage of Work Assigned	[deleted]	[deleted]	[deleted]	[deleted]
Subcontractor (and retained by Contractor)	[deleted]	[deleted]	[deleted]	[deleted]

Id. at 4.

Specific work items would be assigned, [deleted]. Id. at 5.

A Navy technical evaluation review panel (TERP) evaluated offerors' technical proposals, and a separate Navy cost analysis panel (CAP) concurrently began evaluating the offerors' cost proposals. In its initial evaluation of proposals, the TERP noted as a general matter that "[e]ach offeror has a demonstrated history of maintenance and repair of Amphibious warfare class ships" and that "[e]ach offeror was judged to have adequate resources, facilities and skills to accomplish the requirements of this solicitation." AR, Tab 17, Initial TERP Evaluation, at 2. As it relates to the protest, in its initial evaluation of Earl's technical proposal under the

⁴ [deleted] were parties to the resource agreement.

management capability factor, the TERP assigned Earl a rating of [deleted] and noted several major weaknesses, including the fact that while Earl proposed to [deleted] Earl failed to adequately explain how it would integrate its teaming partners into the management organization and functions, and failed to adequately explain the roles and responsibilities of the team members and what they were to provide in support of the work effort. AR, Tab 17, TERP Initial Evaluation of Earl, at 3.

With regard to its initial evaluation of Earl's past performance, under the cost subfactor, the TERP had concerns with Earl's cost control on cost-type contracts, and initially rated Earl as [deleted] under this subfactor. This [deleted] rating was based in part on a past performance report contained in the contractor performance assessment report system (CPARS) regarding Earl's performance on a separate Navy contract in connection with the USS Iwo Jima (LHD 7); in this CPARS report, Earl was rated as "marginal" under cost control. The TERP rated Earl as [deleted] for overall past performance, however, since Earl received ratings of [deleted] under the three other past performance subfactors. AR, Tab 17, Initial TERP Evaluation of Earl, at 2-3.

Following the initial evaluation of proposal evaluations, the Navy opened discussions with all offerors, and requested revised proposals. On August 4, the agency requested final proposal revisions, which were received on August 18. Based on Earl's responses to the Navy's questions in connection with the management capability factor, the TERP revised its rating from [deleted] to "very good" with low risk. AR, Tab 18, Encl. 3, at 4. The TERP also changed its rating under the past performance/cost subfactor from [deleted] to [deleted] based on a change in the CPARS report for Earl's performance under the USS Iwo Jima contract from "marginal" to "satisfactory" and because Earl had proposed specific corrective measures. AR, Tab 18, Encl. 3, at 10. Earl's overall rating under the past performance factor remained "good."

In evaluating the offerors' cost proposals for realism, the Navy principally compared the offerors' proposed labor hours and material costs for performing the notional work items with the government estimates for these cost elements, and reviewed the offerors' proposed direct and indirect rates. AR, Tab 19, CAP Report, at 1. In comparing the offerors' proposed hours and material costs to the government estimates, the Navy denied virtually all proposed deviations from the government estimates. As a consequence, the Navy's determination of probable cost to the government was premised on each offeror using the same number of labor hours and incurring the same material costs in performing the notional work. Specifically, the Navy calculated each offeror's total cost based on the government estimate of

939,452 labor hours and material costs of \$31,868,000.⁵ In this regard, Earl's initial proposed cost, which was based on substantial deviations from the government estimates, was ultimately increased from [deleted] to \$70,221,185.

With the total labor hours and material costs essentially fixed for all offerors in connection with performing the notional work, the Navy's cost realism evaluation focused on the offerors' rate information, *e.g.*, an offeror's direct composite weighted labor rate, general and administrative, and subcontractor rates. The Navy reviewed the offerors' proposed rates and made adjustments in order to establish what the agency believed to be its best estimate of the rates that the offeror would charge in performing the contract. Applying the adjusted rates to the total labor hours and material costs for the notional work items, the agency calculated each offeror's total cost to the government.

In evaluating the cost proposals and rate information for Earl [deleted] the Navy considered the applicability of the resource agreement among these firms. Because the members of the teaming arrangement were competitors, they did not exchange rate information. Thus, while [deleted] cost proposals allocated notional work items to each of the team members, the Navy noted that [deleted] had only provided estimates of their team members' rates. Rather than calculating [deleted] total costs based on the estimated rates, the Navy instead calculated the rates based on information contained in the competing offerors' own proposals, as well as rate information it received from the Defense Contract Audit Agency (DCAA). AR, Tab 19, CAP Report, Encl. 1, at 15, 24; AR, Tab 19, CAP Report, Encl. 2, at 15, 19, 24. Thus, for example, in evaluating [deleted] cost proposal, which estimated a direct labor rate for [deleted], the Navy used the proposed direct labor rate information from [deleted] own proposal "since that is based on more accurate information." AR, Tab 19, CAP Report, Encl. 1, at 24.

Unlike [deleted] Earl did not assign any of the notional work to be performed by [deleted] and, as a consequence, Earl did not include any estimated rates for [deleted]. During its discussions with Earl, the Navy questioned why Earl had prepared its proposal without identifying any costs for work to be performed by its team members under the resource agreement and specifically pointed to the portion of the resource agreement stating that [deleted]. AR, Tab 19, Encl. 3, Cost

⁵ There were two exceptions to the Navy's across-the-board use of the government estimates. The Navy granted one of the offerors other than Earl a deviation and evaluated that offeror's proposal based on a total of [deleted] labor hours for performing the notional work. AR, Tab 19, CAP Report, Encl. 2, at 32. In addition, the Navy granted Earl a deviation for its material costs, resulting in a final evaluated cost to the government for material of [deleted]. AR, Tab 19, CAP Report, Encl. 3, at 43.

Evaluation of Earl’s Proposal, at 7. Earl acknowledged the fact that its cost proposal did not reflect any costs for [deleted] and stated as follows:

The strength of the Agreement is the core capabilities of the Agreement members. The Notional Work Item Packages included in the solicitation [deleted]. These core capabilities that, during the contract execution [deleted] . . . In addition, during contract execution, the efficient use of Agreement members’ labor resources will be utilized to achieve an effective trade balance.

AR, Tab 10, Earl’s Response to Discussion Questions, Encl. 1, at 6-7.

The final CAP report, prepared after receipt of Earl’s response, takes note of the resource agreement’s assignment of production work, and indicates a concern because Earl had not included labor hours or material costs for [deleted] in connection with the notional work or received any quotes from [deleted] for the individual work items. AR, Tab 21, Final CAP Report for Earl, at 1.

Upon completion of the technical and cost evaluations, the TERP and CAP provided their evaluations to the agency’s best value advisory council (BVAC). The following ratings resulted from these evaluations:

Offeror	Mgmt Capability	Resource Capabilities	Past Performance	Overall Technical Rating	Final Projected Cost
Metro	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
A	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Earl	Very good	Very good	Good	Very Good	\$70,221,185
B	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]

AR at 8.

Considering the technical merits and evaluated cost of each proposal, the BVAC completed a cost/technical trade-off among the various offers and presented its findings to the agency’s source selection authority (SSA). In recommending the selection of Earl’s proposal as the best value to the government, the BVAC noted Earl’s teaming partners to be a strength of its proposal and concluded that because Metro only had a “slight technical advantage” over Earl, the evaluated costs of the offerors were “very important.” AR, Tab 22, BVAC Report to SSA, at 7. After reviewing “all source selection documentation relevant to this acquisition” and concurring with the CAP’s conclusion that Earl’s proposal would result in the lowest cost to the government, the SSA determined that Earl’s proposal represented the best value to the government. AR, Tab 24, Source Selection Decision. Upon learning of the agency’s decision, and after receiving a debriefing, Metro filed its protest with our Office.

Metro alleges that the Navy's cost realism evaluation of Earl's cost proposal was improper and that the best value determination was flawed. According to Metro, in evaluating the proposals for cost realism, the Navy mechanically applied the government estimates for labor hours and material costs—normalizing these cost elements—without accounting for each offeror's technical approach. Metro argues that, had the Navy properly accounted for Earl's technical approach, it would have increased Earl's evaluated cost since the government estimates were developed based on work done in [deleted] and [deleted] ship yards, contractors which, according to Metro, are technically superior and more efficient than Earl. Metro also challenges the cost realism evaluation on the ground that the Navy unreasonably failed to increase Earl's cost of performance to account for [deleted] labor rates, which were higher than Earl's rates. In challenging the Navy's best-value determination, Metro argues that the SSA was not informed of relevant information concerning the evaluation of Earl's technical and cost proposals.

Cost Realism Evaluation

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by an offeror, the government is bound to pay the contractor its actual and allowable costs. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9; PADCO, Inc.—Costs, B-289096.3, May 3, 2002, 2002 CPD ¶ 135 at 5; see Federal Acquisition Regulation (FAR) § 16.301. As a result, a cost realism analysis is required to determine the extent to which an offeror's proposed costs represent the offeror's likely costs in performing the contract under the offeror's technical approach, assuming reasonable economy and efficiency. FAR §§ 15.305(a)(1), 15.404-1(d)(1), (2); The Futures Group Int'l, B-281274.2, Mar. 3, 1999, 2000 CPD ¶ 147 at 3. A cost realism analysis involves independently reviewing and evaluating specific elements of each offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's proposal. FAR § 15.404-1(d)(1); Advanced Communications Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. Based on the results of the cost realism analysis, an offeror's proposed costs should be adjusted when appropriate. FAR § 15.404-1(d)(2)(ii).

The evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency. We review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26. An agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs under an offeror's proposal are reasonable and realistic in view of other cost

information reasonably available to the agency as of the time of its evaluation. See Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 10-11.

Application of Government Estimated Labor Hours and Material Costs

Metro challenges the Navy's cost realism analysis on the ground that the Navy simply assumed all offerors could perform the notional work items at the government-estimated labor hours and material costs without considering whether those estimates were consistent with each offeror's technical approach or how the offeror's technical capability affected these cost elements in determining the offeror's total evaluated cost.⁶ According to Metro, this mechanical application of the government estimates was inconsistent with the requirements of FAR § 15.404-1(d), which states in part that a cost realism analysis is the process of evaluating whether an offeror's cost elements "are consistent with the unique methods of performance and materials described in the offeror's technical proposal," as well as the terms of the RFP, which indicated that the Navy would consider "other costs which are likely to be incurred by the Offeror in performance of the requirements of the RFP." According to Metro, had the Navy appropriately accounted for Earl's technical capabilities, it would have upwardly adjusted Earl's proposed cost since the government estimates were based on performance by contractors with superior staffing, facilities, and greater efficiency than Earl's.

While an agency can utilize a reasonably derived estimate of labor hours based on the government's experience as an objective standard to measure realism of proposed costs, an agency may not mechanically apply its own estimates for labor hours or costs—effectively normalizing cost elements of an offeror's proposal to government estimates—without considering the offeror's unique technical approach.⁷

⁶ Metro also argues that in evaluating Earl's proposal for cost realism, the Navy failed to account for its concerns regarding Earl's cost control as evaluated under the past performance factor, as well as the fact that Earl proposed extensive deviations from the government estimates, which were uniformly denied by the agency. According to Metro, these factors should have led the Navy to conclude that Earl would not be capable of performing the notional work at the government estimated levels. However, as discussed below, we conclude that the Navy reasonably applied the government estimates to Earl's proposal. To the extent Metro is arguing that Earl's initial proposal was unrealistically low and should have been rejected, the Navy notes that Earl's final proposal revision did not substantially deviate from the government estimates, and that the Navy did not believe rejection of Earl's proposal was warranted. There is nothing to suggest that this judgment was unreasonable.

⁷ Normalization that involves the adjustment of offers to the same standard or baseline is permissible where there is no logical basis for a difference in approach or where there is insufficient information provided with the proposals, leading to the establishment of common "should have bid" estimates by the agency. See The

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See, e.g., Information Ventures, Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ ____ at ____ (sustaining protest where agency normalized offerors' proposed labor hours to government estimated levels under its cost realism analysis without considering offerors' technical approach); Honeywell Tech. Solutions, Inc.; Wyle Labs, Inc., B-292354, B-292388, Sept. 2, 2003, 2005 CPD ¶ 107 at 12 (sustaining challenge to agency's cost realism evaluation where the agency mechanically adjusted offerors' staffing levels to government estimates); The Jonathan Corp.; Metro Mach. Corp., B-251698.3, B-251698.4, May 17, 1993, 93-2 CPD ¶ 174 at 10-11 (sustaining protest where agency's cost realism evaluation failed to consider each offeror's individualized technical approach and instead mechanically adjusted proposed labor hours and material costs to government estimates).

Unlike in the cases cited above, however, the RFP in this case expressly required offerors to base their cost proposals on the government-estimated labor hours and material costs for accomplishing the notional work and provided that any deviations from the estimates would only be accepted if supported by clear and compelling evidence. Thus, offerors were on notice that the government intended to use the government provided estimates in calculating each offeror's cost to the government for the notional work items. RFP at 165 ("Offerors are to use the Government-provided manhour and material estimates for each notional package and propose those amounts If support of an Offeror's proposed adjustment to an individual work item is less than clear and compelling, the Government estimate will be used to calculate an estimated cost to the Government for that work item."). In explaining its decision to effectively normalize the labor hour and material costs, the Navy stated as follows:

Here, NAVSEA preferred to focus its cost analysis on offerors' direct and indirect rates, as well as any proposed significant subcontractor rates. These are elements that can vary considerably among offerors. On the other hand, NAVSEA expected less variance among the offerors with regard to the manhours and material costs required to perform the work and had recent data from availabilities performed to support its estimates. Accordingly, the RFP made clear NAVSEA's intent to apply the Government estimates of manhours and material costs to each offeror, unless clear and compelling evidence, on a work item level, was provided to support proposed deviation(s).

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Research Found. of State Univ. of New York, B-274269, Dec. 2, 1996, 96-2 CPD ¶ 207 at 5. An agency's normalization of costs is improper, however, where varying costs between competing proposals result from different technical approaches that are permitted by the RFP. See Dynalelectron Corp.; Lockheed Elec. Co., Inc., B-181738, Jan. 15, 1975, 75-1 CPD ¶ 17 at 18-21.

AR at 12.

Given the RFP's language advising offerors that the Navy would calculate offerors' costs using the government's estimates for these cost elements, it was reasonable for the Navy to calculate all offerors' probable cost of performance, including Earl's, based on the government's labor hour and material cost estimates for the notional work items. Cygnus Corp., B-275957, B-275957.2, Apr. 23, 1997, 97-1 CPD ¶ 202 at 11. To the extent Metro now seeks to challenge the propriety of the solicitation's cost evaluation scheme on the ground that it unfairly created an artificial parity among offerors despite differing efficiencies, that challenge is untimely since it concerns an alleged impropriety apparent from the face of the solicitation, which Metro did not raise prior to the closing time for submission of proposals. 4 C.F.R. § 21.2(a)(1) (2005).

Cost of Resource Agreement

In challenging the Navy's cost realism evaluation of Earl's proposal, Metro argues that the Navy failed to account for costs resulting from Earl's resource agreement, which required Earl to subcontract [deleted] percent of the production work to [deleted] which had higher direct labor rates than Earl.⁸ According to Metro, had the Navy accounted for these costs by applying the expected subcontract percentages for performing the work items under the notional packages, Earl's total cost of performance would have been adjusted upward by nearly [deleted].⁹

As noted above, in evaluating Earl's costs, the Navy raised the question of why Earl had not included any costs in its proposal associated with work to be performed by its resource team members, [deleted] and Earl responded [deleted].¹⁰ While the final

⁸ The record reflects that the rates the Navy calculated for [deleted] as subcontractors, which the Navy utilized in calculating [deleted] total costs of performance, were higher than the prime production rate calculated for Earl. AR, Tab 23, BVAC Presentation to SSA, at 56, 58, 62.

⁹ Metro also contends that the Navy improperly calculated each of the team member's subcontractor rates. According to Metro, the Navy failed to account for the reduction in each firm's business base associated with the team member performing as a subcontractor under the contract, rather than as a prime contractor. Accounting for this error results in an additional increase of [deleted] (as calculated by Metro) to Earl's total calculated cost of performance.

¹⁰ While Metro contends that Earl sought to "game" the evaluation by not including [deleted] in its cost proposal, there is nothing in the record to support such a conclusion. Given that the members of the resource agreement did not exchange

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CAP report noted this missing information as a concern, the Navy made no effort to capture the cost associated with Earl's resource agreement, which the Navy considered to be a strength in reaching its best-value determination. This cost element, however, is clearly significant, given that the Navy effectively normalized all cost elements other than the variable rates between offerors. Specifically, as noted above, the Navy applied government-estimated labor hours and material costs for the notional work items to all the offerors, thus reducing the total cost calculation to a comparison of the offerors' estimated direct and indirect rates in performing the contract. In fact, in defending its normalization analysis, as discussed above, the Navy itself asserted that its realism analysis focused on offerors' rates, including proposed major subcontractor rates, because the offerors' rates are the primary cost variables.

The goal of a cost realism evaluation is to determine, for each offeror, a projected cost to the government in connection with an offeror's actual performance under the contract. It involves evaluating whether an offeror's costs are consistent "with the unique method of performance and materials described in the offeror's technical proposal," in order to determine the "probable cost of performance," which "should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal." FAR § 15.404-1(d)(2). Consistent with this concept, the RFP provided that the Navy would consider "any other costs which are likely to be incurred by the Offeror in performance of the requirements of the RFP." RFP at 168.

Given the Navy's emphasis on offerors' rates in its cost realism evaluation, it was imperative for the Navy to consider [deleted] rates in determining Earl's cost of performance since, as a result of the resource agreement, these firms would be performing [deleted] percent of the production work in the event Earl received award.¹¹ Thus, their rates were a material element of Earl's actual performance. As

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their pricing information, Earl may not have known that its rates were lower than those of [deleted].

¹¹ As noted above, unlike Earl, [deleted] had in fact allocated notional work to each of the resource agreement team members in their cost proposals, albeit at percentages somewhat different from the percentages allocated under the resource agreement. [Deleted] proposed [deleted] percent of the work, while the resource agreement allocated [deleted] percent of production work to [deleted]. [Deleted] also proposed Earl to perform approximately [deleted] percent of the work, while the resource agreement allocated [deleted] percent of the work to Earl. AR, Tab 19, CAP Report, Encl., 1 attach. B. Similarly, [deleted] had proposed [deleted] for approximately [deleted] percent of the production work, while the resource agreement allocated [deleted] percent to [deleted]. [Deleted] cost proposal also included approximately [deleted] percent of the work for Earl, while the resource

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the protester aptly notes, the resource agreement, an evaluated strength in Earl's proposal, came at a cost--the cost associated with having [deleted] perform [deleted] percent of the production work. Because the Navy made no effort to capture this cost, the Navy effectively ignored an actual cost of Earl's proposal in performing the requirements of the RFP, rendering the total calculated evaluated cost of Earl's proposal unrealistic and therefore unreasonable.¹²

The Navy maintains that adjusting Earl's costs to account for [deleted] rates would have been inconsistent with the terms of the RFP, which required offerors to submit their cost proposals based on the notional work items.¹³ Any adjustment, the Navy argues, would be inconsistent with Earl's approach in preparing its cost proposal based on the notional work, and thus arbitrary. The Navy's argument, however, ignores the purpose of the cost realism analysis. We recognize that accounting for the cost of [deleted] performance would require the Navy to factor into Earl's total projected cost, a cost that cannot be traced to a specific cost element in connection with Earl's approach to the notional work packages, given Earl's representation that [deleted]. We further recognize that by the terms of the RFP, there was nothing inherently wrong with Earl's plan [deleted] and that the solicitation did not include any assurances or identify any percentages regarding the extent to which the

(...continued)

agreement allocated [deleted] percent of the production work to Earl. AR, Tab 19, CAP Report, Encl. 2, attach. B.

¹² Unlike Metro's challenge to the Navy's decision to equalize all offerors with respect to two cost variables--labor hours and material costs--a determination which was apparent from the express terms of the RFP, Metro could not have appreciated the inability of the notional work items to reasonably capture Earl's true cost of performance until Earl submitted its proposal based on the teaming arrangement with [deleted] and the Navy reviewed Earl's proposal in connection with the notional work items. Thus, to the extent one could view the solicitation as defective because the chosen notional work items therein were incapable of accurately reflecting Earl's actual cost of performance, that would constitute a latent defect--not one apparent from the face of the solicitation.

¹³ While the notional packages here contained 37 work items, the Navy explains that the average number of work items performed during a typical availability is more than 100. Agency's Response to Protester's Comments at 9. Moreover, the Navy indicates that while it seeks to include a representative sampling, "the notional work packages in this case will constitute only a relatively minor portion of the work anticipated" and therefore "may not provide every offeror with the opportunity to capture all aspects of its technical approach, i.e., . . . to allocate this relatively minor portion of the total availability in accordance with a proposed 'teaming arrangement.'" Id.

notional work reflected the actual total contract work.¹⁴ Nonetheless, when faced with notional work in excess of \$70 million, and the disconnect between Earl's resource agreement, which required Earl to allocate [deleted] percent of the production work to [deleted], and Earl's cost proposal, [deleted], it was unreasonable for the agency to take no action to resolve it.

The Navy was required by the terms of the RFP and the FAR, as noted above, to perform a cost realism analysis to estimate Earl's cost of actual performance. In estimating this actual cost, the notional work packages served as a tool to reach an intelligent result. If used intelligently, sample tasks can provide a reasonable basis to assess the relative cost of the competing proposals, but only to the extent they are representative of the contract work. See, e.g., S. J. Thomas, Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73 at 5. Here, the Navy estimated Earl's cost of performance solely for the notional work—ignoring another significant cost in connection with Earl's actual performance, which was clearly evident from Earl's proposal. Thus, to the extent the notional work packages failed to accurately reflect Earl's true costs, the Navy was not excused from its duty to account for an obvious and significant cost element associated with the actual cost of performance by Earl.

Best Value Decision

Metro challenges the agency's best value decision, arguing that the SSA's determination was not an informed judgment because the SSA was denied material information concerning the evaluation of Earl's proposal. Insofar as the cost evaluation was flawed as described above, we agree with Metro's contention that the best value determination likewise was flawed. We reject, however, Metro's allegation that the SSA was improperly denied information with regard to the technical evaluation. Metro contends that the BVAC had voiced concerns about Earl's plan to subcontract a significant percentage of work to its teaming partners and specialty subcontractors, yet this concern was never conveyed to the SSA. Metro's protest relies on e-mail messages and a draft presentation for the SSA which the BVAC circulated among its members, stating that "[Earl's] single most important detractor is its plan to subcontract more than [deleted] of work to its teaming partners and specialty subcontractors." Protester's Comments, exh. D, at Navy E-mail 0363. In addition, with regard to Earl's past performance, Metro challenges the BVAC's failure to include "bar charts" of CPARS ratings in its final presentation to the SSA, which Metro asserts had been included in a draft presentation showing Metro with an 18 percent advantage when compared with Earl.

¹⁴ The total estimated value of the contract is not clear from the record. See AR, Tab 25, Agency Business Clearance Memorandum, at 2 (indicating that the 7-year estimated value of the contract was in excess of \$430 million); AR, Tab 25, Small Business Coordination Record (indicating that the total estimated contract value, including options, was \$239,584,590).

Regarding the first issue, the agency explains that the statement relied upon by Metro was derived from similar language in the TERP report regarding Earl's lack of documentation regarding its teaming approach—a concern ultimately resolved through discussions—and that it was raised in a pre-decisional context solely for the purpose of beginning discussions among members of the BVAC. Agency's Response to Protester's Comments at 16 and Encl. 5, Decl. of BVAC Chairman. Ultimately, the BVAC concluded, as did the TERP, that Earl's subcontracting plan was not a weakness, and it therefore did not include the comment in its final report or presentation to the SSA. With regard to the "bar charts," while the agency states that they were not presented to the SSA, the record reflects that the SSA was provided with a report from the TERP as well as a final BVAC report and presentation, which included a detailed discussion of the basis of the offerors' adjectival past performance ratings. Because the comment and charts relied upon by Metro were drafts and thus created in a pre-decisional context, and because Metro does not challenge the substantive aspects of the agency's final conclusions, Metro's arguments in this regard are without merit.

Recommendation

We sustain the protest on the basis that the agency's cost realism evaluation of Earl's proposal was improper because it failed to reasonably capture the cost of Earl's teaming arrangement with [deleted]. We recommend that the Navy hold discussions in order to more accurately gauge the impact of the teaming agreement on offerors' actual costs and reevaluate proposals to properly reflect this cost,¹⁵ or, to the extent the Navy believes it is necessary to alter the notional work packages in order to more accurately capture the costs associated with the offerors' proposals, we recommend that the Navy amend the solicitation and seek revised proposals and conduct a new evaluation. Under either approach, the Navy should make a new source selection decision. If, after the new evaluation, the agency determines that another firm's proposal represents the best value to the government, the agency should terminate Earl's contract and make a new award.¹⁶ We further recommend that the agency

¹⁵ Because the teaming agreement involved [deleted] as well, it may be appropriate for the Navy to also reconsider the cost effect of the teaming agreement with respect to these firms.

¹⁶ During the course of the protest, the Navy notified our Office and the protester that it had decided to proceed with performance of the contract awarded to Earl on the basis that continued performance was justified by "urgent and compelling circumstances" which significantly affect the interest of the United States. Letter from Contracting Officer to GAO (Jan. 27, 2006). Given that the contract requires performance with respect to numerous scheduled availabilities over a 7-year period, we believe that our recommendation can be implemented and meaningful relief attained notwithstanding continued performance by the Navy.

reimburse the protester the reasonable costs of pursuing its protest, including reasonable attorneys' fees. The protester's certified claim for costs, detailing the time expended and the costs incurred on this protest, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel