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## Decision

**Matter of:** Energy Enterprise Solutions, LLC; Digital Management, Inc.

**File:** B-406089; B-406089.2; B-406089.5

**Date:** February 7, 2012

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J. Scott Hommer, III, Esq., Justin J. Wortman, Esq., Paul A. Debolt, Esq., and Melanie J. Totman, Esq., Venable LLP, for ActioNet, Inc., an intervenor.

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Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protests challenging agency's cost realism evaluation are denied where record shows that agency performed a reasonable and adequate evaluation of cost proposals.

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### **DECISION**

Energy Enterprise Solutions, LLC (EES), of Germantown, Maryland, and Digital Management, Inc. (DMI), of Bethesda, Maryland, protest the issuance of a task order to ActioNet, Inc. of Vienna, Virginia, under request for proposals (RFP) No. DE-SOL-0001043, issued by the Department of Energy (DOE) for information technology support services.<sup>1</sup> Both protesters maintain that the agency misevaluated proposals and made an unreasonable source selection decision.

We deny the protests.

### **BACKGROUND**

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<sup>1</sup> The RFP was issued under the General Services Administration's small business Alliant government-wide acquisition contract program and was limited to small business contract holders under that program.

## The Solicitation

The RFP contemplated the issuance, on a “best value” basis, of a task order to perform comprehensive information technology support services for the agency’s Office of the Chief Information Officer for a 60-day transition period, a two year base period plus one two-year option period. The RFP is for the issuance of an indefinite-delivery, indefinite-quantity task order under which the agency will place sub task orders on either a cost-plus-fixed-fee, cost-plus-award-fee or fixed-price basis. RFP at 8.

For evaluation purposes, the RFP advised that the agency would review proposals under four non-cost considerations: technical approach, management approach (deemed equal in importance), sample task (deemed less important than the first two factors), and past performance (deemed less important than the other three factors); collectively, the non-cost factors were deemed significantly more important than cost.<sup>2</sup> Agency Report (AR) exh. A.14, at 78. For cost evaluation purposes, the RFP advised that the agency would evaluate proposals for realism, reasonableness and completeness. AR, exh. A.14, at 81.

In addition to these evaluation considerations, the RFP included detailed instructions for preparing proposals. For purposes of this decision, only the cost proposal instructions are relevant. First, the RFP required offerors to propose maximum indirect rates for overhead and general and administrative (G&A) expenses, as well as maximum fixed/award fee rates and profit. RFP at 10-11; AR, exh. A.14, at 67. Second, offerors were required to submit a “cost model” to provide the agency with proposed direct labor rates and indirect rates, as well as fully burdened labor rates for 87 specified labor categories.<sup>3</sup> (The RFP included an excel spreadsheet “cost model,” designated as attachment F, that the offerors had to submit with their proposals.) With respect to these labor categories, the RFP also specified the number of hours within each labor category that were to be used in calculating total proposed costs, and offerors were not permitted to alter the number of hours used for the calculation. AR, exhs. A.14, at 67-68; A.4.<sup>4</sup> Additionally, the

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<sup>2</sup> The record shows that, in evaluating the proposals, the agency assigned adjectival ratings of either excellent, good, average, marginal or poor for the technical approach, management approach and sample task factors and rated past performance on a pass/fail basis. AR, exh. B.1, at 61, 86.

<sup>3</sup> The RFP included 91 labor categories, but the remaining 4 categories were for senior management personnel designated as key personnel under the contract.

<sup>4</sup> For the 4 remaining key personnel categories, offerors also were required to propose direct and fully burdened labor rates, but the number of hours for each of the categories was left up to the offeror to specify. AR, exh. A.4.

RFP specified an escalation rate of 2.8 percent to be applied to the labor rates in the out-years of the contract, and also specified an annual amount of \$50 million in material costs. AR, exh. A.14, at 67-68. In effect, all variables relating to how the firms would calculate their total estimated cost to perform, with the exception of direct labor rates and indirect rates applied to the direct rates (along with fee/profit), were dictated by the terms of the solicitation.

#### The Independent Government Cost Estimate (IGCE)

In anticipation of evaluating cost proposals, the agency prepared an IGCE to use as a reference point for performing its cost realism analysis. In preparing its estimate, the agency used Bureau of Labor Statistics (BLS) direct labor rate data from 2009 for the 87 labor categories called for in the RFP. Of note for purposes of this discussion, BLS wage rate data are available at various standardized intervals, or percentile thresholds, as follows: 10<sup>th</sup> percentile, 25<sup>th</sup> percentile, 50<sup>th</sup> percentile (median), 75<sup>th</sup> percentile and 90<sup>th</sup> percentile, with the lowest wage rates expressed at the 10<sup>th</sup> percentile and the highest wage rates expressed at the 90<sup>th</sup> percentile.<sup>5</sup>

The record shows that, in preparing its original IGCE, the agency decided to use above average percentile wage rate data because, as explained by the agency, the sophisticated nature of DOE's IT requirements warranted using more highly qualified personnel. EES Agency Report (EESAR) at 13-14; DMI Agency Report (DMIAR) at 13; AR, exhs. B.1, at 65; F.1, at 65.<sup>6</sup> The percentile wage rate data used by the agency varied by labor category, but the agency made a judgment in the case of each labor category concerning the threshold at which it could obtain enhanced performance of its requirements. AR, exhs. E.8; I.5.

After selecting the various direct wage rates, the agency applied an escalation factor of 3.9 percent to the 2009 data to arrive at estimated 2011 direct hourly rates. AR, exhs. E.8; I.5. After selecting and escalating the direct wage rates, the agency calculated indirect burden rates and applied them to the direct labor rates to arrive at fully burdened labor rates for each of the labor categories. Id.

The agency then used the fully burdened wage rates to calculate the total labor cost for the IGCE. The agency then calculated a fully burdened composite, weighted

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<sup>5</sup> For example, see <http://www.bls.gov/oes/2009/may/oes151021.htm> which provides 2009 wage rate data for computer programmers at the various percentile thresholds.

<sup>6</sup> The record in each protest was developed separately, although our Office was provided a single, consolidated agency report that included all of the exhibits for both protests. We provide parallel citations to the two agency reports where necessary.

average (FBCWA) hourly wage rate. As originally calculated, the government's FBCWA hourly wage rate was \$88.49. EESAR at 14; DMIAR at 13.<sup>7</sup>

### The Revised IGCE

After the agency received proposals, it concluded that its FBCWA hourly wage rate was high based on a comparison of that figure to FBCWA hourly wage rates that it had calculated for each offeror, as well as an average FBCWA wage rate for all proposals. AR, exhs. B.1, at 65; F.1, at 65. In particular, the agency found that the average FBCWA hourly wage rate for all proposals was \$72.12, which was 19.5 percent lower than the agency's FBCWA hourly wage rate of \$88.49. Id.

The agency determined that its initial use of the higher-than-average direct labor rates was the underlying cause of its FBCWA hourly wage rate being high. Specifically, the record shows that the agency reviewed the underlying BLS data that it had used in its earlier calculations. On the basis of that review, the agency calculated that the average interval between the percentile thresholds (10<sup>th</sup>, 25<sup>th</sup>, etc.) was 20.7 percent. AR, exhs. B.1, at 65; F.1, at 65. The agency reasoned that, since that figure was close to the 19.5 percent difference between its FBCWA hourly wage rate and the average FBCWA hourly wage rate for all proposals, its use of the higher-than-average direct wage rates was responsible for the disparity because nothing in the RFP required offerors to use above average wage rates. Id.

In light of these considerations, the agency reduced its FBCWA hourly wage rate by 20.7 percent (essentially reducing its calculations by one percentile category) to arrive at a new FBCWA hourly wage rate of \$70.17.<sup>8</sup> The record shows that this figure was very comparable to (within 2.8 percent of) the \$72.12 average FBCWA hourly wage rate for all proposals, and that, of the 13 proposals submitted, 6 had FBCWA hourly wage rates above the agency's revised figure and 7 had FBCWA hourly wage rates below the agency's revised figure. The agency therefore concluded that this revised FBCWA hourly wage rate was a reasonable benchmark against which to assess the realism of the proposals. AR, exhs. B.1, at 65; F.1, at 65.

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<sup>7</sup> When it prepared its initial IGCE, the agency also made a comparison of the estimated fully burdened rates to the labor rates under the predecessor contract. The agency initially found that the initial comparison tended to support the validity of its original IGCE because the rates used in the IGCE were approximately [deleted] percent [deleted] the rates under the predecessor contract, which was a time and materials type contract. EESAR at 14; DMIAR at 14. Once the agency received proposals and revised the IGCE (discussed below) it made no further reference to, and ceased to rely on, the predecessor rates as a point of comparison.

<sup>8</sup> \$88.49 – 20.7 percent (\$18.317) = \$70.17.

## The Presumptive Realistic Threshold Rate

Finally, the agency reasoned that, because the BLS data upon which it had relied was itself composite, averaged data, it would be reasonable to assume that offerors' proposed costs could vary somewhat from the agency's calculations and nonetheless still be realistic. The agency determined that it would be reasonable to assume that offerors' proposed costs could vary by as much as one half of the average interval between the BLS percentile categories, or 10.35 percent. AR, exhs. B.1, at 65; F.1, at 65. Accordingly, the agency further reduced its FBCWA by 10.35 percent to arrive at a presumptively realistic threshold rate of \$62.91.<sup>9</sup>

As noted, the record shows that the agency calculated a FBCWA hourly wage rate for each offeror. In evaluating proposals, where an offeror's FBCWA hourly wage rate fell below the presumptive realistic threshold rate, the agency reviewed the firm's proposal to determine whether there was an adequate explanation for the difference. Where the agency concluded that the difference was not adequately explained, the agency made an upward cost adjustment to the proposal to increase the offeror's FBCWA hourly wage rate to the presumptive realistic threshold rate for evaluation purposes.

## Proposals

In response to the RFP, the agency received 13 proposals, including those of the protesters and the awardee. The agency performed a technical and cost evaluation on the proposals and arrived at the following evaluation results:

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<sup>9</sup>  $\$70.17 - 10.35 \text{ percent } (\$7.26) = \$62.91.$

• Offeror	• Technical	• Management	• Sample Problem	• Past Performance	• Evaluated Cost
• ActioNet	• Excellent	• Excellent	• Excellent	• Pass	• \$491,863,365
• DMI	• Good	• Good	• Good	• Pass	• \$494,764,811
• EES	• Average	• Good	• Good	• Pass	• \$494,980,898
• A	• Good	• Good	• Good	• Pass	• \$549,307,100
• B	• Good	• Good	• Good	• Pass	• \$540,032,851
• C	• Good	• Marginal	• Good	• Pass	• \$535,376,307
• D	• Good	• Good	• Good	• Pass	• \$621,732,120
• E	• Good	• Excellent	• Good	• Pass	• \$547,326,567
• F	• Good	• Average	• Good	• Neutral	• \$536,827,236
• G	• Good	• Good	• Good	• Pass	• \$601,110,178
• H	• Good	• Average	• Good	• Pass	• \$537,319,353
• I	• Good	• Good	• Good	• Pass	• \$517,663,636
• J	• Good	• Good	• Good	• Pass	• \$650,224,348

AR, exhs. B.1, at 5; F.1, at 5. The record shows that, of the 13 proposals received, the agency made upward cost adjustments to four of them, including the protesters' proposals as well as the awardee's proposal. AR, exhs. B.1, at 91; F.1, at 91. Specifically, the record shows that the agency adjusted ActioNet's proposed cost upward by \$[deleted], EES's proposed cost upward by \$[deleted], and DMI's proposed cost upward by \$[deleted]. Id.

In view of these evaluation results, the agency made award to ActioNet on the basis of initial proposals, finding that its proposal was both the most highly rated under the non-cost criteria, and also offered the lowest evaluated cost among all offerors. After being advised of the agency's source selection decision and receiving debriefings, EES and DMI protested to our Office.

## PROTESTS

Both protesters raise numerous challenges to the agency's cost evaluation, maintaining that virtually every aspect of it was improper. We have carefully reviewed all of the protesters' contentions and conclude that none of them have merit. We discuss the protesters' principal contentions below, but note at the outset that, in considering protests relating to an agency's evaluation of proposals, we do not independently evaluate proposals; rather we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. On the record before us, we have no basis to object to the agency's evaluation of the cost proposals.

### The Reasonableness of the IGCE

Both protesters take issue with the propriety of the IGCE, and more specifically the presumptive realistic threshold rate. According to the protesters, this figure was arrived at arbitrarily, and should not reasonably have been used to evaluate the realism of the offerors' proposed costs. Both protesters point to the fact that the agency had to adjust its initial IGCE--because it was set too high--as evidence of how arbitrary the original figure was, and also note how the agency's subsequent downward adjustment of the figure simply applied the apparently arbitrary 20.7 percent and 10.35 percent reductions without any reasoned basis. According to both protesters, there is no reasonable connection between the agency's IGCE and the costs proposed, such that the agency could reasonably rely on the IGCE or the presumptive realistic threshold rate in evaluating the protesters' cost proposals.

We find no merit to this aspect of the protests. First, neither protester has advanced any argument relating to the validity of the underlying methodology or data used by the agency to prepare the IGCE. The record shows that the agency's calculation of the original IGCE was mathematically correct and based on the labor mix and quantities envisioned by the RFP and relied on actual, accurate BLS data for purposes of establishing the direct hourly rates for the various labor categories. The protesters have neither alleged nor shown that the agency's fundamental approach was unreasonable or that it used unreliable data (for example, inaccurate labor categories) to arrive at its original calculations.

Second, to the extent the agency miscalculated by selecting the higher percentile rates, the record shows that DOE recognized its error and corrected it once proposals were submitted. In particular, the record shows that the agency expressly recognized that the RFP did not contemplate superior quality staffing as envisioned by the agency in preparing the original IGCE. AR, exhs. B.1, at 65; F.1, at 65. As summarized by the evaluators: "Since the RFP did not require a 'best of the best' approach to recruitment and employment of labor, it would be inaccurate to assess the cost realism of proposed labor rates for individual Offeror[s] using a 'best of the

best' approach." Id. The record thus shows that the agency timely realized its miscalculation and sought to take measures to correct the problem.

Third, and most importantly, the record shows that the agency acted reasonably after receiving proposals in adjusting the IGCE downward by an amount that was close to the difference between the original IGCE and the average FBCWA hourly wage rate among all proposals. This was a reasoned response in light of the agency's conclusion regarding the underlying reason why its original IGCE was high (essentially, because the agency had used direct rates that were a percentile category too high) and also resulted in a revised IGCE that was statistically consistent with the proposals submitted. In this latter regard, as noted, the revised IGCE was at the median point among all proposals received (with 6 proposals above the IGCE and 7 below) and was just slightly below (2.8 percent) the average FBCWA hourly rate for all proposals.<sup>10</sup> In effect, the reasonableness of the revised IGCE was externally validated by the results of the competition.

Finally, the agency acted reasonably in establishing the presumptive realistic threshold rate. The record shows that the agency recognized that the BLS data was itself based on averaged wage data, and that individual offers could vary from the rates derived from the BLS data and nonetheless still be realistic. The agency's source evaluation board report specifically explains the agency's reasoning as follows:

In recognition of the fact that any specific BLS percentile labor rate is an average rate itself, the IGCE [team] determined that Offerors could reasonably have proposed somewhat lower labor rates than the specific BLS labor rate used for the revised IGCE and still be realistic. However, the IGCE team determined that any Offerors proposing a significantly lower rate than the revised IGCE may put the Offeror's proposed rate in a lower BLS percentile category and required further analysis to assess the realism of their proposed rates. *Therefore*, in assessing cost realism, the IGCE team determined that any average fully burdened labor that was more than 10.35% (1/2 of the 20.7% difference between BLS percentiles) less than the revised IGCE required review of the Offeror's proposal to identify whether the proposal explained the basis for the rates being unrealistically low.

We have no basis to object to the agency's actions in establishing the presumptive realistic threshold rate. The rate allows for variation among proposed cost, but only within a span of lower costs that would not be so low as to suggest that the offeror

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<sup>10</sup> In fact, to the extent that the revised government FBCWA hourly wage rate was lower than the average FBCWA hourly wage rate for all proposals, it favored the protesters.



was proposing either labor at an unrealistically low level of compensation or labor that was not qualified to perform the agency's requirements. Additionally, the agency did not establish an absolute threshold below which the offerors' proposed rates were determined unrealistic, but simply a threshold that would lead the agency's evaluators to further review any proposal that fell below the threshold. Simply stated, an agency's cost realism evaluation need not (and realistically cannot) achieve scientific certainty; rather, the analysis must provide a reasonable measure of confidence that the proposed costs are reasonable and realistic. L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 10. We conclude that the agency's presumptive realistic threshold rate provided it with a reasonable yardstick to use in evaluating the realism of the offerors' proposed rates.

### The Reasonableness of the Agency's Most Probable Cost Evaluation

The protesters also challenge the reasonableness of the agency's cost realism adjustments for several reasons. First, both protesters allege that the agency's cost realism evaluation failed to take into consideration their respective unique technical approaches.

While the protesters are correct that, in a typical cost realism evaluation setting, agencies are responsible for considering the realism of a firm's proposed costs in light of its unique technical approach, see e.g., Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6, that general rule is inapplicable here because of how the solicitation was structured. As discussed above, the offerors cost proposals were based on completion of the agency's "cost model" which controlled all variables except direct and burdened labor rates and fee/profit. Thus, all of the offerors' cost proposals were based on an identical technical approach that was dictated by the terms of the RFP, and used the same labor categories, staffing mix, escalation rate and material costs.<sup>11</sup> Thus, it was not necessary for the agency's cost evaluation to take into consideration each offeror's unique technical approach.<sup>12</sup>

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<sup>11</sup> In a related argument, DMI asserts that the agency improperly "normalized" the labor costs of the lowest cost offerors. While this may be true, in view of the fact that all of the offers were evaluated based on essentially the same technical approach, this was unobjectionable. Moreover, as discussed below, the agency did not normalize the low cost offerors' rates to either the government's FBCWA hourly rate or the average FBCWA rate for all offerors, but only to the presumptive realistic threshold rate, which essentially represented a presumed realistic floor rate, below which the agency further examined the proposals.

<sup>12</sup> Of course, the agency's technical evaluation--and especially its evaluation of the offerors' responses to the sample tasks--did take into consideration the unique technical approaches proposed. DMI suggests that the agency should have taken

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The protesters also maintain that the agency unreasonably failed adequately to consider the information included in their proposals relating to how they established their proposed direct and fully burdened rates. According to both protesters, they included information in their proposals--for example, private third-party wage studies--that show that their proposed rates of compensation were realistic.

We find no basis to object to the agency's upward adjustments to either offeror's proposed costs. In the case of both offerors the record shows that the central basis for the agency's upward adjustment was their significantly lower proposed compensation, coupled with the absence of an explanation for this significant departure from either the government estimate or the average wage rate data for all competitors. In this connection, we point out that the agency's adjustments did not result in either protester's evaluated costs being particularly close to the average level of compensation proposed by all competitors; rather, their respective proposed costs were only adjusted up to the presumptive realistic threshold, which was itself 12.7 percent below the average rate of compensation proposed by all offerors. In addition, neither protester has directed our attention to any information in their proposals that demonstrates that the agency's evaluation findings were unreasonable.

With respect to DMI, the agency evaluators first noted that their proposed rates were based principally on estimates. AR, exh. F.1, at 77. The evaluators further determined that DMI's proposed rates were significantly lower than the government's FBCWA hourly wage rate (approximately 19 percent lower), and also lower than the average FBCWA hourly wage rate for all offerors (more than 20 percent lower). Id. at 78. The agency also noted that the deviation of DMI's proposed rates was due principally to significantly lower [deleted] labor rates. Id.

In light of these considerations, the evaluators reviewed the DMI proposal in order to determine whether there was an explanation for why its proposed rates were so

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the offerors' responses to the sample tasks into consideration when performing its cost realism evaluation. Leaving aside the fact that no cost information was provided by the offerors in their responses to the sample tasks, the solicitation was clear regarding how cost and technical proposals were to be prepared and evaluated, and there is nothing in the solicitation that suggests that the agency would evaluate the offerors' responses to the sample tasks in performing its cost realism evaluation. To the extent that either protester thought that the agency's cost model was inconsistent with how it thought cost proposals should be evaluated, it was required to file a protest challenging this aspect of the RFP prior to the deadline for submitting proposals. 4 C.F.R. § 21.2 (a)(1) (2011).

significantly low, and found no explanation. Although DMI directs our attention to those portions of its proposal that it maintains support its underlying proposed rates (for example, third-party salary survey data), we have no basis to question the agency's evaluation conclusions in light of the magnitude of the difference between the protester's proposed rates and the rate information used by the agency in its evaluation (the IGCE and the average proposed rate of compensation for all proposals); as discussed, the agency's data was inherently more reliable in light of the fact that it was based on actual BLS data that effectively had been validated through the competition. Simply stated, DMI's assertions essentially amount to no more than disagreement with the conclusions reached by the agency's evaluators and do not provide a basis for our Office to object to the evaluation. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 6.

With respect to EES, the record shows that the evaluators reviewed the EES proposal and found that their proposed rates were based principally on market data and current economic conditions, but also made reference to EES's incumbency. However, as with DMI, the agency evaluators found that EES's proposed rates were significantly lower than the government's FBCWA hourly wage rate (approximately 17 percent lower), and also lower than the average FBCWA hourly wage rate for all offerors (18 percent lower). AR, exh. B.1, at 78. Also as with DMI, the record shows that the agency's review disclosed that the principle consideration driving EES's lower rates were its significantly low [deleted] rates. Id. (The record also shows that EES had proposed [deleted] as the incumbent contractor.) Id. Finally, as with DMI, the evaluators reviewed the EES proposal in order to determine whether there was an explanation for why its proposed rates were so significantly low, and found no explanation. As with DMI, although EES directs our attention to portions of its proposal that it maintains demonstrate the realism of its proposed rates, we have no basis to question the agency's evaluation conclusions in light of the magnitude of the difference between the protester's proposed rates and the rate information used by the agency in its evaluation. EES's disagreement with the evaluators' conclusions does not provide a basis for our Office to object to the agency's evaluation. OPTIMUS Corp., supra.

#### Indirect Rates

Both protesters also challenge the agency's evaluation because they maintain that it essentially masked differences in, or features of, their respective indirect rates. EES maintains that the agency's evaluation effectively overlooked its proposed fringe benefit rate which was [deleted] than the fringe benefit rate used by the agency to calculate the IGCE. According to EES, its [deleted] fringe benefit rate is an important component of its compensation package that it uses to attract and retain qualified employees. As for DMI, it asserts that the agency's evaluation overlooks the fact that it voluntarily capped all of its indirect rates and that, as a consequence, it was unreasonable for the agency's evaluation to apply any escalation to its proposed indirect rates.

We find no merit to these assertions. As noted, the principal reason underlying the agency's adjustments to the protesters' proposed costs was their significantly understated direct labor rates. AR, exhs. B.1, at 78; F.1, at 78. While the record does show that there were minor differences in the elements used by each protester and the agency in calculating their respective indirect rates, in the final analysis those rates were broadly comparable (EES proposed indirect rates totaling [deleted] percent, DMI proposed indirect rates totaling [deleted] percent and the agency used indirect rates totaling 45.5 percent).<sup>13</sup> Compare AR, exh. E.8; EES Cost Proposal, vol. III, spreadsheets 4.1-1-4.9-1; DMI Cost Proposal at 6. Thus, to the extent that there were differences attributable to the proposed elements of indirect costs (as, for example, with EES's proposed [deleted] rate) these differences were comparatively minor and did not substantially affect the agency's evaluation or prejudice either protester.

With regard to DMI's assertion that the agency's evaluation did not take into consideration the fact that its indirect rates were capped, we point out that all offerors were required to proposed maximum (that is, capped) indirect rates for overhead and G&A. RFP at 10-11; exh. A.14, at 67. Thus, to the extent that DMI offered something that was not offered by the other competitors, its proposal to cap indirect rates applied only to its [deleted] rate and its [deletetd] rate. DMI Cost Proposal at 6. As with the EES's different [deleted] rate, the extent to which these differences affected the outcome of the agency's evaluation were minor and the record fails to demonstrate that DMI was prejudiced by the agency's evaluation. In the final analysis, as noted earlier, an agency's cost realism evaluation need not (and realistically cannot) achieve scientific certainty; rather, the analysis must provide a reasonable measure of confidence that the proposed costs are reasonable and realistic. L-3 Sys. Co., supra. Here, we conclude that the agency's cost realism evaluation, even in light of the minor differences in indirect rates proposals noted by the protesters, was reasonable and provided a comparatively confident measure of the likely costs of the protesters' proposals.

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<sup>13</sup> Both proposals and the agency's IGCE also included various permutations of indirect rates. For example, both proposals and the IGCE included indirect rate calculations for work performed at a government location and different rates for work performed at a contractor location; both offerors also had different indirect rate calculations based on whether or not a subcontractor was performing work. The record shows, however, that when calculating proposed costs using the agency's "cost model" excel spreadsheet, all three calculations used burdened rates for government site locations, and therefore were directly comparable. Compare AR, exh. E.8; EES Cost Proposal, vol. III, spreadsheets 4.1-1-4.9-1; DMI Cost Proposal at 14-18.

In sum, we conclude that the agency's cost evaluation was based on a reasonably established IGCE and that the agency's most probable cost evaluation of all of the proposals, including those of the protesters', was reasonable. Accordingly, we deny these aspects of the protests.

#### Technical Evaluation

In addition to challenging the agency's evaluation of cost proposals, both protesters also allege that the agency misevaluated technical proposals. In the case of DMI, its protest allegations relate solely to the evaluation of its own technical proposal. EES's allegations also are confined to the evaluation of its own technical proposal, but--in an effort to show that its proposal was misevaluated--EES also alleges that the agency treated it and the awardee disparately by assigning strengths to the awardee's proposal that also should have been--but were not--assigned to the EES proposal.<sup>14</sup>

We need not consider these allegations in detail. Prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. ITT Corp.-Electronic Sys., B-402808, Aug. 6, 2010, 2010 CPD ¶ 178 at 7.

Here, as discussed in detail above, we conclude that the agency's cost evaluation of proposals was reasonable. In light of that conclusion, ActioNet properly was found to have the lowest evaluated cost, with DMI and EES found to have offered the second and third lowest evaluated costs respectively. AR, exhs. B.1, at 5; F.1, at 5. The record also establishes that the ActioNet proposal was rated excellent in each of the three non-cost evaluation factors, and was assigned a passing rating for past performance. Id. Thus, even if the protesters were correct with respect to every one of their challenges to the agency's technical evaluation, their proposals would not receive ratings higher than the ratings assigned to the ActioNet proposal. Given that this would render the three proposals technically equivalent, it follows that ActioNet

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<sup>14</sup> EES suggests in its comments responding to the initial agency report that it raised substantive challenges to the agency's evaluation of the ActioNet technical proposal. Protesters Comments, Dec. 12, 2011, at 22 n.10. However, a review of EES's pleadings shows that it never substantively challenged the agency's evaluation of the ActioNet proposal; rather it confined its allegations to contentions that it should also have been, but was not, awarded strengths in the same areas that ActioNet was awarded strengths.

would still be in line for award based on its low evaluated cost. Under the circumstances, we conclude that there is no reasonable possibility that any of the alleged errors in the agency's technical evaluation were prejudicial to the protesters.

The protests are denied.

Lynn H. Gibson  
General Counsel