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**Comptroller General
of the United States**

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

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Decision

Matter of: Earl Industries, LLC

File: B-309996; B-309996.4

Date: November 5, 2007

Robert M. Tata, Esq., and Carl D. Gray, Esq., Hunton & Williams, LLP, for the protester.

Michael J. Gardner, Esq., Troutman Sanders, LLP, for the intervenor,
Kelly M. Callahan, Esq., Department of the Navy, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is sustained in a negotiated procurement for award on a “best value” basis where the source selection authority (SSA) did not reasonably assess the protester’s evaluated superior technical merit in the SSA’s cost/technical tradeoff assessment.
2. Protest is sustained in a negotiated procurement for the award of a cost-reimbursement contract, where the agency in its cost realism assessment accepted the awardee’s work allocation in its cost proposal, but that allocation was inconsistent with the firm’s allocation of work in its technical proposal.
3. Protest is sustained in a negotiated procurement for the award of a cost-reimbursement contract, where the agency in its cost realism assessment applied the protester’s historic division-wide composite labor rate rather than the protester’s proposed labor rate to perform the solicitation’s notional work package and the agency did not consider the protester’s explanation during discussions that the firm’s division-wide rate included labor categories that the protester would not use in performing in accordance with its proposed technical approach to meeting the notional work package.

DECISION

Earl Industries, LLC protests the award of a contract to Marine Hydraulics, Inc./Tecnic Corporation, a Joint Venture (MTJV), under request for proposals (RFP) No. N00024-06-R-4409, issued by the Department of the Navy for execution, planning, maintenance, repair and alterations of FFG-7 class ships. Earl challenges the agency’s cost and technical evaluations and source selection decision.

We sustain the protest.

The RFP provided for the award of a cost-plus-award-fee contract for execution, planning, maintenance, repair and alterations of Oliver Hazard Perry FFG-7 class frigates home-ported in and visiting Mayport, Florida. Offerors were informed that the contractor would be required to provide all “material, support (electrical, crane, rigging, etc.) and facilities” necessary to support 13 identified ships and any visiting FFG-7 class ships. See RFP, Statement of Work (SOW), at 43, 52-53. The SOW further informed offerors that “[r]epresentative items to be accomplished are detailed in the notional work package for the FFG 7 Class provided in [RFP] Section J.”¹ Id. at 53.

The RFP provided for award on a “best value” basis and identified the following evaluation factors: management capability, resource capabilities, past performance, and cost. Offerors were informed that the technical evaluation factors were more important than cost, and that the management capability factor was more important than the resource capabilities factor, which was more important than the past performance factor. RFP § M, at 178-80. With respect to the cost factor, the RFP provided that the agency would assess the realism of the offerors’ proposed costs and develop a projected cost to the government for each proposal. In this regard, the RFP stated:

The Government will analyze and review the Offeror’s cost estimates and supporting cost data, including comparison to the Government estimate for the notional and definitized work items in Section L.

Id. at 179.

The RFP provided detailed proposal preparation instructions. With respect to the management capability factor, offerors were to, among other things, describe their management organization, “including all teaming partners and/or significant subcontractors (defined as those contractors providing effort consisting of five percent (5%) of total direct dollars, AND/OR ten percent (10%) of total man-hours.”

¹ The Navy states that the notional work package, which consists “of a representative sample of work items typically performed,” was used “[b]ecause the exact work to be accomplished” was not known. Agency Report (AR) at 3-4 n.1.

RFP § L, at 159. With respect to the resource capabilities factor, the RFP directed offerors to

[d]escribe the total facility resources available to the organization. Clearly indicate which facility resources, production and administrative, are committed [to] the work effort, which facility resources are committed to other work efforts and any residual facility resources available. The Offeror must clearly demonstrate that it has access to facilities required to execute this contract. The Offeror must demonstrate how it will obtain required production and administrative facilities, as well as permits and certifications necessary to operate these facilities and perform the work by contract award for the period of performance of this contract.

Id.

With respect to the cost factor, the RFP instructed offerors to base their cost proposals upon the notional work item package, stating that “proposed estimated cost for the contract line items (CLINs) in Section C shall be based on the Notional Work Item package provided in Section J-1 of the Solicitation.” Id. at 162 (emphasis in original). In this regard, offerors were cautioned that their cost proposal staffing estimates must correlate with their technical proposal staffing estimated under the resource capabilities factor. Id. The RFP also provided that offerors must “fully explain the estimating rationale on which [their] proposal[s] are] based, including full supporting rationale for proposed prime and significant subcontractor[s].” Id. (emphasis in original).

The Navy received proposals from four offerors, including Earl and MTJV, which were evaluated by the agency’s technical evaluation review panel (TERP) and cost assessment panel (CAP). Discussions were conducted with the offerors, and revised proposals received. Earl’s and MTJV’s revised proposals were evaluated as follows:

	Earl	MTJV
Management Capability	[Deleted]	Satisfactory
Resource Capabilities	[Deleted]	Satisfactory
Past Performance	[Deleted]	Satisfactory
Proposed Cost	[Deleted]	\$56,494,108
Projected Cost	[Deleted]	\$59,171,174

AR at 5.

The protester’s higher technical ratings reflected the TERP’s judgment that Earl had “provided the strongest proposal to this solicitation in all areas because of their well thought out plan and their strong current and past performance, especially in the area of Resource Capabilities.” AR, Tab 15, TERP Report, at 2. In particular, the

TERP noted under the management capabilities factor that Earl had offered a team of master ship repair contractors comprised of the largest sector of the industrial base repairing ships at the Mayport Naval Station, and identified as a minor strength Earl's proposal to apply its management expertise as the prime contractor, which would "allow the full FFG7 program and management team to be dedicated 100% to the [contract]." Id., encl. 3, Earl Evaluation, at 1. Under the resource capabilities factor, the TERP assessed as a major strength Earl's clear demonstration that the firm had significant facilities and staffing in Mayport to perform the contract; the TERP also assessed, as a minor strength under this factor, Earl's many skilled tradesmen with more than 25 years experience on FFG-7 class ships. Id. at 2-3.

The awardee's lower technical ratings reflected the TERP's judgment that although MTJV had adequately addressed during discussions the TERP's concerns with the firm's management and resource capabilities, the firm's proposal was merely satisfactory. In this regard, the TERP had found that MTJV's initial proposal was "weak in the local resource capabilities area," noting that

[Marine Hydraulics] does not have shop resources in the Mayport area and Tecnico's and the various other subcontractors['] facilities proposed to be utilized to support the scope of this effort appear to be inadequate. The offeror has not identified sufficient local facilities and resources to execute concurrent availabilities or respond to surge requirements.

Id. at 2; encl. 4, MTJV Evaluation, at 1-2. Following discussions, the TERP accepted MTJV's revised proposal promise to augment existing Mayport facilities and resources with "new local resources as required to support this contract." Id. at 3. In addition, the TERP noted that

[t]he required average men per week to support [this contract] in Mayport will be supplemented with local subcontractors including Tecnico, Atlantic Marine, Earl Industries, North Florida Shipyards, QED Systems and Life Cycle Engineering. Work will be awarded based on "Best Value" to the customer.

Id.

The offerors' cost proposals were evaluated by the agency's CAP, which compared the firms' proposed staff-hours and material costs with those estimated by the RFP. Neither Earl nor MTJV proposed to deviate from the solicitation's staff-hour or material cost estimates. Thus, the CAP's realism evaluation focused on the offerors' proposed rates. The agency requested labor rate and indirect cost rate information from the Defense Contract Audit Agency (DCAA) for the firms and their significant subcontractors.

With respect to Earl's proposed costs, the CAP noted that Earl's proposed composite direct labor rate, which was based upon the notional work package, was lower than the firm's historical division-wide composite rate and did not account for temporary Florida labor that would be required. The Navy decided to apply Earl's significantly higher Florida-division-wide composite labor rate instead of its proposed rate based on the notional work package. Earl's proposed costs were upwardly adjusted by \$[Deleted], most of which (\$[Deleted]) was attributable to the application of this higher composite rate. See AR, Tab 17, Best Value Advisory Council (BVAC) Report, at 6.

With respect to MTJV's proposed costs, the CAP accepted the corporate-wide composite labor rates proposed by the joint venturers, Marine Hydraulic and Tecnico, but increased MTJV's proposed material costs and general & administrative rate based upon DCAA's recommendations. MTJV's proposed costs were upwardly adjusted by \$2,677,066, most of which (\$2.64 million) was attributable to applying fee and escalation to MTJV's proposed material costs. See AR, Tab 16, CAP Report, encl. 4, MTJV Cost Evaluation, at 31-32.

The TERP's and CAP's respective technical and cost assessments were provided to the agency's BVAC. The BVAC accepted the TERP's adjectival technical ratings of the proposals, but concluded that Earl had only a "slight advantage in technical merit" over MTJV's proposal, which the BVAC stated was "based upon the difference in the number of predominantly minor strengths offered" by Earl. AR, Tab 17, BVAC Report, at 8. The BVAC noted that all of the offerors, including MTJV and Earl, "met the requirements of the solicitation with no weaknesses." Id. Identifying MTJV's nearly \$[Deleted] cost advantage, the BVAC determined that

award to [MTJV] with its technically satisfactory evaluation and substantially lower price represents the best value to the Government. Therefore, the BVAC recommends award to [MTJV].

Id.

The BVAC's findings and recommendation were reported to the source selection authority (SSA), who also received oral briefings from the TERP and CAP chairs regarding their respective findings. The SSA noted that the BVAC had found that Earl's "slight technical advantage" was attributable to "several predominantly minor strengths" in Earl's proposal that were not found in MTJV's proposal. In this regard, the SSA stated that the BVAC's report documented "that all of the offerors met the requirements of the solicitation." The SSA selected MTJV's proposal as reflecting the best value to the agency because "the slight technical advantage inherent in [Earl's proposal]" did not warrant the payment of a [Deleted]-percent premium associated with Earl's higher evaluated cost. AR, Tab 18, Source Selection Decision, at 1. Award was made to MTJV, and this protest followed.

Earl first complains that the Navy did not reasonably assess the relative technical merit of its and MTJV's proposals. In this regard, Earl argues that the SSA's conclusion in his selection decision that Earl's proposal reflected only a "slight technical advantage" over MTJV's proposal was not consistent with the TERP's evaluation and the solicitation evaluation criteria.

In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate proposals. Rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Such judgments are by their nature often subjective; nevertheless, the exercise of these judgments in the evaluation of proposals must be reasonable and must bear a rational relationship to the announced criteria upon which competing offers are to be selected. Hydraudyne Sys. and Eng'g B.V., B-241236; B-241236.2, Jan. 30, 1991, 91-1 CPD ¶ 88 at 4.

Here, the RFP provided for a comparative assessment of the offerors' management capability, resource capabilities, and past performance. See RFP § M, at 178. With respect to the resource capabilities factor, offerors were instructed to identify resources committed to the work effort. See RFP § L, at 159.

The TERP found that Earl provided "the strongest proposal to this solicitation in all areas because of their well thought out plan and their strong current and past performance, especially in the area of Resource Capabilities." AR, Tab 15, TERP Report, at 2. With respect to Earl's proposed resource capabilities, the TERP noted as a major proposal strength under the resource capabilities factor that

Team Earl's proposal clearly demonstrates that they have the facilities and manning to execute the requirements of the FFG7 . . . contract. Team Earl's available resources are unmatched in the Southeast region. Three team members--Earl Industries and Atlantic Marine have significant facilities located on Mayport Naval Station. They previously provided significant industrial base support for the Navy in Mayport for many years. Combined, they have almost six acres of land and approximately 120,000 square feet of fully certified facilities dedicated to the Navy. These facilities have completed the overwhelming majority of maintenance on over twenty surface ships and an aircraft carrier at Mayport Naval Station. Team Earl has more than adequate resources and manning to conduct multiple FFG7 availabilities concurrently.

Id., encl. 3, Earl Evaluation, at 2.

MTJV's final revised proposal, on the other hand, was found by the TERP to be only satisfactory under the management capability, resource capabilities, and past

performance factors. AR, Tab 15, TERP Report, at 3. As noted above, with respect to the awardee's resource capabilities, the TERP assessed MTJV's initial proposal as being "weak" because the firm had not identified adequate resources to perform the contract, and assigned a "marginal" rating to MTJV's proposal under this factor. In discussions, MTJV admitted that the "overwhelming majority" of MTJV's current resources were located in Norfolk, Virginia, and not in Mayport, Florida. MTJV promised to augment its existing Mayport facilities and resources with "new local resources as required" and to solicit all local "master ship repair agreement" and "agreement for boat repair" contractors (such as Earl, Atlantic Marine, and QED) to execute various tasks.² See AR, Tab 3, MTJV Discussions Responses, at 11; Tab 15, TERP Report, encl. 4, MTJV Evaluation, at 3. In addition, MTJV promised to provide the Navy with MTJV's "Shipyard in a Box," which reflected shipyard resources that MTJV stated could be shipped to Mayport, as required.³ *Id.* at 12. With little explanation, the TERP changed MTJV's rating for the resource capabilities factor from marginal to satisfactory based upon these promises.

As noted above, the TERP concluded that Earl had provided a superior proposal to that of MTJV, particularly in the area of resource capabilities, under which the TERP documented a major strength. The BVAC and SSA concluded, however, that Earl's higher technical ratings were attributable to "several predominantly minor strengths" and that Earl's technical advantage was "slight."

Although source selection officials may reasonably disagree with the ratings and recommendations of evaluators, they are nonetheless bound by the fundamental requirement that their independent judgments be reasonable, consistent with the stated evaluation scheme and adequately documented. *DynCorp Int'l LLC*, B-289863, B-289863.2, May 13, 2002, 2002 CPD ¶ 83 at 4. Here, the SSA's conclusion with respect to Earl's technical advantage is unsupported by any meaningful explanation in either the contemporaneous record or in response to the protest. That is, we have been provided with no explanation supporting the BVAC's and SSA's judgment that Earl's proposal of significant resources in Mayport (which the TERP termed "unmatched in the Southeast region"), as compared to MTJV's promise to obtain resources as necessary, represented only a slight technical advantage, where the

² Atlantic Marine and QED, two local contractors, were proposed by Earl as significant subcontractors. Earl states that neither Earl nor Atlantic Marine and QED consented to MTJV's representation that they would perform work as subcontractors to MTJV. See Earl's Comments at 18.

³ MTJV informed the Navy that the "Shipyard in a Box" provided resources that were available to this contract on an average of 50 to 90 percent of the time. See AR, Tab 3, MTJV Discussions Response, at 12. As noted by the protester, the costs of transporting the Shipyard in a Box resources to Florida were apparently not included in MTJV's cost proposal, although those costs would appear to be considerable.

RFP provided for a comparative evaluation of the offerors' respective resource capabilities. In this regard, there is no explanation for the SSA's and BVAC's conclusion that Earl's superior technical ratings were attributable to minor strengths. Based upon this record, we do not find that the SSA reasonably assessed, in accordance with the solicitation's evaluation criteria, the relative technical merit associated with Earl's and MTJV's proposals in his decision to select MTJV's proposal on the basis of its lower evaluated costs. Earl's protest is sustained on this basis.

Earl also challenges the Navy's cost realism evaluation of its and MTJV's cost proposals. When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by an offeror, the government is bound to pay the contractor its actual and allowable costs. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9; PADCO, Inc.--Costs, B-289096.3, May 3, 2002, 2002 CPD ¶ 135 at 5; see Federal Acquisition Regulation (FAR) § 16.301. As a result, a cost realism analysis is required to determine the extent to which an offeror's proposed costs represent the offeror's likely costs in performing the contract under the offeror's technical approach, assuming reasonable economy and efficiency. FAR §§ 15.305(a)(1), 15.404-1(d)(1), (2); The Futures Group Int'l, B-281274.2, Mar. 3, 1999, 2000 CPD ¶ 147 at 3. A cost realism analysis involves independently reviewing and evaluating specific elements of each offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's proposal. FAR § 15.404-1(d)(1); Advanced Comm'n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. Based on the results of the cost realism analysis, an offeror's proposed costs should be adjusted when appropriate. FAR § 15.404-1(d)(2)(ii).

The evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency. 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. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26. 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 agency's conclusions about the most probable costs under an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. See Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 10-11.

Here, Earl argues that the Navy's realism evaluation of MTJV's cost proposal was unreasonable because, although the Navy accepted MTJV's allocation in its revised cost proposal of [Deleted] percent of the production hours to Tecnico, see AR, Tab 8, MTJV Revised Cost Proposal, at Supporting Data Breakdown #1, Cost Summary of

All CLINs, MTJV, in its revised technical proposal, stated that it would allocate [Deleted] percent of Tecnico's productive hours to "Miscellaneous Specialty Contractors & other [master ship repair contractors] Earl Ind., [Atlantic Marine], QED, etc."⁴ See AR, Tab 3, MTJV Revised Technical Proposal, at 22. This was unreasonable, Earl argues, because Tecnico's evaluated productive direct labor rate was significantly lower than that of Earl and its subcontractors, Atlantic Marine and QED. Earl contends that if the Navy had assessed MTJV's proposal to allocate [Deleted] percent of Tecnico's productive hours to other contractors this would require an upward adjustment in MTJV's evaluated costs in the agency's cost evaluation. Earl "conservatively" estimates that MTJV's proposed costs would be increased by at least \$[Deleted] to account for Earl's and its subcontractor's higher rates and for the use of their facilities. See Earl Comments, exh. C, Declaration of Cost Consultant, at 3.

The Navy admits that MTJV proposed to have [Deleted] percent of the anticipated contract work performed by "miscellaneous specialty contractors," but argues that a cost realism adjustment was not necessary because Tecnico's evaluated labor rates were reasonably assumed to be representative of the prevailing Mayport area labor rates.⁵ See Navy's Response to Earl's Comments at 2-3. In this regard, the Navy contends that it treated Earl equally, because Earl also stated in its technical proposal that [Deleted] percent of its future work would be performed by undefined "surge/specialty contractors," and the Navy also did not adjust Earl's proposed costs to account for this. The Navy also argues that, in any event, Earl has not demonstrated that it was prejudiced because, according to the agency, the Navy's source selection decision would not change even accepting Earl's argument that MTJV's proposed costs should be upwardly adjusted by \$[Deleted]. See Navy's Response to Earl's Comments at 6 n.6.

⁴ In response to the Navy's question concerning the size of the on-site MTJV production management and execution staff, MTJV also stated that "[a]pproximately [Deleted]% of the workload for this contract will be executed by other local [master ship repair agreement] and [agreement for boat repair] holders that we will solicit to perform work on a competitive basis, as the work is identified and scheduled." AR, Tab 3, MTJV Revised Technical Proposal, at 1.

⁵ The Navy also suggests that OPNAV Note 4700, which was incorporated in the RFP, allows offerors to allocate staffing differently between their technical and cost proposals; the agency, however, has failed to direct to us any part of this document, nor have we found any part, that allows an offeror to propose one allocation of work in its technical proposal but to estimate costs in its cost proposal based upon a different allocation of work. In this regard, the RFP required offerors to ensure that their proposed staffing estimates in their technical and cost proposals correlated. RFP § L, at 162.

An agency may not reasonably award a cost-reimbursement contract to an offeror whose cost proposal evidenced a different technical approach than that presented in the technical proposal, without resolving the inconsistency. See TRW, Inc., B-254045.2, Jan. 10, 1994, 94-1 CPD ¶ 18 at 8-9. Here, the agency failed to resolve the inconsistency presented in MTJV's cost and technical proposals.

In any case, we find no reasonable basis in the record for the Navy's "assumption" that Tecnico's rates were "representative of prevailing Mayport area labor rates." As noted by the protester, Tecnico's burdened labor rate of \$[Deleted] was significantly lower than all but one of the other offerors' and their subcontractors' burdened labor rates. In fact, we calculate the average burdened labor rate for offerors and their subcontractors to be \$[Deleted].⁶ More specifically, Tecnico's burdened labor rate was significantly lower than the rates proposed by Earl (\$[Deleted]), Atlantic Marine (\$[Deleted]), and QED (\$[Deleted]), which were the firms specifically identified by MTJV for possible performance of [Deleted] percent of the contract work. Although the Navy provided the declaration of the CAP chairperson, who generally states that he found that Tecnico's rate was comparable to rates of other contractors working in the Mayport area, see Navy's Response to Earl's Comments, attach. D, Declaration of CAP Chair, at 2, this declaration does not explain with any specificity how he determined this, nor does the Navy otherwise address or rebut the protester's arguments concerning Tecnico's lower rate compared to the offerors' rates in this competition. We also note that allowing MTJV to propose subcontracting a significant amount of the contract to unnamed subcontractors appears to also be inconsistent with the RFP's requirements to identify and provide cost proposals for significant subcontractors, which the RFP defined, in part, to be contractors that were providing effort consisting of 5 percent of total direct dollars. See RFP § L, at 154, 159.

With respect to the Navy's contention that Earl similarly proposed to perform [Deleted] percent of the contract with subcontractors other than those it proposed in its cost proposal, we fail to see how, even if this were true, this demonstrates that the agency's cost realism evaluation was reasonable. In any event, as noted above, MTJV stated in its technical proposal that it would allocate [Deleted] percent of its productive hours assigned to Tecnico at that firm's low labor rate to other "miscellaneous specialty contractors," which all appear to have higher labor rates than Tecnico's. Earl, on the other hand, stated in its technical proposal that [Deleted] percent of the contract work would be performed by its identified team of subcontractors (whose labor rates were considered in the agency's cost realism

⁶ The record did not provide a burdened labor rate for one subcontractor, and we therefore did not include this subcontractor in our calculation. Also, the record provided only an unburdened labor rate for another subcontractor, which we applied in calculating an average burdened labor rate, although we recognize that doing so artificially decreased the average burdened rate that we calculated.

analysis), and that Earl would “accomplish the remaining work with the assistance of our Surge/Specialty Subcontractors” (all of which were also specifically identified in Earl’s proposal). See AR, Tab 5, Earl Technical Proposal, at 25-26. There is no evidence in the record, nor has the agency provided any argument, that indicates that any of the surge/specialty subcontractors identified by Earl in its proposal have higher rates than Earl. In any event, unlike MTJV’s unequivocal statement that work allotted to Tecnico would be performed by others, Earl stated it would perform [Deleted] percent of the contract work, albeit with the assistance of the identified surge/specialty subcontractors.⁷

We also do not agree with the Navy that Earl has failed to demonstrate that it was prejudiced by the Navy’s unreasonable cost realism evaluation. Because the RFP provided for a cost/technical tradeoff basis for award, the protester, to demonstrate prejudice, is not required to show, as the Navy apparently believes, that the protester’s evaluated cost would be lower than that of MTJV; rather, Earl need only show a reasonable possibility that, but for the agency’s actions, it would have had a substantial chance of receiving the award. See Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 17. Here, given our decision above that the Navy did not reasonably consider the firm’s relative technical merit in its source selection, we find a reasonable possibility that a reasonable cost realism assessment of MTJV’s proposal could result in a different award decision. In this regard, we note that in making our decision we afforded little weight to the Navy’s post-protest argument that MTJV’s proposal would be selected for award even if its evaluated costs were increased by \$[Deleted]. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

In short, we find that the Navy failed to reasonably assess the realism of MTJV’s proposed costs, as required by the RFP, and that Earl was prejudiced by this failure. Earl’s protest is also sustained on this basis.

Earl also protests that the Navy unreasonably ignored Earl’s proposed labor rate based upon performing the RFP’s notional work package and applied the firm’s higher, historical Florida-division-wide rate. In this regard, Earl complains that its division-wide labor rate includes “trades and skilled manpower” that are not required under its technical approach to perform the notional work package. See Earl’s Comments at 12-13. The Navy responds that the CAP determined that the work under the contract would be broader than the items contained in the notional work package and therefore “the most appropriate rate to accurately predict the actual cost of performance would be Earl’s Florida Division yard-wide rate.”⁸ AR at 7.

⁷ To the extent that the Navy believes that this may be a problem, this is a matter that should have been raised with Earl during discussions. See TRW, Inc., supra, at 11.

⁸ The Navy, citing our decision in Metro Mach. Corp., B-297879.2, May 3, 2006, 2006 CPD ¶ 80, argues that the agency was required to look beyond Earl’s proposed

(continued...)

There is no evidence in the record that the Navy meaningfully considered Earl's explanations during discussions that the firm's division-wide rate included labor categories that the protester would not use in performing in accordance with its proposed technical approach. In the absence of such consideration, what the Navy did was nothing more than a verification of the firm's historical rate, and not an adequate cost realism analysis assessing the firm's probable cost of performing the contract in accordance with its proposed technical approach.

In any event, as noted above, because the agency did not know the exact work to be performed, the Navy provided the notional work package to represent the work items typically performed. See AR at 3 n.1. Earl relied upon the notional work package to calculate its composite labor rate to perform the contract work, as would be expected given the solicitation's instructions that offerors base their estimated costs upon the notional work package. In assessing the realism of each offeror's proposed costs, the agency was required to determine the extent to which the offeror's proposed costs represent the offeror's likely costs in performing the contract under that offeror's technical approach, assuming reasonable economy and efficiency. See FAR §§ 15.305(a)(1), 15.404-1(d)(1), (2); The Futures Group Int'l, supra, at 3. Assuming that the notional work package reflects the likely work to be performed under the contract, the agency should have assessed Earl's approach (including its labor mix) to performing the notional work package. If the agency believes that the notional work package does not reflect the likely work to be performed under the contract, we think the agency should consider amending the RFP to inform offerors of the work the agency believes would be required.

The protest is sustained.⁹

(...continued)

composite labor rate for the notional work package because that rate may not reflect the actual rate that would be applied in contract performance. In Metro Mach., we found that the agency could not accept, as a part of its realism evaluation, an offeror's promise in its cost proposal to perform all the contract work where that offeror stated in its technical proposal that it would subcontract a portion of that work to other firms. Id. at 12-15. Unlike in Metro Mach., Earl's cost proposal is consistent with its technical approach to performing the notional work package. In this regard, the Navy has provided no evidence that the notional work package does not reflect the contract work that the agency expects to be performed.

⁹ Earl raised a number of other protests allegations concerning the Navy's evaluation of MTJV's technical proposal and past performance. We do not find a sufficient basis in the record to conclude that the agency's evaluation was unreasonable in these respects. However, given our recommendation below, the Navy may wish to revisit these allegations.

We recommend that the Navy consider whether the RFP should be amended to reflect the work the agency believes would likely be performed under the contract, and if the RFP is amended, to obtain revised technical and cost proposals from the offerors. In the event that the agency does not amend the RFP, we recommend that, consistent with this decision, the Navy perform a new cost realism evaluation, reopen discussions, if necessary, and make a new source selection decision that reasonably considers the evaluated technical differences in the firms' proposals. If a firm other than MTJV is selected for award, the agency should terminate MTJV's contract and make award to that other firm. We also recommend that the agency reimburse the protester for its reasonable costs of filing and pursuing the protests. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2007). The protester's certified claim for costs, detailing time expended and costs incurred, must be submitted directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

Gary L. Kepplinger
General Counsel