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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: USIS Worldwide, Inc.

File: B-404671; B-404671.3

Date: April 6, 2011

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Wade L. Brown, Esq., and David Scott, Esq., Department of the Army, for the agency.
Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's assertion that awardee's proposal should have been evaluated as technically unacceptable on the basis that awardee proposed to perform 78 percent of the contract effort with host country nationals (HCNs) and third country nationals (TCNs) provides no basis to sustain the protest where the solicitation stated that "there are no nationality restrictions" on proposed personnel; the record shows that the awardee proposed a significantly lower percentage of TCNs and HCNs than protester alleged; and protester, itself, proposed to perform over [deleted] percent of the contract effort with HCNs and TCNs.

2. Protester's assertions challenging the agency's past performance evaluation reflect mere disagreement with the agency's reasonable judgments where the record establishes that the agency comprehensively considered relevant past performance information for both offerors, recognized positive and negative aspects of both offerors' past performance, considered each offeror's corrective actions to address prior performance problems, and reasonably determined that the proposals presented essentially the same performance risk.

3. Agency performed a reasonable cost evaluation where it relied on statistical analysis, considered other information provided by the offerors related to the status of the labor market and the costs incurred under similar contracts, and recognized differences in the fringe benefits associated with each offeror's proposed rates.

DECISION

USIS Worldwide, Inc. (USIS), of Falls Church, Virginia, protests the Department of the Army's award of a contract to DynCorp International LLC (DI), of Fort Worth, Texas, pursuant to request for proposals (RFP) No. W91CRB-10-R-0059 to provide support for the Afghanistan Ministry of Interior (MOI) and the Afghan National Police (ANP) in building, developing, and sustaining an effective law enforcement organization.[1] USIS challenges the agency's evaluation of proposals under various evaluation factors, including technical, past performance, and cost.

We deny the protest.

BACKGROUND

In July 2010, the agency published the solicitation at issue, seeking proposals for a cost-plus-fixed-fee contract to provide mentoring, training, and logistics support for the MOI/ANP.[2] The solicitation reflects a joint decision by the Department of Defense (DOD) and the Department of State (DOS) to transfer full responsibility for the development of the Afghanistan national security forces from the DOS to the DOD. AR, Tab 3, Acquisition Strategy Document, July 2, 2010, at 5. The solicitation states that the goal of this contract is to train and mentor the Afghan government to "manage all aspects of its police training within two years of contract award." RFP at 11. Consistent with this stated objective, under the heading "Afghan First," the solicitation directed offerors to "hire Host Nation (HN) personnel and [s]ubcontractors to the maximum extent possible." Id. at 13. Nonetheless, in addressing the solicitation requirements to provide necessary and qualified personnel, the solicitation also advised offerors that "[t]here are no nationality restrictions." Id. at 16.

The solicitation established various contract line item numbers (CLIN), dividing the contract performance requirements into three basic areas: program management (CLIN 0002 for the base period and CLIN 0102 for the option period); mentoring/training services (CLINs 0003 and 0103); and logistics support services (CLINs 0004 and 0104). RFP at 2-7. For each of these CLINs, the solicitation established certain minimum requirements, including required labor categories and corresponding hours. Offerors were required to submit their proposed labor rates on spreadsheets provided with the solicitation. Id. at 72-73.

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[1] The Afghan MOI is responsible for nationwide law enforcement. The MOI consists of a number of divisions, including the ANP. Agency Report (AR), Tab 5, Source Selection Plan, Aug. 23, 2010, at 4.

[2] The solicitation contemplated a 2-year base performance period and a 1-year option period.

With regard to the evaluation of proposals, the solicitation established four evaluation factors: technical, experience, past performance, and cost. The solicitation provided that the first two factors--technical and experience--would be evaluated on an acceptable/unacceptable basis.[3] RFP at 76. With regard to past performance, the solicitation provided that each proposal would be assigned one of three performance risk ratings--low, moderate, or high--based on consideration of the offeror's, and its proposed subcontractors', past performance information.[4] Id. With regard to cost, the solicitation provided that each offeror's proposal would be evaluated for reasonableness and realism, elaborating that "the analytical techniques and procedures prescribed in FAR [Federal Acquisition Regulation] 15.404-1 for evaluating offeror proposals may be used singly or in combination with others to ensure the costs are fair, reasonable and realistic." Id. at 77. Finally, the solicitation provided that the source selection decision would be based on a tradeoff between past performance and cost, with past performance being significantly more important than cost. Id.

In August 2010, initial proposals were submitted by eight offerors, including USIS and DI. Based on the evaluation of initial proposals, the agency established a competitive range consisting of USIS, DI, and four other offerors. Thereafter, the agency provided items for negotiation (IFN) to each offeror in the competitive range, and conducted an initial round of discussions. Revised proposals were submitted in October 2010.

In November 2010, the agency advised the offerors that it would conduct a second round of discussions. In connection with these discussions, each offeror was again provided a written list of IFNs. On November 24, final revised proposals (FRPs)

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[3] The solicitation defined an acceptable technical proposal as: "Proposal indicates an understanding of the minimum technical and performance requirements. Proposal is determined adequate and all proposed approaches are considered feasible." RFP amend. 5, at 3. With regard to evaluation of experience, the solicitation defined an acceptable proposal as: "Proposal demonstrates that the offeror (entity) has at least three years continuous [experience] from a single firm (within the entity) with programs/projects similar size and scope of this requirement to include [various specific activities]." Id.

[4] The solicitation defined low risk as: "Essentially no doubt exists that the offeror will successfully perform the required effort based on their performance record." RFP at 76. The solicitation defined moderate risk as: "Some doubt exists that the offeror will successfully perform the required effort based on their performance record." Id. The solicitation defined high risk as: "It is extremely doubtful that the offeror will successfully perform the required effort based on their performance record." Id.

were submitted and, thereafter, evaluated. The final evaluation ratings were as follows:

	Technical	Experience	Past Performance	Cost
DI	Acceptable	Acceptable	Low Risk	$1.034 Billion
USIS	Acceptable	Acceptable	Low Risk	$1.122 Billion
Offeror A	Acceptable	Acceptable	Low Risk	$1.279 Billion
Offeror B	Acceptable	Acceptable	Moderate Risk	$1.108 Billion
Offeror C	Acceptable	Acceptable	Moderate Risk	$1.172 Billion
Offeror D	Acceptable	Acceptable	Moderate Risk	$1.555 Billion

Contracting Officer's Statement, Jan. 20, 2011, at 7; AR, Tab 22, Source Selection Decision Document, at 2.

Based on his review of the evaluation record, as well as his communications with the evaluation boards, the contracting officer made the following determinations:[5]

> Since the Technical and Experience factors are Acceptable/ Unacceptable criteria, all offerors in the competitive range are equal with regard to these two factors.
>
> Past Performance is the discriminating factor because three companies are rated Low Risk (DI, [Offeror A], and USIS), while the other three are all rated Moderate Risk . . . . In accordance with the procedures outlined in the solicitation, I have assessed the Performance Risk rating of DI's, [Offeror A's], and USIS's Past Performance information. Based on that assessment, I find that there is no qualitative difference between the three entities.
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> * * * * *
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> As described [above] the non-cost proposals of DI, [Offeror A], and USIS are equal; DI is the lowest cost offeror. Therefore a tradeoff analysis to determine best value is not warranted because the decision

[5] The contracting officer was also the source selection authority (SSA).

> is clear. By awarding to the lowest cost offeror, the Government also awards to the company reflecting the lowest performance risk and hence, the best value.

AR, Tab 22, Source Selection Decision, Dec. 20, 2010, at 3-4.

A contract was awarded to DI on December 20. This protest followed.

DISCUSSION

USIS protests the award to DI, identifying alleged agency errors with regard to evaluation of DI's proposal under the technical, past performance, and cost evaluation factors. More specifically, USIS asserts that DI's proposal should have been evaluated as unacceptable under the technical evaluation factor, complains that it was unreasonable for DI's and USIS's proposals to be evaluated as equal under the past performance factor, and challenges various aspects of the agency's cost evaluation.

Technical Evaluation

USIS first challenges the agency's evaluation of DI's proposal under the technical evaluation factor, asserting that DI's proposal should have been rated as unacceptable because "[DI] has proposed to utilize TCNs [third country nationals] and HCNs [host country nationals] to perform approximately 78 percent of the effort." Protest at 13. USIS argues that, because DI had, allegedly, relied on such a high level of TCNs and HCNs, its technical approach "will be ineffective" because "it is unlikely that such a quantity of trained TCNs/HCNs exist." Id. In short, USIS asserts that DI's "overwhelming reliance on TCNs and HCNs" constitutes a technical approach that should have been evaluated as unacceptable. Id.

In reviewing an agency's evaluation, we will not reevaluate technical proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Metro Mach. Corp., B-402567, B-402547.2, June 3, 2010, 2010 CPD ¶ 132 at 13.

Here, in responding to USIS's allegations, the agency points out, as discussed above, that the solicitation expressly advised offerors, that "[t]here are no nationality restrictions" in connection with the requirement to provide appropriately qualified personnel. RFP at 16. Further, the solicitation specifically directed offerors to hire HCNs "to the maximum extent possible." Id. at 13. More significantly, the agency notes that not only are USIS's allegations factually inaccurate regarding the percentage of TCN and HCN labor proposed by DI,[6] but USIS's own proposed workforce was comprised of [deleted] percent TCN and HCN labor. Contracting Officer's Statement, Jan. 20, 2011, at 10-12; AR, Tab 20(c), Final Cost Evaluation, at 24.

Based on our review, we agree with the agency that USIS's allegations challenging the technical acceptability of DI's proposal are without merit.

Past Performance Evaluation

Next, USIS challenges the agency's evaluation of USIS's and DI's proposals under the past performance factor, asserting that the agency could not have rationally found the two proposals to present equal performance risk. More specifically, USIS asserts that DI's past performance record contains a "mountain" of negative information that should have resulted in a higher risk rating. In contrast, USIS maintains that the negative information regarding the past performance of USIS's proposed team represents only "isolated instances of malfeasance." USIS Supplemental Comments, Feb. 16, 2011, at 4, 27.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, as well as consideration of actions taken to resolve prior problems, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. See, e.g., Yang Enter., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 5; Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5. Further, an agency's past performance evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether that contractor, or another offeror, disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. See, e.g., Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 5. In short, we will not substitute our judgment for that of the agency, and a protester's mere disagreement with such judgment does not provide a basis to sustain a protest. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Here, we have reviewed the substantial record of information the agency considered in evaluating DI's and USIS's proposals under the past performance factor and find no basis to question the reasonableness of the agency's determination that the proposals were equal with regard to performance risk.

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[6] The record shows that DI proposed a workforce consisting of approximately [deleted] percent TCNs and HCNs. Contracting Officer's Statement, Jan. 20, 2011, at 11; AR, Tab 20(c), Final Cost Evaluation, at 6.

More specifically, the record shows that the agency initially evaluated both DI's and USIS's proposals as representing moderate risk, based on various issues related to their, or their proposed subcontractors' performance of prior contracts. In this regard, following submission of initial proposals and the first proposal revisions, the agency's source selection evaluation board (SSEB) summarized its assessment of moderate risk for USIS's proposal, stating:

> There were excellent reports on one of [USIS's] subcontractors, USTC [U.S. Training Center, formerly known as Blackwater Worldwide], however there was a performance evaluation report from DOS that showed there were two serious incidents in Iraq in mid 2007. While there were good reports before and after this "negative" report, the seriousness of these incidents is a large concern to the board and had a negative impact. Originally, there was no information found for four of the subcontractors, [however,] the revised submission included adequate information for these subcontractors. The information found on USIS showed excellent performance on previous contracts, however, there was a slight concern that none of these contracts were close to the size of the solicitation. The revised submission provided greater detail on past performance for USIS and negated that concern. Overall, the greatest concern is the past incidents for one of its subcontractors. MODERATE RISK[[7]]

AR, Tab 14(b), Revised SSEB Past Performance Rating, Oct. 26, 2010, at 3.

Following USIS's submission of its final revised proposal, which contained additional past performance information and a risk mitigation plan decreasing USIS's reliance on USTC, the SSEB lowered its assessment from moderate risk to low risk, stating:

> Upon review of the revised Past Performance proposal information, the board has determined the mitigation plan that USIS has set forth, specifically regarding USTC, addresses the concerns of the board. The boards assessment of risk is changed from MODERATE to LOW.

AR, Tab 20(b), Final SSEB Past Performance Rating, Dec. 3, 2010, at 4.

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[7] The SSEB's supporting documentation further states that, "a DOS representative stated that malfeasance on the part of some individuals was not a direct reflection on the performance of the company [USTC]," but adds that, "the seriousness of the incident and the impact on the mission if a similar incident were to happen in Afghanistan is severe," and concludes, "[i]mpact remains negative." AR, Tab-14(b), SSEB Past Performance Rating Form-Addendum, Oct. 26, 2010.

Similarly, in evaluating DI's past performance information the agency initially assigned DI's proposal a rating of moderate risk, stating:

> Overall subcontractor past performance was excellent. One subcontractor had a CURE notice (not submitted in proposal) that the COR [contracting officer's representative] stated was quickly resolved. The prime [contractor] had excellent performance examples and interviews with government representatives stated that "operational" performance was strong but there were some management and administrative issues. A CURE notice and CPAR [contractor performance assessment report] report back up this issue. MODERATE RISK

AR, Tab 7(b), SSEB Past Performance Rating, Sept. 24, 2010, at 2.

Following discussions and DI's submission of additional past performance information, the agency lowered its risk rating from moderate to low, and provided the following detailed summary of its evaluation:

> The additional information was taken into consideration in reviewing the previously assigned risk rating of MODERATE. In the original rating, MODERATE was assigned on the basis of CURE NOTICES for subcontractor [deleted], a CPARS report for [DI] and CURE NOTICES for [DI].
>
> The revised submission provided additional information regarding each of the above issues. In the original report, no CURE NOTICES for [a particular subcontractor] were noted. However, one was found through questionnaires. In the revision, [DI] states that [the subcontractor] actually had 6 CURE NOTICES. All six occurred at Kandahar Airfield and appear to have been remedied fairly quickly. The major concern with these CURE NOTICES was the fact that they were not reported until pointed out by the board.
>
> A negative CPARS report on a contract worth $1.2 billion dollars did not have a response from [DI] listed. The revised submission states that [DI] did respond and made changes in leadership and adapted processes that improved administrative functions. The risk rating is changed to slightly negative.
>
> The revised past performance submission addressed the board's concern that the three CURE NOTICES (on three separate contracts) were indicative of management issues. While each issue was addressed after the CURE NOTICE and there is indication that management is improving, the issues could have been prevented in the

> first place. There is indication that there have been no further issues since the 2007 notices. The impact of these issues is changed from negative impact to slightly negative.
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> Upon review of the revised Past Performance proposal submission, the board has determined that some of the areas that were identified as having a negative impact have been changed to slightly negative. There were instances where [DI] appeared to have management and administrative issues leading to CURE NOTICES, but these appear to have been remedied. The board assessment of risk is changed from MODERATE to LOW, based upon [DI's] past performance record and essentially no doubt exists that [DI] will successfully perform the required effort.

AR, Tab 20(b), Final SSEB Past Performance Rating, Dec. 3, 2010, at 7.

Despite the agency's documented consideration of the past performance information discussed above, USIS nonetheless complains that the agency ignored or failed to reasonably assess DI's past performance, and that it failed to properly consider particular information, including a joint DOD/DOS Inspector General report criticizing various aspects of DOS' prior oversight of a DI contract, a Defense Contract Audit Agency (DCAA) report related to DI's accounting system, and selected examples of negative press coverage.[8] Protest at 8-10.

We have reviewed the entire record, including the various past performance documents that USIS maintains are inconsistent with the agency's risk assessments. Based on our review, we conclude that the agency meaningfully, comprehensively, and reasonably considered relevant past performance information for both offerors; that it recognized both positive and negative prior aspects of each offeror's prior performance record; that it took into consideration the relevance, scope, and significance of both offerors' prior performance histories, including consideration of each offeror's corrective or remedial actions in response to prior problems; and that it contemporaneously documented its evaluation. As noted above, it is within an agency's discretion to consider the significance of an offeror's prior performance in the context of, among other things, the contractor's actions to address prior problems, <u>see</u>, <u>e.g.</u>, <u>Yang Enter., Inc.; Santa Barbara Applied Research, Inc.</u>, <u>supra,</u> and since it is not the function of this Office to reevaluate proposals, we will not substitute our judgment for the agency's, absent clear and material agency error.

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[8] Following receipt of the agency report, and the agency's disclosure of the substantial past performance record it considered during its evaluation, USIS filed a supplemental protest, asserting that the agency's judgments flowing from its consideration of the additional disclosed documents were not sufficiently negative with regard to DI's past performance. Supp. Protest, Feb. 7, 2011, at 12-37.

Birdwell Bros. Painting & Refinishing, supra. Based on our review, we find no material errors in the agency's past performance evaluation, and we cannot conclude that it was unreasonable for the agency to assign low risk ratings to both proposals and to conclude that they presented essentially equal performance risk. USIS's various complaints to the contrary reflect mere disagreement with the agency's judgments and fail to provide a basis for sustaining the protest.

Cost Evaluation

Similar to USIS's allegation that DI's proposal should have been evaluated as technically unacceptable, USIS's initial protest challenged the agency's cost evaluation, asserting that, due to DI's "overwhelming reliance on untrained HCNs and TCNs," DI's proposed costs should have been increased for evaluation purposes because "U.S. Nationals will most assuredly be substituted to replace [HCNs and TCNs] during [contract] performance." Protest at 12.

As discussed above, USIS's assertion regarding DI's alleged reliance on HCNs and TCN's is factually inaccurate. More significantly, since USIS itself proposed to rely on a greater percentage of TCN and HCN labor than it inaccurately alleged that DI had proposed, any cost ramifications flowing from the future substitution of U.S. personnel for HCN/TCN personnel, which USIS asserts is inevitable, appear to be appreciably more applicable to USIS's own proposal than to DI's.

Following receipt of the agency report, USIS modified its attack on the agency's cost evaluation. USIS now asserts that the agency's cost evaluation was flawed because it employed a "mechanistic" statistical analysis; failed to consider all proposed labor; and failed to consider the offerors' respective fringe benefits. Supplemental Protest, Feb. 7, 2010, at 38-56. As discussed below, none of USIS's allegations provide a basis for sustaining the protest.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed costs are not considered controlling because, regardless of the costs proposed, the government is bound to pay all actual, allowable costs. FAR §§ 15.305(a)(1); 15.404-1(d); Tidewater Constr. Corp., B-278360, Jan. 20, 1998, 98-1 CPD ¶ 103 at 4. Consequently, an agency must perform a cost realism analysis to evaluate the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(2); Hanford Envtl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9. However, an agency is not required to verify each and every item in assessing cost realism; rather, the agency must perform a reasonable evaluation, which may, and should, include the informed judgments of the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Similarly, an agency's cost realism analysis need not (and realistically cannot) achieve scientific certainty; rather, the analysis must provide a reasonable measure of confidence that the proposed costs are reasonable and realistic. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7; Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 10-11.

Here, the agency performed, and documented, a comprehensive cost evaluation of the offerors' proposals. See AR, Tab 7(c), Cost Evaluation of Initial Proposals, Oct. 6, 2010; AR, Tab 14(c), Cost Evaluation of Revised Proposals, Nov. 8, 2010; Tab 20(c), Final Cost Evaluation Report, Dec. 20, 2010. More specifically, the record shows that, following submission of initial proposals, the agency evaluated each cost proposal, identifying multiple cost IFNs for both DI and USIS, which were presented to them during discussions.[9] Following the offerors' submission of revised proposals, the agency again evaluated the cost proposals, again identifying various aspects of each offeror's cost proposal that needed to be, and were, addressed during a second round of discussions.[10] Finally, following submission of FRPs, the agency conducted its final evaluation of cost proposals. The record shows that, in performing its cost evaluation of the various proposal submissions, the agency considered the proposed costs of each proposal, broken down by CLIN. With regard to USIS's and DI's proposals, the agency's evaluation showed the following:

[9] For example, with regard to DI, the agency stated: "When compared against recent analysis conducted by the Government (which includes data from [DI's] incumbent contract and its contract with MNSTC-I) it appears that [certain specified rates] are unrealistically low." AR, Tab 11(a), IFNs for DI, ¶ 11. Additionally, the agency sought information from DI regarding, among other things, its accounting system, rate escalation, general and administrative costs, and fringe benefits. Id. ¶¶ 14, 15, 16, 18-21. Similarly, with regard to USIS, the agency stated: "Recent analysis conducted by the Government, as well as examination of the competitive environment, suggests [certain identified proposed rates] do not appear reasonable." AR, Tab 11(b), IFNs for USIS, ¶ 12. Among other things, the agency also sought information from USIS regarding USIS' analysis of the labor market, and its proposed subcontractors, bonuses, rate caps, and accounting system. Id. ¶¶ 14, 18-22.

[10] For example, with regard to DI, the agency sought additional information regarding various particular rates proposed by DI and/or its subcontractors and information regarding DI's organizational structure. AR, Tab 16(a), IFNs for DI, at ¶¶ 4-14. Similarly, the agency sought additional information from USIS regarding various cost issues presented by its proposed subcontractors. AR, Tab 16(b), IFNs for USIS, ¶¶ 4-22.

	CLIN	DI	USIS
Base Period			
Program Mgmt.	0002	$ [deleted]	$ [deleted]
Mentoring/Training	0003	$ [deleted]	$ [deleted]
Logistics Support	0004	$ [deleted]	$ [deleted]
Other Direct Costs[11]	0005	$ [deleted]	$ [deleted]
Option Period			
Program Mgmt.	0102	$ [deleted]	$ [deleted]
Mentoring/Training	0103	$ [deleted]	$ [deleted]
Logistics Support	0104	$ [deleted]	$ [deleted]
Other Direct Costs	0105	$ [deleted]	$ [deleted]
Total Evaluated Cost		$1,033,828,000	$1,122,049,000

AR, Tab 20(c), Final Cost Evaluation Report, at 4.

As noted above, the solicitation established minimum requirements for program management (CLINs 0002, 0102),[12] and established the entire requirement for mentoring/training (CLINs 0003, 0103), including identification of all required labor categories and the corresponding number of hours for each. Accordingly, for the mandated portion of CLINs 0002/0102, and the entire requirement for CLINs 0003/0103, the agency computed the average of all of the offerors' proposed rates for each required labor category, then reviewed each offeror's proposed rates to determine whether they were within one standard deviation of the corresponding average rate. AR, Tab 20(c), Final Cost Evaluation Report, at 3. If an offeror's proposed rates were more than one standard deviation below the average rate, the agency sought additional information from that offeror regarding the basis for its lower rate. If the offeror's response failed to sufficiently explain the basis for the low rate, the rate was upwardly adjusted. Id.

In preparing to evaluate the costs proposed for logistics support services (CLINs 0004, 0104), the agency noted that much of the labor required under these CLINs would be unskilled or semi-skilled labor, concluding that a significant portion of these labor requirements was likely to be "filled with staff from the local

[11] The CLINs for other direct costs (CLINs 0005, 0105) were "plug" numbers specified by the solicitation, to which offerors were required to add their proposed burdens. RFP at 4,7.

[12] The solicitation stipulated that offerors must provide certain minimum quantities of labor in designated labor categories for the program management CLINs (0002, 0102), but provided that offerors could propose additional personnel above and beyond those requirements, which DI and USIS both did.

population." Id. Upon receipt and review of the proposals, the agency stated,"[a]s expected, offerors did propose to accomplish much of the requirement with HCN labor, some TCN labor, and a few USNs [U.S. nationals]." Id. In evaluating the rates proposed for CLINs 0004/0104, the agency referred to the *CIA World Factbook*,[13] noting that "Afghanistan's GDP [gross domestic product] per capita is estimated to be $900 and its unemployment rate is estimated to be 35%." Consistent with this information, the agency concluded that "the average wage was expected to be quite low for these CLINs."[14] Id. Based on its consideration of the information discussed above, the agency examined the rates proposed by DI and USIS, upwardly adjusted DI's proposed rates for the option period,[15] and otherwise concluded that DI's and USIS's rates for logistics support services were reasonable and realistic.

Notwithstanding the agency's cost evaluation discussed above, USIS asserts that the evaluation was flawed, first complaining that the agency's application of statistical analysis in connection with its evaluation of the rates proposed for CLINS 0003/0103 and the mandated portion of CLINs 0002/0102 was "mechanistic and irrational." Supp. Protest, Feb. 7, 2011, at 49. We disagree.

Based on our review of the record, we view the agency's comparison of each offeror's proposed rates to the average of the rates proposed by all six competitive range offerors, along with its requirement that offerors further justify rates that were lower than one standard deviation below that average, as a reasonable tool in performing a cost analysis. See MPRI, Div. of L-3 Serv., Inc.; LINC Government Serv., B-402548 et al., June 4, 2010, 2011 CPD ¶ __, at 5-9; Roy F. Weston, Inc., B-274945 et al, Jan. 15, 1997, 97-1 CPD ¶ 92 at 16; see also Mantech, Inc. v U.S., 2010 U.S. Claims LEXIS 120 (Apr. 29, 2010).

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[13] The *CIA World Factbook* "provides information on the history, people, government, economy, geography, communications, transportation, military and transnational issues for 266 world entities." www.cia.gov/library/publications/the-world-factbook.

[14] The agency's evaluation also considered information in the offerors' proposals regarding the status of the labor market. For example, USIS's cost proposal stated, under the heading "Market trends," that "[t]he lower levels of the [deleted] category have experienced some commoditization based on the current labor market." AR, Tab 13(b), USIS Revised Cost Proposal, Oct. 20, 2010, at 36. The term "commoditize" is defined as "to render (a good or service) widely available and interchangeable with one provided by another company." www.merriam-webster.com/dicitionary/commodization.

[15] Upon concluding that the rates proposed for the base period (CLIN 0004) were realistic, the agency upwardly adjusted DI's proposed costs for the option period to make them consistent with its proposed cost structure for the base period. AR, Tab 20(c), Final Cost Evaluation Report, at 10.

As discussed above, for the portion of the proposals to which statistical analysis was applied, the solicitation mandated both the labor categories and the number of hours required under each category, effectively precluding offerors from proposing differing approaches with regard to the labor categories and quantities of labor proposed. Further, the record shows that, while the agency's use of statistical analysis was a significant aspect of its evaluation, the agency did not rely on this tool alone. Among other things, the agency considered information regarding the rates charged by the offerors under other, similar contracts. See, e.g., AR, Tab 11(a), IFNs for DI, ¶ 11; AR, Tab 13(a), DI's Proposal Revision, IFN Cross-Reference Matrix, at 8-9. As noted above, the agency also considered the information provided by the offerors regarding the status of the labor market, including USIS's own observations regarding the commoditization of certain labor categories. See AR, Tab 13(b), USIS Revised Cost Proposal, Oct. 20, 2010, at 36. Finally, USIS has not persuasively shown that any of DI's proposed rates are unrealistic. Cf. Multimax, Inc., et al., B-298249.6 et al., Oct. 24, 2006, 2006 CPD ¶ 165 at 11 (agency's application of a two standard deviation analysis was improper where it resulted in accepting rates that were below the federal minimum wage or negative numbers as realistic). On the record here, we find no merit in USIS's assertion that the portion of the agency's cost realism evaluation that employed statistical analysis was "mechanistic and irrational."

USIS next asserts that the agency's cost evaluation with regard to logistics support (CLINs 0004, 0104) was inadequate because the agency failed to perform a formal market survey of the Afghanistan labor market for the services required. USIS's assertion is without merit. As discussed above, the agency's evaluation specifically considered the status of the Afghanistan labor market in the context of the current unemployment rate and average per capita income. AR, Tab 20(c), Final Cost Evaluation Report, at 4. Further, USIS's proposed cost for the most significant base period (CLIN 0004) was lower than that of DI ([deleted] compared to [deleted]). Id. Finally, the record shows that DI's and USIS's total proposed costs for all logistics support efforts (CLINs 0004 and 0104) constituted approximately [deleted] percent and [deleted] percent, respectively, of their total evaluated costs.[16] Id. As noted above, an agency's cost realism analysis is not required to verify each and every element of a cost proposal. See, e.g., Cascade Gen., Inc., supra. On the record here,

[16] The record also shows that the difference between DI's and USIS's evaluated costs for all logistics support services was less than [deleted] million, which is substantially less than DI's total cost advantage.

we find no merit to USIS's assertion that the agency's cost evaluation for logistics support services was flawed.[17]

Finally, USIS complains that the agency's cost evaluation failed to properly reflect consideration of DI's and USIS's respective fringe benefits. To the contrary, the agency's evaluation record demonstrates that it gave a significant amount of consideration to the differing fringe benefits proposed by DI and USIS. See AR, Tab 11(a), IFNs for DI, ¶¶ 3, 6, 18, 19; Tab 16(a), IFNs for DI, ¶ 14; Tab 15(a), SSA Briefing Document, at 6; Tab 20(c), Final Cost Evaluation Report, at 5, 10-11, 23. Among other things, the agency's evaluation considered the difference in the offerors' fringe benefits with regard to applicable taxes, bonuses, and application of post and hazard differentials to base hours. E.g., AR, Tab 11(a), IFNs for DI, ¶¶ 3, 6, 18, 19; Tab 16(a), IFNs for DI, ¶ 14. Ultimately, the agency concluded that the differences were not sufficiently significant to warrant cost realism adjustments. AR, Tab 20(c), Final Cost Evaluation Report, at 11. While USIS disagrees with the agency's judgment, such disagreement provides no basis for sustaining the protest.

The protest is denied.

Lynn H. Gibson
General Counsel

[17] USIS similarly complains that the agency neglected to perform a realism analysis regarding the costs proposed for program management (CLINs 0002, 0102), to the extent they exceeded the solicitation's statement minimum requirements. The record shows that the agency reviewed these proposed costs, and that the entire program management costs (including the minimum requirements to which the agency applied statistical analysis) constituted less than 2 percent of both USIS's and DI's total evaluated costs. AR, Tab 20(c), Final Cost Evaluation Report, at 4. On this record, USIS's allegations regarding the agency's evaluation of program management costs provides no basis for sustaining the protest.