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Decision

Matter of: Magellan Health Services

File: B-298912

Date: January 5, 2007

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DIGEST

1. Protest challenging agency’s evaluation of technical proposals is denied where the record establishes that the evaluation was reasonable and consistent with the evaluation criteria.
2. Agency’s cost realism evaluation of awardee’s proposal was unreasonable where agency failed to take into account cost adjustments made by its own cost analyst to awardee’s proposal, and instead utilized awardee’s proposed costs as the basis for its source selection decision.
3. Agency’s cost realism evaluation of awardee’s proposal was improper where, although knowing that awardee had proposed to recruit the incumbent workforce and match all existing salaries but had also failed to propose direct labor rates consistent with existing salaries, agency failed to adjust awardee’s proposed labor rates as part of its cost realism evaluation.
4. Protest challenging adequacy of agency’s “best value” source selection decision is sustained where there is insufficient information and analysis in the record, which includes both a contemporaneous source selection document and a post-protest statement, to determine that the selection official’s key conclusion of technical equality, notwithstanding the higher technical rating assigned to the protester’s proposal, was reasonable.

DECISION

Magellan Health Services protests the award of a contract to Ceridian Corporation under request for proposals (RFP) No. 05FOHEAP, issued by the Division of Federal Occupational Health (FOH), Department of Health and Human Services (HHS), for employee assistance program (EAP) services. Magellan, the incumbent contractor, argues that the agency's evaluation of offerors' technical proposals, as well as the agency's evaluation of Ceridian's cost proposal, were unreasonable. Magellan also protests that the agency's source selection decision was improper, insofar as the agency failed to document the basis for its conclusion that the higher-rated Magellan proposal and the lower-rated Ceridian proposal were technically equal as part of its "best value" determination.

We sustain the protest.

BACKGROUND

FOH, a component of HHS, is the federal agency with responsibility for developing and maintaining prevention, intervention, and rehabilitation programs and services for federal employees who have alcohol and/or other problems. To fulfill this mission, FOH designs various occupational health services, including workplace-based behavioral health services, to promote and maintain the physical and mental health of federal employees. RFP Statement of Work (SOW) § C.I.A. EAP is the occupational health program by which FOH provides behavioral health services to approximately 400 federal agencies, departments, and other governmental organizations, and the estimated 1,350,000 employees of those entities and their family members, at locations throughout the United States, as well as certain international locations. Agency Report (AR), Nov. 1, 2006, at 2; Protest at 2.

The RFP, issued on September 8, 2005, contemplated the award of a cost-plus-fixed-fee contract for a base year, together with four 1-year options, for the required EAP services. RFP § L.1. In general terms, the SOW required the contractor to provide all personnel and equipment necessary to perform the EAP services needed to assist employees in their efforts to resolve personal problems that may adversely affect work performance "in the quickest, least restrictive, most convenient, and least costly manner while strictly respecting clients' confidentiality." SOW § C.I.D.1.

The RFP established three evaluation factors: technical; small disadvantaged business (SDB) participation plan; and cost. RFP § M.3.4. The technical factor in turn consisted of four subfactors, with various assigned point weights: technical approach and management plan (40 points); key personnel and personnel management (25 points); past performance (20 points); and continuous quality improvement process (15 points). RFP § M.5.A. The SDB participation plan factor was worth 5 points. RFP § M.4. The RFP expressed the relative importance of the evaluation factors as follows:

The technical proposal (including the Small Disadvantaged Business (SDB) Plan) will receive paramount consideration in the selection of the Contractor(s) for this acquisition, although estimated cost will also be considered. In the event that the technical evaluation reveals that two or more Offerors are approximately equal in technical ability, then the estimated cost, and SDB Plan of the Offeror will become paramount.

RFP § M.2. Award was to be made to the responsible offeror whose proposal was determined most advantageous to the government based on consideration of all evaluation factors. RFP § M.3.4.

Five offerors, including Magellan and Ceridian, submitted proposals (consisting of separate technical and business proposals) by the November 9 closing date. An agency technical evaluation panel (TEP) evaluated offerors' technical proposals and determined that four, including Magellan's and Ceridian's, were technically acceptable. AR, Tab 6, TEP Technical Report, Dec. 19, 2005, at 3. The TEP later also reviewed offerors' business proposals, while other agency employees evaluated offerors' past performance, SDB participation plans, and proposed costs. Based on consideration of all evaluation factors, the contracting officer determined that four offerors' proposals, including those of Magellan and Ceridian, were within the competitive range. *Id.*, Tab 14, Competitive Range Determination, Mar. 15, 2006. The agency held discussions with the offerors whose proposals were in the competitive range.

HHS received revised proposals from only three offerors. The agency evaluated the revised proposals and made a second competitive range determination consisting of the proposals of Magellan and Ceridian. *Id.*, Tab 23, Competitive Range Determination, June 1, 2006. HHS held additional discussions with Magellan and Ceridian, and both offerors submitted final proposal revisions (FPR) by the August 11, 2006, closing date. The agency then evaluated the offerors' FPRs, with final ratings and proposed costs for Magellan and Ceridian as follows:

Factor	Magellan	Ceridian
Technical		
Technical Approach (40)	39.66	35.92
Key Personnel (25)	24.42	22.66
Past Performance (20)	20.00	19.00
Quality Improvement (15)	15.00	15.00
Overall (100)	99.08	92.58 ¹
SDB Participation Plan (5)	5.00	4.75
Total Point Score	104.08	97.33
Proposed Cost	\$170,090,773	\$150,163,847

Id., Tab 33, TEP Technical and Business Review Report, Aug. 28, 2006; Tab 31, SDB Participation Plan Evaluation, Aug. 15, 2006; Tab 35, Source Selection Decision.

The contracting officer subsequently determined that Ceridian's lower-rated, lower-cost proposal represented the best value to the agency and made award to Ceridian. Id., Tab 35, Source Selection Decision, at 28. This protest followed.

DISCUSSION

Magellan's protest raises numerous issues regarding the agency's evaluation of proposals and subsequent source selection determination. Magellan alleges that the agency's evaluation of Ceridian's technical proposal was improper,² and that HHS's cost realism evaluation of Ceridian's proposal was unreasonable. Magellan also argues that the agency's source selection decision was improper because, as part of the determination that Ceridian's lower-rated, lower-cost proposal represented the best value to the government, the agency failed to document its apparent key

¹ While the source selection decision states that the TEP's overall technical score for Ceridian's FPR was 92.75, a review of the TEP evaluation worksheets indicates that Ceridian's overall technical score was 92.58. Id., Tab 33, TEP Technical and Business Report, Aug. 28, 2006; Tab 19, TEP Technical Report, May 2, 2006.

² Magellan originally protested that the agency's evaluation of its technical proposal was also unreasonable and that it should have received a higher technical rating. Protest at 7. The agency specifically addressed this issue in its report to our Office, discussing the minor perceived weaknesses in Magellan's technical proposal that resulted in a less than perfect rating. Contracting Officer's Statement at 6-7. As the protester's comments offered no rebuttal to the agency position here, see Comments, Nov. 13, 2006, at 4-5, we regard the argument as abandoned. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4; L-3 Comms. Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 4.

conclusion that the proposals of the two offerors were technically equal notwithstanding the difference in technical ratings.

As detailed below, we find no basis to question the agency's evaluation of Ceridian's technical proposal. However, with regard to the agency's cost realism evaluation of Ceridian's proposal, the record shows that the evaluation was unreasonable in several ways. Further, the record indicates that HHS failed to document how, as part of its source selection decision, it determined the lower-rated proposal of Ceridian to be technically equivalent to the higher-rated proposal of Magellan.

Technical Evaluation of Ceridian's Proposal

Magellan argues that the agency's evaluation of Ceridian was not adequately documented, that Ceridian's proposal failed to meet mandatory RFP requirements, and that Ceridian's proposal had various deficiencies that were not properly reflected in its point score. Although we do not here specifically address all of Magellan's arguments about the evaluation of Ceridian's technical proposal, we have fully considered all of them and find that they afford no basis to sustain the protest.

In arguing that Ceridian's technical proposal was not adequately documented, the protester contends that the evaluation record provides no explanation as to how the TEP evaluators translated their findings of strengths and weaknesses into point scores. We disagree.

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 procurement statutes and regulations, and adequately documented. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. When utilizing a point score evaluation rating system, an agency need not demonstrate with mathematical certainty how the rating was derived, but rather need only show that the rating was consistent with the solicitation's stated evaluation criteria and supporting documentation. 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. Our review of the record here shows the agency's evaluation of Ceridian's technical proposal to be unobjectionable.

The TEP conducted its evaluation by having each evaluator separately assess each offeror's proposal under the technical subfactors. The record indicates that the TEP members had a narrative description of each technical subfactor criterion, including a list of discrete SOW requirements, when conducting their evaluations. Each TEP evaluator documented his or her findings (i.e., strengths and weaknesses) for each offeror's proposal by evaluation subfactor, and assigned point scores in relation to the maximum points available. A TEP consensus determination of evaluation findings and ratings of each proposal was then developed. AR, Tab 6, TEP Technical

Report, Dec. 19, 2005, at 3, 9-15. For example, the TEP found a total of 34 strengths and 12 weaknesses in Ceridian's initial proposal under the technical approach and management plan subfactor as part of determining the offeror's assigned rating here. Id.

The TEP evaluated Ceridian's revised proposal, and later its FPR, in a similar fashion (on these occasions the TEP noted only the proposals' new strengths as well as new and/or continued weaknesses). Again the record includes the worksheets showing how each evaluator rated Ceridian's revised proposal and FPR under each technical subfactor, including where the offeror's proposal responded to previously-identified weaknesses. Id., Tab 19, TEP Technical Report, May 2, 2006; Tab 33, TEP Technical and Business Review Report, Aug. 28, 2006.

We find that the TEP evaluation ratings of Ceridian's proposal were adequately documented and consistent with the identified strengths and weaknesses. First, the protester's focus on the offerors' ratings is misplaced, as point scores and adjectival ratings are but guides to, and not substitutes for, intelligent decision-making. TPL, Inc., B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 17. Further, there is simply no requirement that the record contain an explanation, as Magellan contends here, of how the agency evaluators translated individual strengths and weaknesses into point scores, only that the point scores be adequately supported in order to determine their reasonableness.

Magellan also argues that Ceridian's technical proposal failed to meet numerous RFP requirements and should have been rejected as technically unacceptable. For example, Magellan alleges that Ceridian's proposal failed to address SOW § C.II.A.2.b ("The Contractor shall identify qualified SAPs [substance abuse professionals] who are conveniently located to employee worksites. A complete list of all SAPs shall be submitted . . . within thirty (30) days of contract award . . ."), as well as § C.II.A.14 ("The Contractor shall design and conduct a promotional campaign The promotional campaign is to be designed and submitted . . . within 60 days after contract award and updated annually thereafter").³ The protester also argues that the agency's evaluation of Ceridian's proposal ignored various deficiencies that the agency had itself identified and that the awardee failed to address.

As a preliminary matter, the record indicates that all of the specific SOW provisions to which Magellan refers apply to "contractor" requirements.⁴ For example, as noted

³ Magellan cites approximately 12 SOW requirements that it alleges Ceridian's proposal left unaddressed. Comments, Nov. 13, 2006, at 7-8.

⁴ The solicitation explicitly defined the term "contractor" as a post-award business entity with whom a contractual relationship had been established, and distinguished it from the term "offeror," which was defined as a preaward entity that submits a proposal. SOW § C.II.

above, the relevant SOW provision states only that the contractor is to identify qualified substance abuse professionals who are conveniently located to employee worksites, and submit a complete listing within 30 days of contract award. Rather than establishing a proposal requirement, this language establishes that the provision was intended only to require designation of the substance abuse professionals after award. See Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 3.

In any event, we find Magellan's assertion that Ceridian's technical proposal failed to address various SOW requirements to be factually inaccurate. The record clearly establishes that Ceridian's revised proposal and/or FPR addressed each of the SOW requirements that Magellan claims were lacking. For example, Ceridian's FPR stated in relevant part that "Ceridian will submit a complete list of all SAPs . . . within 30 days of contract award,"⁵ AR, Tab 29, Ceridian's FPR, Vol. I, Technical Proposal, at 1-25, and that Ceridian will work with FOH to develop annual promotional plans and materials. Id. at 1-110 to 1-115; see also Tab 4, Ceridian's Proposal, Vol. I, Technical Proposal, attach. B, FOH EAP Program Deliverable Schedule, at 11 (Ceridian shall "design a promotional campaign and update it annually . . . and submit [it] within 60 days after contract award"). Similarly, the record also indicates that, contrary to the protester's assertions, Ceridian fully addressed the weaknesses identified in its initial technical proposal, and the TEP took this information into account when evaluating the awardee's FPR. The fact that Ceridian's initial proposal had various perceived weaknesses is simply not determinative of whether the agency's technical evaluation of Ceridian's final proposal was reasonable, since Ceridian addressed those weaknesses in its subsequent submissions.

Cost Realism Evaluation of Ceridian's Proposal

Magellan asserts that HHS failed to perform a reasonable cost realism evaluation of Ceridian's proposal. As the protester points out, the solicitation required the agency to perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent what the government realistically expects to pay for the proposed effort. By contrast, Magellan alleges, HHS did not take into account the fact that Ceridian's cost proposal failed to propose the required level of effort, and understated its direct labor rates while also proposing to pay existing employee salaries. The protester maintains that the agency's failure to reasonably determine Ceridian's realistic costs adversely affected the agency's resulting source selection decision.

⁵ Ceridian's FPR also included a listing of SAPs that indicated among other things, proximity to employee worksites. Id., Tab 29, Ceridian's FPR, Vol. I, Technical Proposal, attach. D, List of Network Providers.

The RFP instructed offerors to base their cost proposals on cost tables included with the solicitation. RFP § L.9. The cost tables, one for the base year and each option year, included various direct labor categories as well as estimated quantities of hours for each labor category. For example, the Field Consultant labor category had an estimated quantity of 256,495 hours per year, and the Field Counselor labor category had an estimated quantity of 91,416 hours per year.⁶ RFP amend. 1, attach. 7, Pricing Tables for Section B, at 2. The RFP also advised offerors that the levels of effort set forth in the cost tables represented HHS's current estimates for the base year and option year requirements for the required EAP services, and that as part of their proposals, offerors were required to propose costs for the levels of effort stipulated in each of these tables. RFP § B.1.a.

The RFP also informed the offerors how the agency planned to evaluate cost proposals:

The Offeror, at a minimum, must submit a cost proposal fully supported by cost and pricing data in sufficient detail to allow the Government to complete a cost analysis which establishes the reasonableness of the proposed costs. A complete cost and complete cost breakdown in support of Section B Tables shall be furnished by the Offeror.

RFP § L.9.

Ceridian, as part of its revised proposal, generally accepted the agency's estimated levels of effort for the various labor categories with the exception of the field consultant and field counselor categories. Here, Ceridian proposed levels of effort that were somewhat lower than the HHS estimates.⁷ AR, Tab 18, Ceridian's Revised Proposal, Vol. II, Business Proposal, at Tables I – V. Ceridian's revised proposal also utilized base year direct labor rates of \$[DELETED] per hour for field consultants and \$[DELETED] per hour for field counselors. Id. at Table I.

The agency performed several cost evaluations of Ceridian's revised proposal. An FOH business review found that Ceridian's failure to use the RFP-specified direct

⁶ The field consultant and field counselor categories represented the solicitation's two largest estimated labor categories, and together comprised 347,911 of the total 537,971 estimated labor hours for each performance period. RFP amend. 1, attach. 7, Pricing Tables for Section B, at 2.

⁷ Ceridian proposed a total of [DELETED] hours for field consultants while the HHS estimate was 1,282,475 hours (a difference of [DELETED] hours). Similarly, Ceridian proposed a total of [DELETED] hours for field counselors in comparison to the HHS estimate of 457,080 hours (a difference of [DELETED] hours).

labor hours in its cost proposal necessitated an evaluated cost increase of \$1,106,799.⁸ Id., Tab 20, FOH Business Report, May 15, 2006, at 4-5. Additionally, the TEP completed a business review of each offeror's revised cost proposal, and with regard to Ceridian's proposed labor rates stated:

FOH has knowingly approved, under the current contract, average labor rates for the Key Personnel categories of counselors and consultants that are higher than industry standard. This is in recognition of demonstrated capabilities and performance of high quality that are difficult to find. If Ceridian is to recruit and retain these staff, it is likely that Ceridian will have to pay higher rates than proposed. Consequently, direct labor costs may be significantly higher than proposed or Ceridian may not successfully recruit sufficient staff experienced in serving FOH customers in the highly specialized manner required. Ceridian then would have to recruit and train more inexperienced staff than projected in the proposal. The more new staff recruited, the greater the risk of decreased quality of service that is unacceptable to customer organizations.

FOH notes that Ceridian has not provided letters of commitment from current experienced consultants and counselors at the proposed rates of pay, and recommends that Ceridian reconsider what rates will be necessary to attract and retain sufficient numbers of these experienced high performing staff and/or adequately describe how the high quality of service required by FOH's customer organizations will be ensured.

Id., Tab 24, TEP Business Review Report, June 13, 2006, at 4.

The TEP also directed comments to the agency's cost analyst regarding the shortcomings it perceived in Ceridian's proposed labor rates, stating:

Direct Labor rates will need to be adequate for the successful offeror to recruit/retain sufficient numbers of the highly capable and highly performing current Counselors and Consultants for the services to be acceptable to FOH's customer organizations. Customer organizations have demonstrated exceptional loyalty to the FOH EAP because of their recognition of the exemplary service they have received from these critical staff, who were designated as Key Personnel for this contract. A significant factor in the successful offeror's ability to recruit/retain these key staff is the ability to pay staff reasonably

⁸ The agency cost analyst also determined that Ceridian's revised cost proposal was not based on the field consultant and field counselor levels of effort as specified in the RFP. Id., Tab 22, Cost Evaluation of Ceridian's Revised Proposal, at 2-3.

commensurate with their performance and historical reimbursement they have received. The IGCE [independent government cost estimate] was based on FOH's extensive experience in developing budgets that are required to recruit and retain sufficient numbers of high performing Counselors and Consultants. Ceridian is not knowledgeable of current staff performance levels or their current rates of pay and thus has proposed direct labor rates that are inadequate as indicated below by the variances from the IGCE. For this comparison, the IGCE has been adjusted upward by 2% to account for the delay in start date since the IGCE anticipated a start date in 2005:

Base year (where retention is key):

a. Field consultants -- Ceridian \$[DELETED]/hr; IGCE \$[DELETED]. Ceridian expects to offer one time signing bonuses and to hire [DELETED] of the 199 consultants and counselors. Total cost difference for Base Year = \$[DELETED].

b. Field counselors -- Ceridian \$[DELETED]/hr; IGCE \$[DELETED]. Total cost difference for Base Year = \$[DELETED].

Based on the RFP specified level of effort for these two categories of Key Personnel, the total difference in proposed Base Year direct costs is \$1,154,701.⁹

Overhead and G&A costs would need to be added to these direct costs to calculate the total difference in proposed costs. Additionally, since the above calculation only considers the Base Year, these costs would be significantly higher over the five year life of the contract. The proposed signing bonus is not likely to be sufficient incentive to recruit these Key Personnel because of the significant reduction in pay they would be offered.

This review team believes that Ceridian would need to significantly increase the direct labor costs proposed for these two categories of Key Personnel if they are to successfully deliver the performance required under this contract.

⁹ This figure is apparently the product of the government's estimated levels of effort for the field consultant and field counselor labor categories for the base year, and the difference between the IGCE and Ceridian hourly rates for these labor categories ([DELETED]).

Id. at 10-11.

In its FPR, Ceridian responded to the agency's expressed concern regarding its ability to attract and retain high quality staffing. The agency's specific inquiry and Ceridian's response thereto are as follows:

1. FOH notes that Ceridian has not provided letters of commitment from current experienced consultants and counselors at the proposed rates of pay, and recommends that Ceridian reconsider what rates will be necessary to attract and retain sufficient numbers of these experienced high performing staff and/or adequately describe how the high quality of service required by FOH's customer organizations will be ensured.

Ceridian understands that there are top performers that FOH wants to retain, and that in order to ensure a smooth transition of the services, we would want/need to retain as many existing field employees as possible.

In order for this to occur, Ceridian will match all existing salaries of the field employees plus increase them by [DELETED]% for the standard merit increase.

Id., Tab 29, Ceridian's FPR, Vol. II, Business Proposal, at 29.

Ceridian's cost proposal, however, did not adjust the proposed direct labor rates for field consultants and field counselors. Rather, as with its revised proposal, Ceridian's FPR set forth base period direct pay rates of \$[DELETED] per hour for field consultants and \$[DELETED] per hour for field counselors. Ceridian's FPR also did not alter the number of hours proposed for the field consultant and field counselor labor categories. Additionally, Ceridian proposed that its overhead rate ([DELETED] percent) and general and administrative expenses (G&A) rate ([DELETED] percent) would be ceilings, or caps. Id. at 29, Table I.

The agency was aware that Ceridian's proposed pay rates (of \$[DELETED] per hour for field consultants and \$[DELETED] per hour for field counselors) were not in fact the existing salaries for these field employees. Specifically, HHS knew that Magellan's FPR had proposed its incumbent workforce using current salary levels, which were \$[DELETED] per hour for field consultants and \$[DELETED] per hour for field counselors.¹⁰ Id., Tab 28, Magellan's FPR, Vol. II, Business Proposal,

¹⁰ We note that with each proposal submission (i.e., initial, revised, and FPR), Magellan updated its proposed direct labor rates, including those for field consultants and field counselors, based upon then-current salary data.

at §§ 3.1.4, 3.3.1, Table I. Further, the agency verified the accuracy of Magellan's proposed direct labor rates against employee earning statements. *Id.*, Tab 32, Cost Evaluation of Magellan's FPR, at 9, 27. These pay rates were even higher than those in the IGCE used by the TEP as part of its business review to determine that Ceridian's pay rates were too low to successfully deliver the performance required by the RFP.

HHS then performed a cost evaluation of Ceridian's FPR. As with previous cost reviews, the cost evaluation found that Ceridian had not proposed sufficient levels of effort for the field consultant and field counselor labor categories. The cost analyst determined that Ceridian's understated levels of effort should result in an adjustment of \$[DELETED] in direct costs and \$[DELETED] in associated overhead.¹¹ *Id.*, Tab 34, Cost Evaluation of Ceridian's FPR, at 2. The HHS cost evaluation did not, however, make any adjustments to Ceridian's proposed direct labor rates, including those for the field consultant and field counselor labor categories. In support of this decision the cost analyst stated:

The offeror provided a copy of his 2006 salary rate structure which shows the targeted reference point for employees' salaries. We verified the proposed rates to the ranges shown in the salary rate structure provided by the offeror, matching each labor category to the zone and grade shown in the documentation. We consider the offeror's proposed labor rates to be acceptable for the purpose of establishing a budget for direct labor.

Id. at 3. While having made various adjustments to Ceridian's proposed costs, the agency's cost analyst nevertheless did not develop a total, bottom-line evaluated cost for the offeror's proposal. *Id.* at 2.

The contracting officer subsequently reviewed Magellan's and Ceridian's proposed costs by major cost element (*i.e.*, direct labor, other direct costs, overhead) and performance period as part of her source selection decision. *Id.*, Tab 35, Source Selection Decision, at 8-19. While expressly accepting the cost analyst's finding that Ceridian's FPR had failed to propose the government-estimated levels of effort for the field consultant and field counselor labor categories as part of its direct labor costs, *id.* at 9, the contracting officer did not consider the corresponding cost adjustment to Ceridian's proposal, or address the concerns expressed by the TEP business review that Ceridian's direct labor rates for the two key field labor categories needed to be "significantly increase[d]." *Id.*, Tab 24, TEP Business Review Report, June 13, 2006, at 11. Instead, for purposes of the agency's award

¹¹ Together with the offeror's rate for G&A ([DELETED] percent), the total cost associated with Ceridian's understated levels of effort for field consultants and field counselors is approximately \$1,026,611 ([DELETED]).

determination the contracting officer considered only the offerors' proposed costs.¹² Id., Tab 35, Source Selection Decision, at 2, 8, 15, 28.

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. Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 9; Hanford Envntl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9; see FAR § 16.301. 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 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 Comms. Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. An offeror's proposed costs should be adjusted when appropriate based on the results of the cost realism analysis.¹³ FAR § 15.404-1(d)(2)(ii). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26. For the reasons set forth below, we find that the agency failed to conduct a proper cost realism analysis of Ceridian's proposal.

As a preliminary matter, although Ceridian's proposal included a fixed fee amount of \$[DELETED] (based on a rate of [DELETED] percent of the offeror's proposed costs), the cost analyst removed the offeror's entire proposed fee amount from his cost analysis, believing that "[t]he determination of an acceptable fee is left to the discretion of the Contracting Officer." AR, Tab 34, Cost Evaluation of Ceridian's FPR, at 7. As the purpose of a cost realism analysis is to determine how well the

¹² The contracting officer also considered only Magellan's proposed cost in her source selection decision; we note, however, that the cost analysis of Magellan's FPR found that an upward adjustment of only \$80,098 was warranted.

¹³ Further, the end product of an agency's cost realism analysis should be a total evaluated cost of what the government realistically expects to pay for the offeror's proposal effort, as it is the agency's evaluated cost and not the offeror's proposed cost that must be the basis of the source selection determination. FAR § 15.404-1(d)(2)(i); Eigen, B-249860, Dec. 21, 1992, 92-2 CPD ¶ 426 at 5.

proposed costs and profit represent the cost of the contract, FAR § 15.404-1(c)(1), it was improper to omit Ceridian's proposed fixed fee from the cost realism analysis. Similarly, the agency's cost analysis removed \$[DELETED] in employee signing bonuses and \$[DELETED] in educational materials from Ceridian's FPR because "the offeror was unable to provide supporting documentation" for these amounts.¹⁴ AR, Tab 34, Cost Evaluation of Ceridian's FPR, at 5. An agency's cost realism evaluation is to consider whether an offeror's proposed costs realistically reflect the costs to perform the work as proposed, and proposed costs should be adjusted downward only if the agency concludes that actual costs will likely be lower than proposed, not because the proposed costs are insufficiently supported by invoices or other means. Accordingly, these downward adjustments to Ceridian's proposed costs were also improper.

Further, HHS's cost realism evaluation of Ceridian's proposal was unreasonable because the contracting officer failed to take into account the cost adjustments recommended by the agency's own cost evaluation, and instead considered only the offeror's proposed costs in the source selection decision. As shown above, the contracting officer accepted the cost analyst's finding that Ceridian had failed to propose sufficient levels of effort for the field consultant and field counselor labor categories as part of its direct labor costs. The contracting officer, however, failed to consider the corresponding cost adjustments of more than \$1 million to Ceridian's proposed cost.¹⁵ In fact, the contracting officer failed to consider anything other than the offerors' proposed costs in her source selection decision.¹⁶ When an agency determines that adjustments to an offeror's proposed costs are in fact necessary, the agency must then base its source selection decision on the offeror's adjusted cost. FAR § 15.404-1(d)(2)(i) ("The probable cost shall be used for purposes of evaluation to determine the best value"); see Eigen, supra (holding that an agency's source selection decision must be based on the actual cost difference between offerors' proposals).

¹⁴ As mentioned above, as part of its proposed effort to retain the incumbent workforce, Ceridian proposed to pay signing bonuses to a specified number of employees in various amounts. Similarly, Ceridian proposed various educational materials as part of the EAP promotional campaign mandated by the SOW.

¹⁵ The agency argues that its cost realism evaluation properly examined Ceridian's proposal and made adjustments as necessary. AR, Nov. 1, 2006, at 4. The agency report fails to mention or recognize, however, that notwithstanding the cost adjustments that the agency's cost analyst determined appropriate, the contracting officer never took these adjustments into account in her source selection decision.

¹⁶ Similarly, in her post-protest declaration, the contracting officer continued to view the existing cost differential between Magellan's and Ceridian's proposals only in terms of the offerors' proposed costs. Contracting Officer's Statement at 16.

Even more significantly, the agency's cost realism evaluation of Ceridian's proposal was also unreasonable with regard to the offeror's proposed direct labor rates for the field consultant and field counselor labor categories. As detailed above, Ceridian's FPR expressly agreed to match existing salaries as part of its effort to attract and retain as many existing EAP field employees as possible. Nevertheless, Ceridian's proposed direct labor rates (of \$[DELETED] per hour for field consultants and \$[DELETED] per hour for field counselors) did not reflect the incumbent employees' existing salaries (of \$[DELETED] per hour for field consultants and \$[DELETED] per hour for field counselors). Moreover, HHS was aware of both the existing salary rates and the discrepancy between these rates and Ceridian's proposed labor rates (which were also substantially lower than the rates in the agency's own IGCE, for that matter). On this record, the agency's failure to make any adjustment here to Ceridian's proposed costs was improper.

The agency argues that its cost evaluation of Ceridian's proposal here was reasonable. HHS points to the fact that the agency cost analyst specifically reviewed Ceridian's proposed direct labor rates and determined that no adjustments were necessary. AR, Nov. 1, 2006, at 4-5. We disagree.

As set forth above, HHS's cost evaluation did not take exception to any of Ceridian's proposed direct labor rates because it determined that Ceridian's proposed rates were supported by the offeror's current salary structure. There is no evidence in the record, however, that the agency cost analyst also considered what Ceridian had actually proposed to do here—to “match all existing salaries of the field employees plus increase them by [DELETED]% for the standard merit increase.” *Id.*, Tab 29, Ceridian's FPR, Vol. II, Business Proposal, at 29. Since Ceridian had proposed to match all existing field employee salaries, a proper cost realism analysis would compare Ceridian's proposed hourly rates to the incumbent employees' current pay rates, and adjust accordingly.¹⁷ Quite simply, an offeror's current salary structure is irrelevant to its probable costs if, as is the case here, the current salary structure is not what the offeror is proposing to use.

The HHS cost evaluation of Ceridian's FPR also fails to explain how the offeror's proposed labor rates were realistic when the agency's own business review of proposals recognized that Ceridian's labor rates were not sufficient to permit it to perform as proposed. As set forth above, the TEP clearly recognized the internal inconsistency between what Ceridian was proposing (*i.e.*, being able to attract and retain a high-performance organization) and what Ceridian's cost proposal

¹⁷ Based on the total agency-estimated levels of effort for the field consultant and field counselor labor categories, and the difference between the existing and Ceridian hourly labor rates, plus overhead and G&A, the adjustment here is approximately \$9,209,633 ([DELETED]). This amount does not include the additional [DELETED] percent standard merit increase that Ceridian also proposed.

represented. Id., Tab 24, TEP Business Review Report, June 13, 2006, at 4. The TEP then expressly pointed out to the agency cost analyst that Ceridian's labor rates here were substantially below the IGCE--amounts which the TEP believed were required to recruit and retain a sufficient number of high performing counselors and consultants. The TEP also concluded that Ceridian would need to substantially increase the direct labor rates proposed for these two key personnel categories if the offeror was to successfully deliver the performance required under this contract. Id. at 10. Notwithstanding the TEP's realism analysis of Ceridian's proposal here, the record indicates that the HHS cost analyst and contracting officer do not appear to have considered this information in the cost evaluation of Ceridian's FPR and source selection decision, respectively.

The agency does not deny that Ceridian's FPR failed to reflect the existing salaries for the field employees that it expressly agreed to match. Nevertheless, HHS also argues that Ceridian's cost proposal was reasonable because it was based on the best information available to the offeror. Specifically,

the rate of compensation offered by Magellan was not publicly available to other offerors. . . . An offeror must find an acceptable method to estimate labor costs based on its most probable cost. Here, Ceridian used its own actual cost experience for the same type of staff, as the government cost analyst found.

AR, Nov. 27, 2006, at 5.

The agency's argument here reflects a fundamental misunderstanding of what is required as part of a cost realism evaluation. A cost realism evaluation implements an agency's obligation to guard against unsupported claims of cost savings by determining whether the costs as proposed represent what the government realistically expects to pay for the proposed effort, based on the information reasonably available to the agency at the time of its evaluation. See Metro Mach. Corp., B-297879.2, May 3, 2006, 2006 CPD ¶ 80 at 9. HHS was fully aware of the incumbent employees' existing salaries, and that Ceridian's proposed pay rates were substantially less than the existing salaries (as well as the agency's own IGCE). The agency's contention here that Ceridian's proposed costs were based on the best information available to the offeror is simply not relevant, and does not relieve the agency from conducting a reasonable cost realism evaluation based on the information readily available to it.

Further, a proper cost realism evaluation prevents an offeror from improperly "having it both ways"--that is, from receiving a technical evaluation rating based on its proposed performance but failing to propose costs that reasonably reflect that performance. Here, Ceridian's technical evaluation rating was in part based on its representation that it would attract and retain as many existing field employees as possible by matching existing salaries; however, the firm did not propose direct

labor rates that reflected existing pay rates. In such a circumstance, it is the government's cost realism analysis that should ensure that an offeror's evaluated costs properly reflect its proposed performance. The failure to undertake such action here made the HHS cost realism evaluation of Ceridian unreasonable.

HHS argues that Magellan has not been prejudiced by any defects in the agency's cost realism evaluation of Ceridian's proposal, since Ceridian's overall cost would remain lower than Magellan's in any event. 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, 103 F.3d 1577, 1581 (Fed. Cir. 1996). Here, we recognize that the identified errors in the agency's cost realism evaluation of Ceridian's proposal do not alter the offerors' relative cost rankings (i.e., Ceridian's evaluated cost would apparently still be lower than Magellan's). However, based on our conclusion, discussed below, that the contracting officer's determination of technical equivalency was without any supporting documentation (and that, as a result, the agency may have to undertake a cost/technical tradeoff as part of its best value determination), and the RFP award language which provided that the technical proposal was of paramount importance, we find the cost realism analysis defects here--totaling more than \$10 million--to be clearly prejudicial to the protester.¹⁸

Source Selection Decision

Magellan asserts that the agency's source selection decision was unreasonable. Specifically, the protester argues that the contracting officer's determination that Magellan's and Ceridian's FPRs were technically equal is not supported by any documentation that demonstrates a reasonable basis for such a determination. Magellan contends that HHS's failure to provide a basis for its conclusions that the

¹⁸ Magellan also argues that the agency's cost realism evaluation of Ceridian's proposed overhead and G&A rate caps was unreasonable. The protester does not contest the acceptability of Ceridian's indirect cost caps per se. Rather, Magellan argues that because HHS found the "price concession" (under which Ceridian agreed to reduce its recovery at the rate of [DELETED] percent of its incurred costs) proposed by Ceridian in its revised proposal to be improper, and because Ceridian merely replaced its price concession with overhead and G&A rate ceilings, those indirect rate ceilings must also be improper. Comments, Nov. 13, 2006, at 15-16. When an offeror agrees to cap certain cost items--including by means of indirect rate ceilings--then that cap can reasonably be used by the agency as the probable cost for purposes of a cost realism analysis, BNF Techs., Inc., B-254953.3, Mar. 14, 1994, 94-1 CPD ¶ 274 at 12, even where the indirect rate caps replace some other cost limitation device that the government deems improper.

offerors' proposals were technically equal, notwithstanding the difference in technical ratings, resulted in an improper award decision. We agree.

As set forth above, the RFP established that offerors' technical proposals, including SDB participation plans, would be of paramount consideration here, and that award would be made to the offeror whose proposal was determined to be the best value to the government based on consideration of all evaluation factors.

The TEP evaluated Magellan's and Ceridian's FPRs and made various adjustments to its previous technical evaluation ratings. As part of its final evaluation the TEP recommended that award be made to Ceridian, stating, "Federal Occupational Health recommends award to Ceridian as the vendor offering the best combination of value and price to the Government." AR, Tab 33, TEP Technical and Business Review Report, Aug. 28, 2006, at 1. The TEP report, however, contained no discussion regarding the relative technical merits of the two offerors' proposals.

In making the source selection decision here, the contracting officer premised her determination on review and acceptance of the evaluation findings and ratings of the offerors' proposals under the stated evaluation factors as follows:

Offeror	Technical Score	SDB Participation Plan	Proposed Cost
Magellan	99.08	5.00	\$170,090,773
Ceridian	92.75 ¹⁹	4.75	\$150,163,847

Id., Tab 35, Source Selection Decision, at 4-5, 8, 15. The contracting officer then set forth her rationale for the selection of Ceridian as follows:

Ceridian Corporation has submitted a proposal which has been determined to offer the best value to the Government. Therefore [it] is considered to be in the best interest of the Government to award a contract to [the offeror] which has been determined to be responsible and otherwise qualified and eligible to receive an award under applicable laws and regulations. Award, cost plus fixed fee, in the amount of \$29,573,143.00 is recommended with four one-year options in the amounts of \$29,247,528.00, \$29,540,129.00, \$30,311,643.00, and \$31,491,404.00 respectively, for a total contract award amount including options of \$150,163,847.00.

Id. at 28.

¹⁹ As mentioned above, Ceridian's actual technical score was 92.58.

At the time of her contract award decision, the contracting officer prepared no contemporaneous documentation that in any way discussed the relative technical merits of the offerors' proposals. Subsequently, along with the agency report filed in response to Magellan's protest, the contracting officer stated that the agency had determined that the offerors' proposals were "technically equal," or "essentially technically equal."²⁰ Contracting Officer's Statement at 5, 8. While this post-protest declaration asserted repeatedly that the two offerors' proposals were technically equal, it contained no discussion of the basis for this conclusion.

In reviewing an agency's evaluation of proposals and source selection decision, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented.

University Research Co., LLC, B-294358 *et al.*, Oct. 28, 2004, 2004 CPD ¶ 217 at 8; Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6; AIU N. Am., Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 at 7. An agency which fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. Johnson Controls World Servs., Inc., *supra*.

While source selection officials may reasonably disagree with the evaluation ratings and results of lower-level evaluators, Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 6-8, they are nonetheless bound by the fundamental requirement that their independent judgments be reasonable, consistent with the stated evaluation factors, and adequately documented. AIU N. Am., Inc., *supra*, at 8-9 (protest sustained because selection official did not document the basis for concluding that proposals were technically equal, after the evaluation panel concluded that one proposal was superior to the other); see University Research Co., LLC, *supra* (protest sustained where source selection official failed to state any basis for rejecting the award recommendation of the agency project officers). In reviewing an agency's evaluation, we will consider the entire record, including documentation prepared after the source selection decision was made; however, we will accord greater weight to contemporaneous materials rather than judgments made in response to protest contentions. Beacon Auto Parts, B-287483, June 13, 2001, 2001 CPD ¶ 116 at 6.

As shown above, the contracting officer prepared no contemporaneous documentation indicating that Ceridian's and Magellan's proposals were technically equal as part of the agency's best value award determination. Nothing in the TEP report shows that the agency evaluators concluded the proposals were technically

²⁰ The contracting officer's statement also implies, without expressly stating, that because the agency found the offerors' proposals to be technically equal, the selection of Ceridian's lower-cost proposal did not involve a cost/technical tradeoff determination.

equal; in fact, the point scores suggest otherwise. Notwithstanding the fact that Magellan's FPR was scored higher than Ceridian's FPR, as documented by the TEP, the source selection decision is devoid of any discussion as to how, or even if, the contracting officer determined before award that the offerors' proposals were technically equal.

The contracting officer's post-protest statement also fails to meet the fundamental requirement that a selection official's judgments be reasonable, consistent with the stated evaluation factors, and adequately documented. Rather, she simply stated in conclusory form that the two offerors' proposals were "technically equal" or "essentially technically equal"--despite the TEP's assessment that Magellan's proposal merited a higher overall rating as well as higher ratings under three of four technical subfactors. Like the source selection decision, the post-protest statement is also devoid of any substantive consideration as to how the contracting officer determined that the offerors' proposals were technically equal, and its conclusory statement falls far short of the requirement to adequately document source selection judgments. AIU N. Am., Inc., supra.

In its report to our Office, HHS argues that the contracting officer was justified in concluding that the technical proposals of Magellan and Ceridian were approximately equal, and cites generally to the source selection decision and evaluation documents in support thereof. The agency also argues that the technical proposals of Ceridian and Magellan indicated that both offerors could perform the required work very well. AR, Nov. 1, 2006, at 3.

The agency's arguments here are misplaced. First, while arguing that the contracting officer was justified in concluding that the technical proposals of Magellan and Ceridian were approximately equal, notwithstanding Magellan's higher technical rating, HHS points to no specific documents in the record, contemporaneous or otherwise, which support that conclusion. We note that the TEP never concluded that offerors' proposals were technically equal, but only that Ceridian's proposal offered the best combination of value and price to the government. Further, the fact that the technical proposals of Ceridian and Magellan demonstrated that both offerors would be able to perform the work requirements very well is not relevant to the determination which the agency made here without explanation--that the proposals of Magellan and Ceridian were technically equivalent.

In light of the absence of any documentation or support for the purported technical equality of the offerors' proposals, the RFP award language that the technical proposal would receive paramount consideration, and the fact that Magellan's technical proposal was higher-rated, we view the selection decision here as unsupported.

RECOMMENDATION

In summary, we find that HHS's cost realism evaluation of Ceridian's proposal was unreasonable, and that the reliance on the offeror's proposed cost (as opposed to the government's evaluated cost) as the basis for the agency's award determination was improper. We also find that the contracting officer's conclusion that the offerors' proposals were technically equal lacked any supporting documentation and was, therefore, improper.

We recommend that the agency perform a proper cost realism evaluation of Ceridian's FPR, and then rely on that cost realism evaluation as part of its source selection determination. We also recommend that HHS make a new source selection decision containing a sufficient and documented comparative analysis of the offerors' proposals and the rationale for any cost/technical tradeoffs. If, upon reevaluation of FPRs, Magellan is determined to offer the best value to the government, HHS should terminate Ceridian's contract for the convenience of the government and make award to Magellan. We also recommend that Magellan be reimbursed the costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2006). Magellan should submit its certified claim for costs, detailing the time expended and cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Gary L. Kepplinger
General Counsel