

REDACTED VERSION*

Matter of: Combat Systems Development Associates Joint
Venture

File: B-259920.2

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DIGEST

1. Protester's contention that the agency conducted an unreasonable cost realism review of the awardee's proposed cuts to pay and benefits is denied where the record shows that the agency reasonably concluded that the proposed cost savings should be accepted because the awardee would be able to unilaterally impose such cost-savings measures on its employees, and where the record also shows that the agency adequately reflected its concerns about the effects of the pay cuts in its decision to downgrade the awardee's technical proposal in two separate areas.

2. Challenge to agency's decision to accept the awardee's level of proposed uncompensated overtime is sustained where the record shows that despite the submission of a signed certification from every employee promising to voluntarily perform [DELETED] hours of uncompensated overtime each week, the agency did not consider the fact that the awardee intended to announce on the day of contract award significant reductions in pay rates and fringe benefits, calling into question the continued willingness of the existing employees to voluntarily work additional hours without compensation. The challenge is also sustained

*The decision issued on June 13, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

because the record suggests that over the life of the contract the rate of employee turnover will be higher than estimated and that the newly hired employees will have even less incentive to provide uncompensated overtime than existing employees.

3. Protester's contention that the agency conducted an improper evaluation of technical proposals is denied where the record shows that the agency review was reasonable and consistent with the solicitation's stated evaluation criteria.

4. Argument that agency should have awarded to protester on the strength of its initial proposal, and should have excluded the awardee from the competitive range, is denied where the protester makes no showing that the agency acted unreasonably in including the awardee's proposal in the competitive range and holding negotiations.

DECISION

Combat Systems Development Associates Joint Venture (CSDA) protests the award of a contract to Vitro Corporation by the Department of the Navy pursuant to request for proposals (RFP) No. N00024-94-R-6360, for technical and engineering support services for the Surface Ship Anti-Submarine Warfare Combat System Program Office. CSDA argues that the Navy conducted an unreasonable evaluation of the technical and cost proposals, and improperly included the awardee's proposal in the competitive range.

We sustain the protest.

The RFP, issued February 18, 1994, sought offers for a cost-plus-fixed-fee level-of-effort contract for the technical and engineering support services described above. The RFP estimated the level of effort for the base period, and for each of five option quantities. These estimates were as follows:

Base Year	336,396 man-hours
Option I	71,840 man-hours
Option II	400,220 man-hours
Option III	361,862 man-hours
Option IV	357,054 man-hours
Option V	323,013 man-hours

The base year together with the five options reflect approximately 5 years of contract effort. Each option effort contains several contract line items (for example, option II consists of line items 0006-0009), and for each line item offerors were required to identify a proposed cost for the man-hours and an accompanying fixed fee.

The RFP advised that the Navy was seeking proposals offering "the greatest technical ability at a reasonable price," and that the agency would select the technically acceptable offeror whose proposal offered the greatest value to the government. The evaluation was structured to consider technical issues and proposed costs. Under the technical factor, there were four subfactors: technical approach; management approach; experience; and facilities and resources. Generally, the technical approach subfactor was substantially more important than the other subfactors, which are listed in declining level of importance.¹ Under the first three subfactors were additional evaluation criteria, which need not be addressed here.

Under the cost factor, the RFP advised that the Navy would consider realism, reasonableness and validity of the costs as proposed. Potential offerors were also advised that they were responsible for demonstrating the cost credibility of their proposals, and that the government would develop an evaluated cost for each offeror's proposal. In addition, to establish the relative balance between technical advantage and proposed cost, the RFP set forth a formula for calculating the amount of cost premium the agency would pay for additional technical merit.²

The Navy received initial proposals from three offerors on April 26. Technical proposals were reviewed by the technical evaluation review panel (TERP); cost proposals were reviewed by the cost analysis panel (CAP). Both panels submitted their reviews of initial proposals to the contract award review panel (CARP). Upon receipt of the TERP and CAP reports, the CARP made adjustments to the conclusions of the two initial review panels, and then converted the adjusted adjectival technical ratings prepared by the TERP to numerical scores, which were weighted according to the

¹Specifically, paragraph B of section M of the RFP advised that the technical approach subfactor was substantially more important than the management approach subfactor, and was more important than the cumulative value for all three of the remaining subfactors. Management approach and experience were of equal importance, and each was more important than the facilities and resources subfactor.

²The RFP's formula for calculating the premium to be paid for additional technical merit is based on the assumption that a proposal scoring at least 60 (on a scale of 100) would be technically acceptable, and that the agency would consider paying a premium of up to 40 percent above the cost of a proposal with the lowest evaluated cost and a technical score of 60 in order to select a proposal with the highest achievable technical score (100).

importance of each of the evaluation subfactors and criteria. The results of the technical and cost review are shown below:

<u>Offeror</u>	<u>Weighted Score</u>	(Costs in millions)	
		<u>Proposed Costs</u>	<u>Evaluated Costs</u>
Vitro	84	\$(DELETED)	\$67.8
CSDA	82	\$(DELETED)	\$55.3
Company A	75	\$(DELETED)	\$71.1

After completing its review, the CARP recommended negotiations, and excluded Company A from further consideration based on its lower score and significantly higher proposed and evaluated costs. On August 23, the contracting officer began discussions with CSDA and Vitro.

After holding written and oral discussions with both offerors, the Navy received best and final offers (BAFO) on October 11. Again, both the CAP and TERP produced reports for the CARP, and, as before, the CARP did not accept all of the findings of the two panels. Instead, the CARP set forth in a memorandum for the record explanations for eight separate adjustments to the ratings assigned by the TERP. After again assigning weighted numerical scores to each offeror's BAFO and comparing those scores to each offeror's evaluated costs, the results of the CARP's BAFO review were as follows:

<u>Offeror</u>	<u>Weighted Score</u>	(Costs in millions)	
		<u>Proposed Costs</u>	<u>Evaluated Costs</u>
Vitro	85	\$53.1	\$54.6
CSDA	80	\$(DELETED)	\$54.4

Although both proposals were technically acceptable and although CSDA's proposal was evaluated as having a slightly lower cost than Vitro's proposal, Vitro's slightly higher evaluated costs were within the range established by the RFP's premium formula, given Vitro's slightly higher weighted score. Thus, the Navy decided that Vitro's proposal was worth the additional evaluated cost, and Vitro was awarded the contract on December 29.

COST REALISM EVALUATION

CSDA argues that the Navy's evaluation of proposed costs was unreasonable because the Navy: (1) failed to properly consider the overall effect of the cost-cutting efforts in Vitro's BAFO--i.e., Vitro's combination of significant pay and benefit cuts together with voluntary uncompensated

overtime--on Vitro's probable costs; and (2) acted unfairly by advising CSDA that the Navy would only accept uncompensated overtime where the offeror could provide historical evidence that the proposed employee had provided uncompensated overtime in the past, but then accepting Vitro's uncompensated overtime because Vitro submitted signed certifications from its employees promising to perform the overtime proposed.

Background on Cost Realism Issues

Addressing CSDA's challenges to the cost realism evaluation requires additional details about the two offerors' approach to proposed costs. In preparing their respective cost proposals, the record clearly shows that both Vitro, the incumbent here,³ and CSDA were considering ways to achieve a competitive advantage by using uncompensated overtime.⁴ The record also shows, however, that CSDA's and Vitro's enthusiasm for proposing uncompensated overtime was tempered by their concern that the Navy might "reject" such overtime if the overtime lacked historical support--i.e., the Navy might recalculate the offeror's proposed costs using a standard 40-hour workweek, thus making evaluated costs significantly higher than those proposed.

As a preliminary matter, a brief explanation of the way uncompensated overtime is priced demonstrates its appeal to competitors seeking an edge in a cost reimbursement environment. In general terms, since the RFP here requires offerors to propose costs using an estimated number of man-hours, an offeror that can credibly state that each of its employees will work more than 40 hours per week without additional compensation, can, other things being equal, propose lower costs. In addition, although the methodology for using uncompensated overtime may vary, offerors are permitted to calculate their costs using an uncompensated overtime rate which is lower than the employee's standard

³The incumbent contract was actually awarded to Tracor Applied Sciences, Inc., part of Tracor, Inc. Tracor, Inc. acquired Vitro in August 1993, and decided to consolidate the performance of this contract under Vitro. The contract was subsequently transferred by novation from Tracor to Vitro.

⁴Uncompensated overtime is used to describe "hours worked in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA), without additional compensation." Defense Federal Acquisition Regulation Supplement (DFARS) § 252.237-7019(a)(1). See also Tracor Applied Sciences, Inc., B-253732, Oct. 19, 1993, 93-2 CPD ¶ 238.

hourly rate. Id.; see also Systems Research & Applications Corp., B-225574.2, May 26, 1987, 87-1 CPD ¶ 540.

For example, if employees are paid \$20 per hour for 40 hours of work, but will actually work 5 additional hours without compensation, the effective hourly rate for those employees is lower, as shown below:

$$\frac{\$20.00 \times 40 \text{ hours}}{45 \text{ hours}} = \frac{\$17.78}{\text{hour}}$$

Since offerors proposing uncompensated overtime may use this lower effective hourly rate to calculate their total proposed costs, the reduction in proposed costs can be substantial. Using the effective rate calculated above for 5 hours of uncompensated overtime each week (without overhead or other adjustments) and the number of man-hours in the base period for this RFP (336,396 man-hours), the advantage of using uncompensated overtime is shown below:

Offeror with standard rate:

$$336,396 \times \$20 = \$6,727,920.$$

Offeror with uncompensated overtime rate:

$$336,396 \times \$17.78 = \$5,981,120.80$$

Evaluation of the Cost Proposals

In its initial proposal, Vitro advised that its employees would work a [DELETED], and would be required to provide an additional [DELETED] hours of uncompensated overtime.⁵ The Navy's evaluators rejected Vitro's [DELETED] because there was no company policy in place and because, even if implemented, there was no indication that the policy would be in effect for any other Vitro contract. The Navy also rejected Vitro's proposed [DELETED] hours of uncompensated overtime per employee because the former Tracor employees performing the contract were not under the total time accounting system necessary to generate a verifiable history of performing such overtime during Tracor/Vitro's past

⁵This decision need not consider the accounting differences between providing a [DELETED] and an additional [DELETED] hours of uncompensated overtime, and providing [DELETED] hours of uncompensated overtime in addition to a standard 40 hour per week, because Vitro abandoned its [DELETED] in its BAFO.

performance of this contract.⁶ As a result, the Navy's CAP report recalculated Vitro's costs using a 40-hour workweek rather than the [DELETED]-hour weeks proposed. This recalculation--together with adjustments to Vitro's overhead rates and general and administrative expenses--resulted in an upward adjustment to Vitro's initial proposed costs from \$59.2 million to \$67.8 million.

Vitro's BAFO attempted to address the Navy's concerns, and to introduce other significant cost-savings measures. Vitro abandoned the [DELETED] with the explanation that senior management had rejected the proposal to impose a [DELETED] company policy. In its place Vitro proposed that its employees would provide voluntary uncompensated overtime at average amounts of [DELETED] or [DELETED] hours per week.⁷ Since Vitro did not have evidence of providing uncompensated overtime in the past, Vitro submitted signed certifications from each of its exempt employees promising to provide the uncompensated overtime. These certifications stated

"I understand that the Vitro Corporation Proposal, in response to Naval Sea Systems Command solicitation N00024-94-R-6360, projects that exempt employees will deliver [DELETED] [or [DELETED] where appropriate] hours of uncompensated overtime (UT) per week on average during the contract period of performance. As an employee of Vitro Corporation, I hereby certify and freely represent that I will voluntarily provide the projected UT in accordance with the UT policies of the Company."

Vitro also proposed to cut employee pay between [DELETED] and [DELETED] percent on the day of contract award, and to implement the following cuts in benefits: a decrease in [DELETED]; a decrease in [DELETED]; and the elimination of

⁶DFARS § 252.237-7019 requires that contractors offering to provide uncompensated overtime have a cost accounting practice appropriate for accumulating and reporting uncompensated overtime hours--i.e., the offeror must be able to record all hours worked, including uncompensated hours, for all employees, which is referred to as a total time accounting system.

⁷Specifically, Vitro proposed that its [DELETED] most senior people would provide [DELETED] hours of uncompensated overtime each week, while all other exempt personnel would provide [DELETED] hours of uncompensated overtime each week.

[DELETED].⁸ The record indicates that Vitro's employees had not been advised about the proposed cuts in pay and benefits.

In response to Vitro's BAFO, the Navy explains that it considered each of three major factors in Vitro's proposal: (1) whether Vitro was likely to provide the uncompensated overtime in its proposal; (2) the realism of the proposed pay cut; and (3) the adequacy of Vitro's proposed fringe benefit rates.⁹ With respect to Vitro's proposed uncompensated overtime, the Navy accepted Vitro's approach because each of the employees provided a signed certification. Although the evaluation records show that the Navy would have preferred historical data as evidence of the likelihood that it would actually receive the benefits of the uncompensated overtime proposed, it concluded that the use of signed employee certifications was adequate for purposes of its cost realism review. With respect to the cuts in pay and benefits, the Navy concluded that Vitro's approach would have a negative impact on employee morale and downgraded Vitro's technical proposal in areas related to contract management and retention of personnel.

CSDA's proposal, given its status as a joint venture, required different considerations. CSDA is a joint venture comprised of two teaming partners: EG&G Washington Analytical Services Center, Inc., holding a 49-percent interest in the joint venture; and GPS Technologies, Inc., holding a 51-percent interest in the joint venture. None of the proposed work was to be performed by the joint venture itself; instead the work was to be performed by subcontractors, including EG&G and GPS, to which approximately 70 percent of the total effort was allocated. The two joint venturers, and one of the four remaining subcontractors, Matrix, accounted for approximately 80 percent of the total effort, and were the only three subcontractors to propose the use of uncompensated overtime. Given the amounts of uncompensated overtime

⁸For replacement hires, Vitro proposed to offer only [DELETED].

⁹The Navy's review of Vitro's proposed fringe benefit rates--[DELETED]--considered both the impact of the fringe benefit rates on the quality of personnel over the life of the contract, and whether Vitro's method of calculating the rates met with the approval of the Defense Contract Audit Agency (DCAA). CSDA does not challenge, and our decision does not consider, the mechanics of how the fringe rate was calculated. With respect to the impact of the lower benefits signified by these rates, we will review this issue together with the Navy's evaluation of the proposed pay cut.

proposed by the three subcontractors, CSDA's proposal anticipated that slightly more than [DELETED] percent of the total required effort would be provided as uncompensated overtime.¹⁰

When the Navy evaluated CSDA's proposal for cost realism, it accepted all of Matrix's proposed uncompensated overtime, but rejected portions of the uncompensated overtime proposed by EG&G and GPS as overly optimistic and not supported by the historical information available.¹¹ Although the record indicates that the Navy and DCAA requested historical information from CSDA to support the proposed uncompensated overtime, there is a dispute about what oral instruction may have been given to CSDA regarding the necessity for historical data. According to CSDA, the Navy's contracting officer advised CSDA during oral discussions that the agency would only allow offerors to propose uncompensated overtime where the offeror had historical evidence of such overtime being performed in the past. The Navy denies giving any such instruction to CSDA. In addition, because of the alleged instruction regarding historical information, CSDA claims that it instructed one of its subcontractors that it could not propose uncompensated overtime in the BAFO since it lacked historical support for the overtime.

Analysis

When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) § 15.605(d). 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.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Contracting officers are required by the FAR to document this evaluation, FAR § 15.608(a)(1), and when properly documented, our review of an agency's exercise of judgment in this area is limited to determining whether the

¹⁰For comparison, the record shows that Vitro's BAFO proposed that slightly more than [DELETED] percent of the total effort would be made up of uncompensated overtime.

¹¹Unlike Vitro, CSDA's three subcontractors, mentioned above, were able to provide historical evidence that some of the proposed employees had provided uncompensated overtime in the past, although in the case of GPS and EG&G, the Navy concluded that the historical data did not adequately support the amount of uncompensated overtime claimed.

agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Management Sys., Inc.; Department of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

With respect to CSDA's contention that the Navy should not have accepted Vitro's pay and benefits cuts, we note first that the evaluation record shows that the Navy expressly considered Vitro's proposed pay and benefits cuts and ensured that the possible adverse effect of the cuts was reflected in the evaluation, as required by FAR § 15.608(a)(1). See also Amtec Corp., B-240647, Dec. 12, 1990, 90-2 CPD ¶ 482, aff'd, Department of the Army--Recon., B-240647.2, Feb. 26, 1991, 91-1 CPD ¶ 211. Specifically, the CAP identified the proposed pay and benefits cuts in Vitro's cost proposal, and suggested that the CARP consider their impact when reviewing the TERP's evaluation of the technical proposal. When the CARP reviewed both the technical and cost evaluation reports, it concluded that:

"these measures proposed by Vitro (pay cuts, benefits reduction, working uncompensated overtime) will result in dissatisfied and disgruntled employees. Disgruntled employees are rarely, if ever, enthusiastic about their jobs and will just do the bare minimum of effort needed to accomplish the work without concern about the quality of work."

Thus, the CARP reduced Vitro's technical ratings to address concerns about the impact of Vitro's approach on its personnel.

The CARP reduced Vitro's technical ratings from excellent to acceptable under the contract management criterion under the management approach subfactor (which includes consideration of how the offeror manages its personnel), because the CARP concluded that the cuts suggested that Vitro lacked a good personnel management scheme. This reduction resulted in a corresponding reduction for the entire management approach subfactor from "excellent (low)" to "good (high)." In addition, the CARP increased the risk assessment for the personnel qualifications criterion under the experience subfactor from low risk to high risk, which resulted in a corresponding increase in the risk assessment for the entire experience subfactor from low to medium. The Navy based this change on its concern that Vitro might have difficulty retaining its people given the proposed changes to pay and benefits.

We view the Navy's decision to downgrade Vitro's technical proposal for its proposed pay and benefit cuts as a reasonable and adequate response to the issues presented by Vitro's approach. See Information Spectrum, Inc., B-256609.3; B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251. Although CSDA argues that the Navy should have rejected the proposed pay and benefits cuts, we disagree. Unlike the voluntary nature of the proposed uncompensated overtime, discussed below, a cut in pay and benefits for exempt employees is a unilateral company action requiring no employee input or action, is clearly verifiable, and is definite in its impact on proposed costs. To the extent that the proposed cuts raise issues regarding Vitro's personnel management, and its ability to retain existing personnel, the Navy adequately responded to those concerns with its adjustments to the technical evaluation.

With respect to CSDA's contention that the Navy should not have accepted Vitro's uncompensated overtime in light of Vitro's proposed pay and benefit cuts, we agree that the Navy's evaluation was inadequate.

Vitro's proposal, the Navy's evaluation materials, and the pleadings filed during the course of this protest, show that Vitro intended to announce its pay and benefit cuts on the date of contract award if successful in retaining its contract as a result of this competition. The record shows that the unannounced pay cuts of between [DELETED] to [DELETED] percent will be imposed for all employees other than the [DELETED] most senior employees proposed for this effort, and that for many of the junior employees, the pay cut will range from [DELETED] to [DELETED] percent. Thus, when Vitro's proposed employees certified that they would voluntarily provide [DELETED] (or [DELETED]) hours of uncompensated overtime every week, they were unaware of the significant pending cut in pay, and the pending loss of a portion of their [DELETED]; a portion of their [DELETED]; and [DELETED].

Although the Navy considered Vitro's proposed uncompensated overtime as part of its decision to downgrade Vitro's technical evaluation for the proposed pay cuts, there is no evidence in the record that the Navy considered the impact of the pay cuts on the continued willingness of Vitro's employees to provide uncompensated overtime. In fact, at a hearing convened by our Office, the Navy's contracting officer testified that there was no consideration of the relationship between these issues as part of the decision to accept the employee certifications. In addition, given that Vitro declined to revise its company policies and will continue to view such overtime as voluntary, the certifications here have no bearing on whether Vitro's

new hires will voluntarily agree to continue providing uncompensated overtime.¹²

The significance of the treatment of proposed uncompensated overtime is clear: without continued voluntary unpaid effort from Vitro's employees, the cost of this contract over the next 5 years will likely be much greater than the evaluated cost upon which the Navy made its selection decision. Accordingly, given the relatively small difference in evaluated costs between CSDA's and Vitro's proposals, a change in the treatment of proposed uncompensated overtime--even a partial discounting of the amount of proposed uncompensated overtime the Navy would accept as realistic--could have a determinative effect on the technical/cost tradeoff and thus on the ultimate award decision.

We conclude that the Navy failed to consider the fact that the certifications here were solicited from and provided by employees without knowledge of pending decreases to their pay and benefits. Under these unique circumstances, the Navy's cost realism review must consider whether Vitro's certifications truly provide evidence of a long-term willingness to provide voluntary unpaid effort over the life of this contract. Accordingly, based on our conclusion that the Navy's cost realism evaluation with respect to Vitro's proposed uncompensated overtime failed to consider certain key information, we sustain the protest on this ground.

CSDA also argues that the cost realism review was unfair because the Navy advised CSDA that it would only accept an offeror's proposed uncompensated overtime where the offeror could provide evidence that the employee had provided uncompensated overtime in the past, but then accepted Vitro's uncompensated overtime even though Vitro had no historical evidence of providing such overtime. In support of its claim, CSDA's president testified at a hearing convened by our Office that its understanding was supported by the terms of the RFP, by the historical support requested during negotiations by both the DCAA and the Navy, and because the contracting officer expressly advised CSDA of this requirement during oral discussions.

¹²The record shows that Vitro estimated its annual turnover at [DELETED] percent prior to proposing these cuts. Thus, prior to the end of this contract, new hires will likely comprise a majority of Vitro's work force, and their actions could substantially change Vitro's ability to deliver the uncompensated overtime here.

As stated above, the record here shows that both CSDA and Vitro expected that the Navy would focus on historical support for uncompensated overtime, and that the Navy itself intended to disallow uncompensated overtime when offerors lacked historical data to support it. In fact, the Navy admits it abandoned its preference for historical support and accepted Vitro's certifications only "after much discussion."

Despite the Navy's clear intent at the outset to review historical support for uncompensated overtime, the record does not support CSDA's claim that it was advised that such information was the only way an offeror could establish that such overtime should be accepted. First, although CSDA is correct in noting that the RFP required offerors to establish the credibility of their cost proposals, the RFP makes no mention of a requirement for historical data. Second, although both the Navy and DCAA requested information about past performance of such overtime, the contracting officer testified that she never stated that such information was required to show an offeror's cost realism. Third, the Navy's memorandum for the record documenting issues covered during oral discussions makes no mention of any discussion of uncompensated overtime during the meeting with CSDA.¹³ Finally, the handwritten notes of CSDA's president do not clearly support CSDA's contention: while these notes--written on the day of CSDA's oral discussions with the Navy and produced by CSDA in response to a document request from the Navy--show a notation about a requirement for historical data to support uncompensated overtime, CSDA's president testified that the relevant portion of the notes was written after the meeting, but later the same day.

On balance, based on our review of the record, including the testimony from both CSDA's president and the contracting officer, we find that the Navy did not advise CSDA that historical evidence was the only way an offeror could provide support for uncompensated overtime. While it is clear that CSDA believed that its proposed costs might be increased wherever it proposed uncompensated overtime without supporting historical data, and that CSDA advised at least one of its subcontractors of its belief, we cannot

¹³With respect to the Navy's notes, the record shows that even though CSDA submitted an agenda of issues to be covered during oral discussions, CSDA's agenda does not mention uncompensated overtime. In addition, the Navy's memorandum includes other issues not on CSDA's agenda that the contracting officer testified were covered during oral discussions, but the memorandum does not mention uncompensated overtime.

conclude that CSDA, or any of the other offerors, was advised that such historical data was a requirement for proposing uncompensated overtime.

TECHNICAL EVALUATION

CSDA argues that the Navy's technical evaluation was unreasonable because the conversion of adjectival ratings to numerical scores was unfairly executed, and because the Navy improperly downgraded CSDA's score based on its split office arrangement. CSDA also argues that the Navy should have excluded Vitro's proposal from the competitive range and awarded to CSDA on the strength of its initial proposal, rather than conduct discussions.

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. A protester's disagreement with the agency's judgment, without more, does not show that the judgment was unreasonable. Id.

With respect to CSDA's contention that the Navy improperly and unfairly converted adjectival ratings to numerical scores, our review of the record shows that none of CSDA's contentions are supported by the facts. For example, CSDA claims that in the Navy's initial evaluation of the management approach subfactor, Vitro was rated "excellent (low) with low risk," but unfairly received 85 points for this rating while all other assessments modified with the adjective "low" received a score ending in 1--i.e., 71, 81, or 91.¹⁴ While Vitro's contention accurately cites the numbers in the initial CARP report, the discrepancy is clearly an oversight. The CARP report explains that the TERP evaluated Vitro's proposal as unacceptable under the small business/small disadvantaged business subcontracting plan criterion under the management approach subfactor. However, Vitro included this information in its cost proposal and the CARP upgraded the score awarded by the TERP from unacceptable to excellent. The effect of the upgraded

¹⁴The source selection plan here established the following numerical ranges: outstanding, 91-100; excellent, 81-90; good, 71-80; acceptable, 60-70; and unacceptable, 0-59. Within the 10-point range, assessments modified with the adjective "low" were scored at the low end of the range (81, 91, etc.); assessments modified with the adjective "mid" were scored in the middle of the range (65, 75, etc.); and assessments modified with the adjective "high" were scored at the high end of range (79, 89, etc.).

score on this criterion resulted in an upgrade for the management approach subfactor from excellent(low) to excellent(medium). Hence the award of 85 points was consistent with the numerical conversion scheme that was fairly applied to both offerors. CSDA's other challenges in this area are similarly answered.

We also find unpersuasive CSDA's contention that the agency unreasonably downgraded CSDA for proposing a split office. The RFP here required offerors to propose a facility within 1 mile of the Navy's program office in Crystal City. Prior to the closing time for receipt of proposals, the Navy received an offeror's question asking if the Navy required all personnel assigned to the program to reside in one facility. The Navy answered that "the Offeror should assign personnel in whichever facilities they (the Offeror) have determined those personnel can best perform the requirements delineated in Section C of the RFP." As a result, CSDA proposed that [DELETED] percent of the personnel for this effort would be housed in Crystal City, while the remaining personnel would be housed in CSDA's Fairfax, Virginia facility.

Our review of the record shows that the Navy reasonably concluded that CSDA had not adequately addressed the impact of a split office on its ability to manage and coordinate the effort here. We see no reason to question the CARP's concern that the physical separation of CSDA's employees could lead to poor integration of related work efforts, or the CARP's determination that CSDA should have identified the separation of personnel between Crystal City and Fairfax as a potential problem area with recommended solutions. We also note that CSDA does not challenge the results of the agency's evaluation, but instead contends it was misled by the Navy's response to the pre-proposal submission question wherein the Navy stated that offerors could appropriately locate their work force in more than one place. We disagree. The Navy's decision to permit offerors to propose a split work force could not reasonably be interpreted to mean that such an approach might not raise concerns about coordinating the contract effort. In short, we find no fault with the Navy's documented and rational consideration of this issue.

As a final matter, CSDA argues that the Navy should have excluded Vitro's proposal from the competitive range and awarded to CSDA on the strength of its initial proposal, rather than conducting discussions. To support its contention, CSDA argues that the proposal submitted by Company A contained similar weaknesses to Vitro's proposal.

The competitive range consists of all proposals that have a reasonable chance of being selected for award, that is, those proposals which are technically acceptable as submitted or which are reasonably susceptible of being made acceptable through discussions. FAR § 15.609(a); Mainstream Eng'g Corp., B-251444, Apr. 8, 1993, 93-1 CPD ¶ 307. Here, the Navy included both CSDA's and Vitro's proposals in the competitive range, but concluded that neither of the proposals could be accepted without further negotiation. While CSDA is correct that some of the reasons stated by the Navy for not awarding to CSDA on the strength of its initial proposal are legally unsound--such as, for example, the Navy's claim that it could not accept CSDA's initial proposal because the company failed to include an executed certificate of procurement integrity, see FAR § 3.104-9(b)(3)(ii)(A); General Elec. Ocean and Radar Sys. Div., B-250418; B-250419, Jan. 11, 1993, 93-1 CPD ¶ 30--its contentions are misplaced. The proposal to be examined here is Vitro's, not CSDA's, and we find nothing unreasonable about the decision to include Vitro's proposal in the competitive range.

Even assuming the Navy reasonably could have excluded Vitro's proposal from the competitive range--and we reach no conclusion on this issue--it does not follow that the agency acted improperly by including the proposal in the competitive range. See Vortec Corp., B-257568 et al., Oct. 18, 1994, 94-2 CPD ¶ 145 at n.1. In fact, where there is doubt about whether a given proposal should be included in the competitive range, that doubt should be resolved in favor of including the proposal, since this is consistent with the overall goal of maximizing competition. FAR § 15.609(a); Birch & Davis Assocs., Inc.--Protest and Recon., B-246120.3; B-246120.4, Apr. 20, 1992, 92-1 CPD ¶ 372. See also Mainstream Eng'g Corp., supra; Avondale Technical Servs., Inc., B-243330, July 18, 1991, 91-2 CPD ¶ 72. Since Vitro's proposal was clearly technically acceptable, and since its much higher evaluated cost was generally related to one agency decision--the decision to reject Vitro's proposed uncompensated overtime--we will not question the agency's decision to hold discussions with Vitro regarding its proposal.¹⁵

¹⁵To the extent CSDA claims that Vitro's proposal was not significantly different from the proposal that was excluded, our conclusion is twofold: as stated above, we conclude above that the decision to include Vitro's proposal in the competitive range was reasonable; with respect to the proposal that was excluded from the competitive range, CSDA is not an interested party to raise this issue. This is a matter for pursuit by the excluded company, not CSDA. See 4 C.F.R. § 21.0(a) (1995).

RECOMMENDATION

Because we conclude that the Navy could not reasonably accept Vitro's proposed uncompensated overtime on the strength of the employee certifications submitted in Vitro's BAFO without considering the impact of the proposed but unannounced pay and benefit cuts, we conclude that the agency conducted an unreasonable evaluation of cost proposals and thus lacked a rational basis for making award to Vitro.

We recommend that the Navy reconsider its evaluation of uncompensated overtime, and make a finding regarding the likelihood that, under the circumstances here, Vitro will deliver the uncompensated overtime proposed. Based on the results of that reevaluation, the Navy should make adjustments, if appropriate, to Vitro's proposed costs. In addition, the Navy may also choose to reopen discussions with both competitive range offerors and request revised BAFOs. If the Navy concludes that CSDA, rather than Vitro, is the offeror whose proposal offers the greatest value to the government--within the guidelines established by the RFP's premium formula--then Vitro's contract should be terminated and award made to CSDA. We also find that the protester is entitled to recover its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6. CSDA's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States