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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Marine Animal Productions International, Inc.

File: B-247150.2

Date: July 13, 1992

David P. Metzger, Esq., and Alice M. Crook, Esq., Davis, Graham & Stubbs, for the protester.
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Barbara J. Amster, Esq., and Douglas P. Larsen, Jr., Esq., Department of the Navy, for the agency.
John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly considered time frames and milestones proposed by the protester in solving particular problems in response to solicitation for training marine mammals since they bear on the offeror's understanding of the training requirements and are reasonably related to the stated evaluation criteria; this consideration did not involve an unidentified evaluation subfactor, but rather an element of the evaluation intrinsic to evaluation factors and subfactors evaluated to assess the offerors' understanding of the agency's requirements.
2. Protester's allegation that it did not receive meaningful discussions and was misled by an agency statement at oral discussions that the agency understood the protester's response to stated proposal deficiencies is denied, where the record considered as a whole shows that the protester should have been aware of the agency's continued concern with the stated deficiencies and that the protester's interpretation of the agency's statement at oral discussions was unreasonable.
3. The procuring agency, in conducting a cost realism analysis on a negotiated procurement for a cost reimbursement contract, reasonably concluded that some of the protester's proposed wage rates were unrealistic, based on a survey of wage rates for comparable positions in the geographic area of contract performance, and acted properly in adjusting upward the protester's proposed costs to reflect more realistic wage rates.

DECISION

Marine Animal Productions International, Inc. (MAP) protests the award of a contract to Science Applications International Corporation (SAIC) under request for proposals (RFP) No. N66001-91-R-0178, issued by the Naval Ocean Systems Center (NOSC), Department of the Navy, for the training and care of marine mammals at the agency's facilities in San Diego, California, and Kaneohe Bay, Hawaii. MAP argues that NOSC failed to conduct meaningful discussions and evaluate the cost and technical proposals reasonably and in accordance with the RFP evaluation criteria.

We deny the protest.

The RFP was issued on June 5, 1991, for marine mammal care, training, research, systems development, and engineering support services for NOSC's marine mammal research and development program. The RFP contemplated the award of a indefinite delivery/quantity contract, with a cost-plus-fixed-fee pricing arrangement, for a base contract period of 3 years with two 1-year options.

The RFP provided that award would be made to the responsible offeror whose offer, conforming to the solicitation, was determined most advantageous to the government, cost and other factors considered. The RFP listed the following evaluation criteria:

- (A) Technical requirements
 - (1) Behavior Problems
 - (2) Biosystems Proposals
 - (3) Sea Lion Training Techniques (MK5)
 - (4) Dolphin Training Techniques/MK6 Behaviors
 - (5) Dolphin Training Techniques/MK7 Behaviors
 - (6) Technical Personnel
 - (7) Animal Husbandry
 - (8) Research
- (B) Cost
- (C) Engineering
- (D) Management¹

The solicitation informed offerors that the evaluation criteria and subcriteria were listed in descending order of importance with the following exceptions: the Behavior

¹The engineering and management technical evaluation subcriteria have not been included here as they are not relevant to the protest issues raised.

Problems and Biosystems Proposals subcriteria were of equal importance; the Sea Lion Training Techniques (MK5), Dolphin Training Techniques/MK6 Behaviors, and Dolphin Training Techniques/MK7 Behaviors subcriteria were of equal importance; and the Animal Husbandry and Research subcriteria were of equal importance.

The RFP provided detailed instructions for the preparation of technical proposals. Offerors were provided with sample marine mammal behavior and training problems² related to the Behavior Problems, Biosystems Proposals, Sea Lion Training Techniques (MK5), Dolphin Training Techniques/MK6 Behaviors, and Dolphin Training Techniques/MK7 Behaviors evaluation subcriteria, and were informed that their technical proposals were to include, at a minimum, a detailed work breakdown structure for solving each of these training problems. Offerors were also informed that a cost realism analysis would be performed.

MAP and SAIC attended a pre-proposal conference and site survey of the agency's facilities at which the offerors asked questions relevant to the RFP and the preparation of their proposals. One question submitted focused on the RFP's requirement that offerors address the sample training problems presented by the agency in the RFP. Specifically, the agency was questioned as to how it would be possible to submit an offer containing a detailed work breakdown structure to solve the training problems presented without first having access to information concerning the agency's past and current training efforts.

²The agency explains that it classified this portion of the RFP as SECRET "in that the problems represented potential problems to be solved during the course and scope of this procurement effort." Because of this, and because much of the protest revolves, to some extent, around the agency's evaluation of the offerors' responses to these problems in their proposals, we will not describe or specifically refer to either the problems or the offerors' responses in this decision. Also, a protective order was issued pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(d)(1) (1992), and the protester's counsel was provided with complete access to relevant procurement documentation, including classified documents (after protester's counsel independently satisfied agency security requirements). Our discussion of the protest issues that are based upon protected, confidential information is necessarily general. In any case, we have reviewed and considered the entire record, including the classified portions, in reaching our decision.

NOSC responded to this question in amendment 3 to the RFP, issued on August 12. The agency explained that the sample training problems presented in the RFP may be encountered in any open ocean or open bay marine animal training program, and were designed to investigate whether an offeror had the knowledge of the training principles and the depth of expertise required to successfully perform the contract. NOSC stated that it would not be providing a breakdown of any of its existing training programs as such information "would only serve as a 'cookbook' guide to offerors to 'regurgitate' (existing) training techniques." To assist in the offerors' development of their proposals, the agency included in amendment 3 an example of a "milestone chart," on which offerors could indicate the amount of time in days/months needed to achieve certain trained behaviors.

NOSC received initial proposals from MAP and SAIC (the incumbent contractor) by the RFP's September 3 closing date. Both proposals were included in the competitive range, although the agency noted that MAP's proposal contained significant deficiencies in that the proposal was "consistently unrealistic in milestone projections which would equate to project shortfalls and unrealistic cost estimates per project."

Discussions were held and best and final offers (BAFO) were received and evaluated. MAP's technical proposal received 63.72 out of 100 possible technical points and its proposal received an overall total score of 128.02 out of 187.5 possible non-cost points (i.e., technical (63.72), engineering (34.59), and management (29.71)). SAIC's technical proposal received 80.12 points, with its proposal receiving an overall total of 145.71 non-cost points (i.e., technical (80.12), engineering (36.94), and management (28.65)).

The agency noted in its evaluation summary that the difference in MAP's and SAIC's scores was most pronounced in the technical area and reflected MAP's "unrealistic training schedules and faulty training methodologies." Specifically, the NOSC Technical Evaluation Board (TEB) found that MAP's proposal demonstrated that MAP did "not fully understand the complexity and difficulty of open-ocean . . . training." With regard to MAP's response to the behavior problems section of the RFP, the TEB concluded that the isolation and food deprivation methods proposed by MAP to correct marine mammal behavior problems revealed a lack of training experience. The TEB also found that the training methods proposed by MAP were "questionable" and would require more time than MAP projected to correct the sample behavioral problems presented in the RFP. As to MAP's response to the

sea lion training techniques section of the RFP, the TEB, as an example, noted that MAP's proposed solution to sea lion biting episodes demonstrated a significant lack of understanding of sea lion training techniques. The TEB also found that MAP's dolphin training techniques included "unrealistically short training milestone estimates," and that "this inability to properly calculate training milestones reflected a deficiency in understanding the very nature of the [training] problem[s], resulting in a loss in confidence that MAP could complete all tasking under this contract."

NOSC made a number of upward adjustments to MAP's and SAIC's proposed costs in its BAFO cost realism analysis, due primarily to the agency's conclusion that some of the offerors' proposed labor rates were unrealistically low. The agency adjusted MAP's proposed cost-plus-fixed-fee for the base contract period and the 2 option years from \$18,942,915 to a probable cost of \$20,648,808, while SAIC's proposed BAFO cost of \$21,346,384 was adjusted upward to \$22,070,052.

The agency determined that SAIC's proposal offered the best overall value to the government based on technical and price considerations and made award to that firm. This protest followed.

MAP protests that the evaluation of its and SAIC's technical proposals was unreasonable and evidenced bias. In this regard, MAP has provided a detailed critique of the agency's evaluation of the proposals. Specifically, MAP claims that NOSC's evaluation of MAP's milestones and time frames, one of the primary evaluated deficiencies in MAP's BAFO, was unreasonable and gave undue weight to a factor not mentioned in the RFP. MAP complains that NOSC improperly considered the offerors' milestones and time frames since "[n]owhere does [s]ection M or [a]mendment No. 0003 [to the RFP] inform offerors that the realism of their proposed training time frames will be evaluated." In addition, MAP claims that NOSC acted improperly in allowing SAIC to support the milestones and time frames it proposed through the use of information not available to MAP.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Instructional Design Sys., B-246314, Feb. 28, 1992, 92-1 CPD ¶ 254. In reviewing an agency's evaluation, we will not reevaluate the technical proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367. A protester's mere

disagreement with the agency does not render the evaluation unreasonable.

Here, NOSC properly considered the offerors' milestones and time frames. Contracting agencies are required by statute to set forth, at a minimum, all significant evaluation "factors (and significant subfactors) . . . (including cost or price, cost- or price-related factors, and noncost- or nonprice-related factors)" and their relative importance, 10 U.S.C.A. § 2305(a)(2)(A) (West, Supp. 1991); H.J. Group Ventures, Inc., B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203. Agencies are not required to specifically identify each element to be considered during the course of the evaluation where a particular not specifically identified element is intrinsic to the stated factors or subfactors.

Here, the RFP provided that offerors would be evaluated on the basis of their ability to demonstrate an understanding of the agency's marine mammal training requirements through their proposed plans to solve the sample training problems presented in the RFP. Offerors were also advised to submit milestones in their solutions to the problems. The agency considered the realism of the offerors' proposed milestones and time frames to the extent that it reflected on the offerors' overall understanding of the sample training problems presented and whether they possessed the knowledge of the training principles and depth of understanding required to successfully perform the contract. The agency did not treat the realism of the proposed milestones and time frames as a distinct evaluation factor or subfactor. Nor did it assign any point value or specific weight to the realism of the milestones and time frames proposed in the evaluation of proposals. In our view, milestones and time frames did not constitute separate factors or subfactors that the agency was required to identify and weigh. They were properly considered in judging the offerors' relative understanding of the agency's requirements.

MAP argues that the agency's conclusions drawn from its evaluation of MAP's milestones were erroneous, and that its "milestones were not all that unrealistic." The protester explains that its milestones were shorter than what was apparently anticipated by the agency because they were based on training the marine mammals in a particular behavior "in isolation" versus training a particular behavior "as one of a 'chain' (i.e., sequence) of different behaviors."³ MAP

³As explained by the protester:

"Training a behavior in isolation means training the marine mammal to accomplish a single

(continued...)

contends that because NOSC's experience in training marine mammals is based on training in chained behaviors, which MAP claims requires more time, NOSC's "experience was irrelevant and inapplicable and should not have been used as a standard in evaluating" MAP's proposed milestones. The protester contends that in calculating the time frames in which certain behaviors would be trained, it assumed that the training would be "conducted under ideal conditions" and that they would be "dealing with the perfect or ideal dolphin."⁴ MAP argues that because of this pretense, the agency acted unreasonably in considering "real world" factors, such as training less than ideal dolphins under less than ideal conditions, in considering the realism of

³(...continued)
behavior.

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"A chain of behaviors, on the other hand, is a sequence of different behaviors which the animal is required to perform in a particular sequence. . . .

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"[A]s a rule, placing a given behavior in a chain may be more difficult and less reliable than teaching that behavior as the end product.

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"It is clear that training an animal to perform a single behavior is always simpler, or more reliable and expedient, than incorporating that behavior, along with others, into a complex chain.

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"Nevertheless, one may want to train behavior as part of a chain for reasons other than time efficiency. But, if the question is one of ease or rapidity of training that particular behavior, and that is the goal, then concentrating on that behavior in a flexible isolated training manner should result in a shortened training time. . . ."
(Emphasis added.)

⁴The quotations are taken from the protester's comments on the agency report. Elsewhere in this document the protester states that "[i]n responding to [the problems presented in the RFP] offerors had to recognize some 'real world' constraints--training would involve the real ocean, real marine mammals, real boats, weather and so forth."

MAP's proposed milestones. MAP argues that its assumption of ideal conditions and dolphins was reasonable because the agency stated that offerors did not need access to information concerning the agency's past and current training efforts to prepare their proposals.

From our review of the record, we find NOSC's conclusions regarding MAP's milestones, and their reflection on MAP's understanding of the agency's requirements, to be reasonable. The five heaviest weighted technical criteria, to which this aspect of the proposal is addressed, were clearly stated to be for the purpose of allowing the offerors to demonstrate their understanding of the RFP work--as opposed to work not envisioned by the RFP. See generally Syscon Servs., Inc., 68 Comp. Gen. 698 (1989), 89-2 CPD ¶ 258. Thus, NOSC could reasonably find that an experienced offeror would present realistic milestones for these training problems, even without historical contract data, and would realize that ideal dolphins in ideal situations was an unreasonable expectation upon which to base training program milestones. This is so because the training problems were examples of what will be accomplished under the contract and were clearly not intended under the RFP to be a textbook exercise, given the uniqueness of NOSC's training requirements. Under the circumstances, MAP's position, that because it was not provided with information concerning the agency's past and present training efforts it could assume that it would be training the perfect or ideal dolphin under ideal conditions, is clearly untenable.

The agency also disputes MAP's claim that its milestones were realistic because training a behavior as one of a chain requires more time to accomplish than training each behavior in isolation. MAP, while clearly disagreeing with the agency's position, has failed to point to any data or information contained in its proposal, such as that derived from MAP's past experiences in marine mammal training, to substantiate either its claim regarding training in isolation or its proposed milestones. Based on our review, we do not find unreasonable the agency's position in this regard, notwithstanding MAP's proffered explanation in support of this point.

MAP argues that NOSC was precluded from referring, to any extent, to the agency's past experiences in marine mammal training when considering the milestones proposed by MAP. MAP also contends that the agency treated the offerors unequally in allowing SAIC to support its proposed

milestones through the use of information that was not available to MAP.⁵

Here, the agency structured the RFP with the goal of enabling all prospective offerors, who may be capable of performing this work, the opportunity to compete on an equal basis with the incumbent.⁶ There is no evidence in the record that SAIC obtained any unfair advantage in this procurement because of its knowledge as the incumbent contractor of the agency's past and present marine mammal training efforts. The record does not indicate that SAIC's proposal was upgraded solely because it referenced its experiences in past training efforts performed for the agency in substantiating its proposed milestones. To the contrary, SAIC's proposed milestones were accepted by the agency because the agency believed that they were based on sound training methodologies and because they were substantiated by reference to some past experience. The protester's milestones were questioned, and its proposal downgraded, because MAP did not point to any past experiences in marine mammal training in support of its milestones.

Under the circumstances, the agency properly allowed SAIC to substantiate its proposed milestones by reference to the experience it gained in training marine mammals as the incumbent contractor. To the extent SAIC continued to enjoy an advantage, in competing for the contract by reason of its incumbency, despite the agency's goal of neutralizing any such advantage, such advantage was not required to be discounted or equalized, since the record shows that it was not the result of preferential treatment or other unfair

⁵In this regard, MAP is referring to information SAIC derived from its marine mammal training experiences as the incumbent contractor, and to NOSC's declination to provide MAP access to that information.

⁶The solicitation, as originally issued, did not include any information concerning NOSC's past and present training efforts. The agency's position that "such information" would not be provided was clarified and explained in amendment 3 to the RFP. To the extent the protester is arguing that the agency should have provided this information in the solicitation, or otherwise prior to submission of proposals, and that NOSC's failure to provide this information to all offerors was improper, MAP's protest, filed after the award of contract, is untimely. Under our Bid Protest Regulations, a protest against alleged solicitation improprieties must be filed no later than the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1).

action by the government. LaQue Center for Corrosion Tech., Inc., B-245296, Dec. 23, 1991, 91-2 CPD ¶ 577. Further, we believe that NOSC could properly consider, in assessing MAP's understanding of NOSC's requirements, NOSC's experience in managing this program. An agency may properly reference its own experience in managing a program or contract in evaluating proposals and need not accept at face value an offeror's technical proposal, which is inconsistent with its experience. See Contract Servs. Co., Inc., B-246585.3, May 7, 1992, 92-1 CPD ¶ 427.

MAP also contends that during discussions the agency misled it into believing that its proposed milestones and time frames, and the assumptions on which they were based, were considered valid and acceptable by the agency. MAP argues that the agency thus failed to conduct meaningful discussions with it and that, as a result, the firm was not provided a fair opportunity to sufficiently revise its BAFO.

In order for discussions to be meaningful, agencies generally must point out weaknesses, excesses, or deficiencies in proposals, unless doing so would result in disclosure of one offeror's technical approach to another offeror or in technical leveling. Aerostat Servs. Partnership, B-244939.2, Jan. 15, 1992, 92-1 CPD ¶ 71. There is no requirement that agencies conduct all-encompassing discussions; rather, agencies are only required to reasonably lead offerors into the areas of their proposals which require amplification or correction. Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424. An agency, however, may not mislead an offeror during discussions into responding in a manner that does not address the agency's concerns. Id.

The agency informed MAP by letter dated November 8, 1991, that its proposal was within the competitive range. In an attachment to this letter, the agency provided MAP with a list of technical issues/weaknesses that it had identified during its evaluation of MAP's initial proposal and which were to be addressed by MAP. As to MAP's technical approach, and specifically with regard to MAP's proposed time frames and milestones, the agency informed MAP that its response to the Behavior Problems section of the RFP "appeared to underestimate the time required to correct behavioral problems." The agency also requested that MAP clarify its response to the Biosystems Proposals section of the solicitation with regard to "the length of time it would take to train . . . [and] condition behaviors." In the area of Dolphin Training Techniques/MK6 Behaviors, the agency informed MAP that its "proposal seems to be unrealistic in the time frame . . . [proposed] for beaching and transporting . . . based on our experiences and data base," and the agency requested that MAP "reevaluate the time frame needed and length at each training step. . . ."

The agency also informed MAP that one of its milestones in this section of its proposal "appears to be too fast for a naive dolphin based on our experience." With regard to MAP's response to the Dolphin Training Techniques/MK7 Behaviors section of the RFP, the agency stated that the proposal "appears to reflect an unrealistic time required to develop behaviors," and that some of MAP's milestones here "appear to be too fast to develop reliable behaviors based on a large data base accumulated by [NOSC] over the past [20] years." The agency further informed MAP that another time frame it proposed under this portion of the RFP "appears too short based on NOSC prior experience," and requested that MAP "clarify" its proposal in this regard. As to one other time frame proposed by MAP in this section of its offer, the agency asked MAP to "reevaluate . . . and clarify how 25-26 weeks is enough time to develop" the behavior specified in the solicitation.

Oral discussions with MAP were held on November 22.⁷ According to MAP, during this meeting it explained that its approach to the sample problems provided in the solicitation was based on training the desired behaviors in isolation and not as part of a chain of behaviors⁸ and its assumption that it would be training ideal dolphins under ideal conditions. MAP states that after this presentation, the chairman of the meeting for NOSC said "Oh, now we understand."⁹

By letter dated November 25, the agency requested that MAP submit its EAFO. This letter referenced MAP's proposal, the agency's letter to MAP of November 8, and the discussions held at NOSC on November 22. An enclosure to the letter repeated questions raised by MAP at the oral discussions and provided the agency's responses. As to MAP's technical approach, including its proposed milestones and time frames, the enclosure referenced a question asked by MAP with regard to its response to the Biosystems Proposals section of the

⁷MAP did not, and was not required, to respond to the agency's written discussions prior to the commencement of oral discussions.

⁸See footnote 3.

⁹The protester has submitted the affidavits of three of its employees who were present at the November 22 meeting stating that the NOSC chairman either made the statement quoted or made a statement very similar to it. NOSC, on the other hand, has submitted the affidavit of the chairman, who states that he cannot remember making such a statement, and the affidavit of the contracting officer, who is unable to recall what the chairman said.

RFP, and stated that certain "tasks need to be reexamined as regards to time frames to accomplish those steps." The enclosure also stated, in response to another question asked by MAP, that "[r]eal world' factors need to be considered."

We find that the agency conducted meaningful discussions with MAP regarding the agency's concerns with MAP's proposed milestones and time frames. As detailed above, the agency's written discussions letter of November 8 was replete with references to MAP's milestones and time frames and the agency's concern that they were underestimated, unrealistic, too short, or too fast.

MAP argues, however, that it was misled during oral discussions regarding the agency's concerns with its proposed milestones and time frames, in that it reasonably interpreted the NOSC representative's statement--"Oh, now we understand"--made after MAP's explanation for the bases of its proposal, as the agency's acceptance of MAP's time frames and milestones, and the assumptions on which they were based. In further support of its contention that it was reasonably misled regarding the agency's continued concern with its milestones and time frames, MAP points to the agency's letter of November 25, which, in contrast to the agency's letter of November 8, contains only one reference to MAP's proposed milestones.

We fail to see how MAP could have been reasonably misled during the course of discussions by the conduct of the agency. Even under an interpretation of the agency's conduct at the oral discussions most favorable to the protester,¹⁰ there is no reasonable indication that the agency personnel accepted as valid MAP's proposed milestones and time frames, and the assumptions on which they were based. Rather, it appears that the agency was merely expressing that it now understood how MAP had arrived at milestones and time frames so different than those anticipated by the agency. Given the agency's expressed views that MAP's time frames and milestones were grossly understated, we do not see how the protester could reasonably have interpreted the agency's verbal four-word response to MAP's presentation to constitute a sudden and complete acceptance of MAP's milestones and time frames and the assumptions on which they were based. We also note that the agency's letter requesting MAP's BAFO referenced the agency's November 8 letter to MAP, made additional reference to milestones proposed by MAP, and alerted MAP that it needed to consider "real world" factors.

¹⁰By this we mean accepting as fact MAP's representation that the NOSC chairman stated during discussions "Oh, now we understand."

Thus, we find that MAP was accorded fair and meaningful discussions with regard to its milestones and that the agency fairly considered the milestones in the evaluation in finding that MAP's failure to propose realistic milestones negatively reflected on its understanding. The record also shows that the offerors' problem solutions were a significant aspect of the five highest rated technical subcriteria and that NOSC's evaluation of the offerors' responses to the problems, including the offerors' proposed milestones, reasonably supported SAIC's higher technical rating.

The protester also contends that NOSC unreasonably over-rated SAIC's proposal and underrated MAP's proposal as to the proposals' presentations of operant conditioning principles.¹¹ The protester primarily argues that SAIC's proposal was deficient because it "did not demonstrate classical operant conditioning principles." In support of this contention, the protester points to a statement made by one evaluator that SAIC's proposal did not contain a "section on classical operant conditioning," and that the proposal did not "demonstrate that SAIC has expertise in presenting animal training in classical text of operant psychology." With regard to the evaluation of its own proposal, MAP points to the statement of another evaluator, made during the evaluation of initial proposals, that the section of MAP's proposal discussing operant conditioning principles "was a 'refresher' course for me to read this section before the actual subfactor area." MAP concludes, primarily on the basis of these statements, that it did not receive "an adequate amount of credit" for this portion of its proposal, and that "[t]o the extent SAIC's [evaluation] scores did not reflect these deficiencies, its overall scores should be considered completely overrated by the other evaluators."

We disagree with protester's contention that the evaluators overrated SAIC's proposal by failing to recognize that SAIC's proposal was deficient for not including a section on classical operant conditioning principles, and underrated MAP's proposal, even though MAP did include such a section.¹² From our review of the RFP, and consistent with the agency's explanation concerning the scoring, we find no requirement that proposals contain a section on "classical operant conditioning," nor any evaluation factor

¹¹This references basic conditioning techniques that can be used on the dolphins and sea lions.

¹²Contrary to the protester's allegations, to the extent that weaknesses were identified in SAIC's specific conditioning and training techniques, the record shows that SAIC was appropriately downgraded.

corresponding to the evaluation of a section on "classical operant conditioning." Also, MAP does not refer to any specific point scoring on the part of the evaluators in contending that its proposal was underrated and SAIC's proposal was overrated with regard to operant conditioning. Nor does MAP respond to the agency's explanation of its evaluation of this area, despite being given the opportunity to do so. In any event, it is not unusual for individual evaluators to have disparate judgments regarding the relative strengths and weaknesses of technical proposals, and, contrary to the protester's view, disparities in evaluator ratings do not, in themselves, establish that the evaluation process was flawed or otherwise unreasonable.¹³ U.S. Def. Sys., Inc., B-245006.2, Dec. 13, 1991, 91-2 CPD ¶ 541.

The protester next argues that the evaluation of proposals was improper because NOSC imposed a number of unannounced technical evaluation criteria on MAP that were not imposed on SAIC. For example, MAP points out that during the conduct of written discussions the agency commented with regard to the sea lion training portion of MAP's proposal that its "proposal appear[ed] to be weak in the area of different rates of learning - what if a particular sea lion is 'skittish' and has a tendency to bite?"¹⁴ MAP contends that this comment/question constituted the imposition of an unannounced technical evaluation criteria--training skittish sea lions that bite--and that because this question was not also asked of SAIC, it amounted to the unequal treatment of offerors.

We first note that MAP's argument--that this question, and other similar questions asked by the agency during discussions with MAP, constituted the imposition of unannounced technical evaluation criteria--is untimely under our Bid

¹³For much the same reasons, MAP's detailed comparison and critique of the individual evaluator worksheets--which show some disparate and changed scores in a number of areas--do not show that the evaluation was unreasonable, nor do they show bias in the source selection. It is the rationality of the ultimate source selection decision, not the scoring of lower level evaluators, that is generally at issue in challenges to the source selection. See Verify, Inc., 71 Comp. Gen. 158 (1992), 92-1 CPD ¶ 107.

¹⁴This is one of numerous examples cited by MAP of the alleged imposition of unannounced technical evaluation criteria during discussions. Although we have reviewed all cited examples in reaching our decision, we only discuss this example because it is typical and since other examples may involve the disclosure of classified or proprietary information.

Protest Regulations. Our Regulations require that protests, not based upon alleged improprieties in a solicitation, be filed no later than 10 working days after the protester knew, or should have known, of the basis of protest. 4 C.F.R. § 21.2(a)(2). To the extent that MAP believed that the agency's questions here constituted the imposition of unannounced technical evaluation criteria, it should have raised this issue of protest within 10 working days of its receipt of these questions.

In any case, these questions do not constitute the imposition of unannounced technical evaluation criteria by the agency. As explained previously, agencies need not specifically identify every element to be considered during the evaluation process where a particular element or consideration is intrinsic to an identified factor or subfactor. The RFP here specifically provided that offerors would be evaluated on the basis of their ability to demonstrate an understanding of the agency's needs with regard to the training of sea lions. The agency's questions, related to the training methods proposed by MAP and to the different rates at which sea lions learn, were clearly related to the evaluation of the offeror's understanding of sea lion training.

We also reject MAP's contention that the agency treated MAP and SAIC unequally because SAIC was not asked the same questions during discussions. There is no requirement that an agency hold identical discussions with different offerors since the degree of weaknesses or deficiencies in the offerors' proposals, if any, obviously will vary. TRS Design & Consulting Servs., B-218668, Aug. 14, 1985, 85-2 CPD ¶ 168. Indeed, since proposals almost invariably have inherent differences, it is fair to conduct appropriately different discussions. Id. Based on our review of the record, we do not find that the questions asked of MAP during discussions that were not also asked of SAIC equate to the unequal treatment of the offerors; rather, we find reasonable the agency's position that it asked those questions of the protester which focused on the weaknesses in the protester's proposal as it related to the protester's proposed training methodologies and problem solving techniques.¹⁵

¹⁵Another alleged example of unannounced and unequal evaluation is NOSC's questioning of MAP as to the availability of adequate "isolation" pens in San Diego. Since isolation techniques were inherently inherent in MAP's training solutions, this was an appropriate area of evaluation and inquiry by NOSC.

MAP finally questions NOSC's cost realism analysis of its proposal. This analysis resulted in a significant upward adjustment of MAP's proposed costs because the agency found that some of MAP's labor rates were unrealistically low. MAP points to resumes and letters of intent, which it included in its proposal, that it asserts establish that its personnel would indeed work at the rates proposed. MAP also notes that the Defense Contract Audit Agency (DCAA) performed a rate check, which verified MAP's rates.

When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs of contract performance and proposed fees are not considered controlling since an offeror's estimated costs may not provide valid indications of the final actual costs that the government is required, within certain limits, to pay. See Federal Acquisition Regulation § 15.605(d); Amtec Corp., B-240647, Dec. 12, 1990, 90-2 CPD ¶ 482. Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.-Federal, 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review is limited to determining whether the agency's cost realism analysis is reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

NOSC states that it did not accept the labor rates proposed by MAP for a number of reasons. The agency first explains that MAP is based in Biloxi, Mississippi, and the labor rates actually being paid MAP employees in Biloxi and those rates proposed for this contract are unrealistic, based on a comparison with the wages being paid for similar positions in San Diego and Hawaii--two relatively high cost areas. As to the resumes and letters of intent supplied by MAP, the agency notes that they refer to MAP's proposed wage rates as starting salaries and that they contain no indication that these personnel agreed to be bound to the proposed salaries for any length of time, much less the 3-year base period of contract performance here. The agency asserts that the marine mammal training program "cannot withstand high employee turnover rates and the subsequent loss of expertise" should an offeror be unable to retain its proposed personnel because of below standard wages. NOSC states that it thus calculated average wage rates for the positions, for which the wages were considered too low, based on wages being paid for similar positions in the San

Diego and Hawaii areas and adjusted MAP's rates upward to reflect these rates.¹⁶

We find that the record supports the reasonableness and propriety of the agency's cost realism evaluation of MAP's proposal. As maintained by the agency, MAP's proposed wage rates are significantly lower than wages being paid for similar positions in the San Diego and Hawaii areas, and, in fact, are significantly lower than those proposed by SAIC. While the protester argues that because DCAA's review verified MAP's rates NOSC was obligated to accept them, we note that DCAA merely performed a rate check of MAP, verifying that their proposed rates were consistent with the rates MAP has historically paid its employees in Biloxi; the record does not indicate that DCAA reached any conclusions regarding the realism of those rates relative to the San Diego and Hawaii areas. In any event, contracting officers are not bound by DCAA audit recommendations since such recommendations are only advisory. OAQ Corp., B-228599.2, July 13, 1988, 88-2 CPD ¶ 42. Indeed, a contracting officer may not blindly rely on DCAA audit recommendations, since the contracting officer is solely responsible for the cost realism determination. Purvis Sys. Inc., 71 Comp. Gen. 207 (1992), 92-1 CPD ¶ 132. Here, the record indicates that the NOSC contracting officer considered all of the information available, including that from DCAA, and acted reasonably in upwardly adjusting MAP's proposed costs to compensate for the wage rates that the agency had determined were unrealistic.


As stated above, MAP has made a number of other related contentions during the course of this protest concerning the agency's evaluation of proposals, the conduct of discussions, and the agency's cost realism analysis. Although these contentions may not be specifically addressed in this decision, each was carefully considered by our Office and found either to be insignificant in view of our other findings or to be invalid based upon the record as a whole. For example, one of these contentions involves an allegation by MAP that the NOSC evaluators were biased in favor of SAIC because SAIC has ex-NOSC employees on its staff. Another purported example of bias is the allegation that improper peer pressure was put on certain evaluators to upgrade their scores of SAIC's proposal. We have reviewed the record and find no credible evidence of bias or bad faith on the part of the agency evaluators, nor has MAP offered such evidence. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations,

¹⁶The record shows that NOSC evaluated SAIC's cost proposal in the same manner.

inference, or supposition. Avagadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229.

In sum, the record fairly supports the agency's technical and cost evaluations, and conclusion that SAIC's technical proposal was significantly superior to MAP's, and that this superiority offsets MAP's lower cost. Indeed, the record shows that SAIC would have been selected for award, even if MAP's costs had not been upwardly adjusted.

The protest is denied.


for James F. Hinchman
General Counsel