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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Metro Machine Corp.

File: B-402567; B-402567.2

Date: June 3, 2010

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DIGEST

1. Protest challenging agency's cost realism evaluation of awardee's proposal is denied where the record demonstrates that agency's conclusions were reasonable.

2. Protest that agency's evaluation of awardee's proposal failed to consider the conclusions of a Defense Contract Audit Agency audit report regarding the awardee is denied where the record shows the allegation is without basis.

3. Protest of agency's technical evaluation is denied where record shows evaluation was reasonable and consistent with evaluation criteria; mere disagreement with agency's evaluation is insufficient to show it was unreasonable.

DECISION

Metro Machine Corp., of Norfolk, Virginia, protests the award of a contract to BAE Systems Norfolk Ship Repair Inc., also of Norfolk, Virginia, under request for proposals (RFP) No. N00024-09-R-4401, issued by the Naval Sea Systems Command, Department of the Navy, for the maintenance, repair, modernization, and alteration of DDG-51 Class ships (Arleigh Burke-Class guided missile destroyers) homeported or visiting Norfolk, Virginia. Metro alleges that the agency's evaluation of offerors' proposals and subsequent source selection decision were improper.

We deny the protest.

BACKGROUND

The mission of the DDG-51 Arleigh Burke-Class ships is to conduct sustained combat operations at sea, providing primary protection for the Navy's aircraft carriers and battle groups, as well as escort to Navy and Marine Corps amphibious forces and auxiliary ships, and independent operations as necessary.

The RFP, issued on May 1, 2009, contemplated the award of a cost-plus-award-fee/ incentive-fee, "multi-ship, multi-option (MSMO)" contract for execution planning and performance of Chief of Naval Operations-scheduled ship availabilities for certain DDG-51 Class ships at Norfolk, Virginia.[1] Generally, under an MSMO contract, each ship availability is a separate option under the contract. In this case, the RFP provided for the award of a base contract for the execution planning for the first scheduled availability, the USS Arleigh Burke, and the performance of non-scheduled repairs and maintenance between scheduled availabilities--the actual maintenance and modernization work was an option under the base contract. The RFP also provided for options for 22 additional availabilities and the associated execution planning for these availabilities over a 5-year period. Id. at 2-31.

The RFP instructed offerors to base their cost proposals on a notional work package included with the solicitation. The notional work package consisted of individual work items, the costs of which would vary with the type of scheduled availability. For the majority of the work items in the notional work package, the RFP provided offerors with an independent government estimate (IGE) of the number of direct labor hours and material costs to perform the work item. The RFP also instructed offerors to use the government labor hour and material cost estimates for each notional work item in preparing their cost proposals. While offerors were permitted to propose deviations from the IGEs, the solicitation required the offeror to provide "clear and compelling evidence" to substantiate that an adjustment was warranted. Id. at 197.

The RFP identified, in addition to evaluated cost, the following technical evaluation factors, in descending order of importance: management approach; technical approach; resource capabilities; and past performance. The RFP established that the technical factors, when combined, were more important than cost, and that contract award was to be made to the responsible offeror whose proposal represented the "best value" to the government, all factors considered. Id. at 217-20.

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[1] The RFP established four different types of scheduled availabilities: selected restricted availabilities (SRA); drydocking selected restricted availabilities (DSRA); extended selected restricted availabilities (ESRA); and extended drydocking selected restricted availabilities (EDSRA). The maintenance and modernization work that the contractor was to perform on each ship was based on the type of scheduled availability. RFP at 67-79.

Both BAE and Metro submitted proposals by the June 16 closing date. A Navy technical evaluation review panel (TERP) evaluated offerors' technical proposals using the adjectival rating system set forth in the RFP: exceptional, very good, satisfactory, marginal, or unsatisfactory and, with regard to past performance, neutral. Concurrent with the technical evaluation, a Navy cost assessment panel (CAP) evaluated offerors' cost proposals and calculated an overall evaluated cost to the government for each offeror.

On October 22, after the initial evaluation of cost and technical proposals, the Navy determined that the proposals of both BAE and Metro should be included within the competitive range. The Navy then held discussions with each offeror. The agency received discussion responses from the offerors by November 24, and final proposal revisions (FPR) by the December 4 closing date.

By January 21, 2010, the TERP and CAP provided the agency's best value advisory council (BVAC) with their respective evaluations of the offerors' proposals, which were as follows:

Factor	BAE	Metro
Management Approach	Exceptional	Exceptional
Technical Approach	Exceptional	Very Good
Resource Capabilities	Exceptional	Very Good
Past Performance	Exceptional	Exceptional
Overall Technical Assessment	Exceptional	Very Good
Proposed Cost	$352,676,436	$392,636,512
Evaluated Cost	$415,326,382	$412,012,550

Agency Report (AR), Tab 33, Final TERP Report, at 3; Tab 34, Final CAP Report, at 1.

The Navy technical evaluators detailed the various strengths (major and minor), weaknesses, and deficiencies that they found in support of the adjectival ratings assigned to offerors' proposals. AR, Tab 33, Final TERP Report. Similarly, the CAP's evaluation provided a narrative explanation and backup documentation regarding its analysis of the cost elements within offerors' proposals. AR, Tab 34, Final CAP Report; Tab 60, CAP Work Item Reviews; Tab 61, CAP Cost Evaluation Spreadsheets. The BVAC adopted the evaluation findings and ratings, and recommended that contract award be made to BAE. AR, Tab 37, BVAC Report, at 11.

On February 5, after having received the final evaluation reports and BVAC presentation, the source selection authority (SSA) determined that BAE's proposal was technically superior to that of Metro under all four technical factors. The SSA also found that BAE's technical advantages outweighed the associated $3.3 million (.81%) higher evaluated cost, and concluded that BAE's higher technically rated, higher cost proposal represented the best value to the government. AR, Tab 39, Source Selection Decision, at 1-3. This protest followed.

DISCUSSION

Metro challenges numerous aspects of the agency's cost realism evaluation and its evaluation of the offerors' technical proposals.[2] Although we do not specifically address all of Metro's issues and arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

Cost Realism Evaluation of BAE's Proposal

Metro argues that the agency failed to reasonably evaluate the cost realism of BAE's "non-significant subcontractor"[3] labor rate or consider BAE's increased pension costs. Metro also challenges the agency's calculation of BAE's evaluated material costs. Metro argues that a proper cost realism evaluation would have resulted in greater upward adjustments to BAE's proposed costs, thereby increasing the evaluated cost difference between the offerors' proposals.

BAE's Non-Significant Subcontractor Labor Rate

Metro alleges that the Navy failed to properly evaluate the cost realism of BAE's average non-significant subcontractor labor rate (including BAE's temporary labor). The protester points to the fact that BAE's non-significant subcontractor labor rate was dramatically lower than both the awardee's significant subcontractor labor rates and Metro's average non-significant subcontractor labor rate. Metro argues that a proper cost realism analysis of BAE's non-significant subcontractor labor rates would have increased BAE's evaluated cost by at least an additional $18.9 million. Protest, Apr. 12, 2010, at 2-7.

The RFP stated, as part of the cost proposal instructions, that "[s]ubcontractor proposals are not required for non-significant subcontractors. However, offerors

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[2] Metro's original protest also raised two additional issues: (1) that the Navy's cost realism evaluation of Metro was improper; and (2) that the agency's evaluation of offerors' proposals under the technical approach factor was improper. Metro subsequently withdrew these issues. Metro Comments, Apr. 12, 2010, at 4.

[3] For cost proposal purposes, "significant subcontractor" was defined as a subcontractor providing more than 5% of an offeror's total direct dollars or 10% of the total labor hours. RFP at 195. Accordingly, a "non-significant subcontractor" was one providing less than 5% of an offeror's total direct dollars or 10% of the total labor hours.

must identify each non-significant subcontractor proposed and provide labor rates for each, supported with quotes from the identified subcontractors." RFP at 195.

BAE's cost proposal identified the significant and non-significant subcontractors that would, in addition to the prime contractor, perform various aspects of the work items within the notional work package. BAE's cost proposal included supporting quotes--consisting of labor hours and labor rates--from each non-significant subcontractor.[4] BAE also provided historical data to support its temporary labor rate. BAE then "rolled up" the total labor hours, average labor rates, and direct labor dollars for itself, its temporary labor, and each significant and non-significant subcontractor for the entire 5-year performance period. AR, Tab 27, BAE FPR, Exh. F-3, Data in Summary Format--Program Totals.

The CAP, as part of its cost realism analysis of BAE's FPR, accepted as realistic the labor rates proposed for each non-significant subcontractor as well as BAE's temporary labor rate, finding that BAE's labor rates were supported by the cost data (e.g., quotes, historical information) provided by the offeror. AR, Tab 34, CAP Report of BAE, at 25. The CAP found, however, that BAE's proposed ratio of temporary labor to regular labor was not consistent with the offeror's historical temporary labor usage. Id. at 2-3. As a result, the CAP adjusted upward BAE's regular labor hours and decreased BAE's non-significant subcontractor/temporary labor hours.[5] Id. at 2-3. The CAP's downward adjustments to BAE's non-significant subcontractor/temporary labor hours also resulted in an adjusted average labor rate for the offeror as follows:[6]

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[4] The labor rates ranged from $[DELETED] per hour for security services, to $[DELETED] per hour for air conditioning plant condenser maintenance services. BAE's non-significant subcontractor quotes were often fixed-price in nature.

[5] The CAP also found that BAE's proposed use of one particular non-significant subcontractor (MF&B Marine) to provide surge labor services was not consistent with the offeror's technical proposal, and reallocated these hours to BAE's regular labor hours. Id. at 2, 24.

[6] The CAP analyzed the labor hours and rates for each non-significant subcontractor by work item and availability when determining BAE's total non-significant subcontractor labor dollars. AR, Tab 61, CAP Cost Evaluation Spreadsheets, FPR – Projected Cost for BAE. The average weighted labor rate here was a product of the total labor hours and total labor dollars.

Non-Significant Subcontractors (including BAE temporary labor)	Proposed	Evaluated
Labor Hours	1,344,352	944,395
Hourly Rate	$[DELETED]	$[DELETED]

AR, Tab 34, CAP Report for BAE, at 24-25.

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 the offeror, the government is bound to pay the contractor its actual and allowable costs. Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13; Metro Machine Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 9; see Federal Acquisition Regulation (FAR) § 16.301. As a result, 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 costs are likely to be 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 is the process of 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 Commc'n 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).

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. Metro Mach. Corp., supra, at 10-11. 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, and adequately documented. Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 17; Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

We find the Navy's cost realism analysis of BAE's proposal here was proper. As a preliminary matter, the record shows (and Metro does not dispute) that the CAP properly adjusted downward BAE's non-significant subcontractor/temporary labor amounts based on historical information and/or methods of performance described in the offeror's technical proposal. Further, the record shows that the Navy reasonably determined that BAE's non-significant subcontractor and temporary labor rates were supported by historical data and/or invoices, and that no adjustments were necessary. Having determined that the labor rates for BAE's non-significant subcontractors and temporary labor were realistic, there is no basis to question the reasonableness of the CAP's adjusted average labor rate even if it is lower than the rate BAE proposed.

Metro does not dispute that BAE's cost proposal included invoices from each of its non-significant subcontractors in support of the labor rates (and labor hours) that the offeror proposed, nor does Metro dispute that BAE's temporary labor rate was supported by BAE's historical cost data. Further, Metro has not demonstrated (or even asserted) that BAE's proposed labor rates here were below the prevailing rates for the types of work to be performed by each non-significant subcontractor. Rather, Metro argues only that BAE's non-significant subcontractor labor rate is both dramatically lower than BAE's significant subcontractor labor rates and Metro's non-significant subcontractor labor rate.[7] This simplistic comparison is unpersuasive. Metro has not shown that BAE's significant and non-significant subcontractors would be performing the same types of work or employing the same types of labor, so the comparison between their labor rates is not meaningful. Similarly, Metro has made no showing that BAE's non-significant subcontractors would be performing the same types of work as Metro's non-significant subcontractors, so the comparison between their labor rates likewise is not meaningful. As the Navy reasonably determined that BAE's non-significant subcontractor and temporary labor rates were realistic and supported, the fact that the labor rates differed from other subcontractor rates in the offerors' proposals does not in any way show that the Navy's evaluation was improper.

BAE's Increased Pension Costs

Metro protests that the Navy's cost realism analysis of BAE's proposal was improper insofar as the agency failed to adjust BAE's projected costs to account for the firm's increased employee pension costs. Metro alleges that, prior to the submission of FPRs, BAE was aware that the contribution rates to its employees' pension trust were increasing. The protester contends that neither BAE's FPR nor the Navy's cost realism analysis adjusted BAE's overhead rates to account for these increased pension costs. Metro argues that BAE's higher pension costs would have increased the offeror's total evaluated cost by approximately $5 million. Protest, Apr. 12, 2010, at 10-12.

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[7] Metro also contends that BAE engaged in "gamesmanship" with regard to its non-significant subcontractor labor rate by artificially hiding the actual costs of performance. There is nothing in the record to support such a conclusion.

On November 11, 2009, BAE received notice from the Boilermaker-Blacksmith National Pension Trust regarding pension contribution rate changes.[8] The notice stated that the pension trustees had determined the adverse financial conditions affecting the pension fund would result in increased contribution rates from all contributing employers, effective January 1, 2010. The pension trust notice also contained a provision stating, "[i]f all or part of the [increase] is taken from employees' wages, this must be handled as a reduction of the employees' wage rate, rather than a deduction from the employees' wages." Id., Exh. 5, Pension Trust Notice, at 1-2.

The following facts are based largely on declarations of various BAE employees, which we have no reason to question. BAE conducted an extensive review of the pension trust notice with internal and external legal counsel and pension consultants in the weeks following its receipt. BAE submitted its FPR on December 4 without making adjustment for or mentioning the pension trust notice, and the CAP had no knowledge of any pension trust contribution increases when performing its cost realism analysis of the offerors' FPRs.[9] AR, Apr. 21, 2010, at 10-12, attach. 1, Declaration of BAE Human Resources Director, Apr. 20, 2010, at 1-2, attach. 2, Declaration of BAE Finance Director, Apr. 20, 2010, at 1-3.

By December 9, BAE determined that the increased pension liability was a company responsibility; while the pension fund trustees were not a party to and did not have authority to modify BAE's employee wages as established by the parties' collective bargaining agreement (CBA), the trustees did have authority to increase the contributing employers' pension contributions. Even at this point, however, BAE was unaware of the cost impact of the increased pension liability on its Norfolk shipyard or its proposal, for various reasons. First, BAE believed that one option available to it--as suggested by the pension trust notice--was to reduce employee wages to offset any increase in BAE's required pension contributions. Additionally, BAE was then engaged in negotiations with the local IBB union for a new CBA which

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[8] BAE's employees belong to the International Brotherhood of Boilermakers (IBB) union, which utilizes the Boilermaker-Blacksmith National Pension Fund for the employees' pension plan.

[9] Metro contends that the pension fund contribution increase, which applied to it as well, was determined to have no impact on its final cost proposal. Specifically, the protester concluded that because [DELETED], the increase here would not increase Metro's proposed costs. Protest, Apr. 12, 2010, at 12. Metro does not dispute, however, that because it had proposed BAE as one of its significant subcontractors, there would be an indirect impact to its proposed costs. Further, Metro's calculation of the estimated cost impact to BAE does not include an offset for the higher costs that BAE would incur as a subcontractor to Metro.

would determine, among other things, how BAE's higher pension contributions would be funded. Id.

BAE and the local union did not begin negotiations on the economic portion of the new CBA until January 2010.[10] The Navy awarded the contract to BAE on February 19, and BAE concluded CBA negotiations with the local union on March 5. BAE's increased pension contributions were one of several issued addressed collectively in the CBA negotiations; while some of the contractor's labor costs increased, others were reduced. BAE subsequently calculated that the cost impact to its proposal here for the increased pension fund contributions was approximately $2.5 million.[11] Id.

While under certain circumstances an offeror is required to advise the agency of material changes to its proposal, even after submission, in order to ensure that the agency's evaluation is based on consideration of the proposal as it actually exists at the time it is being evaluated, Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 10; Dual, Inc., B-280719, Nov. 12, 1998, 98-2 CPD ¶ 133 at 3-6, we do not think that such a duty to report arose here given that the impact of the increased pension costs was not known until after award was made.

As detailed above, BAE received the pension fund notice on November 11 and had not determined whether this in fact represented a BAE financial liability prior to its December 4 FPR submission. Even after determining on December 9 that the increased pension liability was a company responsibility, BAE was unaware of the cost impact of the increased pension liability on its Norfolk shipyard or its proposal. As suggested by the pension trust notice, one option potentially available to BAE was to reduce employee wages to offset any increase in required pension contributions. Moreover, BAE was engaged in CBA negotiations with the local IBB union that would determine, among other things, how BAE's higher pension contributions would be funded. These CBA negotiations did not conclude until March 5, well after the February 19 award date. It was only at such time that BAE could realistically estimate the cost impact of the pension fund notice.

In sum, the record shows that the cost impact of the increased pension fund contribution was not certain enough prior to award to constitute a material change to BAE's proposal and, as a result, BAE was not required to advise the agency of the matter during the evaluation process.

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[10] On December 30, 2009, BAE executed an addendum to the existing CBA in which it agreed to pay the increased pension contributions until negotiations on the new CBA were concluded.

[11] BAE's calculation also does not include an offset for the higher costs that BAE would incur as a subcontractor to Metro.

BAE's Estimated Material Costs

Metro protests that the Navy's cost realism analysis of BAE was improper insofar as the agency appears to have made an error in calculating the awardee's evaluated material costs. Specifically, the protester contends that while the CAP report indicates that BAE's proposed deviations for two work items within the notional work package were rejected, the Navy then failed to utilize the IGEs in its projected cost calculations. Metro argues that this error resulted in BAE's material costs being understated by almost $6.9 million. Protest, Apr. 12, 2010, at 14-16.

As set forth above, the solicitation provided offerors with IGEs of the labor hours and material costs for the notional work items upon which offerors were to base their cost proposals. RFP at 196-206. The RFP, however, allowed offerors to propose deviations from the IGEs when properly substantiated. The two work items in question here are Work Item No. 992-11-001, Temporary Services, and Work Item No. 993-11-002, Crane, Rigging, and Forklift Services.

BAE's FPR proposed deviations from the IGEs for various work items, including the two work items here. The Navy reviewed offerors' proposed deviations for each work item separately as part of its cost realism analysis; the agency also kept all the work papers of its review. The Navy analyzed in detail BAE's proposed material cost deviations for both the temporary services and crane/rigging/forklift services work items. Although the CAP did not completely agree with BAE's proposed deviations, neither were such deviations entirely rejected. As a result, the CAP calculated material cost amounts for each type of availability that were between the deviations which BAE had proposed and the Navy's IGEs as follows:

Temporary Services	**EDSRA**	**DSRA**	**ESRA**	**SRA**
IGE	$850,859	$454,590	$850,859	$328,315
BAE (proposed)	$647,939	$347,085	$443,111	$170,890
BAE (evaluated)	$831,649	$442,890	$465,257	$186,592[12]

Crane/Rigging/Forklift	**EDSRA**	**DSRA**	**ESRA**	**SRA**
IGE	$507,000	$270,000	$507,000	$195,000
BAE (proposed)	$62,023	$33,030	$63,080	$24,261
BAE (evaluated)	$469,117	$254,370	$117,117	$45,045

AR, Tab 60, CAP Work Item Review Papers, Part 5, BAE FPR, at 17-21, 23-26.

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[12] This figure was in error; the figure should have been $178,945. AR, Apr. 21, 2010, at 15 n.13; Tab 60, CAP Work Item Review Papers, part V, BAE FPR, at 19-20. This minor error had the effect of causing BAE's evaluated cost to be slightly overstated, and caused no prejudice to Metro.

Metro does not dispute the validity of the Navy's calculations here. The CAP then carried over its calculations into the final cost realism analysis of BAE's proposal. AR, Tab 34, CAP Report of BAE, at 27. However, in the accompanying narrative, the CAP report stated that BAE's proposed deviations had been rejected and the amounts adjusted back to the IGE. Id. at 29-31.

Metro argues because the narrative in the CAP report stated that BAE's proposed deviations had been rejected and the amounts adjusted back to the IGE, the Navy's decision not to use its IGE amounts was in error. This argument is without merit. The end product of an agency's cost realism analysis is the total estimated cost that the agency realistically expects to pay for the offeror's proposed effort. Magellan Health Servs., supra. As shown above, the record clearly reflects how the Navy determined the figures that it did for BAE's estimated material costs of the two work items in question. Moreover, Metro does not dispute the validity of the Navy's calculations here. It was these undisputed figures that the CAP then used when determining the total evaluated cost of BAE's proposal. The only thing that Metro's protest correctly notes is the inconsistency between the figures here and the accompanying narrative portion of the CAP report, and it is clear that it was the narrative language that was in error, an error which caused no prejudice to the protester.

DCAA Audit Report of BAE

Metro protests that the Navy's evaluation of BAE's proposal was improper because the agency failed to properly consider a DCAA audit report regarding a deficiency in BAE's estimating system. Metro argues that by ignoring the DCAA's conclusion that BAE's estimating system was deficient, the evaluators' recommendations and the SSA's award decision were improper.

On December 2, 2009, DCAA issued an audit report regarding a deficiency in BAE's estimating system. In general terms DCAA found that in addition to BAE's official, projected volume of business (PVOB) on which its proposed overhead and general and administrative (G&A) rates for future years were based, the contractor also maintained an internal budget forecast. DCAA found that BAE's internal budget forecast was not only more conservative than its PVOB, but more realistic based on analysis of historical data. Consequently, DCAA concluded that BAE had overstated its direct labor base and understated its proposed indirect rates for future years by not using the company's best and most realistic information. AR, Tab 51, DCAA Audit Report No. 01661-2099M24020001, at 3. As a result of its audit findings, DCAA recommended overhead and G&A rates for BAE higher than those proposed by BAE. AR, Tab 51, DCAA Rate Verification for BAE, Dec. 9, 2009, at 1-6.

The record shows that the CAP was fully aware of the DCAA audit report and its findings regarding BAE's estimating system deficiency when performing the cost realism analysis of the awardee's FPR. AR, Tab 34, CAP Report of BAE, at 13-14, 31-

32. Moreover, based on its own analysis, the CAP utilized overhead and G&A rates for BAE that were higher than both those proposed by the offeror and those recommended by DCAA. Id. For example, for fiscal year 2011, while BAE's FPR proposed an overhead rate of [DELETED]%, and DCAA recommended a rate of [DELETED]%, the CAP utilized a rate of [DELETED]%. Id. at 13.

Metro does not challenge either the overhead or G&A rate portions of the Navy's cost realism analysis of BAE. See Protest, Apr. 12, 2010, at 1-19. Rather, Metro argues that the Navy's evaluation does not appear to have addressed the systemic deficiency in BAE's estimating system, and that the DCAA audit report calls into question the reliability of any information contained in BAE's cost proposal. We find no merit in these assertions. The DCAA audit report regarding BAE's estimating system related to two specific areas--the offeror's overhead and G&A rates. Contrary to the protester's assertions, the record reflects that the Navy was aware of the DCAA audit report and properly took it into account as part of its cost realism analysis of BAE's proposal: the CAP utilized indirect rates that were higher than those proposed by BAE and those recommended by DCAA, which Metro does not challenge. Quite simply, while the protester contends that BAE's estimating system deficiency "cannot be divorced" from the other aspects of the offeror's cost and technical proposals, Metro Comments, Apr. 27, 2010, at 10, the protester completely fails to establish what, if any, impact exists beyond BAE's proposed indirect rates.

Projected Rate Risk Assessment

Metro protests that the agency's cost realism analysis of offerors' proposals and the subsequent best value tradeoff decision were improper by failing to apply the projected rate risk assessments as set forth in the RFP. Metro argues that by not properly considering offerors' projected rate risk assessments, and the significant advantage represented by Metro's capped indirect rates as compared to BAE's uncapped indirect rates, the Navy's award determination was improper.

The RFP instructed offerors to submit projected rate risk assessments as part of their cost proposals. This self-assessment asked each offeror to analyze the risk and impact (low, medium, or high) of various risk factors (e.g., cost control during slow and excess periods). RFP at 195. The RFP, however, did not make consideration of offerors' projected rate risk assessments a separate evaluation criterion. Rather, as set forth above, the RFP established only that the Navy would perform a realism analysis of each offeror's cost proposal, of which the projected rate risk assessment was one part.

Both BAE and Metro submitted projected rate risk assessments as part of their cost proposals. As part of its cost realism analysis, the CAP considered, among other things, whether the offeror had proposed capped or uncapped indirect rates (Metro does not challenge the indirect rates used by the CAP for either itself or BAE.) The CAP did not separately evaluate offerors' projected rate risk assessments, or whether offerors had proposed capped or uncapped indirect rates. The CAP's cost realism analysis report does not mention offerors' projected rate risk assessments.

We find no merit in Metro's assertion that the Navy failed to properly evaluate offerors' projected rate risk assessments, as there simply was no requirement that the agency do so. The RFP required the Navy to evaluate the realism of each offeror's cost proposal, and the record shows that the Navy did so here, including consideration of whether the offerors proposed capped or uncapped indirect rates. The fact that the CAP did not specifically mention or separately evaluate the offerors' self-assessments regarding rate risk in no way shows that the evaluation was unreasonable. See SAMS El Segundo, LLC, B-291620, B-291620.2, Feb. 3, 2003, 2003 CPD ¶ 44 at 18-19; Jacobs COGEMA, LLC, supra, at 22.

Navy's Evaluation of Technical Proposals

Metro challenges the Navy's evaluation of BAE's technical proposal under the management approach and resource capabilities factors. Metro argues that in light of the heavy reliance by BAE and its significant subcontractors on temporary labor, as indicated by the awardee's cost proposal, the ratings assigned to BAE's technical proposal were unreasonable.

The TERP evaluated BAE's proposal as "exceptional" under the management approach factor based on the identification of three major strengths, three minor strengths, and no weaknesses. Similarly, the TERP evaluated BAE's proposal as "exceptional" under the resource capabilities factor based on two major strengths, three minor strengths, and no weaknesses. One of BAE's evaluated strengths under both the management approach and resource capabilities factors was its resource sharing agreements with significant subcontractors (including such an agreement with Metro). The agency evaluators found that BAE's resource sharing agreements provided the offeror with the ability to share facility and manpower resources to optimize facility utilization and to better level workload across the port. AR, Tab 33, Final TERP Report, at 3, 7.

In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

The record shows the Navy's evaluation of BAE's proposal to be unobjectionable notwithstanding the awardee's planned use of temporary labor. First, Metro does not dispute any of BAE's many identified strengths under the management approach and resource capabilities factors other than the strength identified for the offeror's resource sharing agreements. Further, Metro does not dispute that BAE had resource sharing agreements with its various subcontractors which provided BAE with the ability to share facility and manpower resources to optimize facility utilization. Additionally, as detailed above, the Navy's cost evaluation found BAE's proposed degree of reliance on temporary labor was not consistent with the offeror's historical practices and reallocated BAE temporary labor hours to BAE regular labor hours. We find the protester's argument amounts to mere disagreement with the agency's evaluation, which does not render it unreasonable. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Metro also protests that the Navy's evaluation of offerors' proposals under the resource capabilities factor was improper insofar as the agency considered excess resource capacity beyond what was required to perform the work. Specifically, Metro contends that the TERP and BVAC reports concluded that both offerors had more than adequate resources, facilities, and skills to accomplish the requirements of the solicitation. From this Metro argues that it was improper for the agency to distinguish between degrees of excess resource capacity. We disagree.

The RFP stated that offerors' resource capabilities proposals were to describe the total facility resources available to the organization; demonstrate how the offeror will obtain required production and administrative facilities; describe the plan for phasing and allocation of facility resources; describe and provide consolidated manpower charts to support the work projected from this solicitation; provide current and projected workload for all team members; provide a plan to accommodate any peaks or valleys in workload; and provide a craft/trade staffing plan for this MSMO period of performance. RFP at 191. The solicitation also established that the evaluation of offerors' resource capabilities would be based on the criteria described in the proposal instructions, using an adjectival rating system. Id. at 218. In our view, the agency's evaluation of offerors' resource capabilities proposals was reasonable and consistent with the stated evaluation criteria. If Metro was of the opinion that the agency should only assess the minimum adequacy of offerors' resource capabilities on a pass/fail basis, it was required to protest the ground rules of the procurement prior to the original closing date.[13] See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2010).

The protest is denied.

Lynn H. Gibson
Acting General Counsel

[13] Metro also originally protested that the agency's evaluation of its proposal under the resource capabilities factor was unreasonable insofar as: (1) Metro had received a higher evaluation rating in prior procurements; (2) the Metro and BAE resource capabilities were substantially identical because the offerors shared the same physical resources as teaming partners; and (3) no agency discussions alerted Metro to any reason why Metro's resource capabilities would not be rated as high as they had been previously. Protest, Mar. 1, 2010, at 8-12. The Navy specifically addressed these allegations in its report to our Office, AR, Mar. 31, 2010, at 36-44, and Metro's comments offered no rebuttal of the agency's position. See Metro Comments, Apr. 12, 2010, at 2. Where, as here, an agency provides a detailed response to a protester's assertions and the protester does not respond to the agency's position, we deem the issues abandoned. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4; L-3 Commc'ns Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 4.