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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Summit Research Corporation

File: B-287523; B-287523.3

Date: July 12, 2001

Patricia H. Wittie, Esq., Kurt D. Ferstl, Esq., and David T. Hickey, Esq., Reed Smith, for the protester.

James H. Roberts, III, Esq., Manatt, Phelps & Phillips, for AverStar, Inc., an intervenor.

Robert C. Peterson, Esq., Space and Naval Warfare Systems Center, Department of the Navy, for the agency.

Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging an agency's conclusion that an evaluation of small business participation should reflect only the offeror's reliance on small business subcontractors--and not also whether the offeror is itself a small business--is sustained where the record shows that the evaluation clause at issue, on its face, advised that the agency would assess small business participation, not small business subcontracting, and where the solicitation and the agency's own evaluation forms, request information about, and reflect consideration of, the aggregate use of small business in performance of the total contract.

2. Protest alleging that agency evaluators unreasonably ignored information received from the Defense Contract Audit Agency (DCAA) advising that one of an offeror's proposed key personnel was no longer employed by the company is sustained where the record shows that the DCAA advised the agency of the employee's departure more than a month before contract award, and the agency took no steps to change its evaluation or consider the impact of the employee's departure, despite acting on several other recommendations provided in the same communication.

DECISION

Summit Research Corporation protests the award of a contract to AverStar, Inc. by the Space and Naval Warfare Systems Center, Department of the Navy pursuant to request for proposals (RFP) No. N65236-00-R00523, issued to procure training for

mid- and senior-level operators of sensor-based intelligence gathering equipment used in support of patrol and reconnaissance forces (and other operational Naval commands) of the Atlantic and Pacific fleets. Summit argues that the Navy unreasonably selected AverStar for award due to errors in the agency's technical evaluation and cost realism review.

We sustain the protest.

BACKGROUND

The Space and Naval Warfare Systems Center in Charleston, South Carolina, is responsible for providing systems training and sensor data library support for users throughout the Navy fleet. This training is termed All-Sensor Advanced Analysis Training, while the support functions are termed All Sensor related technical services; both are provided as part of readiness training and support for Navy Command Control Communications Computer and Intelligence (C⁴I) personnel to ensure a high level of proficiency in sensor analysis skills. RFP at 9. Summit, a small business, is the incumbent contractor providing these training services since the inception of this readiness training program in 1984. Protest at 4.

The RFP was issued on June 13, 2000, and anticipated award of a cost-plus-fixed-fee, indefinite-delivery/indefinite-quantity (ID/IQ) task order type contract, for a base year, followed by four 1-year options, "to the acceptable offeror whose total offer on all items is the most advantageous to the Government considering price and other factors." RFP at 7, 30, 88. To determine the most advantageous proposal, the RFP identified four evaluation factors, which it termed "other factors," presumably in contrast to the cost factor. These other factors were: (1) experience, (2) past performance, (3) personnel qualifications, and (4) small business, small disadvantaged business, HUBZone small business, and women-owned small business participation (hereinafter "small business participation"). *Id.* at 89-90, RFP amend. 0003 at 2. The RFP advised offerors that the evaluation factors of experience, past performance, and personnel qualifications were equal in importance, and each was significantly more important than the small business participation factor; it also advised that the evaluation factors above would be significantly more important than cost, but that cost would be an important factor in this evaluation scheme. RFP at 88-89. While the role of cost was downplayed, potential offerors were also warned that the agency reserved the right to award to a lower cost offeror, if the offers were considered essentially equal in terms of technical capability. RFP at 89.

Since experience and past performance are not at issue in this protest, we need not set forth further detail regarding the solicitation's requirements in these areas; under the personnel qualifications evaluation factor, however, there are several RFP requirements relevant to this decision. To permit review of an offeror's personnel qualifications, each proposal was required to identify candidates for each of 11 key personnel positions spread across 4 key labor categories. For each candidate for a

key position, proposals were to include a resume, a letter of commitment, and an indication of the percentage of time the identified candidate will be dedicated to performance of this contract. RFP at 82-84. In addition, the RFP stated:

Offerors are reminded the Letters of Commitment must be current, and offerors are responsible for conforming their offer to reflect changes in the status of any contingency hire or current employee, which makes their prior commitment suspect, i.e., death, illness, relocation, or acceptance of other employment.

RFP at 83. While the RFP permitted submission of a resume for more than one position, it advised that an individual resume would count for the required number of resumes in only one category. Further, offerors were cautioned that

[i]f more than the required number of resumes are submitted for a particular category, the offeror shall specify which of them shall be evaluated. No credit will be given for additional resumes over the required amount.

Id.

Under the small business participation evaluation factor, the RFP advised that proposals would be evaluated on the extent of participation of small businesses in performing the contract. Id. at 84. To facilitate this assessment, the RFP required all offerors (both large and small businesses) to provide information concerning their intended subcontracting, teaming, or joint venture arrangements. This information was collected on a data form appended to the solicitation. RFP, attach. 4 at 6. Among other things, the data form specifically required an offeror to identify the percentage of the total acquisition value that would be performed by small business. Id. (question 5).

With respect to cost, the RFP advised that cost proposals would be subjected to a cost realism review that could result in adjustments, for purposes of evaluation, to the proposed costs. RFP at 91.

After receiving three proposals in response to the RFP by the July 20 closing date, including proposals from Summit and AverStar, the agency convened a technical evaluation board (TEB) to review proposals under the first three evaluation factors (experience, past performance, and personnel qualifications). Evaluation of the fourth factor, small business participation, was assigned to the contract negotiator. The source selection plan, not provided to offerors, set the value of the first three evaluation factors at 50 points each, and the small business participation evaluation factor at 5 points, for a total available point score of 155 points. Evaluation of cost proposals was assigned to a contract award review panel (CARP), which was also responsible for reviewing and integrating the TEB report with the contract negotiator's evaluation of small business participation and the cost realism review,

and for making an award recommendation to the source selection authority (SSA). Agency Report (AR) at 3-4. Cost proposals were not scored.

The final TEB report was provided to the CARP on March 7, 2001, although it reflects a date of August 1, 2000. AR at 4. The final evaluation report and decision document is the Business Clearance Memorandum (BCM), approved on March 17. The ultimate scores assigned to the three initial proposals (the agency did not hold discussions) under each of the four evaluation factors is set forth below, together with evaluated costs:

	Summit	AverStar	Offeror A
Experience (50 possible pts.)	[deleted]	[deleted]	[deleted]
Past Performance (50 possible pts.)	[deleted]	[deleted]	[deleted]
Key Personnel (50 possible pts.)	[deleted]	[deleted]	[deleted]
Small Business Participation (5 possible pts.)	[deleted]	[deleted]	[deleted]
TOTAL SCORE	137.19	136.67	115.65
TOTAL EVALUATED COST	\$9,171,877	\$9,166,015	[deleted]

BCM at 13, 15, 17-18.

After first concluding that award to Offeror A could not be justified (despite the lower evaluated cost of its proposal) because of certain risks and weaknesses associated with its proposal, the SSA turned to selecting either Summit or AverStar for award. BCM at 21. With respect to Summit, the SSA first noted that Summit's total score was only one-half point higher than AverStar's, and that the higher score was due to Summit's [deleted]. She also noted that Summit's evaluated price was slightly higher than AverStar's (by approximately \$5,800) because of a cost realism adjustment associated with Summit's proposed [deleted]. Further, she explained that the reason for this adjustment--i.e., [deleted]--created a higher performance risk for Summit (than presumably exists for AverStar). Id.

With respect to AverStar, the SSA again first discounted AverStar's half-point lower technical rating due to the small business participation factor, then noted that AverStar "offers significant strengths and no deficiencies in the technical evaluation." Id. In addition, the SSA stated that AverStar's proposal provides "a high level of confidence for successful contract execution with a very low risk factor." Id.

Further, the SSA noted that “AverStar’s evaluated price incorporates the labor rates they are currently experiencing as of February 2001,” and that this reduces the risk of major cost growth in the offer. Id. at 22.

With respect to her tradeoff decision, the SSA concluded:

Based on the details shown in the business proposal and [the] other factors proposal evaluations and the trade-off analysis above, the TEB and CARP have recommended AverStar, Inc. for award. The highest technical rating in the most significant other factors received by AverStar and the lowest evaluated cost realism price represents the Best Value for the Government.

Id. This protest followed.

DISCUSSION

Summit argues that the Navy’s technical evaluation was flawed in two areas, and raises several challenges to the agency’s cost realism review. Turning first to the technical evaluation, Summit contends that the Navy’s assessment of its proposal under the small business participation evaluation factor unreasonably excluded its own participation as a small business offeror, and instead assessed only Summit’s use of small business subcontractors. In addition, Summit argues that the Navy’s assessment of AverStar’s proposal under the key personnel factor improperly includes an individual whose employment with AverStar ended approximately 1 month after proposals were submitted, and seven months before the contract was awarded.

Our standard in reviewing challenges to an agency’s evaluation of technical proposals is to examine the record to determine whether the agency’s judgments were reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. Here, based on a review of the solicitation, the proposals, the evaluation materials, Summit’s arguments, and the Navy’s specific responses to these arguments, we conclude that Summit is right on both counts. We reach these conclusions for the reasons set forth below.

Small Business Participation

With respect to the small business participation evaluation factor, the Navy argues that Summit should not receive credit for its status as a small business, and that awarding credit for such status is inconsistent with the face of the solicitation, and with instructions provided on the form used to gather information for the evaluation of this factor. According to the Navy, if an offeror could receive a perfect score

under this evaluation factor for simply being a small business, the solicitation would have sought no information beyond a company's status from small business offerors.

The RFP here, as mentioned above, advises that “[o]ffers will be evaluated on the extent of participation of [small business] in performance of this contract,” and requires that all offerors (large and small) provide information concerning their subcontracting, teaming, or joint venture arrangements. RFP at 84. In addition, the small business participation evaluation factor identifies five subfactors, including the extent to which small businesses have been identified for use in contract performance; the extent of the offeror's commitment to those businesses, including enforceability of that commitment; identification of the percentage of aggregate small business participation in the total value of the contract; and the realism of the proposed approach for using small businesses. Id. Of relevance here, the source selection plan anticipated awarding **[deleted]** points under the subfactor used to assess the percentage of aggregate small business participation in the total value of the contract. Source Selection Plan, Attach. 4, Form 3B. Specifically, the plan anticipates a score of **[deleted]**. Id.

In response to this requirement, Summit's proposal identified itself as a small business, identified a small business subcontractor responsible for **[deleted]** percent of the value of the contract, and explained that the resulting arrangement would result in 100 percent performance by small business. Summit Proposal, Vol. 1, Tab D at 1-3. In evaluating this approach, the Navy disregarded Summit's participation, considered only the participation of Summit's subcontractor, concluded that this approach would result in less than **[deleted]** percent small business participation, and awarded Summit a score of **[deleted]** under this subfactor. For the record, AverStar also received a score of **[deleted]** under this subfactor.¹ Otherwise, Summit received **[deleted]**. See BCM at 18. Thus, as shown above, Summit received a score of **[deleted]** for small business participation, and AverStar a score of **[deleted]**.

Our view of the small business participation evaluation factor is that the provision, on its face, advises that proposals will be evaluated on the extent of participation of small business in performance of the contract. We also disagree with the Navy's argument that instructions printed on a form appended to the RFP for collecting data from offerors about small business participation should have put the protester on notice that the Navy was evaluating only participation by small business subcontractors. The instructions at issue state:

¹AverStar's proposal identified it as a large business that, **[deleted]**, would perform **[deleted]** percent of the value of the contract, while **[deleted]**. AverStar Proposal, Vol. 1, Tab D at 1-2.

Note: This information applies to large and small business proposals to subcontract, team, or joint venture with other small businesses, small disadvantaged businesses, and women-owned small businesses.

RFP, attach. 4 at 6. These instructions convey only that small businesses, as well as large, must provide the requested information about their reliance on other small business subcontractors, and hence must identify (in response to question 5 on the form) the extent to which small business, in the aggregate, participates in the total contract.

As a final matter, we disagree with the Navy's assertion that the protester's interpretation of this evaluation factor results in small business offerors receiving a perfect score by virtue of their status alone. In this regard, the Navy's argument is inconsistent with its own scoresheets. Specifically, the data form appended to the RFP required all offerors (including small business offerors) to identify the aggregate small business participation in the total value of the contract. *Id.* at question 5. In the event a small business offeror intended to subcontract 75 percent of the value of the contract to large businesses, it would be required to disclose on the form that only 25 percent of the total contract would be performed by small business.² In this circumstance, the Navy's scoresheet for rating this factor provides for a score of **[deleted]**. Source Selection Plan, Attach. 4, Form 3B. Thus, under the Navy's evaluation scheme, small business offerors do not receive a perfect score based solely on their status as small businesses.

Accordingly, we conclude that the Navy's assessment of Summit under the small business participation evaluation factor was unreasonable, and that Summit's score should be raised from **[deleted]** points to **[deleted]** points to reflect the proposal's 100 percent small business participation in the total value of the contract, consistent with the agency's evaluation scheme and materials.

Key Personnel

With respect to the evaluation of key personnel, Summit argues that the Navy improperly gave credit to AverStar for a key employee whose employment ended approximately 1 month after proposals were submitted, and seven months before the contract was awarded. Summit contends that AverStar was required by the RFP to advise the Navy of this employee's departure and failed to do so, despite extending the time for acceptance of its offer on three different occasions after the departure of the employee. In addition, Summit contends that the Navy received notice of the employee's departure from DCAA approximately 1 month prior to award.

²As the solicitation here is not set aside for small business, there is no bar to a small business offeror submitting a proposal based upon subcontracting 75 percent of the value of the contract to a large business.

While the Navy acknowledges that the departure of one of AverStar's key employees was mentioned in DCAA materials it received analyzing AverStar's proposed labor rates, it states that the evaluators did not share this information with the SSA until after award, and it argues that there should be no effect on the evaluation from this employee's departure and that details regarding the substitution of key employees are matters of contract administration. Before addressing these arguments, we set forth below additional factual material on the RFP, the proposals, and the Navy's evaluation.

The RFP designated four key labor categories and required offerors to identify, and provide resumes for, 11 individuals spread across these key labor categories as follows: program manager, 1 resume; senior analyst/instructor, 3 resumes; analyst/instructor, 6 resumes; and inverse synthetic aperture radar analyst/database manager, 1 resume. RFP at 17-18, 84. For each of these 11 positions, the RFP specified the number of labor hours required for the base period, and for each option period. *Id.* at 75. With the exception of the program manager position, the specified labor hours for each position in each annual period--i.e., 1,976 hours--required offerors to propose one full-time equivalent employee (FTE) for each position. *Id.* The program manager position involved only 988 labor hours for the base year, and for each option period--indicating, in essence, that the job of program manager requires half of one FTE. *Id.*

The RFP also required a showing that the individuals identified were available and the percentage of their time dedicated to performing this contract. *Id.* at 82. To demonstrate availability, the RFP required letters of commitment from each of the 11 individuals offered as key personnel, and required that

Letters of Commitment must be current, and offerors are responsible for conforming their offer to reflect changes in the status of any contingency hire or current employee, which makes their prior commitment suspect, i.e., death, illness, relocation, or acceptance of other employment. **CAUTION:** *If a letter of commitment is not provided for all key personnel as required, the applicable resume(s) for which a letter of commitment is not received will not be evaluated and automatically receive an "unacceptable" rating.*

RFP at 83. Finally, of relevance here, the RFP indicated that if more than the required number of resumes were provided for any labor category, "the offeror shall specify which of them shall be evaluated," and advised that offerors would not get credit for additional resumes over the required amount. *Id.*

In a proposal approach apparently not anticipated by the Navy (other than for the half-time program manager position), offerors proposed a mix of full- and part-time employees for the 11 key personnel positions. For example, and of relevance here,

AverStar proposed **[deleted]**. AverStar Proposal, Vol. 1, Tab C at iv. AverStar provided resumes for each of these **[deleted]** individuals. Id. at 4-15. In keeping with the RFP's admonition that no more than 11 resumes would be evaluated (and its requirement that if more than 11 resumes were provided, the offeror should indicate which resumes were submitted for evaluation), AverStar's proposal indicated that **[deleted]**. Id. at iv. As coincidence would have it, the **[deleted]** employee whose resume was not submitted for evaluation is the very individual who left employment with AverStar one month after the proposal was submitted. We will refer to this individual as Mr. Jones.

In evaluating AverStar's proposal, the record shows that the Navy assigned adjectival ratings to all **[deleted]** of the resumes provided for the **[deleted]** position. AR Tab 13b. In scoring the proposal under the key personnel factor, however, the evaluators assigned a numerical score to only **[deleted]** of the resumes. Despite the proposal's indication that Mr. Jones' resume was not submitted for evaluation, the evaluators scored resumes in the order they were listed in the proposal, thus including a numerical score for Mr. Jones in their assessment of the proposal's key personnel. Id. As a result, the numerical score assigned was based on a review of **[deleted]**.

In its protest, Summit argues that the Navy erred in its technical assessment of AverStar (and in its cost realism assessment, as discussed in the next section of this decision), when it based its key personnel evaluation on an employee the Navy knew was no longer employed by AverStar. We agree, although, as discussed below, the flaws in this evaluation are not limited to those identified by Summit.

As a preliminary matter, with respect to Summit's contention that AverStar compromised the validity of this technical evaluation by not advising the Navy of the departure of one of its key personnel, we disagree. While we agree that the RFP here imposed an obligation on offerors to keep the agency apprised of any information that called into question the commitment of the proposed key employees, RFP at 83, AverStar's proposal clearly indicated that Mr. Jones' resume was not submitted for evaluation. Thus, regardless of its obligation, AverStar had no reason to expect that its omission would result in a flawed evaluation. Simply put, we cannot fault AverStar for the Navy's mistake.

Rather, the record here shows that the Navy received detailed rate information from DCAA, via e-mail, on February 7, 2001--more than five weeks prior to the March 17 BCM tradeoff decision, and almost two months prior to the March 30 award date--that indicated that Mr. Jones had ended his employment at AverStar on August 25, 2000. AR, Tab 22. In addition, the record shows that other items of information included with this transmission were incorporated into the Navy's evaluation. Compare AR, Tab 22 (DCAA's e-mail message) with BCM at 14. The fact that the evaluators had this information and did not provide it to the SSA, in no way supports the reasonableness of the source selection decision. We conclude that the agency acted improperly when it elected to ignore information it received from DCAA that

should have raised questions about the accuracy of the evaluation upon which the selection decision was eventually based. See AAA Eng'g & Drafting, Inc., B-250323, Jan. 26, 1993, 93-1 CPD ¶ 287 at 6. The failure to raise these questions was unfair to both the agency and other competitors, and violated the Navy's obligation to reasonably evaluate proposals. Id.

Before ending this analysis, and turning to the cost realism issues raised by the protester, we recognize that in many protests, the addition of a point or two, or a fraction of a point, to the score of one offeror or another, is not itself sufficient to support a decision to overturn an agency procurement. See Textron Marine Sys., B-243693, Aug. 19, 1991, 91-2 CPD ¶ 162 at 13 n.8. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

Here, this competition was decided with a 0.52 point spread (in Summit's favor), out of 155 available points, and a \$5,862 cost difference (in AverStar's favor), between two proposals with evaluated costs in excess of \$9 million. Under the small business participation evaluation factor alone, our review indicates that Summit's proposal should receive the **[deleted]** additional available points in that category. While we cannot pinpoint with similar precision the impact of the Navy's decision to ignore the departure of AverStar's Mr. Jones, our review of the evaluation scoresheets leaves no doubt that AverStar's score under key personnel would have been lowered by removing Mr. Jones's resume and replacing it with the resume of the **[deleted]** proposed by AverStar.³ Under these circumstances alone, we conclude that Summit has shown a reasonable possibility that it was prejudiced by these errors.

³The agency report at Tab 13b included all of the evaluator scoresheets. As mentioned above, in reviewing AverStar's proposal, the five TEB members completed evaluation worksheets for **[deleted]** of the individuals proposed for the three FTE positions in the senior analyst/instructor key labor category. Numerical ratings, however, were assigned only to the first three individuals listed in the proposal (even though **[deleted]**). On a scale of 50 available points, with a score between 43 and 50 considered exceptional, the average score given Mr. Jones by the five TEB members was **[deleted]**. In addition, in four areas where key personnel candidates could be rated as excellent, very good, satisfactory, marginal, or unsatisfactory, the five TEB members handed out **[deleted]** excellent ratings, and **[deleted]** very good ratings for Mr. Jones. For the individual who was not given a point score, but for whom the TEB members did complete the adjectival worksheets, the results are strikingly different. Four of the five TEB members (one evaluator rated this candidate **[deleted]** in all four areas) rated this individual **[deleted]**. Our comparison of the TEB's adjectival ratings and narrative comments for Mr. Jones
(continued...)

There is, however, another matter highlighted by our review of this protest issue that leads us to conclude that, at this point, the Navy cannot reasonably rely on the point scores generated here to distinguish between the key personnel proposals of Summit and AverStar. Specifically, in our review of the record to ascertain the impact of the Navy's failure to remove Mr. Jones from its assessment of AverStar's proposed key personnel, it became apparent that the Navy's approach of reviewing only 11 resumes--regardless of whether the resume was offered for a full-time position, or for some portion of the required hours less than full-time--means that the Navy did not assess equal numbers of key personnel for the different offerors, and did not assess all of the personnel offered for the 11 key positions.⁴

For example, in scoring the first three resumes identified in the AverStar proposal for the **[deleted]** position (**[deleted]**), the TEB omitted from its review one full-time position. It thus based its overall assessment on 9.5 FTEs, rather than the 10.5 FTEs it intended to evaluate.⁵ Since, as explained above, one of these **[deleted]** employees was Mr. Jones, and since **[deleted]**, AverStar's score is doubly inflated by this error--once by the agency's failure to remove Mr. Jones' resume and replace it with the **[deleted]** resume of the other **[deleted]**, and again by disproportionately reflecting in AverStar's score Mr. Jones' higher-rated resume, even though he was offered for **[deleted]**. This difference between the intended evaluation and the actual evaluation will be larger to the extent this approach was repeated in the assessment of other positions in the AverStar proposal.

The evaluation complications arising from the offerors' use of part-time employees were not confined to the Navy's assessment of AverStar's proposal. For example, Summit proposed **[deleted]** for the half-time program manager position--**[deleted]**. Summit Proposal, Vol. 1, Tab C at Table C-1 (between pages 2 and 4). Since this was a half-time position, the Navy interpreted this offer as a **[deleted]** of the 988 labor hours required by the RFP. BCM at 16. One of these **[deleted]** employees--**[deleted]**. Summit Proposal, Vol. 1, Tab C at Table C-1. In keeping with the RFP's

(...continued)

and for the individual who was rated (but not numerically scored), and the results of a rough attempt to quantify the assessment for the individual who was not scored, leave us with no doubt that AverStar's key personnel score would have been lower if it had not included Mr. Jones. AR, Tab 13b.

⁴Our review also leads us to note that, given the complexities raised by evaluation of these proposals, the Navy might have identified some of the problems here, and avoided them, by holding discussions with the offerors.

⁵As noted earlier, all 11 of the key personnel positions were for 1 FTE per year, with the exception of the program manager position, which was for one-half the full complement of annual hours.

admonition that resumes would count towards the evaluation of only one key labor category, Summit's proposal indicated that the resume of this individual offered for **[deleted]**, should be evaluated for the **[deleted]**. Id.⁶

Upon review, the Navy concluded that the individual offered for **[deleted]** of the time required for **[deleted]** did not meet the experience requirement for this position in the RFP. For this reason, the Navy concluded that Summit's approach **[deleted]**. BCM at 16, 21. On the other hand, since the Navy evaluated only one resume for each position, its assessment of Summit is based on the score given **[deleted]**. For this reason, the score given Summit for the **[deleted]** position may be inflated.

In addition, the TEB's assessment of Summit's proposal under the **[deleted]** position does not score resumes in the order in which they were identified in the proposal, as the TEB did when reviewing AverStar's proposal. Rather, the TEB: (1) scored the resume for the individual offered for **[deleted]** position; (2) skipped the resume for the individual offered for the **[deleted]** position (as Summit requested in its proposal); and (3) scored the resumes for the remaining **[deleted]**. Thus, the evaluation of Summit in this area is based on **[deleted]**.

Given the agency's uneven approach to evaluating key personnel, we conclude that the evaluation here has not been done equally, is irrational, and cannot be used to make meaningful distinctions between two proposals that appear to be almost equal in technical merit and in evaluated cost.

Cost Realism

With respect to the evaluation of proposed costs, Summit raises five separate challenges to the Navy's evaluation of costs proposed by it and by AverStar, including an argument, based upon the facts discussed above, that the agency should have removed the **[deleted]** labor hour costs associated with AverStar's Mr. Jones (and used **[deleted]** labor hour rate) upon learning that Mr. Jones had ended his employment with AverStar. In addition, Summit argues that the Navy erred in using an artificially low labor escalation rate for AverStar, and wrongly permitted AverStar **[deleted]**. With respect to its own proposal, Summit argues that the Navy wrongly rejected the G&A rate included in its proposal, and used a higher provisional rate, without realizing that the provisional rate was calculated on a different, and smaller, cost base than the rate in its proposal.

⁶For completeness, we note for the record that Summit's **[deleted]** of this individual means that it, too, offered **[deleted]** for the **[deleted]** position. They were: **[deleted]**. Id. In keeping with the RFP's admonition that only 11 resumes would be evaluated, Summit advised the agency not to evaluate the resume of the individual offered for **[deleted]** of the **[deleted]** position.

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation § 15.305(a)(1). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.–Fed., B-216516, Nov. 19, 1984, 84-2 CPD ¶ 542 at 5. Our review of any agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. General Resesarch Corp., B-241569, Feb. 19, 1991, 91-1 CPD ¶ 183 at 5, recon. denied, American Management Sys., Inc.; Dep't of the Army–Recon., B-241569.2, B-241569.3, May 21, 1991, 91-1 CPD ¶ 492 at 7-8; Grey Adver., Inc., B-184825, May 14, 1976, 76-1 CPD ¶ 325 at 27-28.

We need not discuss again the issue of Mr. Jones' employment. Summit's argument (that Mr. Jones' **[deleted]** hourly rate should have been removed from AverStar's proposed costs and replaced with **[deleted]** rate), and the Navy's response (that it views the rate as reasonable, and can point to at least one other individual proposed for this position by another offeror with a similar rate), have been rendered academic by our decision sustaining the protest. While Summit may not have been prejudiced by the Navy's failure to remove the rate, the preferred practice would be to use the actual verified rate of an employee proposed in place of Mr. Jones, or to make an independent assessment about the likely cost of filling this position. Since AverStar will presumably replace Mr. Jones with someone else when given an opportunity to revise its proposal, we need not discuss this matter further.

With respect to Summit's four remaining challenges to the cost realism evaluation, which have not been rendered academic by our decision, we have reviewed each of the contentions raised by Summit, the responses of the Navy, and the record, and we conclude that the agency's decisions were reasonable in each area. For example, we do not agree that the Navy unreasonably accepted AverStar's proposed escalation rate of **[deleted]** percent per year. On this issue, AverStar's argument, in its entirety, is based on the wording of the DCAA review provided to the Navy in response to its request for assistance. Specifically, DCAA stated, "The **[deleted]**% factor is considered reasonable, however, AverStar has been experiencing a rate more in line with **[deleted]**%." AR, Tab 22 at 2. Based on this information alone, we will not conclude that the Navy improperly accepted the proposed **[deleted]** percent rate, rather than using the higher rate that DCAA noted the company had been experiencing.

As a second example, we also disagree with Summit's claim that the Navy unreasonably rejected its proposed G&A rate of **[deleted]** percent and instead used a DCAA-provided provisional rate of **[deleted]** percent. Summit's proposal, on this subject, explained that it was using "its current DCAA submitted provisional rates,

adjusted for fiscal year 2001.” Summit Proposal, Tab E, Pt. II at 2. Its proposal, however, does not explain how its provisional rate was adjusted for the coming year, or why. In addition--and separate from any adjustment related to a new fiscal year--the proposal does not explain that the provisional rate has been **[deleted]** by the addition of **[deleted]** to the cost base Summit uses to calculate its G&A rate (rather than excluded from the cost base, as they are in the DCAA provisional rate--a matter Summit argues the Navy should have been able to discern).

As the Navy points out, with no explanation from Summit about how it adjusted its provisional rate, and thus, no mechanism by which the Navy could assess the realism or reasonableness of the adjustment, the Navy decided to continue using the provisional rate. In addition, our review of Summit’s proposal leads us to conclude that the proposal did not adequately provide notice to the Navy that the cost base used to calculate the G&A rate in the proposal was different from the cost based used to calculate the DCAA provisional rate. Id. at 1-10. In summary, we see nothing unreasonable about the Navy’s decision to use Summit’s provisional G&A rate provided by DCAA when the agency calculated Summit’s most likely cost of performance.

RECOMMENDATIONS

We recommend that the Navy reopen the procurement, and consider amending the solicitation to permit review of additional key personnel resumes for offerors who propose a mix of full- and part-time people for the 11 key positions. After final proposal revisions have been received and evaluated, the agency should make a new award determination. If AverStar’s proposal is not selected for award, we recommend that the agency terminate its contract with AverStar, and make award to the offeror whose proposal is considered most advantageous to the government.

We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys’ fees. 4 C.F.R. § 21.8(d)(1) (2001). The protester should submit its certified claim for such costs, detailing the time expended and the costs incurred, directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel