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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: KPMG LLP

File: B-406409; B-406409.2; B-406409.3; B-406409.4

Date: May 21, 2012

Michael A. Hordell, Esq., Michael R. Golden, Esq., Heather Kilgore Weiner, Esq., and Samuel Jack, Esq., Pepper Hamilton LLP, for the protester.
David S. Cohen, Esq., John J. O'Brien, Esq., and Gabriel E. Kennon, Esq., Cohen Mohr LLP, for Deloitte & Touche LLP, an intervenor.
Christopher E. Gagne, Esq., and Arthur L. Passar, Esq., Central Intelligence Agency, for the agency.
Paul N. Wengert, Esq., Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency conducted misleading discussions where it advised protester during discussions that it should provide resumes for all proposed personnel for the lifespan of the contract, but now asserts that the RFP did not require such submission of resumes.

2. Agency failed to conduct an adequate cost realism analysis of proposals for cost-plus-fixed-fee level-of-effort contract where the record is devoid of any meaningful analysis by agency evaluators of their basis for accepting as realistic the awardee's cost proposal, and record showed that, beginning a year into performance, the firm's cost savings depended on replacement of staff whose resumes were relied upon for the awardee's higher technical ratings.

DECISION

KPMG LLP, of McLean, Virginia, protests the award of a contract to Deloitte & Touche LLP, of Arlington, Virginia, by the Central Intelligence Agency (CIA) under request for proposals (RFP) No. 2012-11120600005 for accounting and financial services in support of the Office of the Director of National Intelligence (ODNI). KPMG argues that the CIA held misleading discussions, misevaluated the proposals, failed to conduct a proper cost realism analysis, and made an unreasonable source selection decision.

We sustain the protest.

BACKGROUND

The CIA issued the RFP on December 12, 2011, seeking proposals to provide services to assist in the preparation of auditable financial statements for the ODNI. RFP at 1. The RFP anticipated the award of a cost-plus-fixed-fee level-of-effort contract[1] for a base year and four annual option periods[2] to the firm whose proposal offered the best value. Agency Report (AR) at 2; RFP at 10, L-2.[3]

The RFP described the objectives of the contract as producing auditable financial statements each year by November 15, beginning with Fiscal Year 2014. After that, the contractor will support the agency's efforts to resolve audit issues, so that the agency is able to obtain an unqualified opinion on the ODNI financial statements by Fiscal Year 2016. Statement of Work (SOW) at 3-4. The contract tasks were grouped into nine areas: program management, financial analysis, internal controls and compliance, financial statements preparation support, process redesign and policies/procedures, training, documentation support, audit support, and preparation of written products. SOW at 5-9.

Since the RFP stated that the CIA intended to award a cost-reimbursement level-of-effort contract, it provided that "the required level of effort for this requirement is fourteen (14) Full Time Equivalents [FTEs] for a period of one year (BASE) with options for an additional four years . . ." Id. at 4; RFP at 5. The SOW further allocated the 14 FTEs among three labor categories: program manager/senior technician (2 FTEs), financial support personnel (8 FTEs), and functional support specialist (4 FTEs). SOW at 10-11. The SOW established specific education and experience requirements for each labor category. Id.

Proposal Instructions

The RFP directed offerors to submit proposals addressing, among other things, the firm's technical approach, management approach, past performance, security, and cost/price. RFP at L-3. Under the technical volume, the RFP directed offerors to provide a narrative description of the offeror's approach, and to include resumes for "the proposed Project Manager, full time staff, and any other specialized staff the offeror believes might be required for backup." RFP at L-5. For the management volume, the RFP directed each offeror to describe how its proposed team would be

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[1] See generally Federal Acquisition Regulation (FAR) §§ 16.306(d)(2), (4).

[2] The base contract period was to run from February 1, 2012, to January 31, 2013, and similarly for each of the four option years. RFP at 9.

[3] Both sections L and M of the RFP were page numbered separately. To avoid ambiguity, our citations to pages in those sections will be "L-[page number]" (as above) or "M-[page number]," respectively.

capable of performing the contract requirements, and also to describe the offeror's ability to retain and recruit personnel consistent with the SOW. Id. With respect to the security requirements, the RFP directed offerors to describe the firm's general approach to complying with the contract's security requirements and to supply specific information about "each individual proposed employee," including the individual's full name, date of birth, social security number, background investigation and security clearance, and the date when the individual would begin work on the contract. RFP at L-8.

In the cost volume, the RFP directed offerors to provide a complete explanation of the basis for their costs. The RFP provided that "ALL of the instructions for the Cost/Price Volume apply to all Offerors, whether Prime or subcontractor." RFP at L-9. The instructions further directed offerors to provide cost or pricing data "from the prime and subcontractors," and a basis of estimate for the offeror's costs, including a breakdown of the underlying cost elements. RFP at L-9.

Best Value Evaluation Scheme

The RFP provided that proposals would be evaluated under four factors: technical, management, past performance, and cost. RFP at M-2. The RFP explained that award would be made to the firm whose proposal provided the best value, with the technical factor more important than the management factor, which was, in turn, more important than the past performance factor. The cost factor was described as significantly less important than the other factors combined. RFP at M-2 to M-3.

Under the technical factor, the RFP listed two subfactors: personnel qualifications and skills, and technical capability and understanding of the requirements. Id. Under the management factor, the RFP listed one subfactor: staffing and availability. Id. There were no subfactors under the other evaluation factors.

The RFP also established a fifth factor, security, to be evaluated on a pass/fail basis. The RFP stated that firms receiving a rating of "fail", or whose security deficiencies were not correctable, would be eliminated from the competition. RFP at M-3 to M-4. The security factor evaluation was to consider the "clearance status of the proposed personnel," among other things, and the RFP advised offerors that contractor personnel were required to hold a "current ODNI ISSA/TS [Industrial Security Staff Approval/Top Secret] clearance, or be eligible for immediate crossover." RFP at M-4.

Proposal Submission

The CIA received timely proposals from KPMG and Deloitte. Both firms' initial proposals offered diminishing resources over the life of the contract; that is, each firm proposed either fewer personnel or less qualified personnel after an initial contract performance period. For example, KPMG's initial proposal offered to provide 14 FTEs during the first [**deleted**].[4] Thereafter, the proposal stated that the firm anticipated that the services would be less complex, and KPMG proposed to reduce staffing for the [**deleted**]. AR Binder 2, Tab 4, KPMG Initial Management Proposal, at 3. Similarly, Deloitte's proposal indicated that after the base performance period, it would "transition" to less experienced personnel. Supplemental (Supp.) AR Binder 3, Tab 3, Deloitte Final Proposal Revision, at 1.

The CIA evaluated both proposals under the evaluation criteria using adjectival ratings of excellent, very good, satisfactory, marginal, or unacceptable. The initial technical and management evaluation ratings were as follows:

Factor/Subfactor	**Deloitte**	**KPMG**
Technical Approach		
1. Personnel Quals & Skills	Very Good	Very Good
2. Technical Capability	Very Good	Very Good
Management Approach	Very Good	Very Good

Supp. AR Binder 3, Tab 8, Final Technical & Management Evaluation Report, at 1.

Discussions

Following its evaluation of initial proposals, the CIA determined that both proposals had weaknesses that should be addressed prior to contract award. Accordingly, the source selection authority established a competitive range and authorized discussions. AR Binder 1, Tab 11, Competitive Range Determination, at 1.

The CIA provided each offeror a written discussion letter. For KPMG, the discussion letter advised the firm, among other issues, that its proposed staffing was unacceptable, stating:

> KPMG has failed to propose the required Fourteen (14) FTEs as mandated and has therefore failed to meet the requirements of the solicitation. As a result, the Government does not have a realistic cost estimate based on KPMG's submission. Resumes should be provided for all personnel proposed to perform over the lifespan of the contract.

AR Binder 1, Tab 12, Discussions Letter from CIA to KPMG, at 1.

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[4] Specifically, KPMG's proposal provided resumes for [**deleted**], whose efforts provided a total of 14 FTEs during [**deleted**]. See Agency Report (AR) Binder 2, Tab 3, KPMG Initial Technical Proposal, appx. A, at A-1 to A-33.

In discussions with Deloitte, the agency raised a similar concern with Deloitte's proposal to "transition" to less qualified personnel after the initial performance period, stating:

> Deloitte should either submit resumes for the less experienced personnel forecasted, or revise the cost proposal to reflect the labor categories for the resumes provided in the initial proposal in order for the Cost and Technical/Management Teams to make a fair cost determination.

Supp. AR Binder 3, Tab 6, Discussions Letter from CIA to Deloitte, Jan. 13, 2012, at 1.

The CIA also posed a question to Deloitte regarding the absence of pricing information for Deloitte's subcontractors, stating that the initial proposal was incomplete in that regard and requesting that Deloitte "submit all required information for subcontractors as specified in [RFP] Section L, [¶] 7.4.1." Id.

Submission of Final Proposal Revisions

In its final proposal revision (FPR), KPMG stated that it was eliminating the staff reductions initially proposed [**deleted**], and instead would be maintaining its staff at 14 FTEs for all years of contract performance. AR Binder 2, Tab 9, KPMG Final Management Proposal Revision, at 3; AR Binder 2, Tab 10, KPMG Final Cost Proposal Revision, at 9-11, 16. Additionally, KPMG provided resumes for all of its proposed personnel. AR Binder 2, Tab 9, KPMG Final Technical Approach Proposal Revision, at 5-6 & app. A, at A-1 to A-39; KPMG Final Management Proposal Revision, at 4-5.

In contrast, Deloitte responded in its FPR that "it is very difficult to provide resumes of specific individuals that we plan to transition into the contract." Supp. AR Binder 3, Tab 5, Deloitte Final Technical Proposal Revision Cover Letter, at 1. Instead, Deloitte stated that it was "provid[ing] a representative resume for each labor category," explaining that the resumes were submitted to reflect "the types of skills and experience that we envision delivering in the out years." Id. at 1-2.

Deloitte's final cost proposal revision included a complex explanation for its labor costs. The proposal stated that the firm followed two practices for its proposed direct costs. First, for the [**deleted**] key personnel, Deloitte's proposed costs were [**deleted**]. In contrast, for the non-key personnel, Deloitte used "blended" rates, which were calculated as [**deleted**]. Supp. AR Binder 3, Tab 5, Deloitte Final Cost Proposal Revision, at VII-66 to VII-70. Deloitte explained that its blended rates were determined by dividing the range of direct labor rates for each labor category into [**deleted**] (consistent with the forward pricing rate recommendation[5] applicable to the company), and then selecting a [**deleted**]. Id. at VII-70.

Deloitte also stated that due to the RFP's security clearance requirement, "the salaries necessary to attract such personnel are on the higher side of the salary ranges in the survey." However, contrary to that assertion, for [**deleted**] of the [**deleted**] blended rates, Deloitte used only rates in the [**deleted**].[6] Id. These blended rates were then used by Deloitte to calculate its proposed costs for each year of contract performance. Supp. AR Binder 3, Tab 5, Deloitte Final Cost Proposal Revision, at VII-8 through VII-43.

Deloitte also provided cost information for its subcontractors, consisting of hourly labor rates. Supp. AR Binder 3, Tab 5, Deloitte Final Technical Proposal Revision Cover Letter, at 1; Supp. AR Binder 3, Tab 5, Deloitte Final Cost Proposal, at VII-176 to VII-187k.

Evaluation of Final Proposal Revisions

The CIA evaluated the FPRs and concluded that both of the final proposals eliminated the weaknesses the agency identified during discussions. While the evaluators made no changes to KPMG's ratings, they ultimately identified several strengths in the proposal. Specifically, the evaluators assigned two minor strengths to KPMG's final proposal revision under the personnel qualifications subfactor: (1) that personnel proposed for the financial support personnel and the functional support specialist positions exceeded the minimum qualifications in all areas, and (2) that the program manager exceeded all minimum requirements. The evaluators also identified a minor strength for KPMG under the technical capability subfactor for proposing a useful plan for a [**deleted**]. Under the management factor, the evaluators identified as a significant strength KPMG's comprehensive plan [**deleted**], and as a minor strength, KPMG's plan for [**deleted**]. Supp. AR Binder 3, Tab 8, Final Technical & Management Evaluation Report, at 6-7.

The evaluators also identified several strengths in Deloitte's final proposal revision. Under the personnel qualifications subfactor, the evaluators assessed two major strengths for Deloitte: (1) for the qualifications of the proposed program manager and senior technician, because the strength of their resumes gave the evaluators

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[5] A forward pricing rate recommendation is defined as "a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement." FAR § 2.101.

[6] Specifically, [**deleted**] was factored into only one labor category, while the [**deleted**] was not used in any of the labor categories. Id.

confidence in the offeror's ability to successfully achieve [**deleted**]; and (2) that all of the personnel proposed for the financial support personnel and functional support specialist positions exceeded the minimum experience requirements, including [**deleted**]. Id. at 4. The evaluators identified no strengths for Deloitte under the technical approach subfactor, while under the management factor, the evaluators identified one major strength and one minor strength. The major strength was assessed because Deloitte's management approach had been used to obtain [**deleted**], and the firm had [**deleted**]. The minor strength was that the firm had a solid approach to [**deleted**]. Id. at 5.

A cost evaluation team (CET) was assigned to assess the realism of the offerors' proposed costs. The cost evaluators concluded that a most probable cost could not be determined for either firm, stating as follows:

> A most probable cost estimate was not done for either company. KPMG, LLP proposed . . . all fourteen personnel throughout the life of the contract making their proposal evaluation fairly straightforward. Deloitte's pricing decreases in the option years due to their strategy of providing higher priced, higher qualified personnel in the early years of the effort . . . and then replacing them with less expensive, but still qualified personnel in the later years. Deloitte does not provide an exact date when this will occur, but states that it will take place when "experience and innovation" allow them to transition personnel. When the technical evaluation team . . . reviewed the representative resumes for proposed personnel who may be used in the out years, it gave them a high degree of confidence that their qualifications still exceeded the minimum asked for in the SOW. Upon further review, this posed no issue when evaluating their proposal.

AR Tab 16, CET Final Report, at 4.

The CET report then made identical brief statements that each offeror's proposed costs were realistic because they were consistent with the firm's technical proposal, and were "consistent with the Government Cost Estimate."[7] Id. at 5 (KPMG) & 7 (Deloitte).

An auditor's notes, which were attached to the cost evaluation report, contained specific concerns regarding Deloitte's final cost proposal revision. Among these was the concern that Deloitte failed to provide cost or pricing data for the firm's subcontractors, as required by both RFP ¶ L.7.3 and the agency's discussion

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[7] The government estimate comparison in the record compares each offeror's total annual proposed cost to a single total annual government estimate for each year. Id. at 9. The record contains no more detailed government estimate.

questions. Id. at 10.[8] The auditor's notes also observed that, although Deloitte's pricing decreased in the option years by transitioning personnel to lower-cost replacement staff,

> Deloitte does not provide an exact date when this will occur, but states that it will take place when 'experience and innovation' allow them to transition personnel. As such the decrease in pricing is not assured as it is based on an intangible occurrence.

Id.

The auditor concluded that there was "[n]o reasoning to compute a [most probable cost]" and therefore the most probable cost was each offeror's "actual costs." Id. The auditor further observed that a comparison of the offerors' labor rates to publicly available data was "problematic" because available data was dated, and was not based on a survey of rates for personnel with security clearances. Finally, the auditor suggested that a comparison of rates between the two offerors would be more relevant, but observed that there were significant rate differences between the two proposals which were "attributable largely to Deloitte's proposal strategy." In conclusion, the auditor simply noted that the total proposed costs for both firms were lower than the government estimate.[9] Id. at 10.

The source selection decision listed the final evaluation results as follows:

Factor/Subfactor	**Deloitte**	**KPMG**
Technical Approach	Very Good	Very Good
1. Personnel Quals./Skills	Exceptional	Very Good
2. Technical Capability	Satisfactory	Very Good
Management Approach	Very Good	Very Good
Past Performance	Exceptional	Exceptional
Security	Pass	Pass
Cost	$15.4 million	$16.2 million

AR Binder 1, Tab 18, Source Selection Decision, at 2-3.

Source Selection Decision

In reviewing the evaluation results, the source selection authority noted the excellence of KPMG's staffing at the program manager position, and the capabilities

[8] Since the attached auditor's notes are not numbered, we have continued the numbering from the cost evaluation report, in order to cite to the notes.

[9] As noted above the government estimate in the record consists of annual amounts. It appears this statement refers to the total 5-year cost estimate.

of Deloitte's senior technician and the staff proposed for its financial support personnel positions. Id. at 3. The selection authority then repeated the CET evaluation of Deloitte's costs, noting that the firm had proposed to replace the original staff with less experienced, less expensive personnel, and that Deloitte had described this transition as dependent on the firm's "experience and innovation." Despite this observation, the selection authority reiterated the CET's view that this presented "no issue" for evaluation. Id. at 4.

The selection decision then addressed which firm's proposal offered the best value. The selection authority observed that Deloitte had received slightly higher evaluation ratings than KPMG; he also stated that while KPMG had "several strengths [for particular labor categories] and a slightly better Technical Approach," Deloitte's proposal had more important strengths, "particularly . . . in the most heavily-weighted Personnel Qualifications and Skills [sub]factor," that would be "more beneficial to the program." Id. While noting that the cost factor was less important, the selection authority concluded that Deloitte's proposal offered a significant cost savings compared to KPMG's proposal. Id. at 5. Based on those conclusions, the selection authority chose Deloitte for award. Id. This protest followed.

DISCUSSION

While KPMG raises various allegations, our decision focuses on two, which we conclude have merit and were prejudicial to KPMG. First, the CIA misled KPMG during discussions by informing it that the firm should provide resumes for all personnel for the lifespan of the contract, yet subsequently declined to hold Deloitte to the same standard. As discussed below, this difference in approach required KPMG to base its costs on specific highly-trained personnel who had obtained security clearances, while Deloitte was permitted to estimate lower costs after the base period for personnel not yet identified--but presumed to be less costly than the personnel Deloitte would use for the base period. Second, the CIA conducted a cursory and inadequate cost realism analysis, failed to assess whether either offeror's cost approach corresponded to its technical approach, and failed to reasonably assess a most probable cost for either offeror.[10]

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[10] We do not address several of KPMG's arguments because correcting the errors identified above will require the CIA to conduct meaningful discussions, obtain revised proposals, evaluate the revised proposals, and perform an appropriate cost realism analysis. During the course of this protest, the CIA and Deloitte sought dismissal of certain issues. After considering the parties' arguments, we informed the parties that two of KPMG's assertions would be dismissed as follows: (1) the assertion that the agency improperly required KPMG to propose 14 FTEs during each year of contract performance is dismissed as an untimely challenge to the terms of the RFP; and, (2) KPMG's challenges to the agency's ratings assigned to Deloitte's proposal under the two technical subfactors (which KPMG argued were

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Misleading Discussions

KPMG first notes that, consistent with the RFP requirement that offerors "must include a professional resume" for all proposed personnel, RFP at L-5, the CIA instructed KPMG during discussions that it must propose 14 FTEs in each contract year, and that "[r]esumes should be provided for all personnel proposed to perform over the lifespan of the contract." AR Binder 1, Tab 12, Discussions Letter from CIA to KPMG, at 1. As quoted above, KPMG notes that the CIA's discussions with Deloitte provided essentially the same instruction ("Deloitte should either submit resumes for the less experienced personnel forecasted, or revise the cost proposal to reflect the labor categories for the resumes provided . . ."). Supp. AR Binder 3, Tab 6, Discussions Letter from CIA to Deloitte, Jan. 13, 2012, at 1. Yet, the agency thereafter found Deloitte's submission of a single "representative resume" for each of the three labor categories to be acceptable. On this record, KPMG argues that it was misled by the agency during discussions and/or subsequently treated unequally, because although KPMG complied with the agency's direction, Deloitte did not--and, indeed, Deloitte's noncompliance formed the basis for effectively lowering its evaluated costs.

The CIA responds that the RFP did not require resumes for employees that were proposed to perform beyond the initial performance period, that the agency's discussions question to KPMG did not reflect a mandatory requirement, and that KPMG bears the responsibility for its voluntary decision to submit resumes of existing employees for the full term of the contract. CIA Response to Third Supplemental Protest, at 4-6. The CIA further asserts that, even if the RFP, or the agency's discussions, required KPMG's submission of additional resumes, the agency could waive the requirement, and if it has done so here, the agency's actions did not prejudice KPMG. We disagree.

In negotiated procurements, whenever discussions are conducted by an agency, they are required to be meaningful, equitable, and not misleading. Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 19. In conducting discussions with offerors, agency personnel also may not engage in conduct that favors one offeror over another. FAR § 15.306(e)(1). Thus, agencies may not engage in what amounts to disparate treatment of the competing offerors. Front Line Apparel Group, B-295989, June 1, 2005, 2005 CPD ¶ 116 at 3-4. Where the manner in which an agency communicates with an offeror during discussions misleads an offeror into responding in a way that does not address the agency's concerns, the discussions are inadequate. Metro Mach. Corp., B-281872 et al., Apr. 22, 1999, 99-1 CPD ¶ 101 at 6-7. Thus, for example, where an agency advises

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inherently inconsistent) are dismissed as speculative and lacking a sufficient factual basis. 4 C.F.R. §§ 21.2(a)(1), (f) (2012).

an offeror in discussions to revise its proposal in a way that does not reflect the agency's evaluation, the discussions are misleading. SeKON Enter., Inc.; Signature Consulting Group, B-405921, B-405921.2, Jan. 17, 2012, 2012 CPD ¶ 26 at 7 (protest sustained where agency discussions advising protester to increase staffing level were not based on initial evaluation, and agency gave no consideration to increased staffing level in evaluation of revised proposal).

Here, as discussed above, the agency clearly advised KPMG that it "should" provide personnel resumes "for all personnel proposed to perform over the lifespan of the contract." In the context of the CIA's current position that the RFP did not require submission of resumes for personnel that were proposed to perform beyond the initial performance period, the agency's discussions with KPMG were clearly misleading.[11] Further, in cases such as this, we need not establish with certainty what the protester's approach would have been if the discussions had been meaningful; rather, a protester's reasonable assertion of a claim that it could have improved its competitive position is sufficient to demonstrate prejudice. Hughes STX Corp., B-278466, Feb. 2, 1998, 98-1 CPD ¶ 52 at 11. In this regard, KPMG has reasonably maintained that the agency's misleading discussions precluded the firm from proposing its own cost-saving approach. See Second Supp. Protest (Mar. 26, 2012) at 20-22; Third Supp. Protest (Apr. 16, 2012) at 24, 31. We find this sufficient to establish prejudice. Accordingly, we sustain the protest on this basis.

Inadequate Cost Realism Analysis

KPMG also argues that the CIA failed to conduct a reasonable cost realism analysis as required by the RFP and, instead, accepted the offerors' proposed costs without any meaningful analysis. Protest at 38; First Supplemental (Supp.) Protest at 5-8.

Upon reviewing Deloitte's proposal under the terms of our Office's protective order, KPMG argued that the evaluators apparently failed to recognize several anomalies in Deloitte's cost proposal. For example, KPMG contends that Deloitte's cost proposal was based on less-well-qualified replacement personnel beginning at the first option year, in February 2013; that Deloitte's cost proposal used labor costs for

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[11] The CIA's assertion, that its use of the word "should" did not convey a mandatory requirement, is wholly unpersuasive. In the context of the discussions at issue, a reasonable offeror would understand that the agency's discussions established a duty; that is, if KPMG wished to be considered compliant with the RFP, it was required to submit resumes for all proposed personnel for all 5 years of contract performance. As we have noted previously, terms like "may" and "should" are capable of expressing a mandate. USIA Underwater Equip. Sales Corp., B-292827.2, Jan. 30, 2004, 2004 CPD ¶ 32 at 4 (solicitation statement that offered item "should" meet particular standards was a statement of a mandatory term, thus protester's proposal was properly rejected as unacceptable).

a subcontractor that were not based on the rate in the subcontractor's accompanying cost proposal; and that Deloitte's own labor costs were not based on specific personnel, but instead reflected [**deleted**] rates for personnel--apparently without security clearances. Second Supp. Protest at 16, 38-51; Third Supp. Protest at 23-26 & 46-53; Protester's Final Comments, at 5-15. KPMG further notes that, to the extent the CIA evaluators performed any cost realism analysis on Deloitte's proposal, they expressed the view that Deloitte's cost savings were "not assured" and "intangible." Under these circumstances, KPMG argues that Deloitte's proposed cost could not provide a reasonable basis for the source selection decision here. Second Supp. Protest at 38-42. We agree.

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed costs are not controlling since such costs may not accurately reflect the actual costs the government will incur. FAR § 15.404-1(d). While, in conducting an adequate cost analysis, an agency is not required to verify each and every variable, it must reasonably consider the extent to which the costs reflected in the offeror's technical approach reflect what the contract should cost, assuming reasonable economy and efficiency. <u>ATLIS Fed. Servs., Inc.</u>, B-275065.2, B-275065.3, Feb. 12, 1997, 97-1 CPD ¶ 84 at 8, 10. In this regard, we will review an agency's judgment to see that the agency's cost realism evaluation was reasonable, not arbitrary, and adequately documented. <u>Honeywell Tech. Solutions, Inc.</u>, B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 17; <u>Jacobs COGEMA, LLC</u>, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26. Thus, we will sustain a protest where the cost realism analysis was not adequately documented. <u>E.g.</u>, <u>National City Bank</u>, B-287608.3, Aug. 7, 2002, 2002 CPD ¶ 190 at 12-13 (record lacked documentation that technical evaluation board had considered whether awardee's proposed staffing reductions realistically conformed to its technical approach).

Here, the CIA asserts that it only needed to consider the realism of the offerors' rates, and that it did so. The CIA further maintains that the evaluators' statement that Deloitte's lower costs were "not assured" and "intangible" did not mean that they were unrealistic. Supp. AR (Apr. 5, 2012) at 12-15. The CIA also argues that Deloitte's proposed blended direct labor cost rates were permitted by the RFP and were, therefore, realistic. Second Supp. AR (Apr. 24, 2012) at 17-20. Finally, in response to KPMG's challenge that the cost evaluation failed to detect that Deloitte had used lower rates for a subcontractor than the subcontractor itself proposed, the CIA argues that the error is insignificant. <u>Id.</u> at 20-21.

In our view, the record here reflects no meaningful agency consideration of when--or if--Deloitte's proposal to "transition" to less experienced personnel, and the cost reductions associated with that approach, would actually occur. To the contrary, the agency expressly acknowledged that this critical event is "not assured" and "intangible" and, because of that, "a most probable cost estimate was not done." AR, Tab 16, CET Final Report, at 4. Not only did the agency bypass this issue, but the record indicates that the technical evaluators merely concluded that Deloitte's staffing approach "posed no issue," and that the cost evaluators "took no exception" to either offeror's direct, indirect, overhead, and general and administrative costs. AR Binder 1, Tab 17, Source Selection Evaluation Board Report, at 3; AR Binder 1, Tab 18, Source Selection Decision, at 4. In short, the agency failed to provide any reasonable basis for estimating the probable costs it will incur under the contract it awarded--a prerequisite to the award of every cost-reimbursement contract by the federal government. See Advanced Research Projects Agency--Recon., B-259479.3, July 18, 1995, 95-2 CPD ¶ 26 at 4; see also FAR § 15.404-1(d)(2).

In light of the clear impact on projected costs of Deloitte's approach to performing this contract, as well as the agency's misleading discussions with KPMG regarding its staffing approach, we find the agency's documentation purporting to support its cost evaluation to be inadequate. Accordingly, we sustain the protest on this basis.

RECOMMENDATION

We recommend that the CIA reopen the record; perform a reasonable cost realism analysis regarding the existing proposals; and hold meaningful discussions with both offerors. During discussions, the agency should identify any concerns about the realism of the proposed costs, and clarify whether resumes are required for all personnel over the life of the contract. (We think that clarifying the agency's position on resumes is particularly important since the agency indicated to KPMG during discussions that resumes were required, waived the requirement for Deloitte, and argued here that resumes were not required.) Following the conclusion of discussions, the CIA should request a new round of final proposals, evaluate them (including assessing cost realism), and make a new source selection decision. If KPMG is selected for award, we recommend that the contract awarded to Deloitte be terminated. Finally, we recommend that the CIA reimburse KPMG's costs of filing and pursuing its protest. 4 C.F.R. § 21.8(d)(1). KPMG's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the CIA within 60 days after this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel