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Decision

Matter of: The S.M. Stoller Corporation

File: B-400937; B-400937.3; B-400937.4

Date: March 25, 2009

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Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of awardee's proposed approach to complying with solicitation's performance work statement (PWS) is sustained where the record shows that a reasonable offeror would not have understood the solicitation to allow proposing a technical approach that was inconsistent with the PWS.

DECISION

The S.M. Stoller Corporation, of Broomfield, Colorado, protests the award of a contract to Navarro Nevada Environmental Services, LLC under request for proposals (RFP) No. DE-RP52-08NA28091, issued by the Department of Energy (DOE), National Nuclear Safety Administration (NNSA) for environmental remediation services in Nevada. Stoller contends that the agency improperly waived or relaxed a material solicitation requirement in its evaluation of Navarro's technical proposal, conducted an unreasonable cost realism evaluation, and failed to reasonably consider the risks in the awardee's proposed technical approach.

We sustain the protest.

BACKGROUND

NNSA administers the Nevada Test Site (NTS), a 1,375 square mile restricted access site in Nevada. The NTS was the site of numerous explosives tests, including

approximately 928 underground and atmospheric nuclear tests. In 1989, DOE established the Environmental Management Program, which is responsible for addressing the environmental effects of nuclear weapons tests at sites across the country, including the NTS.

In 1996, DOE, the Department of Defense, and the state of Nevada entered into the Federal Facilities Agreement and Consent Order (FFACO) to identify sites requiring environmental remediation, including the NTS, and to develop plans and procedures for the remediation work. As relevant here, the FFACO establishes procedures for “characterizing” the work required for a corrective action site (CAS) where evaluation and remediation services are to be performed. Agency Report (AR), Tab 13, FFACO, at 7. Under the terms of the FFACO, multiple CASs may be grouped into a corrective action unit (CAU) based on common conditions or other features which make treating the CASs as a single unit appropriate. *Id.* at 10.

The FFACO contains six appendices, which list the CASs and CAUs where site characterization and remediation work is required, and the processes for performing the work. As relevant here, Appendix II lists all CASs and CAUs which have been identified, but not yet prioritized and approved for remediation activities. Once a CAU has been prioritized and approved for action it is transferred to Appendix III. The FFACO and its appendices are frequently amended to reflect changes in the underlying agreement and changes to the CAUs listed in the appendices, including reorganization of CASs within their respective CAUs. A 2000 agreement between DOE and Nevada states that DOE can unilaterally reorganize CAUs that are listed in Appendix II, prior to their transfer to Appendix III, without the approval of Nevada. AR, Tab 13, Letter Agreement to Modify FFACO, at 1; see also Letter Modification of FFACO, Aug. 31, 1998, at 1 (stating that DOE can “unilaterally transfer and group CASs into CAUs in Appendix II to address their program needs.”). In contrast, the transfer of a CAU from Appendix II to Appendix III requires agreement from all of the parties to the FFACO.

In 2003, NNSA awarded a contract for environmental characterization and remediation services at the NTS to a joint venture between Navarro and Stoller. The award challenged here is for the follow-on contract, which will continue the site identification and remediation services for the NTS.

The RFP was initially issued on March 21, 2008. The RFP was issued as a small-business set-aside, and anticipated the award of a cost-plus-award-fee contract, with a 2-year base performance period and three 1-year option periods. The RFP stated that proposals would be evaluated on the basis of the following four non-cost factors: technical approach, key personnel and retention strategy, corporate experience, and past performance. RFP at 69. The first three factors were of equal importance, and past performance was of less importance than the other three. In making award, the RFP stated that the non-cost factors were “significantly more important than cost or price,” but also that “cost/price will contribute substantially to the selection decision.” *Id.* at 68.

The solicitation stated that offerors' technical proposals must demonstrate an approach that complies with the requirements of the performance work statement (PWS). *Id.* at 68-69. The PWS stated that the contractor "shall comply with [the FFACO]." RFP amend. 2, PWS, at 12. The PWS stated that offerors were responsible for performing work "activities" relating to three FFACO sub-projects: industrial sites, underground test area (UGTA), and soils. The PWS identified approximately 50 activities to be performed over the 5 years of the contract, each of which consisted of a CAU and an associated action, such as preparation of a document.

In this regard, offerors were required to prepare two documents for each of the soils sub-project CAU identified in the PWS: a corrective action investigation plan (CAIP), which sets forth the FFACO-required procedures for investigating a particular CAU; and a corrective action decision document/closeout report (CADD/CR), which describes the remediation action established for a particular CAU after the FFACO-required analysis. RFP amend. 2, PWS, at 16-20; AR, Tab 13, FFACO, at 6-7. The three soils sub-project CAUs relevant to Stoller's protest arguments are Johnny Boy, Area 20, and Sedan. RFP amend. 2, PWS, at 12-14.

Offerors were advised that cost proposals would be evaluated for cost reasonableness and realism, in accordance with Federal Acquisition Regulation (FAR) part 15.4. The RFP stated that offerors' cost proposals would be evaluated to assess whether "the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the PWS requirements, and are consistent with the Staffing Plan Summary submitted by the offeror." RFP at 69.

NNSA received proposals from eight offerors, including separate proposals from Stoller and Navarro, by the closing date of May 13, 2008. The agency convened a source evaluation board (SEB) to evaluate offerors' technical proposals. As relevant here, Navarro's proposed technical approach included consolidation of the three soils sub-projects listed above into a single CAU. AR, Tab 6A, Navarro Technical Proposal, at 5. Navarro stated in its proposal that the consolidation of the three individual CAUs would achieve "[s]treamlining and cost savings" that would accelerate the schedule for performing the soils sub-project requirements and result in cost savings. *Id.* In its evaluation of Navarro's technical proposal, the SEB cited the offeror's proposal to accelerate the soils sub-project schedule as a "significant strength." AR, Tab 8, SEB Report, at 29. The SEB evaluated Navarro's and Stoller's technical proposals as excellent, overall. *Id.* at 9.¹

After evaluating offerors' technical proposals, the SEB evaluated the realism of each offeror's proposed costs. The cost realism evaluation consisted of two stages. First,

¹ The agency used an evaluation scheme of excellent, good, satisfactory, and unsatisfactory. AR, Tab 8, SEB Report, at 7.

the SEB, led by the SEB chair, evaluated whether an offeror’s proposed staffing and labor hours were realistic to perform the proposed technical approach. Hearing Transcript (Tr.)² at 24:15-25:8. Second, the SEB financial advisor evaluated offerors’ proposed direct and indirect rates and other costs, and then applied these rates and costs to the evaluated labor hours to develop the overall probable cost for each offeror. *Id.* at 286:15-287:12. In evaluating the realism of the offerors’ proposed costs, the agency did not compare the offerors’ proposed costs to the independent government cost estimate (IGCE), or to each other. Tr. at 36:22-38:1, 143:10-16.

The source selection authority (SSA) concurred with the SEB’s technical evaluation ratings, and with its conclusion that Navarro and Stoller were the two most highly rated offerors. *Id.* at 4.

As relevant here, the final evaluation for the offerors’ technical and cost proposals was as follows:

	STOLLER	NAVARRO
OVERALL RATING	EXCELLENT	EXCELLENT
Technical Approach	Excellent	Excellent
Key Personnel & Retention	Excellent	Good
Corporate Experience	Excellent	Excellent
Past Performance	Excellent	Excellent
PROPOSED COST	\$68,251,067	\$54,805,503
EVALUATED/PROBABLE COST	\$68,261,948	\$55,761,082

AR, Tab 9, Source Selection Decision (SSD), at 3.

Although the SSA concluded that both Navarro and Stoller were rated excellent under the technical approach evaluation factor, Navarro’s proposal was viewed as superior to Stoller’s based on its approach to accelerating the soils sub-project schedule. AR, Tab 8, SEB Report, at 29; Tab 9, SSD, at 5. The SSA also concluded that Stoller’s proposal was superior to Navarro’s under the key personnel evaluation factor, and that the offerors were “substantially equivalent” under the corporate experience and past performance evaluation factors. *Id.* at 6. In a direct comparison of the offerors’ technical proposals, the SSA stated that “Navarro’s Technical Approach presents advantages over . . . Stoller’s approach based on an accelerated Soils Sub-Project which more than offsets any difference between the two offerors’ proposed Key Personnel which I consider to be substantially equivalent.” *Id.* at 7.

² Our Office conducted a hearing on February 26, 2009, to further develop certain protest issues. We took the testimony of the chair of the SEB and the SEB financial advisor, who were designated by NNSA as individuals who could address questions concerning the agency’s technical and cost evaluations.

Overall, the SSA concluded that the offerors' technical proposals were effectively equal, and that the contract should be awarded to Navarro based on that offeror's \$12.5 million lower evaluated cost. Id.

NNSA advised Stoller of the award to Navarro on December 3, 2008. The agency provided Stoller a debriefing on December 11, and this protest followed.

DISCUSSION

Stoller argues that NNSA's evaluation of Navarro's proposal was flawed in three respects. First, Stoller argues that the agency improperly waived or relaxed a material solicitation requirement by allowing Navarro to consolidate three CAUs listed in the PWS into a single CAU. Second, Stoller argues that the agency's cost realism evaluation of Navarro's proposal was unreasonable. Third, Stoller argues that the agency failed to consider whether Navarro's proposal posed a risk to the agency's future contracting requirements.

As discussed below, we agree with Stoller that the agency improperly waived or relaxed a material solicitation provision, and sustain the protest on this basis. We also agree with the protester that the waiver or relaxation of the material PWS requirement affected the reasonableness of the cost realism evaluation of Navarro's proposal with respect to the evaluation of the realism of the proposed soils sub-project costs, and sustain the protest on that basis. With regard to the other aspects of the cost realism evaluation, and the risk evaluation, we disagree with Stoller and deny those bases of protest.

Waiver or Relaxation of PWS Requirements

Stoller first argues that NNSA improperly waived or relaxed a material solicitation requirement in the PWS that required offerors to prepare two documents for each of three soils sub-project CAUs. As discussed above, Navarro proposed, and the agency accepted, a technical approach whereby three soils sub-project CAUs-- Johnny Boy, Area 20, and Sedan--were consolidated into a single CAU. As set forth in greater detail below, this protest ground essentially argues that the agency accepted a proposal that deviated from the requirements of the solicitation in such a way that other competitors, reasonably following the terms of the solicitation, could not have anticipated was permitted.

It is a fundamental principle of government procurement that competitions must be conducted on an equal basis, that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8. Contracting officials may not announce in the solicitation that they will use one evaluation scheme and then follow another without informing offerors of the changed plan and providing them an opportunity to submit proposals on that basis. Fintrac, Inc., B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 6. Our Office will sustain a

protest that an agency improperly waived or relaxed its requirements for the awardee where the protester establishes a reasonable possibility that it was prejudiced by the agency's actions. Datastream Sys., Inc., B-291653, Jan. 24, 2003, 2003 CPD ¶ 30 at 6.

Stoller argues that the solicitation did not reasonably advise offerors that they could propose, and that NNSA would accept, a technical approach that consolidated the individual CAUs listed in the PWS. Instead, Stoller argues that offerors should have understood the plain language of the PWS to require offerors to submit technical proposals that addressed the activities as described in the PWS, *i.e.*, addressed each CAU as stated. The protester therefore argues that the agency improperly accepted Navarro's proposal because it did not comply with the requirement to address the CAUs individually, as listed in the PWS. Stoller further contends that it was prejudiced by the agency's actions because it did not have an opportunity to submit a proposal that involved reorganization or consolidation of CAUs.

In reviewing Stoller's contention that Navarro's proposed consolidation of the CAUs was improper because it did not comport with the requirements as set forth in the PWS, we look first to the PWS itself. As discussed above, the PWS stated that "[t]he contractor shall comply with the Federal Facility Agreement and Consent Order (FFACO)." RFP amend. 2, PWS, at 12. The PWS also stated that "[t]he contractor shall perform the following activities," and listed approximately 50 individual activities, such as preparing documents for specific CAUs. As relevant here, the PWS identified six activities, pertaining to the three soils sub-project CAUs at issue, as follows:

GFY [Government Fiscal Year] 2011

- Complete Area 20 Soils CAU CAIP
- Complete Sedan Soils CAU CAIP
- Complete Area 20 Soils CAUs CADD/CR
- Complete Sedan Soils CAU CADD/CR

GFY 2012

- Begin Johnny Boy Soils CAU CAIP

GFY 2013

- Begin Johnny Boy Soils CAU CADD/CR

Id. at 12-14.

In addition to the fiscal year dates listed above, the RFP contained a schedule derived from the DOE "Life-Cycle Baseline, Revision 7" (LCBL), which contained specific milestones and deadlines for each activity.

Navarro explained its approach to consolidating the three soils sub-project CAUs as follows:

Our approach to the Soils Sub-Project includes the following features that allow us to provide the best value to the government:

* * * * *

Streamlining and cost savings. Where appropriate, we will consolidate CAUs to reduce their number and the required FFACO documentation to characterize and close sites. For instance, we will characterize and complete three of the cratering test CAUs required to be closed by the RFP (Johnny Boy, Area 20, and Sedan) with a single set of FFACO documents. This allows us to reduce the schedule from five years to two years and to implement cost reductions of approximately \$[deleted].

AR, Tab 6A, Navarro Technical Proposal, at 5.

In its evaluation of Navarro’s technical proposal, the agency concluded that the awardee’s proposed consolidation of the CAUs was a “significant strength” under the technical approach evaluation factor, as follows:

The offeror proposes to achieve or exceed FFACO milestones with potential savings by completing all soils PWS requirements in FY 2012, a full year ahead of schedule. Some of the key elements of this approach which support its feasibility include the following: . . . b) The Offeror[’s] efficient approach to closing the CAUs, which include the cratering test locations by using one set of regulatory documents (e.g., CAIPs, and CADD/CRs) to reduce the number of document production and review cycles with resulting cost savings and streamlining of the schedule.

AR, Tab 8, SEB Report, at 29.

In his testimony, the SEB chair further elaborated that consolidating the three CAUs would result in cost savings during performance because instead of preparing three CAIP and three CADD/CR documents, Navarro’s plan anticipated preparing one CAIP and one CADD/CR document for the consolidated CAU. Tr. at 330:22-331:5. The agency understood that the consolidation would result in reduced document preparation efforts, regulatory reviews, and would provide potential efficiencies in field activities. Id. at 330:3-21, 331:12-334:5. In its evaluation of Navarro’s cost proposal, the agency noted that the proposed staffing and labor hours for the soils sub-project were realistic because, in part, the work schedule was accelerated and would be completed 1 year ahead of schedule. AR, Tab 11, Navarro Cost Realism Evaluation, at 2.

We think Stoller reasonably understood the solicitation to require offerors to propose technical solutions based on the CAUs as listed in the PWS. The agency acknowledges that although the list of CAUs had been updated in FFACO Appendix II prior to the issuance of the RFP, the PWS requirements reflect an older version of the appendix. Tr. at 344:10-15. In its proposal, Stoller stated that it was aware that the list of CAUs in the PWS was not current, but understood the solicitation to require offerors to propose the requirements as stated in the PWS: “While we have based our approach, cost estimate, and proposal discussions on the PWS and the ‘Description of Work’ document presented on the web site, we know that changes [to Appendix II] have occurred.”³ AR, Tab 7A, Stoller Technical Proposal, at 1-8.

In our view, offerors were not reasonably on notice that they could propose, and the agency would accept, consolidating the CAUs listed in the PWS. We think the plain language of the PWS anticipated that each item, as listed, was a separate requirement. As a result, allowing Navarro to consolidate the CAUs was a material waiver or relaxation of the proposal-submission requirements of the solicitation because it allowed the awardee to propose reduced costs and accelerate its performance schedule—a feature which the agency recognized as a significant strength.

During the course of this protest, NNSA and Navarro raised three primary arguments in support of their view that the PWS permitted offerors to propose, and the agency to accept, a technical approach that consolidated individually-listed CAUs. As discussed below, we find each argument to be without merit.

First, the agency and intervenor argue that the PWS did not expressly prohibit offerors from consolidating the CAUs. As discussed above, however, we think the solicitation as written required offerors to separately address each of the requirements listed in the PWS. Under these circumstances, we do not think that offerors should have understood the absence of an explicit prohibition on consolidating the CAUs to be an authorization to deviate from the terms of the PWS.

³ We believe that the reasonableness of Stoller’s interpretation of the RFP is supported by NNSA’s pre-solicitation Q&As. Specifically, the Q&As indicated that although “activities may change over the period of performance,” the agency intended the RFP to reflect a “snapshot” of the NTS requirements, AR, Tab 5, Pre-Solicitation Q&As, at 46, so that “all offerors would be proposing to the same work requirements.” Agency Comments on Hearing at 16.

Next, NNSA and Navarro argue that the Q&As issued by the agency indicate that offerors were allowed to propose consolidation of the CAUs. After the RFP was issued, the agency published the following solicitation Q&As on its website:

8. Question: “In the list of Pertinent Documents, DOE has provided the 2009-2013 schedules. Is DOE dictating that bidders follow the schedule given, or are bidders free to develop their own approach to meet the FFACO milestones?”

Response: The FFACO milestones are minimum milestones. Offerors may propose an approach to meet or accelerate these milestones consistent with the FFACO approved strategy while balancing the Offeror’s proposed approach to avoid or minimize any technical risk.

30. Question: “In the PWS, Section 3, Specific Requirements, a certain number of milestones have been defined. In particular, the milestones dictate the approach to be taken (CAIP, CADD or CADD/CR) for all the Projects. Can we use our own approach for the milestones that are not FFACO milestones? We respectfully suggest that allowing the bidders to bring their own approach would provide the government with a better understanding of the value that the bidders bring. So, we suggest that for the CAUs where a firm FFACO milestone is not fixed yet, the government uses as milestones the closure of the CAU by a given date and give the bidders flexibility on the approach to be taken.

Response: See response to Question 8.

Id., RFP-Related Q&As, Apr. 2, 2008, at 4, 9-10 (emphasis added).

The agency and intervenor argue that the phrase “may propose an approach to meet or accelerate these milestones consistent with the FFACO approved strategy” implies that offerors could propose any approach that was consistent with the FFACO—including consolidation of CAUs listed in Appendix II. As discussed above, the record shows that the agency has the discretion to reorganize CAUs listed under Appendix II of the FFACO. The Q&As cited above, however, clearly address accelerating the schedule for completing the various milestones for the activities listed in the PWS, and do not mention consolidation or reorganization of the CAUs. We do not think that the phrase “consistent with the FFACO approved strategy” reasonably advised offerors that they could also propose to consolidate the CAUs listed in the PWS, especially where the agency, and not the contractor, would have to determine whether such consolidation or reorganization was appropriate.⁴

⁴ NNSA contends that Stoller’s argument that the agency waived or relaxed a solicitation requirement for Navarro is based on a patent ambiguity in the solicitation—i.e., between the PWS and the Q&As—and should therefore be dismissed (continued...)

Finally, NNSA and Navarro argue that the PWS specifically permitted offerors to propose consolidation of the CAUs listed in the PWS. PWS § 3.1.1.8 states that “[t]he contractor shall provide planning and management services for the identification, grouping, and prioritization of CASs and CAUs.” The agency and intervenor contend that this section advised offerors that they were permitted during contract performance to propose reorganization or consolidation of any CAUs listed in Appendix II. We disagree.

This PWS section merely addresses the support services that the contractor must provide during contract performance—it does not clearly state, as the agency and intervenor suggest, that offerors are permitted to propose an alternative CAU organization from that listed in the PWS. Put differently, we do not think that the PWS requirement to provide “planning and management services for the identification, grouping, and prioritizing of CASs and CAUs” during contract performance reasonably advised offerors that they could propose to consolidate the CAUs in their proposals as part of their technical approach.

In sum, we think that offerors were not reasonably on notice that the agency would accept a proposal that consolidates the CAUs listed in the PWS. Accordingly, we conclude that NNSA improperly waived or relaxed the requirements of the PWS in its evaluation of Navarro’s proposal. We also conclude that Stoller was prejudiced here because, but for the agency’s improper action, Stoller would have had a substantial chance of receiving an award. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

Stoller was prejudiced here because the record shows that Navarro’s consolidation of the soils sub-project CAUs contributed to a portion of the difference between the

(...continued)

as untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2008). As discussed above, we think that the solicitation does not support the agency’s view that offerors were on notice that they were permitted to propose to consolidate CAUs; in other words, we do not think that the solicitation is ambiguous. See Poly-Pacific Techs., Inc., B-293925.3, May 16, 2005, 2005 CPD ¶ 100 at 3 (an ambiguity exists if a specification is susceptible to more than one reasonable interpretation that is consistent with the solicitation, when read as a whole). We also disagree with the intervenor’s contention that the waiver or relaxation argument was untimely when first raised in Stoller’s comments on the agency report. The argument was timely raised in Stoller’s second supplemental protest, and the arguments discussed in the protester’s comments on the agency report are reasonably related to that supplemental protest. Compare Second Supplemental Protest at 8-10, with Protester’s Comments on AR at 2-4, 7-8.

offerors' evaluated cost.⁵ See AR, Tab 8, SEB Report, at 25, 40; Tab 6B, Navarro Cost Proposal, at 16; Tab 7B, Stoller Cost Proposal, at 33. The agency's cost realism evaluation also concluded that the consolidation of the CAUs and acceleration of the soils sub-project schedule demonstrated that Navarro's proposed staffing and hours were realistic. AR, Tab 11, Navarro Cost Realism Analysis, at 2. Finally, in the SSD, the agency found that Navarro's accelerated schedule was a "significant strength" that rendered its proposal superior to Stoller's under the technical approach subfactor, and offset Stoller's higher rating under the key personnel subfactor. AR, Tab 8, SEB Report, at 29; Tab 9, SSD, at 5, 7. On this record, we think Stoller was clearly prejudiced by the combined effects of the waiver or relaxation of the requirement on the cost and technical evaluations of Navarro's proposal, and we therefore sustain the protest.⁶

Cost Realism Evaluation

Next, Stoller contends that NNSA's evaluation of the offerors' proposals for cost realism was flawed. We agree with Stoller that the agency's waiver or relaxation of the PWS requirements concerning the CAUs, discussed above, affected the cost realism evaluation. In this regard, the agency's conclusion that Navarro's proposed costs were realistic for the soils sub-project was based in part on Navarro's accelerated schedule for the soils sub-project. AR, Tab 11, Navarro Cost Realism Analysis, at 2. We therefore sustain the protest on this basis.

With regard to the balance of Stoller's arguments, however, we conclude that the agency's cost realism evaluation was reasonable. As discussed below, the protester argues that the agency's overall methodology for evaluating Navarro's proposed costs was unreasonable and lacked adequate documentation—particularly in light of the differences between the offerors' proposed costs. The protester also argues that

⁵ Although Navarro cites a \$[deleted] savings from the consolidation, see AR, Tab 6A, Navarro Technical Proposal, at 5, the SEB chair testified that the agency did not rely on that figure as representing the value of the potential savings. Tr. at 94:19-95:13. As a result, we cannot tell from the record the exact amount of savings and its effect on the difference between the offerors' evaluated cost. However, we think the protester has met its burden to show that it was prejudiced because the consolidation clearly resulted in significant savings for Navarro, and because Stoller was not given an opportunity to submit a proposal based on the waived or relaxed requirements.

⁶ Our decision should not be viewed as expressing an opinion on whether consolidation of the CAUs is in fact an advantageous approach to performing the PWS requirements. Instead, as discussed above, we take the solicitation's provisions as a given, and base our decision on our finding that the agency's acceptance of Navarro's proposed technical approach constituted an improper waiver or relaxation of the solicitation requirements.

the agency should have made a downward adjustment to its own proposed costs. We address each argument in turn.

When an agency evaluates a proposal 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. FAR §§ 15.305(a)(1); 15.404-1(d); Tidewater Constr. Corp., B-278360, Jan. 20, 1998, 98-1 CPD ¶ 103 at 4. Consequently, the agency must perform a cost realism analysis to evaluate the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1); Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9. An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(c), or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Further, 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 information reasonably available to the agency as of the time of its evaluation. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7; Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 10-11. We review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and not arbitrary. Hanford Env'tl. Health Found., supra, at 10.

Other than the issue of the impact of the waiver of the PWS requirement discussed above, Stoller's challenges to NNSA's evaluation of Navarro's cost proposal relate primarily to the differences between the number of labor hours proposed by the offerors; the protester does not, for example, argue that the awardee's labor rates or indirect costs were unrealistic. The parties agree that the proposed labor rates for Navarro and Stoller were similar, and that the difference between the offerors' overall proposed costs is primarily attributable to the differences in the number of proposed labor hours. See Tr. at 297:11-298:11. As relevant here, the protester focuses on the following differences between the offerors' overall labor hours, and the labor hours for the soils and UGTA sub-projects:

	NAVARRO	STOLLER
Total Labor Hours	[deleted]	[deleted]
Soils Sub-Project Labor Hours	[deleted]	[deleted]
UGTA Sub-Project Labor Hours	[deleted]	[deleted]

AR, Tab 8, SEB Report, at 25, 40; Tab 6B, Navarro Cost Proposal, at 16; Tab 7B, Stoller Cost Proposal, at 33.

First, Stoller argues that the record does not show how NNSA conducted the evaluation of Navarro's proposed costs, and relies on undocumented, unsupported

conclusions. The protester contends that, given the differences in hours proposed by the offerors, the agency's evaluation was not reasonable. The SEB report stated, without significant detail, that Navarro's proposed costs were realistic to perform the offeror's technical approach.⁷ See AR, Tab 11, Navarro Cost Realism Evaluation, at 2; Tab 8, SEB Report, at 40. We agree with the protester that the cost realism evaluation prepared by the SEB lacks detail and does not adequately explain how the agency evaluated the awardee's proposal. During the hearing conducted by our office, however, the SEB chair provided detailed and credible testimony regarding the agency's cost realism evaluation that was consistent with the contemporaneous materials, and amplified them.

In reviewing an agency's evaluation, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. Further, we will give credence to credible witnesses where the testimony is detailed and there is no information in the record that leads us to question the accuracy or credibility of the witnesses' testimony. See FN Mfg. Inc., B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212 at 10-11.

During the hearing, the SEB chair explained that the agency began its cost realism evaluation of Navarro by reviewing the company's organizational structure in order to evaluate the sufficiency of its staffing approach, including its estimates for the required labor hours. Tr. at 39:12-40:21. In this regard, Navarro's proposal stated that its labor hour estimates were based on [deleted] for each work activity, such as preparing a CAIP document for a particular CAU. AR, Tab 6B, Navarro Cost Proposal, Attach. 3, at 1-5. Navarro's proposal also identified the labor hour estimates established [deleted], and the hours that [deleted]. Id.

⁷ In completing its report, the SEB used a template document for the cost realism evaluation provided by the SEB financial advisor. The SEB financial advisor also instructed the SEB chair to "summarize" the cost realism findings when completing the template document, and to provide a detailed narrative only for those areas where the SEB had specific concerns regarding the realism of an offeror's proposed costs. Tr. at 278:13-280:17.

The agency also reviewed the basis of estimate (BOE) documents provided by Navarro, [deleted], such as [deleted]. Tr. at 65:6-66:17. Each BOE contained a [deleted], the basis for estimating the required hours, and [deleted] hours estimated for the work. See AR, Tab 6B, Navarro Cost Proposal, at 65-317. The estimated hours were based on the [deleted] discussed above, as well as adjustments to the [deleted] based on the [deleted] of the solicitation requirements. See id.

The SEB concluded that the “labor categories and skill mix presented in [Navarro’s] Staffing Plans are realistic and consistent with their Volume II Technical Approach and are appropriate to perform the proposed effort.” AR, Tab 11, Navarro Cost Realism Evaluation, at 1. For the soils, industrial sites, and UGTA sub-projects and project management labor categories, the SEB concluded that the “total hours and hours proposed per activity are appropriate and realistic for the contract period because they are consistent with the proposed technical approach and reflect a sufficient number of personnel to accomplish” the PWS requirements. Id. at 2.

Following the evaluation of the offerors’ proposed staffing and labor hours, the SEB financial advisor reviewed the offerors’ proposed direct and indirect labor rates, which had been separately reviewed by the Defense Contract Audit Agency (DCAA). AR, Tab 8, SEB Report, at 40; Tr. at 286:15-287:12. Based on adjustments recommended by DCAA, the SEB financial advisor applied the adjusted direct and indirect labor rates and costs to the proposed labor hours to develop an overall probable cost for the offerors. AR, Tab 8, SEB Report, at 40. As relevant here, the agency concluded that one of Navarro’s proposed direct labor rates, one of its indirect rates, and certain of its subcontract costs required adjustment, resulting in an \$955,579 increase in the awardee’s evaluated cost. Id. at 40-41. In sum, the agency concluded that Navarro’s proposed costs in terms of staffing and labor were realistic for the proposed technical approach. In performing the review, the SEB chair stated that the agency evaluators applied their personal knowledge and familiarity with the work to assess whether the proposed labor was realistic for the technical approach. Tr. at 21:10-23:9, 73:20-75:20.

Our review of the record leads us to conclude that NNSA’s evaluation of Navarro’s cost proposal was reasonable. The testimony of the SEB chair and SEB financial advisor show that the evaluators relied on their familiarity with the agency’s performance requirements and their professional experience, and they made reasonable judgments in the evaluation. FN Mfg. Inc., supra, at 10-11. We further think that the testimony of the agency witnesses was credible and reflects the contemporaneous evaluation by the agency.

Stoller also contends that NNSA should have made downward adjustments to its own probable cost because of the differences between Stoller’s and Navarro’s proposed hours for various activities. The protester, in essence, argues that if the agency concluded Navarro’s hours were realistic, the agency should have concluded that Stoller misunderstood the PWS requirements and proposed too many hours.

Therefore, Stoller contends, the agency should have revised its probable costs downward. We disagree.

The FAR states that a cost realism evaluation must consider the probable cost to the government for each offeror's proposal, and that agencies must evaluate offerors' probable cost by "evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed," FAR § 15.404-1(d)(1). The agency must then "adjust[] each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis." FAR § 15.404-1(d)(2)(ii). We have held that agencies should make downward adjustments to an offeror's evaluated cost where the proposal shows a misunderstanding of the requirements in a manner which would cause the government to incur a lower cost than that identified in the proposal. See Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 3-4 (protest sustained where agency concludes that protester misunderstood the requirements for other direct costs; most probable cost should have been reduced to reflect agency's judgment as to costs actually to be incurred); Kellogg Brown & Root Servs., Inc., B-298694 et al., Nov. 16, 2006, 2006 CPD ¶ 160 at 5-8 (agency properly made downward adjustment to protester's probable cost where indirect cost rates were overstated).

Here, the differences between the offerors' proposals stemmed from their differing methods for estimating hours, assumptions as to the scope of certain work requirements, and technical approaches, such as acceleration of soils sub-project requirements. Unlike our prior decisions in Priority One and Kellogg Brown & Root, which were cited by the protester in support of its argument, there is no clear basis in this record to conclude that the government will not incur the costs identified in Stoller's proposal. Accordingly, the agency had no reasonable basis to make a downward adjustment to the protester's proposed costs. See Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 14.

Notwithstanding our conclusion that the agency was not required to make a downward adjustment of Stoller's proposed costs, it appears that the two offerors may have based their proposals on differing assumptions of the PWS requirements. For example, the record shows that Stoller and Navarro had widely-differing assumptions regarding activities that the PWS and milestone schedule indicated must be started, but not completed, during the contract. These include the South Yucca Soils CAU, the Buckboard Mesa Soils CAU, and the Ranier Mesa/Shoshone Mountain UGTA CAU Drilling Program. The protester notes that in some cases it proposed [deleted] times as many labor hours as the awardee. Protester's Post-Hearing Comments at 22. Despite these significant differences, the record indicates that the agency viewed both offerors as technically acceptable, and the protester has not demonstrated that Navarro's assumptions were inconsistent with the RFP. Nonetheless, because we sustain the protest on other grounds, as discussed above,

we think that the agency may want to address whether the solicitation adequately reflects the scope of work required for certain CAUs.

In sum, we agree with Stoller that NNSA's cost realism evaluation was flawed to the extent it relied on Navarro's proposed approach to accelerating the soils sub-project schedule, and sustain the protest on that basis. For the balance of the protest issues concerning the cost realism evaluation, we find no basis to sustain the protest.⁸

Risk Evaluation

Finally, Stoller argues that DOE unreasonably failed to consider whether Navarro's proposed approach to the soils sub-project requirements posed risk to the agency's long-term ability to award contracts to fulfill its needs. The protester argues that because Navarro proposed to complete the soils sub-project requirements in four years instead of the full 5-year period of the contract, there will be a 1-year "gap" during which no work is performed. The protester contends that this gap poses a risk to the agency's overall mission of environmental remediation at the NTS because the next contract to perform the requirements would need to resume the work after a 1-year layoff.

We think this argument lacks merit. The solicitation required offerors to propose to perform the requirements of the PWS, including the soils sub-project, and the protester does not dispute that Navarro's proposal addresses these requirements. The solicitation does not set forth any evaluation criteria which would reasonably relate to the risk posed to future contract performance, *i.e.*, to future agency

⁸ In pursuing this protest, Stoller raises other collateral issues. For example, Stoller contends that NNSA unreasonably failed to compare Navarro's proposed costs to the IGCE or to Stoller's proposed costs. Stoller argues that the agency should have concluded that the difference between Navarro's proposed costs and the higher costs in the IGCE and Stoller's proposal should have caused the agency to question the awardee's costs. There is no general requirement that an agency's cost realism evaluation "normalize" the staffing levels that the offerors propose to each other or to government estimates. *See, e.g., Metro Mach. Corp.*, B-297879.2, May 3, 2006, 2006 CPD ¶ 80 at 10. Furthermore, the record shows that the agency did compare the offerors' proposed costs to the IGCE, but concluded that the comparison was not valid because of the limitations of the IGCE. Specifically, the agency concluded that because the IGCE was based on data that was 2 years old, and because the IGCE was not based on "competitive proposals," it overstated the probable cost to the government. Tr. at 35:8-36-13. Under these circumstances, we do not think it was unreasonable for the agency to discount the relevance of its IGCE in evaluating offerors' proposed costs. We have reviewed all of the protester's remaining arguments, and conclude that, aside from those we specifically identify as meritorious, none provides a basis for sustaining the protest.

requirements outside the scope of the PWS. Furthermore, as discussed above, the Q&As issued by the agency advised offerors that they were permitted to propose schedules that accelerated the performance schedules--thereby implying that certain activities could be completed prior to the end of contract performance. On this record, we find no basis to sustain the protest because Stoller fails to demonstrate that the agency departed from the evaluation scheme set forth in the RFP.

CONCLUSION AND RECOMMENDATION

We recommend that NNSA reevaluate its requirements for this procurement, and determine whether a solicitation approach that allows offerors to propose to consolidate or reorganize the CAUs listed in the PWS is consistent with the agency's requirements. The agency may also want to consider clarifying the PWS areas identified by the protester under which the offerors appear to have made differing assumptions as to the work required. The agency should amend the solicitation to clarify the agency's actual requirements, obtain new proposals from the offerors, and make a new selection decision. If Navarro is not found to offer the best value to the government, the agency should terminate Navarro's contract for the convenience of the government.

We also recommend that Stoller be reimbursed the costs of filing and pursuing this protest, including reasonable attorney fees. 4 C.F.R. § 21.8(d)(1). Stoller should submit its certified claim for costs, detailing the time expended and cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Gary L. Kepplinger
General Counsel