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**United States Government Accountability Office  
Washington, DC 20548**

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## **Decision**

**Matter of:** Metro Machine Corporation

**File:** B-295744; B-295744.2

**Date:** April 21, 2005

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### **DIGEST**

1. Cost realism evaluation of offerors' proposals was unobjectionable where record shows that agency reasonably considered the information submitted in each offeror's proposal and that the agency's methodology and rationale for its analysis were reasonable.
2. Contracting agency's cost realism analysis of protester's proposal was reasonably based on information reasonably available to it, even when it did not inquire into the conclusions of a Defense Contract Audit Agency audit report, where the agency instead sought additional information from the offeror itself through discussions.
3. Contracting agency engaged in meaningful discussions concerning proposed direct and subcontractor labor rates, such that the protester should have known and understood the agency's concerns, where it specifically requested during written discussions that offeror explain the rationale for the rates being proposed.
4. Protest of agency's past performance 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.

5. Protest that agency's source selection decision was improperly based on a mechanical comparison of technical evaluation ratings is denied where the record shows the allegation is without basis.

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## **DECISION**

Metro Machine Corporation protests the award of a contract to Norfolk Shipbuilding & Drydock Corporation (Norshipco) under request for proposals (RFP) No. N00024-04-R-4405, issued by the Naval Sea Systems Command (NAVSEA), Department of the Navy, for the repair, maintenance, and modernization of naval amphibious assault ships (*i.e.*, LHA and LHD class ships) homeported in Norfolk, Virginia. Metro alleges that the agency conducted inadequate discussions with it, and that the agency's cost evaluation of Metro's and Norshipco's proposals, the agency's past performance evaluation of Metro's and Norshipco's proposals, and the source selection decision were improper.

We deny the protests.

## **BACKGROUND**

LHA and LHD class ships represent the largest of all amphibious warfare ships. Each LHA and LHD ship resembles a small aircraft carrier, and is capable of supporting various vertical, short takeoff, tiltrotor, and rotary wing aircraft operations.

The RFP, issued on May 13, 2004, contemplated the award of a cost-plus-award-fee contract to provide all materials, services, and facilities necessary to perform phased maintenance on seven LHA/LHD class ships over a 5-year period.<sup>1</sup> Phased maintenance is a strategy in which maintenance is performed through a series of short, frequent phased maintenance availabilities (PMA), in lieu of regular overhauls. The solicitation also called for support to the Norfolk Naval Shipyard (NNSY) in performance of drydock-phased maintenance availabilities (DPMA), which involve putting a ship in drydock to perform repairs below the water line, in addition to the repairs that would be performed in a PMA. The solicitation included a total of 13 availabilities, 10 PMAs and 3 DPMAs, together with various planning and emergent requirements for each availability. RFP at 119-37. Additionally, the RFP mandated a minimum 40 percent small business subcontracting requirement for each scheduled availability. *Id.* at 176.

The solicitation instructed offerors to base their cost proposals on a notional, or standardized, work package included with the solicitation. The notional work package contained 158 individual work items, which constituted a standardized list

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<sup>1</sup> The LHA/LHD ships in question, all homeported in the Norfolk, Virginia area, are the USS Saipan, USS Nassau, USS Wasp, USS Kearsarge, USS Bataan, USS Iwo Jima, and a seventh, unnamed ship to be determined. RFP at 119-37.

of repairs and alterations necessary to complete one PMA, as well as the required support to NNSY in furtherance of one DPMA. For each of these 158 work items, the RFP provided offerors with a government estimate of the number of direct labor hours and material costs to perform the item. The RFP 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 government estimates, the solicitation then required the offeror to provide supporting cost data to substantiate that an adjustment was warranted.

The solicitation identified, in addition to evaluated cost, the following technical evaluation factors, in descending order of importance: integrator and management capability; technical approach; resource availability; past performance; and cost performance.<sup>2</sup> RFP § M-2. The RFP also expressed the relative importance of cost and technical factors by stating that overall technical merit was considered more important than evaluated cost; however, the importance of cost as an evaluation factor would increase as the difference in overall technical merit among competing proposals decreased. RFP § M-3. Award was to be made to the responsible offeror whose technically acceptable proposal was determined to be the “best value” to the government, all factors considered. Id.

Three offerors, including Metro and Norshipco, submitted proposals by the July 12 closing date. A Navy technical evaluation review panel (TERP) evaluated offerors’ technical proposals using an adjectival rating system: outstanding, very good, satisfactory, marginal, or unsatisfactory for those technical factors other than past performance; and outstanding, good, satisfactory, neutral, marginal, or unsatisfactory for past performance. Concurrent with the technical evaluation, a Navy cost analysis panel (CAP) evaluated offerors’ cost proposals and calculated an overall evaluated cost to the government for each offeror.

On September 22, after the agency’s initial evaluation of both cost and technical proposals, the NAVSEA contracting officer determined that all three offerors should be included within the competitive range. Agency Report (AR), Tab 5, Competitive Range Memorandum. The Navy then held discussions with each offeror. The agency received discussion responses from offerors by October 4, and final proposal revisions (FPR) by the October 18 closing date.

On November 8, the TERP provided the agency’s best value advisory council (BVAC) with its final evaluation ratings of the offerors’ technical proposals, which were as follows:

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<sup>2</sup> The solicitation also set forth various evaluation subfactors, of equal importance within each technical evaluation factor. RFP § M-2.

<b>Factor</b>	<b>Norshipco</b>	<b>Metro</b>	<b>Offeror C</b>
Integrator & Mgmt Capability	Very Good	Very Good	Satisfactory
Technical Approach	Very Good	Very Good	Satisfactory
Resource Availability	Satisfactory	Satisfactory	Satisfactory
Past Performance	Outstanding	Good	Outstanding
Cost Performance	Satisfactory	Very Good	Satisfactory

AR, Tab 13, TERP Final Report; Tab 17, TERP Amended Report.<sup>3</sup>

Similarly, on November 24 the CAP provided the BVAC with the final proposed and evaluated costs for each offeror's cost proposal as follows:

	<b>Norshipco</b>	<b>Metro</b>	<b>Offeror C</b>
Proposed Cost	\$224,565,429	\$188,022,212	\$236,463,594
Evaluated Cost	\$243,428,122	\$248,793,414	\$258,367,957

AR, Tab 19, CAP Summary Report; Tab 20, CAP Addendum to Metro Cost Analysis Report.<sup>4</sup>

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<sup>3</sup> In addition to the adjectival evaluation ratings, the TERP report to the BVAC also ranked offerors' technical proposals as follows: (1) Norshipco; (2) Metro; and (3) Offeror C. AR, Tab 13, TERP Report. The BVAC later developed overall technical ratings for each offeror's proposal: very good for Norshipco; very good for Metro; and satisfactory for Offeror C. AR, Tab 21, BVAC Report to SSA.

<sup>4</sup> Subsequent to the filing of Metro's protest, the Navy determined that, for all three offerors, it had incorrectly calculated the overhead applicable to the overtime and new work requirements, thereby duplicating certain costs. AR at 14 n.6, attach. 3, Revised Cost Analysis. As recalculated, the Navy's projected costs to the government for the three offerors are \$236,087,271 for Norshipco, \$243,215,626 for Metro, and \$248,449,106 for Offeror C, thereby increasing the difference in evaluated cost between the proposals of Norshipco and Metro from \$5,365,292 to \$7,128,355 (not \$7,508,312 as reported by the Navy). The protester does not take exception to the agency's recalculation here. See Metro's Comments at 19; Metro's Supplemental Comments. Additionally, in a supplemental report on the protests, the Navy asserted that because of an "error in transposition," Norshipco's final evaluated cost was overstated by an additional \$8,027,682--the result of material cost deviations that NAVSEA had accepted but failed to incorporate into Norshipco's evaluated cost summary. Agency's Supplemental Report at 21. Metro argues that it did not have a fair opportunity to respond to the alleged "error in transposition," and contests the

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On December 16, the BVAC summarized the evaluation findings and recommended the selection of Norshipco to the Navy source selection authority (SSA). AR, Tab 21, BVAC Report to the SSA. The SSA subsequently determined that Norshipco's proposal was both the highest technically rated (having a "slight, but discernible, edge" over that of Metro) and had the lowest evaluated cost to the Navy. AR, Tab 22, Source Selection Decision, at 3-4. Based on an assessment of all evaluation factors, the SSA determined that Norshipco's proposal represented the best value to the government. These protests followed.

Metro's protests raise numerous issues that can be grouped into four categories. First, Metro alleges that the Navy's cost realism evaluation of the offerors' proposals was improper. Second, Metro contends that the Navy failed to hold meaningful discussions with the protester regarding its cost proposal. Third, Metro alleges that the agency's evaluation of offerors' past performance was unreasonable. Lastly, Metro alleges that the agency's source selection decision was improper because of its mechanical reliance upon evaluation ratings. Although we do not here specifically address all of Metro's arguments about the evaluation of proposals and source selection decision, we have fully considered all of them and find that they afford no basis to question the agency's selection decision here.

## EVALUATION OF COST PROPOSALS

Metro first contends that the agency's evaluation of the offerors' cost proposals was improper. Specifically, Metro argues that the Navy's upward adjustment of Metro's proposed direct labor rate, as well as its proposed subcontractor labor rate, was unwarranted. Metro also argues that Navy improperly ignored reasonably available information when conducting the evaluation of its cost proposal. Metro contends that these adjustments improperly added more than \$28 million to Metro's total evaluated cost. Second, Metro alleges that the Navy's evaluation of Norshipco's cost proposal was improper in certain regards. The protester argues that had the Navy properly evaluated the offerors' cost proposals, its proposal would have been found to be lower cost than that of Norshipco.

### Evaluation of Metro's Cost Proposal

The solicitation established that, with regard to the submission of cost proposals, the burden of proof of cost credibility rested with the offeror. RFP at 243. The RFP also

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validity of the underlying Norshipco material cost deviations. Metro's Supplemental Post-Hearing Comments at 1-2. We need not decide whether Norshipco's evaluated cost should be adjusted to reflect the agency's asserted \$8 million mathematical error since, as discussed fully below, even without this additional reduction, Norshipco's evaluated costs remain lower than Metro's.

stated that offerors should explain fully the estimating rationale upon which their proposals were based, including full supporting rationale for proposed labor and overhead rates, and should address, as necessary, any inconsistency between their proposals and their established estimating and accounting practices. Id. at 243-44.

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

A detailed review of each Offeror's cost proposal will be made to assess and evaluate the realism of the Offeror's estimated costs for performance of the requirements of this solicitation. The evaluation will consider the Offeror's proposed labor hours, labor rates, material costs, burden rates and other costs in light of information available to the Contracting Officer, including the relationship of such proposed labor hours and costs to the effort described in the Offeror's technical proposal, and Government estimates . . . .

RFP § M.2.

Prior to the solicitation here, Metro, a defense contractor which performs almost all of its work for the Navy, AR, Tab 31, Defense Contract Audit Agency (DCAA) Audit Report of Metro, at 8, had developed and utilized a direct labor rate consisting of [DELETED] components: [DELETED]. Metro's Protest at 7, 13. Metro had also established a forward pricing rate agreement (FPRA) with the Navy that included a company direct labor rate of \$[DELETED] per hour. AR, Tab 31, DCAA Audit Report of Metro, at 4. Metro's overall direct labor forward pricing rate was the byproduct of labor rates for the component parts: [DELETED].<sup>5</sup> Id. at 3-4.

At a hearing held by our office, Metro's cost estimator testified that as part of its bidding strategy here, Metro determined that the RFP's 40 percent subcontracting requirement would affect the amount of work that Metro normally performed itself and the amount of work that Metro normally subcontracted. Hearing Transcript (Tr.) at 257. Specifically, Metro determined that the work it would perform itself would [DELETED].<sup>6</sup> Id. at 257-58. As a result, Metro formulated a new direct labor rate for the solicitation here of \$[DELETED] per hour, consisting of its [DELETED].<sup>7</sup>

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<sup>5</sup> Metro's [DELETED] labor rate of \$[DELETED] per hour was in turn derived from the company's [DELETED], as well as general and administrative expense (G&A) and profit rates of [DELETED] percent ([DELETED]). See AR, Tab 19, CAP Summary Report, encl. 1, Metro Cost Analysis Report, at 4.

<sup>6</sup> Metro also planned that [DELETED]. Id. at 262.

<sup>7</sup> While Metro changed its proposed direct labor rate as part of its final proposal (from \$[DELETED] per hour to \$[DELETED] per hour), the adjustment resulted entirely from Metro's determination that the change in work requirements altered the  
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Id. at 258-59. The rationale for why Metro's proposed direct labor rate deviated from its forward pricing rate was not set forth in the offeror's proposal. Id. at 262-63, 289. Also as part of its bidding strategy here, Metro decided not to seek quotes from any of the subcontractors that it intended to use.<sup>8</sup> Instead, in determining its proposed subcontractor labor rate, Metro used [DELETED] of \$[DELETED] per hour for all 29 of the subcontractors it proposed. AR, Tab 19, CAP Summary Report, encl. 1, Metro Cost Analysis Report, at 4, 17.

The CAP began its evaluation of Metro's initial cost proposal after the July 12 closing date. As testified to by the contracting officer at the hearing our Office conducted, the Navy had concerns about Metro's proposed direct and subcontractor labor rates shortly after receipt of Metro's proposal. Id. at 23. Specifically, the CAP believed that Metro's proposed rates were not representative of what the Navy was then experiencing, either with regard to Metro itself or with regard to subcontractor rates in the Norfolk area. Id. at 24-25. The agency was also aware that there was no differentiation in Metro's proposed subcontractor rates; the direct labor rates and overhead rates did not vary among the individual companies proposed. Id. at 25. Moreover, while the agency understood how Metro had calculated its proposed direct and subcontractor labor rates, it did not understand the rationale for why Metro was using the labor rates that it had proposed. Id. at 29-30, 54-56.

Simultaneous with the CAP's evaluation here, the Navy asked DCAA to perform an audit of Metro's initial cost proposal, including a review of the offeror's proposed direct and subcontractor labor rates. AR, Tab 31, DCAA Audit Report of Metro, at 1. As part of the DCAA audit, Metro orally informed the DCAA auditor of why the company was proposing the direct labor rate that it was—specifically, that the [DELETED] its direct labor rate here because of the solicitation's subcontracting requirement. Tr. at 173-75, 265-69. Metro also provided the DCAA auditor with additional cost data in support of its decision to use [DELETED] as an estimating technique for its proposed subcontractor labor rate. Id. at 170. Based on understanding both how Metro had calculated its proposed labor rates and why those rates had been used, DCAA did not take exception to Metro's initial cost

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relative weightings of the [DELETED] components, and did not result from a change to Metro's underlying methodology. Metro's Protest at 15-16.

<sup>8</sup> Metro decided to accept the government labor hour and material cost estimates for all notional work items when preparing its proposal. Id. at 256. Accordingly, Metro needed to determine only its subcontractors' labor rates in order to determine its proposed subcontractor labor costs. Id. at 269-70. Metro believed that, for a variety of reasons, it was better able to estimate its subcontractors' labor rates and costs than the subcontractors themselves could. Id. at 272-74; AR, Tab 19, CAP Summary Report, encl. 2, CAP Final Report Metro, at 10-11.

proposal.<sup>9</sup> AR, Tab 31, DCAA Audit Report of Metro, at 2-5. The DCAA audit report provided to the Navy set forth the auditing agency's conclusions, but did not state why no exception was being taken. *Id.* at 4-5. At no time after receipt of the DCAA report and before contract award did the Navy ask the DCAA auditor who performed the audit of Metro about the report's conclusions.<sup>10</sup> Tr. at 56-57, 179.

After completion of the CAP's initial cost evaluation and receipt of the DCAA audit report, the Navy held discussions with Metro. The agency's discussion questions included various inquiries into Metro's proposed direct and subcontractor labor rates.<sup>11</sup> AR, Tab 6, Navy Discussions with Metro. With regard to its direct labor rate, Metro's response described the cost and pricing data upon which the proposed rate was based, but, as in its proposal, did not explain the rationale for the deviation from its established forward pricing rate. AR, Tab 62, Metro Responses to Discussions, at 6. Similarly, with regard to its proposed subcontractor direct labor rate, Metro reiterated its belief that the estimated rate it had derived from [DELETED] was more reliable than actual subcontractor quotes. *Id.* at 10. Metro's subsequent final cost proposal contained a proposed direct labor rate of \$[DELETED] per hour as well as a proposed subcontractor labor rate of \$[DELETED] per hour.<sup>12</sup>

In its evaluation of Metro's final cost proposal, the CAP concluded that both Metro's proposed direct labor and subcontractor labor rates were unrealistically low. Specifically, the Navy determined that Metro's proposed direct labor rate was not supported by the offeror's proposal, and was substantially less than Metro's forward

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<sup>9</sup> It is unclear whether DCAA believed that Metro's chosen rate methodology here was nondiscretionary, as the audit report stated, "The solicitation specified the format for direct labor and subcontract labor to be proposed. Metro was required to deviate from [its] FPRA and propose prime direct labor and a [sic] separate subcontract direct labor rates." AR, Tab 31, DCAA Report of Metro, at 4.

<sup>10</sup> As testified to by the contracting officer, the Navy had concerns about the DCAA report immediately upon its receipt, and did not understand why DCAA had not taken exception to Metro's proposed rates, especially since a separate DCAA audit report of Metro as a subcontractor for the same solicitation did not question a proposed direct labor rate of \$[DELETED] per hour. Tr. at 54, 81; AR, Tab 31, DCAA Report of Metro, at 3-5, Tab 31, DCAA Report of Metro as Subcontractor, at 2-4.

<sup>11</sup> Metro also protests the adequacy of the agency's discussions; we separately review this protest issue below.

<sup>12</sup> While Metro's proposed direct labor rate did not include any measure of labor rate escalation, its proposed subcontractor labor rate did incorporate a rate escalation to take into account the 5-year contract performance period. AR, Tab 19, CAP Summary Report, encl. 1, Metro Cost Analysis Report, at 4; Tab 20, Addendum to Metro Cost Analysis Report, at 1.

pricing rate, the rate Metro was actually using on other Navy ship repair contracts, and the rate proposed by Metro as a subcontractor to another offeror for the same solicitation. Tr. at 43-46; AR, Tab 20, CAP Addendum to Metro Cost Analysis Report, at 1. The CAP then revised Metro's direct labor rate to the offeror's forward pricing rate of \$[DELETED] per hour, plus escalation.<sup>13</sup> AR, Tab 20, CAP Addendum to Metro Cost Analysis Report, at 1-2. The CAP also determined that the proposed subcontractor labor rate created by Metro, without obtaining any quotations, was not sufficiently supported and not realistic. Id. at 2. The CAP then utilized three different methods of analysis in determining realistic subcontractor rates, and adopted the one most advantageous to Metro, resulting in a projected subcontractor labor rate of \$[DELETED] per hour, with escalation. Id. at 13-14. The CAP's adjustments to Metro's proposed direct and subcontractor labor rates, as well as other adjustments to which Metro does not object, resulted in the protester's proposal having a projected cost to the government of \$243,215,626, higher than that of Norshipco. AR, attach. 3, Revised Cost Analysis, at 1-3.

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 an offeror, the government is bound to pay the contractor its actual and allowable costs. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9; PADCO, Inc.-- Costs, B-289096.3, May 3, 2002, 2002 CPD ¶ 135 at 5; see Federal Acquisition Regulation (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 Communications 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. 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.

We find that the Navy's cost realism analysis of Metro's proposal, including the adjustments to Metro's proposed direct and subcontractor labor rates, was proper.

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<sup>13</sup> Metro does not challenge the rate escalation portion of the Navy's adjustment here. Tr. at 352.

The record shows, and Metro now admits, that although required by the RFP to do so, the protester failed to establish in its proposal the realism of its proposed labor rates. See Metro's Post-Hearing Comments at 10. While Metro's proposal explained "how" its proposed direct labor rate had been calculated, it failed to explain "why" the proposed rate was a realistic one. In the absence of the required supporting explanation, and given the deviation from Metro's established forward pricing rate, the agency's analysis and upward adjustment were reasonable. Likewise, the Navy reasonably determined that Metro's common subcontractor labor rate--constructed by Metro from its own cost data because of the offeror's decision not to seek actual subcontractor quotes--lacked cost credibility and realism. While Metro may have believed the assumptions upon which its proposed subcontractor labor rate was based to have been valid (e.g., that it could better estimate costs than its proposed subcontractors, that the [DELETED] overhead rate applied was valid), there was nothing unreasonable about the Navy's decision not to accept these assumptions as part of its cost realism analysis here.<sup>14</sup>

Metro now argues that, even if its cost proposal did not explain the underlying basis for its direct and subcontractor labor rates, the Navy's cost realism analysis was improper because it was not based on information reasonably available to the agency at the time of the evaluation. Specifically, Metro contends that the agency's burden to base its cost realism analysis on information reasonably available to it required the Navy to inquire of DCAA why it had not taken exception to Metro's proposed labor rates, instead of, as occurred here, in effect ignoring the DCAA audit report. Metro argues that had the Navy performed this inquiry, then DCAA could have readily provided reasonable explanations to the contracting officer about the labor rates within Metro's proposal, based on the oral information given by Metro to DCAA during the audit process. Metro also contends that the contracting officer's failure to obtain this information from DCAA resulted in an uninformed and prejudicial cost realism analysis of Metro's proposal. We disagree.

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 rates proposed are reasonable and realistic in view of other cost

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<sup>14</sup> We also find that the cost estimation methodologies used by the Navy to adjust Metro's proposed direct and subcontractor labor rates were reasonably based and not arbitrary. While an agency must independently analyze the realism of an offeror's proposed costs based upon its particular approach, personnel, and other circumstances, and a cost estimation method which mechanically adjusts proposed labor rates fails to satisfy the requirement for an independent analysis of an offeror's proposed costs, see The Jonathan Corp.; Metro Machine Corp., B-251698.3, B-251698.4, May 17, 1993, 93-2 CPD ¶ 174 at 11, here the estimation methodologies used by Navy were reasonable in light of the lack of actual cost information provided by Metro regarding its proposed direct and subcontractor labor rates.

information reasonably available to the agency as of the time of its evaluation. See Science Applications Int'l Corp., B-290971 et al., Oct. 16, 2002, 2002 CPD ¶ 184 at 17; The Futures Group Int'l, B-281274.5 et al., Mar. 10, 2000, 2000 CPD ¶ 148 at 10. Additionally, although a contracting agency can utilize the services of DCAA when performing a cost realism analysis rather than perform all aspects of the evaluation itself, the audit agency is but one tool upon which the agency may elect to rely. See Gentex Corp.--W. Operations, B-291793 et al., Mar. 25, 2003, 2003 CPD ¶ 66 at 27. In fact, an agency's reliance upon the advice of DCAA when performing a cost realism analysis does not insulate the agency from responsibility for error on the part of DCAA, even where, at the time, the agency is unaware that information it is given by DCAA is incorrect. See L-3 Communications Corp., Ocean Sys. Div., B-281784.3, B-281784.4, Apr. 26, 1999, 99-1 CPD ¶ 81 at 11; American Mgmt. Sys., Inc.; Department of the Army--Recon., B-241569.2, B-241569.3, May 21, 1991, 91-1 CPD ¶ 492 at 7-8.

As set forth above, the agency had concerns about the DCAA audit report of Metro shortly after its receipt--the Navy did not understand why DCAA had failed to take exception to Metro's proposed labor rates, especially since a separate DCAA audit report did not take exception to Metro's use of its higher, forward pricing rate when the firm was proposed as a subcontractor for the same solicitation. Nevertheless, the Navy never made a concerted attempt to find out why DCAA had not questioned Metro's proposed labor rates at any time prior to its award decision. In different circumstances, we might find the contracting agency's failure improper. Here, however, we do not, because of what the Navy did do: after its receipt of the DCAA audit report the Navy held discussions with Metro and asked the offeror itself about the proposed direct and subcontractor labor rates. The Navy thus made a direct inquiry of Metro instead of an indirect inquiry of DCAA regarding that portion of Metro's proposal that was questioned.

A contracting agency has responsibility to perform a valid cost realism analysis, and it cannot shift responsibility for that analysis to DCAA. Gentex Corp.--W. Operations, supra. As part of the exercise of that responsibility, an agency has the discretion, as happened here, to reject DCAA advice believed to be in error. Further, while a contracting agency's cost realism analysis must evaluate whether an offeror's proposed rates are reasonable and realistic in light of information reasonably available, Science Applications Int'l Corp., supra, the Navy did no harm to this rule when it elected not to ask DCAA about its audit report conclusions but instead took the labor rate issue directly to the offeror itself and provided Metro with the opportunity to remedy the deficiency which existed between what it had proposed and what it had supported. Having failed in its responsibility to establish the realism of its proposed labor rates within its proposal, and having also failed to explain its rationale in discussions, Metro cannot now reasonably argue that the burden was instead on the agency to attempt to determine the rationale for its proposed costs through an inquiry to DCAA. Accordingly, we find the Navy's decision here not to

inquire of DCAA regarding its audit report to be an insufficient basis for determining that the agency's cost realism evaluation was unreasonable or improper.

### Evaluation of Norshipco's Cost Proposal

Metro also alleges that the agency's evaluation of Norshipco's cost proposal was improper in certain regards. The protester first contends that the agency failed to follow the evaluation criteria and unreasonably accepted Norshipco's proposed deviations from the government's labor hour and material cost estimates in the absence of substantiating cost data. Metro argues that the Navy's decision to accept Norshipco's proposed deviations without the submission of sufficient supporting cost data resulted in a significant, but illusory, cost savings in Norshipco's proposal.

As set forth above, the solicitation provided offerors with government labor hour and material cost estimates for each of the 158 notional work items upon which offerors were to base their cost proposals. The RFP allowed offerors to propose deviations from the government estimates when supported by "clear and compelling evidence."<sup>15</sup> RFP at 245. While it did not define "clear and compelling evidence," the RFP set forth examples of the cost data (e.g., standards, historical costs on similar tasks, factors, vendor quotes) with which an offeror could support proposed deviations from the government-provided estimates.<sup>16</sup> *Id.* at 252-53.

Norshipco's initial and final cost proposals each proposed deviations from the government labor hour and material cost estimates for various work items. The CAP determined that Norshipco's final cost proposal proposed 19 deviations from the government labor hour estimates, and 103 deviations from the government material cost estimates.<sup>17</sup> AR, Tab 19, CAP Summary Report, at 3. Norshipco also submitted

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<sup>15</sup> Specifically, if "an offeror provides clear and compelling evidence that an adjustment is warranted, the Government will adjust that Offeror's labor hour and/or material dollar estimates for the individual work item(s) addressed, to the extent it is determined that the proposed rationale support such an adjustment." RFP at 245.

<sup>16</sup> The RFP also established that when an offeror's proposed deviations were not supported by clear and compelling evidence, then the government estimate would be used to calculate the evaluated cost to the government for that work item. RFP at 245.

<sup>17</sup> As explained below in detail, in many instances Norshipco's proposed deviations from the Navy's material cost estimates were upward, unintended, and unsupported ones, resulting from the offeror's inclusion of subcontractor G&A and profit burdens to the government-provided material cost estimates, while the Navy considered its material cost estimates to already include G&A and profit burdens other than those for the prime contractor.

various types of cost data in support of its proposed deviations. AR, Tab 44, Norshipco Initial Cost Proposal, Vol. I, Part II.F; Tab 45, Norshipco Discussion Question Responses; Tab 46, Norshipco Final Cost Proposal. In performing its evaluation the CAP accepted the supporting documentation as provided by Norshipco for the 19 proposed labor hour deviations, and for 12 of the 103 proposed material cost deviations. AR, Tab 19, CAP Summary Report, at 3-4, encl. 4, CAP Final Report Norshipco, at 3-9. The Norshipco-proposed deviations which the Navy accepted resulted in the awardee's total projected cost being \$14,174,725 less than it would have been, had the deviations been rejected.<sup>18</sup>

In reviewing protests relating to the propriety of an agency's evaluation, our Office does not reevaluate proposals; our review is limited to considering whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation scheme, as well as applicable statutes and regulations. L-3 Communications Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 5. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Command Mgmt. Servs., Inc., B-292893.2, June 30, 2004, 2004 CPD ¶ 168 at 3. In negotiated procurements, unless specifically prohibited by the solicitation, offerors generally are not precluded from proposing to meet an agency's requirements with staffing levels and/or materials different from the government's estimates. See Crestmont Cleaning Serv. & Supply Co., Inc., et al., B-254486 et al., Dec. 22, 1993, 93-2 CPD ¶ 336 at 4. Here, the RFP notified offerors that the government estimates did not necessarily represent the exact quantities required to be used when costing the notional work items. Instead, proposed deviations to the labor hours and material cost estimates based on supporting cost data would be acceptable, if justified.

Metro does not dispute that Norshipco was permitted to propose deviations from the Navy's labor hour and material cost estimates. Rather, Metro argues that the agency

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<sup>18</sup> The proposed labor hour deviations which the CAP accepted resulted in Norshipco's projected cost being based upon a total direct labor estimate of 3,804,210 labor hours, a difference of 205,184 from the government's total labor hour estimate of 4,009,394 (as reflected in the evaluation of an offeror which did not propose deviations). AR, Tab 19, CAP Summary Report, encl. 3, Norshipco Cost Analysis Report, at 3, 16, encl. 1, Metro Cost Analysis Report, at 17. Metro's cost analyst quantified Norshipco's cost for the accepted labor hour deviations at \$8,737,795. Metro's Supplemental Protest, Declaration of Metro Cost Consultant, at 8. Similarly, the CAP's acceptance of Norshipco's proposed material cost deviations resulted in a determination that Norshipco's final projected material cost totaled \$76,399,142, a difference of \$5,436,930 from the government's total material cost estimate of \$81,836,072 (again as reflected in the evaluation of an offeror which did not propose deviations). AR, Tab 19, CAP Summary Report, encl. 3, Norshipco Cost Analysis Report, at 16, encl. 1, Metro Cost Analysis Report, at 18.

failed to comply with the RFP by improperly accepting deviations proposed by Norshipco in the absence of “clear and compelling evidence.” Metro contends that Norshipco’s supporting cost data consisted only of nonbinding vendor quotations, “cherry-picked” historical evidence, and unsupported assertions, rather than the “clear and compelling evidence” required by the solicitation. Our review finds the Navy’s evaluation here to be unobjectionable.

The record demonstrates that for the notional work items where it proposed deviations, Norshipco’s cost proposal included, as supporting data, the offeror’s understanding of the requirement, statements of the technical approach, “make-or-buy” analyses, statements regarding historical experience, and subcontractor and/or vendor quotations. AR, Tab 44, Norshipco Initial Cost Proposal, Vol. I, Part II.F. Norshipco’s responses to the Navy’s discussion questions often resulted in the submission of additional information supporting its proposed deviations. AR, Tab 45, Norshipco Discussion Question Responses. The CAP separately examined each of Norshipco’s proposed deviations. AR, Tab 19, CAP Summary Report, encl. 4, CAP Final Report Norshipco. In some instances the Navy found that the evidence provided by Norshipco was sufficient and accepted the offeror’s proposed deviations; in other instances the CAP determined that the evidence provided by Norshipco was insufficient. *Id.* Although we do not here specifically address each Norshipco deviation accepted by the Navy and challenged by the protester, we have fully considered all of them and find the agency’s determinations were both reasonable and consistent with the solicitation.

For example, with regard to notional work item 993-11-011, Rigging, Crane and Transportation Services, the agency provided offerors with estimates of 7,400 labor hours and \$46,500 in material costs for each PMA. Norshipco’s final cost proposal proposed to perform the work item here with [DELETED] labor hours and \$[DELETED] in material costs for each PMA. In support of its proposed deviations, Norshipco stated:

Norshipco assumes that the Government material estimate of \$46,500 is based on [DELETED] for a PMA. The PMA is to be accomplished [DELETED]. Our material estimate of \$[DELETED] is for [DELETED]. The Government estimate of 7,400 labor hours is considered excessive. Through proper planning, [DELETED]. Norshipco’s estimate is based on [DELETED], equaling [DELETED] labor hours. A dedicated [DELETED] has been added at [DELETED] equaling [DELETED] labor hours, which brings the total estimate for this item to [DELETED] labor hours. Data has been provided to warrant a deviation from the Government’s estimate.

AR, Tab 45, Norshipco Discussion Question Responses, at 5; see also AR, Tab 44, Norshipco Initial Cost Proposal, Vol. I, Part II.F.(e), Specification 993-11-0001. In performing its review here, the CAP found that Norshipco had provided a detailed

breakdown supporting how it had calculated the proposed labor hour estimate, and with regard to material costs, how the contractor's [DELETED] reduced its anticipated cost. AR, Tab 19, CAP Summary Report, encl. 4, CAP Final Report Norshipco, at 6. While Metro argues that Norshipco failed to demonstrate actual performance at the labor hour levels proposed, Metro's Supplemental Protest at 24, we find that the agency's determination that Norshipco had provided sufficient evidence to support the proposed deviations to be reasonable.

Similarly, with regard to other instances where the Navy accepted Norshipco's proposed deviations, Metro also contends that the proof and supporting justifications provided by the awardee were insufficient. Metro essentially argues that the agency's standard regarding what constituted "clear and compelling evidence" was too lenient. To the extent that Metro believes that the Navy's judgment of what constituted sufficient evidence to be improper, in our view, this amounts to mere disagreement with the agency's evaluation, which does not render it unreasonable.<sup>19</sup> See Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 7.

Metro also argues that the agency's evaluation of Norshipco's cost proposal was improper with regard to the treatment of certain material costs. Specifically, Norshipco's proposal indicated that while on certain occasions Norshipco itself would incur the costs of the required materials, in most instances Norshipco's subcontractors would be purchasing the necessary materials. Metro contends that in performing its cost realism analysis, the Navy improperly "rewrote" Norshipco's proposal and artificially treated all of Norshipco's material costs as if purchased by the prime contractor. Metro argues that the agency's treatment of Norshipco's material costs resulted in the improper removal of associated subcontractor overhead (i.e., G&A) and profit burdens from Norshipco's proposal.

As detailed above, the RFP required offerors to use the government labor hour and material cost estimates unless a proposed deviation was sufficiently supported. In the absence of sufficient cost data to support a proposed deviation, the solicitation stated that the agency would use the government estimates. Also, at the hearing our Office conducted, a CAP member acknowledged that although not explicitly stated in the RFP,<sup>20</sup> the Navy's material cost estimates were intended to be inclusive of all

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<sup>19</sup> Metro argues, in the alternative, that to the extent that the information submitted by Norshipco constituted "clear and compelling evidence," then the Navy provided offerors with unreliable estimates. Metro's Supplemental Protest at 26. The fact that the agency determined the cost information submitted by Norshipco sufficient to support proposed deviations in certain instances provides no basis to support Metro's claim that the government estimates were faulty.

<sup>20</sup> The RFP informed offerors that when setting forth their proposed labor hour and material estimates for each work item, "these estimates should be exclusive of G&A

(continued...)

subcontractor burden costs (i.e., G&A and profit), and that the only costs that offerors were to add to the government material estimates were relevant prime contractor burden costs.<sup>21</sup> Tr. at 216-18; see also Agency's Supplemental Report at 14; Agency's Post-Hearing Comments at 16.

Norshipco's initial and final cost proposals detailed whether the labor and material expenses would be incurred by Norshipco itself or by a proposed subcontractor. In its final cost proposal, Norshipco proposed prime contractor material costs totaling \$15,012,611 and subcontractor material costs totaling \$53,880,248. AR, Tab 46, Norshipco Final Cost Proposal, Vol. 1, Part II, Exh. G-3. In many instances Norshipco's subcontractors added G&A and profit burdens to their material cost estimates, such that the material costs as proposed by Norshipco for various notional work items exceeded the Navy's material cost estimates.<sup>22</sup> Norshipco's upward deviations from the government material cost estimates were inadvertent, as it was unaware that the Navy's estimates here included subcontractor burden costs.<sup>23</sup>

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(...continued)

(other than for prime labor) . . . and Profit/Fee." RFP at 245. While the RFP instructed offerors to separately propose their G&A and profit burdens, it did not indicate, as the Navy has argued, that the government material estimates included all subcontractor cost burdens.

<sup>21</sup> In support of such treatment, the CAP member explained that the Navy's material cost estimates were based upon historical data and prior contract efforts which reflected all aspects of a contractor's costs for materials to the government, including vendor and subcontractor G&A and profit burdens. Tr. at 219-37.

<sup>22</sup> It is unclear of the extent to which Norshipco's proposed downward deviations from the government material cost estimates were inadvertently offset by the offeror's inclusion of subcontractor cost burdens to its proposed material costs.

<sup>23</sup> For example, in its response to the Navy's discussion question regarding its material cost deviations, Norshipco stated,

The remaining 86 [work] items represent those that were assigned to our three major team members . . . : [e]ach of the members took their respective items, used the Government estimate as directed by Norshipco, and applied their respective burdens and fees to calculate the direct and end cost to Norshipco to utilize in our proposal. . . . However, the application of burdens and fees by our team members for materials appears to be misleading the Government to believe that Norshipco was proposing a deviation that really does not exist.

AR, Tab 19, CAP Summary Report, encl. 4, CAP Final Report Norshipco, at 3. Metro was also apparently unaware that the Navy's material estimates included subcontractor burden costs: although Metro planned that it, as the prime contractor, (continued...)

Additionally, Norshipco's upward deviations from the government material estimates did not include any supporting cost data.

In performing its evaluation of Norshipco's cost proposal, the CAP determined that Norshipco's upward deviations from the government material estimates were not supported by clear and compelling evidence, and therefore, adjusted downward to the government estimates those instances where the material costs as proposed by Norshipco exceeded the government estimates.<sup>24</sup> AR, Tab 19, CAP Summary Report, encl. 4, CAP Final Report Norshipco, at 3-6. The CAP summary report of Norshipco's projected costs then accumulated all evaluated material costs under the prime contractor. AR, Tab 19, CAP Summary Report, encl. 3, Norshipco Cost Analysis Report, at 16. Metro's cost consultant calculated that the CAP's removal of the subcontractor G&A and profit burdens from the material costs within Norshipco's proposal resulted in a total reduction of \$6,606,847 to Norshipco's evaluated costs.<sup>25</sup> Metro's Supplemental Protest at 28, Declaration of Metro Cost Analyst, at 13-14. The Navy argues that its treatment of Norshipco's material costs here was entirely proper, as it was consistent with the stated terms of the solicitation. The agency asserts that the CAP properly adjusted (here, downward) those Norshipco material cost deviations for which the offeror failed to provide a sufficient basis of support. The Navy also contends that its treatment of Norshipco's material costs here was appropriate even if offerors did not understand that the agency's material cost estimates were inclusive of subcontractor burden costs.

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(...continued)

would provide all material necessary to perform the contract, AR, Tab 19, CAP Summary Report, encl. 1, Metro Cost Analysis Report, at 18; Tr. at 340, the offeror did not seek any downward deviations from the government's material cost estimates.

<sup>24</sup> In light of the Navy's failure (in the RFP or elsewhere) to disclose to offerors that subcontractor cost burdens were already included within the government material cost estimates, we do not believe that it was reasonable for the Navy to assume, as it did, that Norshipco had "knowingly disregarded the instructions of the RFP" and had illogically proposed upward deviations from the government material cost estimates. AR, Tab 19, CAP Summary Report, encl. 4, CAP Final Report Norshipco, at 2.

<sup>25</sup> Metro's cost analyst calculated that the reductions for Norshipco subcontractors [DELETED] and [DELETED] were \$3,468,268 and \$406,630, respectively. The analyst also estimated a [DELETED] percent burden rate for all remaining Norshipco subcontractors in the absence of evidence indicating the actual extent to which these companies had included G&A and profit burdens, thereby resulting in additional reductions of \$2,364,451. Together with the resulting elimination of Norshipco G&A costs of \$367,498, the total calculated reduction was \$6,606,847. Metro's Supplemental Protest, Declaration of Metro Cost Consultant, at 12-15.

Metro argues that the Navy's failure to take into account Norshipco's actual materials strategy (*i.e.*, that approximately 75 percent of Norshipco's material costs would be incurred by its subcontractors) in its cost evaluation created an "illusory" cost savings of the subcontractor G&A and profit burdens that the offeror would actually incur. Metro also argues, after learning at the hearing our Office conducted what costs the government material estimates represented, that the agency ignored the distinct aspects of the offerors' proposals regarding material costs and failed to treat offerors equally; *i.e.*, any downward adjustment to Norshipco's proposal to eliminate a double subcontractor G&A and profit burden should have been, and was not, accompanied by a similar adjustment to Metro's proposal.

We need not resolve this issue because we find that Metro has not demonstrated that it was prejudiced by the Navy's treatment of Norshipco's material costs here. 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. Parmatic Filter Corp., B-285288.3, B-285288.4, Mar. 30, 2001, 2001 CPD ¶ 71 at 11; *see Statistica, Inc. v. Christopher*, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, Metro contends that the CAP's improper removal of the subcontractor cost burdens from Norshipco's proposal resulted in a total reduction of \$6,606,847 to Norshipco's projected costs. By contrast, the total evaluated cost difference between the proposals of Norshipco and Metro was at least \$7,128,355. *See* AR at 14 n.6, attach. 3, Revised Cost Analysis; Agency's Supplemental Report at 21. Under these circumstances, we conclude that Metro could not have been prejudiced since, even assuming the agency's evaluation of Norshipco's proposed costs in this regard was improper and those costs should not have been adjusted downward as alleged by Metro, Norshipco's higher-rated proposal would remain lower priced.<sup>26</sup>

#### AGENCY DISCUSSIONS WITH METRO

Metro alleges that the Navy failed to conduct meaningful discussions with it regarding its cost proposal. In particular, the protester contends that the agency failed to adequately inform Metro of its concerns regarding the firm's proposed direct labor rate and subcontractor direct labor rate. Metro contends that while the agency's discussion questions inquired into other aspects of Metro's cost proposal, the discussions failed to inform Metro of the Navy's specific concerns regarding the proposed labor rates. Metro argues that had the Navy asked the proper questions,

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<sup>26</sup> Likewise, while Metro contends, in the alternative, that the Navy should have eliminated the duplicative subcontractor G&A and profit burdens from its proposal as well as that of Norshipco, the protester has not quantified what these costs are nor demonstrated that it was prejudiced by the alleged improper agency action. *See* Metro's Post-Hearing Comments at 19-20.

Metro could have explained how the agency's concerns were unfounded and/or addressed the concerns in its final proposal revision.

Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. See FAR § 15.306(d)(3); American States Utils. Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 6. We review the adequacy of discussions to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Northrop Grumman Info. Tech., Inc., B-290080 et al., June 10, 2002, 2002 CPD ¶ 136 at 6. When an agency engages in discussions with an offeror, the discussions must be meaningful. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. However, this requirement does not obligate an agency to spoon-feed an offeror, Marine Hydraulics Int'l, Inc., B-291594.3, Oct. 3, 2003, 2003 CPD ¶ 220 at 8, nor does it create an obligation for agencies to conduct successive rounds of discussions until all proposal defects have been corrected. OMV Med., Inc., B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 7. Rather, for discussions to be meaningful, they must reasonably lead an offeror into the areas of its proposal requiring correction or amplification. See American States Utils. Servs., Inc., supra; TRI-COR Indus., Inc., B-259034.2, Mar. 14, 1995, 95-1 CPD ¶ 143 at 5.

Here, the Navy held discussions with all three offerors after completing its initial evaluation of technical and cost proposals. AR, Tab 5, Competitive Range Memorandum. With regard to technical proposals, the Navy's discussions consisted of providing each offeror with a complete copy of the agency's initial technical evaluation report, including ratings and identified strengths and weaknesses and evaluation comments. With regard to cost proposals, the Navy's discussions consisted of specific written questions.

The Navy provided Metro with a total of 24 discussion questions regarding the offeror's cost proposal, including questions regarding Metro's proposed direct labor rates and subcontractor labor rates. One specific discussion question stated,

On Breakdown Number Three [Offeror's Projected Prime Direct Labor Rate and Indirect Rates], the projected labor hour rates (fully burden labor dollars) are as follows: FY-05--\$[DELETED]; FY-06--\$[DELETED]; FY-07--\$[DELETED]; FY-08--\$[DELETED]; FY-09--\$[DELETED] without [facilities capital cost of money] FCCOM. However, the current forward pricing rate (fully burden labor dollars) for Metro is \$[DELETED] without FCCOM. Please explain the rationale of Metro's projected labor hour rate decreases from the current forward pricing rate of \$[DELETED] for FY-05 (-\$[DELETED]), FY-06 (-\$[DELETED]), FY-07 (-\$[DELETED]), FY-08 (-\$[DELETED]), FY-09 (-\$[DELETED]). Historically, labor hour rates in the Tidewater area increase each year.

AR, Tab 6, Agency Discussion Questions for Metro, Encl. 3, at 3. Several other discussion questions inquired into Metro's proposed subcontractor labor rates and costs.<sup>27</sup>

Metro does not dispute that the Navy provided it with these discussion questions. Rather, Metro contends that the agency's inquiry regarding its proposed direct labor rates related only to out-year decreases in its fully burdened costs. Similarly, Metro contends that the agency discussion questions regarding its proposed subcontractor costs requested only additional information and did not sufficiently identify the agency's concerns regarding its proposed labor rates. Metro essentially argues that none of the discussion questions explicitly apprised it of the Navy's concerns that Metro's proposed direct and subcontractor labor rates were unacceptable, unreasonable, or unrealistically low.

In reviewing whether there has been sufficient disclosure of perceived deficiencies, our focus is not on whether the agency describes the deficiencies in such detail that there could be no doubt as to their identity and nature, but whether the information was sufficient in the context of the procurement to afford the offeror a fair and reasonable opportunity to identify and correct deficiencies in its proposal. MTP (JV), B-276903, July 31, 1997, 97-2 CPD ¶ 38 at 5; TRI-COR Indus., Inc., *supra*.

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<sup>27</sup> The agency discussion questions regarding Metro's proposed subcontractor rates stated:

No subcontracting plan was provided in your proposal even though all of the notional work package estimates indicated hundreds of subcontracted labor hours. Please provide a list of all potential subcontractors and vendor quotes or letters of commitment. . . . Also, please provide, or have each subcontractor provide, a cost proposal for their portion of the notional work package. . . .

Please provide a cost breakdown of the \$[DELETED] subcontract direct labor costs for CLIN 009. Please list individual subcontractors, labor hours per subcontractor, as well as the labor rates for each subcontractor. . . ., and

In Attachment III, Cost Proposal . . ., you included a cost of \$8,181,693 as "subcontractor overhead." Is "subcontractor overhead" a standard Metro indirect cost? Has the [overhead] rate applied ([DELETED]%) been recently reviewed and approved by DCAA? If so, please provide DCAA approval letters.

Id. at 2, 4.

Under the circumstances here, we cannot conclude that a reasonably prudent offeror, reviewing the agency's question in conjunction with the material that the offeror had submitted with its proposal, could have failed to recognize the agency's concerns regarding both the proposed direct labor rates and subcontractor labor rates. See MTP (JV), *supra*. Contrary to the protester's characterization, the Navy's discussions reasonably provided Metro with notice of the agency's concern that the proposed direct labor rate differed from its forward pricing rate. Moreover, Metro's response to the discussion question indicated that the firm recognized the scope of the agency's concern.<sup>28</sup> Likewise, the discussions reasonably provided Metro with notice of the agency's concerns regarding its proposed subcontractor rates, including the complete absence of subcontractor quotations. The fact that an offeror's responses did not satisfy the evaluators provides no basis to conclude that the discussions were inadequate. See ViaSat, Inc., B-291152, B-291152.2, Nov. 26, 2002, 2002 CPD ¶ 211 at 8. Given this conclusion—that Metro received sufficient notice that its proposed direct labor rates and subcontractor labor rates were viewed as unsupported—we see no basis to conclude that the Navy failed to hold meaningful discussions with Metro.

#### EVALUATION OF OFFERORS' PAST PERFORMANCE

Metro protests that the Navy's evaluation of the offerors' past performance was improper. Metro first contends that the agency's evaluation of its past performance was unreasonable and inconsistent with the treatment accorded other offerors. Metro also contends that the Navy's evaluation of Norshipco's past performance was unreasonable because it ignored highly relevant negative past performance information for Norshipco. Metro argues that had the Navy properly evaluated the offerors' past performance, then Metro would have received a higher evaluation rating (outstanding, instead of good), while Norshipco would have received a lower evaluation rating (at most, good, instead of outstanding).

Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria, since determining the relative merits of offerors' past performance information is primarily a matter within the contracting agency's discretion. Hanley Indus., Inc., B-295318, Feb. 2, 2005, 2005 CPD ¶ 20 at 4. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. Our review of the record leads us to conclude that the agency's evaluation of the offerors' past performance here was both reasonable and consistent with the RFP's evaluation terms.

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<sup>28</sup> Specifically, Metro's response to the Navy discussion question included a detailed narrative explanation about what information it had relied upon and how it had derived the calculation for its proposed direct labor rate.

### Past Performance Evaluation of Metro

The RFP instructed each offeror to provide “any information regarding its past performance, or that of its subcontractors performing significant work under the contract, on contracts similar to the Government’s requirement.” RFP at 241. With regard to the evaluation of past performance, the solicitation set forth the agency’s intent to review contractor performance assessment reporting system (CPARS) ratings and other existing past performance information on relevant contracts. Id. at 269. The Navy also reserved the right to consider subcontractors’ past performance to the extent it considered the subcontractor participation to be significant to performance under the contract here. Id.

While the TERP assigned evaluation ratings to Metro’s initial proposal under the other technical factors, the TERP did not rate the offeror’s proposal under the past performance factor because of a lack of subcontractor past performance information. AR, Tab 4, Initial TERP Report for Metro. As part of its subsequent discussions with Metro, the Navy provided the offeror with a complete copy of the initial TERP report.<sup>29</sup> AR, Tab 6, Navy Discussions with Metro. The Navy also furnished Metro with a “subcontractor past performance questionnaire” and directed that Metro provide the questionnaire to its proposed subcontractors with instructions that the businesses which had utilized the subcontractor services, relevant in scope in the effort here, complete and return the questionnaires to the agency. Id. at 1, encl. 2.

In its response to the Navy’s discussions questions, Metro addressed subcontractor past performance by providing the agency with its own ratings for its proposed subcontractors: universally “exceptional and directly relevant to the [subject] contract.” AR, Tab 58, Metro Technical Proposal Responses, at 216. In support of its subcontractor past performance ratings Metro explained,

Given that the Metro organizational approach to managing subcontracted work is unique to Metro, the only relevant subcontractor past performance is that which was performed as a Metro subcontractor. Subcontractor performance as a prime contractor or as a subcontractor to a prime contractor other than Metro is not relevant. Further, each subcontractor’s performance on

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<sup>29</sup> The agency’s discussions also stated the reason why the Navy had not assigned a rating to Metro’s proposal under the past performance factor: Metro had proposed a substantial amount of subcontracting for this contract but had provided little past performance information on the subcontractors it planned to use. AR, Tab 6, Navy Discussions with Metro, at 1.

each individual availability it has worked for Metro is indistinguishable from Metro's and assumed equal to Metro's . . . .

Id.

When evaluating Metro's final proposal revision, the TERP determined that although Metro had provided some additional information regarding subcontractor performance, the agency still had no past performance data available for review for various subcontractors that collectively were proposed to accomplish approximately 20 percent of the work effort. AR, Tab 13, TERP Final Report of Metro, at 65. The TERP concluded that, based on the performance data it had regarding Metro and its proposed subcontractors, the offeror merited an overall past performance rating of good. Id.

Metro protests that the Navy's past performance evaluation of its proposal was unreasonable. Specifically, Metro argues that the agency's evaluation rests upon the erroneous determination that it lacked performance information on various Metro subcontractors, when Metro had in fact provided the agency with adequate past performance information for its proposed subcontractors. We find the agency's decision not to rely upon Metro's own evaluation of its proposed subcontractors was neither unreasonable nor inconsistent with the solicitation.

It is the offeror's responsibility to provide sufficient information in its proposal regarding the quality and relevance of its past performance so that the agency will be able to conduct a meaningful review of that past performance. Franz Rubenbauer Raumausstatter; Malerbetrieb Anastassios Georgiadis, B-290317.3 et al., July 16, 2002, 2002 CPD ¶ 124 at 5. Additionally, in determining the quality and relevance of an offeror's past performance information, an agency may reasonably consider the credibility of the information's source. See Hughes Missile Sys. Co., B-259255.4, May 12, 1995, 95-1 CPD ¶ 283 at 14-15 (agency performance risk assessment which included consideration of the credibility of the information source was proper).

Here, the RFP advised offerors of the Navy's intent to evaluate past performance by reviewing performance data from independent sources (i.e., CPARS, regional maintenance center files, other government and non-government sources). The Navy's subsequent discussions with Metro then expressly directed the offeror to provide the agency with subcontractor past performance questionnaires to be completed by the entity which utilized the subcontractor's services (e.g., the government customer). Metro instead decided to develop its own past performance ratings regarding its proposed subcontractors and provide those to the Navy. An offeror in a negotiated procurement acts at its peril when its proposal does not provide specific information requested by the agency's instructions. See Forest Regeneration Servs. LLC, B-290998, Oct. 30, 2002, 2002 CPD ¶ 187 at 5. The Navy determined that while the data provided by Metro indicated what previous PMAs the subcontractors had performed, it failed to provide any meaningful and independent information regarding performance, level of effort, or type of work the

subcontractors had performed. AR, Tab 13, TERP Final Report for Metro, at 65. We find nothing improper about the agency's decision to take Metro's failure to provide independent past performance information for its proposed subcontractors, as requested by the agency's instructions, into account in its evaluation of the offeror's proposal here.

Metro also argues that the Navy's evaluation of past performance failed to treat offerors equally with regard to instances where subcontractor performance information was not provided. Metro contends that the agency's evaluation of Norshipco also indicated many instances where past performance information on proposed subcontractors was not available and for which the agency assigned the subcontractors neutral performance ratings; nonetheless, Norshipco received an overall rating of outstanding while Metro received an overall rating of good.

In our view, Metro's argument is mistakenly premised upon an improper "apples-to-oranges" comparison of the offerors' proposal. In performing its evaluation of Norshipco's past performance, the TERP determined that the awardee had provided adequate past performance information on all subcontractors proposed to perform the notional work items.<sup>30</sup> AR, Tab 13, TERP Final Report of Norshipco, at 61-69. By contrast, in performing its evaluation of Metro's past performance, the TERP determined that the offeror had not provided adequate past performance information on all subcontractors proposed to perform the notional work items. AR, Tab 13, TERP Final Report of Metro, at 64-73. While the TERP was able to assess the performance quality and relevance of all relevant Norshipco subcontractors, it was unable to do the same for Metro, and the agency's overall past performance ratings for Norshipco and Metro reflected this distinction. In sum, the difference in the past performance ratings of Metro and Norshipco was not the result of unequal treatment by the agency of identical underlying facts, but instead resulted from the agency's recognition of different underlying facts.

#### Past Performance Evaluation of Norshipco

Metro also protests that the agency's evaluation of Norshipco's past performance was improper. Specifically, Metro argues that the Navy ignored highly relevant negative past performance information for Norshipco and its subcontractor, [DELETED], when performing its evaluation here. Metro points to various instances in the CPARS reports for both Norshipco and [DELETED] where the performance assessments identified weaknesses and shortcomings. Metro contends that had the

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<sup>30</sup> The TERP assigned a rating of neutral to proposed Norshipco subcontractors when it determined that, although adequate information had been submitted, the prior performance was of low relevance to the contract effort here. AR, Tab 13, TERP Report for Norshipco, at 61-69.

Navy conducted a proper evaluation of the awardee's past performance, then Norshipco would have been rated no higher than good.

We find Metro's assertion here to be without merit. The record indicates that in evaluating the past performance of Norshipco and its subcontractors, the TERP considered all CPARS reports that it possessed--those containing unfavorable comments and identified weaknesses to which Metro refers, as well as the vast majority of reports containing favorable comments and assessment ratings, which Metro does not mention. After considering individual prior contract efforts, trends in performance, and performance as a whole, the TERP concluded that, "with one exception, all CPARS data available for review of [Norshipco] and six subcontractors was positive in nature." AR, Tab 13, TERP Final Report of Norshipco, at 61. The existence of isolated instances of poor performance, or isolated weaknesses in otherwise favorable performance assessments, does not preclude a favorable evaluation of past performance overall. See CH2M Hill, Ltd., B-259511 et al., Apr. 6, 1995, 95-1 CPD ¶ 203 at 5-6. Under the circumstances, we have no basis to find the agency's evaluation unreasonable.

#### SOURCE SELECTION DECISION

Lastly, Metro protests that the agency's source selection decision was improper. Specifically, the protester contends that the Navy's determination that Norshipco's proposal was technically superior to that submitted by Metro was flawed because the agency's approach was based solely on a comparison of the offerors' evaluation ratings. Metro alleges that the only basis articulated by the SSA for Norshipco's slight technical edge over Metro resulted from the SSA's observation that Norshipco had one more "very good" subfactor rating than did Metro under the integrator and management capability factor. Metro argues that the SSA's reliance upon a mere mechanical counting of evaluation ratings, without any analysis of the actual qualitative differences between the two offerors' proposals, does not constitute a reasonable basis for the SSA's determination regarding Norshipco's technical superiority.

In reviewing an agency's source selection decision, we will examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. See Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. As part of the source selection process, the evaluation ratings of offerors' proposals, whether numeric, color or adjectival, are but guides to, and not substitutes for, intelligent decisionmaking. See SAMS El Segundo, LLC, B-291620, B-291620.2, Feb. 3, 2003, 2003 CPD ¶ 44 at 17. They are tools to assist source selection officials in evaluating proposals; they do not mandate automatic selection of a particular proposal. See Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 31. Similarly, an agency's source selection decision cannot be based on a mechanical comparison of the offerors' technical scores or ratings per se, but must rest upon a

qualitative assessment of the underlying technical differences among the competing proposals. See The MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 at 8; Chapman Law Firm, LPA, B-293105.6 et al., Nov. 15, 2004, 2004 CPD ¶ 233 at 5.

Here, the SSA premised his selection decision upon acceptance of the evaluation findings, ratings, and recommendations regarding the offerors' proposals as contained in the TERP, CAP, and BVAC reports. AR, Tab 22, Source Selection Decision, at 2. In comparing the technical proposals of Norshipco and Metro, the SSA first examined the offerors' overall ratings, the individual evaluation factor ratings, and, with regard to the integrator and management capability factor, the subfactor ratings. The SSA then considered the offerors' relative strengths under the integrator and management capability factor and determined that, here, Norshipco had a "slight, but discernible, edge over Metro [notwithstanding] their common overall technical rating of Very Good." Id. The SSA concluded that Norshipco's highest technically rated, lowest evaluated cost proposal represented the best value to the government. Id. at 3-4.

Contrary to the protester's assertions, the record demonstrates that the SSA's comparison of proposals and award decision was based, not on a mechanical application of the evaluation ratings, but on the underlying qualitative merits of the offerors' proposals. Under most of the RFP's technical evaluation factors, the SSA reasonably determined that the evaluation ratings accurately reflected the essential equivalency between the Norshipco and Metro proposals. As to the integrator and management capability factor, the SSA properly looked behind the adjectival ratings to determine what technical differences existed such that Norshipco's proposal was technically superior to Metro's. The SSA reasonably concluded that the strengths identified in Norshipco's proposal by the evaluators--and upon which Norshipco's evaluation ratings under the foremost technical factor and subfactors were based--provided the offeror with a "slight, but discernible, edge" over Metro's proposal. As the SSA reasonably found that Norshipco's proposal was both technically superior and lower cost than that of Metro (as well as Offeror C), we find no basis to disturb the agency's determination that Norshipco's proposal represented the best value to the government.

The protests are denied.

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