



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Systems Integration & Research, Inc.; Presearch Inc.

**File:** B-279759.2; B-279759.3

**Date:** February 16, 1999

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James J. McCullough, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson for Systems Integration & Research, Inc.; and Jacob B. Pompan, Esq., Pompan, Murray, Ruffner & Werfel, for Presearch Inc., the protesters. Kenneth D. Brody, Esq., McMahon, David & Brody, for DTI Associates, Inc., an intervenor.

Thomas W. Essig, Timothy Hickey, Esq., Andrew C. Saunders, Esq., and John M. Davis, Esq., Naval Sea Systems Command, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Agency's acceptance of awardee's proposed uncompensated overtime and direct labor rates is unobjectionable where solicitation does not prohibit uncompensated overtime; agency reasonably relied on reviews and recommendations by Defense Contract Audit Agency of the awardee's direct labor rates, escalation rates, overhead, and general and administrative rates; and agency independently considered projected cost of awardee's performance.
2. Allegation that agency improperly evaluated protester's proposal is denied where the record shows that the agency evaluated the proposal in accordance with the evaluation factors announced in the solicitation and record reasonably supports protester's overall technical rating.

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## DECISION

Systems Integration & Research, Inc. (SIR) and Presearch Inc. protest the award of a contract to DTI Associates, Inc. under request for proposals (RFP) No. N00024-97-R-5487, issued by the Department of the Navy, Naval Sea Systems Command, for

management support services.<sup>1</sup> SIR argues that the Navy failed to conduct a proper cost realism analysis to account for DTI's proposed uncompensated overtime and labor rates in both the technical and cost evaluations, which resulted in a flawed cost/technical tradeoff decision. Presearch contends that the Navy improperly evaluated its proposal.

We deny the protests.

## BACKGROUND

The RFP, issued on August 20, 1997, as a total small business set-aside, contemplated the award of a cost-plus-fixed-fee contract for a base period with up to four 1-year option periods. RFP Amendment No. 0004, § B.<sup>2</sup> Offerors were instructed to submit proposals in four separate volumes: offer (volume I); written capability information (volume II); supporting cost data (volume III); and oral presentation (volume IV). *Id.* § L-3. Section M of the RFP stated that the agency would first determine the acceptability of each offer on a pass/fail basis. *Id.* § M, at 130. The agency would then evaluate the "relative capability" of each offeror in the following areas, which were of equal importance: resumes, past performance information, and the oral presentation. *Id.* at 134. With respect to cost, the RFP stated that the evaluation would be based on an analysis of the realism and completeness of the cost data, the traceability of cost to the offeror's capability data, and the proposed hours and labor mix. The RFP stated that the government would estimate the overall cost to the government including fee. *Id.* at 131-32. The "relative capability" area was to be considered more important than projected cost. Award was to be made on the basis of the proposal deemed to represent the best value to the government. *Id.* at 130.

### Initial Evaluation and Source Selection

Six firms submitted initial proposals by the time set on October 17, 1997, and the contracting officer (CO) determined that all six proposals were acceptable. A technical evaluation review panel (TERP) evaluated the resumes and past

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<sup>1</sup>The RFP sought management support services for the Program Executive Offices for Theater Air Defense/Surface Combatants and Expeditionary Warfare. The agency explains that the required services generally fall into the categories of program planning, acquisition planning, and business operations support, and states that while not technically complicated, these tasks often require short time periods for their performance.

<sup>2</sup>The agency synopsised the RFP in the Commerce Business Daily on July 7, 1997, and issued the solicitation over the Internet on August 20. The RFP was amended several times.

performance information,<sup>3</sup> and a cost analysis panel (CAP) evaluated the cost data with the assistance of the Defense Contract Audit Agency (DCAA). Oral presentations were made from October 23 to October 27. In accordance with section L of the RFP, all offerors were provided with the same task on the day they were scheduled for their oral presentation, and were given 1 hour in which to prepare their response to the task. The task consisted of a two-part acquisition support question requiring the preparation of a milestone chart and a "budget reclama" (sample tasks 1(a) and 1(b)), a management philosophy question, and a facilities capability question. Each offeror was allotted 1 hour for its oral presentation, which was videotaped and was attended by the TERP members.

After individually evaluating the offerors' resumes, past performance information, and oral presentations, the TERP convened to reach a consensus in assigning strengths, weaknesses, and risks to each offeror's "relative capability," as well as an overall adjectival rating of either outstanding, good, satisfactory, or poor to the proposals. The TERP chairperson then prepared a consolidated report reflecting the individual members' narrative descriptions of each proposal's strengths, weaknesses, and risks.

The CAP reviewed all of the cost data submitted by each offeror and requested that DCAA review and verify each offeror's proposed direct and indirect labor rates, as well as each offeror's proposed uncompensated overtime (UOT) and compensation plan. The CAP then reviewed DCAA's report and recommendations, made its own independent determination of the reasonableness of each offeror's proposed cost, and prepared a report. In early 1998, the TERP and CAP met with the contract award review panel (CARP) to discuss their preliminary findings; and in February, the TERP and the CAP presented their respective reports to the CARP. Although the CARP ultimately adopted both reports, it also identified a few additional minor weaknesses in the "relative capability" area in SIR's and DTI's proposals, and adjusted the overall adjectival ratings accordingly, with the following results:

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<sup>3</sup>For each offeror, the CO also obtained responses from references to a past performance questionnaire that was included as part of section L-3 of the RFP. The CO then forwarded the responses and his notes to the TERP for evaluation.

Offeror	Rel. Capability	Projected Cost
Presearch	Satisfactory	\$39,294,207
Offeror A	Satisfactory	39,980,753
DTI	Satisfactory	43,029,517
Offeror B	Satisfactory	46,780,098
Offeror C	Satisfactory	47,634,764
SIR	Outstanding	47,482,590

Agency Report (AR) at 10.

Based on its review of the projected cost and "relative capability" ratings, the CARP ranked the offerors in order of "best value" as follows: SIR, DTI, Presearch, and offerors A, B, and C. CARP Report, Mar. 16, 1998, at 10.

The CARP also made a cost/technical tradeoff assessment between the two highest-ranked proposals--SIR's and DTI's. In its recommendation, the CARP focused on four significant weaknesses in DTI's proposal. For instance, the CARP noted that DTI's proposed Deputy Program Manager had no similar experience indicating her capability to help manage a contract of the magnitude contemplated by the RFP. The CARP viewed this as a significant risk in DTI's proposal because ineffective management of the subcontractors or the volume of work could severely harm the programs supported. The CARP also noted that DTI proposed two unpriced subcontractors, but did not provide any resumes or cost information for those firms. In addition, the CARP noted that the role of DTI's proposed principal officers was unclear, and that DTI had provided no justification to support its use of over [DELETED] percent of UOT,<sup>4</sup> which the CARP considered to present a risk of cost growth. *Id.* at 11-12. Based on its review, the CARP concluded that SIR was technically superior in the amount and quality of experience of its proposed personnel, and recommended award to SIR as offering the best value to the government over DTI and the other offerors. *Id.* at 12.

The source selection authority (SSA) concurred with the CARP's recommendation, and on March 23, the Navy awarded the contract to SIR. DTI subsequently filed a protest in our Office following a debriefing by the agency. In response to DTI's protest, the Navy terminated SIR's contract; reopened the competition; conducted

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<sup>4</sup>The CARP noted that DTI and its subcontractors proposed [DELETED], which was more than [DELETED] percent of the total number of staff hours estimated in the initial RFP (1,229,280).

discussions with all offerors in the competitive range, and requested and evaluated best and final offers (BAFO).

### Subsequent Evaluation and Source Selection

As part of the process of reopening the competition, by letters dated May 19, the Navy informed all offerors of the corrective actions the Navy was taking in response to DTI's protest. That letter stated that the weaknesses and risks identified at the respective offeror's debriefing would constitute the basis for discussions and, for each offeror, the letters contained an attachment listing those weaknesses, risks, and other discussion items. The letter sent to DTI specifically described the significant weaknesses and risks the TERP had identified in DTI's proposal with respect to the proposed Deputy Program Manager, unpriced subcontractors, UOT, and the unclear role of the principal officers. The Navy's letters also forwarded amendment No. 0003 to the RFP, which reissued the solicitation in its entirety, and stated that while oral presentations would not be repeated, offerors could submit to the Navy their comments on the weaknesses identified in that area.

Offerors responded to the May 19 letters by submitting information on some or all of the weaknesses and risks identified. According to the agency, some of the offerors not only commented on the oral presentation weaknesses but also provided new answers to sample tasks 1(a) and 1(b). AR at 14. The TERP reviewed all of the information submitted by the offerors, including the comments on the sample task weaknesses and risks, and prepared a report on its findings. TERP Report, June 24, 1998.

On June 19, the agency issued amendment No. 0004 to the RFP, requesting BAFOs by July 6. Among other things, this amendment changed sections L-3 and M of the RFP to permit offerors an opportunity to provide new, written information on the management philosophy and facilities capability questions asked during the oral presentations. RFP amendment No. 0004, at 104-105, 131. The amendment required offerors to submit this information as a new written volume with their BAFOs, and stated that the agency would evaluate this new information as part of the oral presentation subfactor. *Id.* at 104.

Five of the six firms that had submitted initial proposals, including SIR, DTI, and Presearch, responded to amendment No. 0004.<sup>5</sup> The CO determined that all five proposals were acceptable and updated the past performance information for each firm. The TERP reevaluated proposals based on the BAFO responses to

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<sup>5</sup>One firm which had submitted its own proposal in response to the initial RFP teamed with Presearch as a proposed subcontractor in Presearch's BAFO and did not submit a separate response to amendment No. 0004.

amendment No. 0004, and, as it had done with initial proposals, the CAP conducted a new cost realism analysis of each offeror's cost proposal with DCAA's assistance. The TERP and the CAP then convened to discuss their findings and prepared reports, which were submitted to the CARP.

The CARP concurred with the findings of the TERP and the CAP, with the following results:

Offeror	Rel. Capability	Projected Cost
Presearch	Satisfactory	\$33,061,468
DTI	Good	34,016,173
SIR	Outstanding	40,100,063
Offeror A	Satisfactory	41,343,585
Offeror B	Satisfactory	41,671,288

AR at 18.

The CARP then ranked the offerors in the following order: DTI, SIR, Presearch, with offerors A and B in fourth and fifth place, respectively. The CARP then compared the subfactor ratings and respective strengths, weaknesses and risks for all offerors; the subfactor ratings showing the technical differences between the three highest-ranked proposals are shown below:

Offeror	Past Perf.	Resumes	Oral Present.
SIR	Good	Outstanding	Outstanding
DTI	Good	Good	Satisfactory
Presearch	Good	Satisfactory	Poor

CARP Report, Sept. 25, 1998, at 5; AR at 18.

Based on its review, the CARP found SIR and DTI to be essentially equal in past performance, and considered those firms' proposals to be slightly better than Presearch's. SIR's proposal was deemed superior in both the resumes and oral presentation areas, having no weaknesses under those subfactors.

On the other hand, DTI received no weaknesses under the resumes subfactor and the CARP found that the firm proposed personnel almost as well qualified as SIR's. While DTI's response to the sample tasks had some weaknesses and risks, the CARP found that the firm had demonstrated a thorough knowledge of defense

acquisition procedures and proposed an excellent array of available facilities. Based on its review, the CARP concluded that SIR's personnel and oral presentation had an advantage over DTI's, but that it was not sufficient to justify paying an 18-percent cost premium for SIR's proposal. CARP Report, Sept. 25, 1998, at 16. Accordingly, the CARP recommended to the SSA that award be made to DTI. Id. The SSA agreed with the CARP's recommendation and the Navy awarded the contract to DTI. These protests to our Office followed debriefings by the agency.

### SIR's Protest

SIR contends that the Navy failed to perform an adequate cost realism analysis of DTI's proposal. Specifically, SIR argues that in its evaluation, the Navy failed to properly account for DTI's proposed UOT.<sup>6</sup> SIR also maintains that the Navy failed to conduct a meaningful cost realism analysis of DTI's proposed compensation levels which, according to SIR, are unrealistically low for the Washington, D.C. metropolitan labor market. In this connection, SIR argues that the Navy failed to reasonably evaluate whether DTI could attract and retain the quality of personnel required to perform the contract at DTI's average hourly labor rate of [DELETED] compared to SIR's average hourly labor rate of [DELETED].<sup>7</sup> According to SIR, rather than evaluating the reasonableness of DTI's unrealistically low average hourly labor rates, the Navy based its decision to select DTI for award solely on the firm's low proposed cost.

### Cost Realism Evaluation

When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs of contract performance and proposed fees are not considered controlling since an offeror's estimated costs may not provide valid indications of the final actual costs that the government is required, within certain limits, to pay. See Federal Acquisition Regulation (FAR) § 15.605(c) (June 1997); ManTech Envtl. Tech., Inc., B-271002 et al., June 3, 1996, 96-1 CPD ¶ 272 at 8. An agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting a cost realism analysis. Rather, the

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<sup>6</sup>"UOT" refers to the unpaid overtime hours (hours in excess of 8 hours per day/40 hours per week) incurred by salaried employees who are exempt from coverage of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. §§ 201-19 (1994). Under the FLSA, exempt employees need not be paid for hours worked in excess of 8 hours per day or 40 hours per week.

<sup>7</sup>SIR calculated these average hourly labor rates by dividing DTI's [DELETED] and SIR's [DELETED] total proposed BAFO costs, exclusive of fixed fees, by the total number of labor hours specified in the RFP for the base and option periods (1,061,493). Comments at 6 n.4 and exhibit 1B.

evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess the realism of cost and technical approaches and must bear the difficulties or additional expenses resulting from a defective cost analysis. Because the contracting agency is in the best position to make this cost realism determination, our review is limited to determining whether the agency's cost realism analysis is reasonably based and not arbitrary. The Warner/Osborn/G&T Joint Venture, B-256641.2, Aug. 23, 1994, 94-2 CPD ¶ 76 at 5.

Section M of the RFP advised offerors that the agency would evaluate proposed cost based on its analysis of the realism and completeness of the cost data; the traceability of the cost to the offeror's capability data; and the proposed allocation of staff hours and labor mix. RFP amendment No. 0004, at 131-34. The RFP notified offerors that the government would consider the realism of the proposed labor rates and would evaluate the proposed compensation in accordance with FAR § 52.222-46, "Evaluation of Compensation for Professional Employees." Id. Finally, the RFP provided that the government would estimate its overall cost based on pertinent cost information, and that if the offeror's proposed costs were considered to be unrealistic, they would be adjusted accordingly. Id. Section L of the RFP recommended a standard 40-hour work week, and required offerors to precisely define their work week if a different work week was proposed. Id. at 112. The RFP did not prohibit the use of UOT.

The agency explains that it was concerned that UOT could lead to unrealistically low proposed rates that could impair an offeror's ability to attract and retain professional employees. AR at 20-21. Therefore, the agency included the following provision in section L:

#### COMPANY POLICY ON UNCOMPENSATED EFFORT

Briefly summarize the compan[y's] policy on [UOT] and state what if any impact it may have on this effort. If [UOT] is included in any of the cost estimates used it should be clearly identified with an explanation as to why it is needed and how it is consistent with the RFP [§] L clause, 'Requirements Concerning Work Week' and RFP [§] I-1 clause, DFARS 252.237-7019 Identification of Uncompensated Overtime. **Contractor and subcontractors shall provide five years of history of salary rates and retention, by employee, for those employees who have performed and are proposed to perform using [UOT]. Explain any salary increases and/or breaks in employment for these employees. Contractor and subcontractors shall provide a company-wide retention rate for the last five years where [UOT] was employed.**

RFP amendment No. 0004, at 115.



The record shows that the CAP conducted a reasonable cost realism analysis of each offeror's cost proposal. The proposals were also reviewed to ascertain and verify the proposed labor mix, the percentage of prime versus subcontractor effort, other direct costs, and total staff hours proposed against the RFP's requirements. CAP Report, undated at 4. The CAP also reviewed the use of UOT where proposed. Id. In addition, the CAP requested that cognizant DCAA branch offices verify specific BAFO cost elements including direct labor rates, indirect rates, and other costs. Letters from Navy to DCAA (July 13, 1998). For each offeror that proposed UOT, the Navy specifically requested that DCAA review, verify, and comment on the offeror's policy, 5-year salary rates history and retention rate, and company-wide retention rate, and provide a risk assessment of the offeror's compensation plan and indicate whether the offeror has a DCAA-approved cost accounting system which records all hours worked, including uncompensated hours for all employees, regardless of contract type. Id. at 1.

#### DTI's Uncompensated Overtime

In accordance with the RFP's instructions, DTI's BAFO included cost information for DTI and its proposed subcontractors, including direct labor rates, indirect costs, and escalation rates. DTI did not propose any contingent hires--that is, all of the personnel it proposed were already employees of DTI or its proposed subcontractors. DTI and two of its proposed subcontractors [DELETED] proposed that their employees would perform UOT in accordance with their respective company's established work schedule and compensation policies.

DTI's proposal was based on a [DELETED] workweek for its FLSA-exempt employees, which equates to a total of approximately [DELETED] hours of UOT over the life of the contract, including options. DTI provided a copy of its employee compensation plan, which included its formal written policy that FLSA-exempt employees work [DELETED] hours per week. DTI's proposal, volume III, at 67. In addition, as required by section L of the RFP, DTI provided a table of its FLSA-exempt employees' 5-year salary histories. The salary history DTI submitted shows that of the 14 key personnel DTI proposed, 6 have been employed by DTI since 1994. DTI also provided a chart showing its company-wide retention rate for 1994-98. Id. at 66-67. That chart shows that DTI has had a steady retention rate of approximately [DELETED] percent over the past 5 years. Id.

DTI also provided employee salary history for the two proposed subcontractors that proposed UOT--[DELETED]. [DELETED] proposed a total of [DELETED] hours of UOT based on its established [DELETED]-hour work week for its professional personnel. The salary history submitted by [DELETED] shows that of the nine key personnel the firm proposed, five have been employed with the company since 1994. [DELETED] proposed [DELETED] hours of UOT in accordance with its established corporate compensation policy for FLSA-exempt employees.

[DELETED] salary history shows that all four of the key personnel proposed for this effort have been employed by the company since 1993.

The record shows that DCAA reviewed DTI's compensation policies and procedures, labor distribution, and billing system and verified that DTI's established policy is for FLSA-exempt employees to work a [DELETED]-hour work week, and that DTI's system records all hours worked, including UOT. DCAA Memorandum, July 16, 1998. DCAA took no exception to DTI's use of UOT. Id. DCAA also reviewed [DELETED] UOT policy and found that it was not significantly different from other firms whose employees work UOT. DCAA Memorandum, Aug. 5, 1998.

Additionally, DCAA informed the Navy that it had reviewed [DELETED] compensation plan many times in the past and that [DELETED] accounting system and labor recordkeeping were adequate. DCAA Memorandum, July 27, 1998. DCAA also verified that the information provided regarding [DELETED] 5-year history of its employees' salary rates, dates of hire, and the amount of UOT worked was generally accurate. Id.

The record thus shows that DTI's proposal and DCAA's reviews demonstrated that DTI and its subcontractors proposed the use of current employees; proposed the use of UOT in accordance with their established company policies; had accounting systems that adequately track UOT; and had retained employees with their proposed compensation structure. DCAA specifically reviewed DTI's and its subcontractors' salary and retention histories and found no adverse impact associated with the companies' use of UOT. Further, rather than relying solely on DCAA's reports, the record shows that the CAP independently analyzed DTI's proposed costs. The CAP concurred with DCAA's evaluation, and, with the exception of adjustments to DTI's indirect rate, made no adjustments to DTI's proposed costs. Based on our review of the record, we conclude that SIR's argument that the agency failed to perform an adequate cost realism analysis of DTI's proposal, is without merit.

#### DTI's Direct Labor Rates

SIR argues that the agency failed to account for DTI's lower proposed direct labor rates in its BAFO. In this connection, SIR asserts that DTI reduced its direct labor rates by [DELETED] percent for employees proposed in both the initial proposal and DTI's BAFO, and that DTI and one of its subcontractors substituted lower-paid employees in DTI's BAFO for higher-paid employees that had been proposed in the initial proposal. SIR argues that the agency failed to consider risks associated with DTI's lower direct labor rates.

We have reviewed the Navy's cost realism analysis of DTI's proposed direct labor rates and conclude that it was reasonable. In response to the Navy's request, DCAA verified that DTI and two of its proposed subcontractors [DELETED] proposed direct labor rates that matched those in DCAA's files. DCAA Branch Offices' Memoranda, July 15, 1998. DCAA found that the direct labor rates proposed for

[DELETED] personnel were slightly higher than the rates in DCAA's files, but DCAA took no exception to the proposed direct or indirect rates. Id. The record shows that in calculating the government's projected cost for DTI, the CAP used the higher proposed rates for [DELETED] because the CAP considered those rates more realistic. CAP Report, undated, at 21.

With respect to [DELETED], DCAA found that the proposed direct labor rates for some of that firm's employees were slightly lower than the rates contained in DCAA's files, and DCAA did not have any rate information for some of [DELETED] proposed employees. Id. at 22. However, because the information in DCAA's files was unaudited and more than 10 months old, DCAA did not take exception to [DELETED] proposed rates. Id. Although the CAP took no exception to [DELETED] proposed rate, it noted a potential cost risk in the unaudited nature of the proposed rates. Id. With respect to another proposed subcontractor, [DELETED], DCAA was unable to verify that firm's labor rates because [DELETED] is a relatively new business and DCAA had no information in its files. Id. at 23. However, since the direct rates for the proposed personnel were similar to rates for similarly qualified individuals proposed by other offerors, the CAP made no adjustments to [DELETED] proposed rates. Id. at 23.

DCAA also reviewed DTI's and its subcontractors' proposed escalation rates and took no exception; the CAP thus made no adjustments to the proposed escalation rates. In addition, the record shows that DCAA reviewed DTI's proposed fringe benefits, overhead, and general and administrative rates, and took exception to those rates because they did not match DCAA's approved provisional billings indirect rates for DTI in 1998. The CAP accepted DCAA's recommended indirect rates and adjusted DTI's proposed costs from [DELETED] to a projected cost of [DELETED]. Id. at 17-18.

With respect to SIR's allegation that DTI reduced its proposed direct labor rates by [DELETED] percent for all of its employees in its BAFO, the agency states that SIR's contention is not accurate. The agency explains that DTI based its direct labor rates for its initial proposal on projected rates, while its direct labor rates in its BAFO were based on actual labor rates; the actual rates simply were lower in many cases than the initial projected rates. The agency performed a cost realism analysis of the labor rates DTI proposed in its BAFO and, as explained above, determined that DTI's labor rates were realistic.

Contrary to SIR's argument, we see no basis to conclude that the agency failed to properly consider risks associated with DTI's direct labor rates. The record shows that DTI's proposed labor rates were based on the wages and salaries that DTI and its subcontractors are currently paying their employees to perform under similar contracts. There is no evidence in the record that DTI and its proposed subcontractors would not be able to retain their employees at the rates proposed. Cf. Combat Sys. Dev. Assocs. Joint Venture, B-259920.2, June 13, 1995, 95-2 CPD

¶ 162 at 17 (agency unreasonably accepted awardee's proposed UOT without considering the impact of the proposed but unannounced pay and benefits cuts). The record shows that the Navy obtained DCAA's verification that DTI's proposed rates were the current rates being paid by DTI and its proposed subcontractors in comparable positions at the time the firm submitted its BAFO, and that those rates were realistic. In the absence of evidence showing that the rates DTI proposed were unrealistically low, the Navy could properly rely upon DCAA's advice in performing its cost realism analysis. Delta Research Assocs., Inc., B-254006.2, Nov. 22, 1993, 94-1 CPD ¶ 47 at 6. In sum, the agency had a reasonable basis for accepting DTI's proposed labor rates, having obtained DCAA's verification and comments that the proposed rates reflected DTI's actual rates and that DTI had historically maintained a stable workforce with its compensation structure. See Id.

SIR also argues that the Navy's technical evaluation failed to give adequate consideration to the impact on performance of DTI's compensation rates and level of UOT. According to SIR, had the Navy properly considered the performance risk associated with DTI's proposed compensation and UOT levels on contract performance, DTI would not have received an overall rating of "good" in the "relative capability" area. The protester's arguments in this regard are without merit.<sup>8</sup>

As already explained, the CAP, CARP and SSA reasonably found DTI's compensation rates and proposed amount of UOT acceptable and realistic. The record further shows that the CAP conducted a thorough cost realism analysis of DTI's cost data. This included an analysis of direct and indirect labor rate history, UOT history, and the firms' compensation plans. The record shows that the TERP's analyses included an evaluation of the resumes for key personnel. The CARP and the SSA also reviewed the TERP's evaluation and conducted their own independent assessment and reasonably concluded that DTI's proposal offered the best value. The TERP evaluated the qualifications of DTI's proposed key personnel under the resumes subfactor within the "relative capability" area and reasonably found no performance risks. The CAP also was aware that DTI had proposed the specified number of staff hours and the preferred labor mix. The CARP and the SSA independently reviewed DTI's personnel qualifications, compensation rates, and the amount of proposed UOT and reasonably found no performance risk. Based on our

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<sup>8</sup>SIR also asserts that in its BAFO, DTI proposed the use of several non-key personnel who were lower paid than personnel initially proposed. SIR argues that the Navy improperly failed to consider whether these lower-paid personnel might be less qualified or less experienced than the personnel DTI initially proposed. The RFP provided, however, that the Navy would consider the relevance and quality of the education, experience, knowledge, and skills of the proposed key personnel. There was no requirement for the agency to evaluate non-key personnel. Accordingly, SIR's argument in this regard is without merit.

review of the record, we have no basis to question the Navy's evaluation of DTI's proposal.

### Presearch's Protest

Presearch argues that the agency's evaluation of Presearch's technical proposal under the resumes subfactor was unreasonable.<sup>9</sup> In this regard, Presearch contends that the Navy improperly downgraded Presearch's proposal because it failed to indicate which personnel the firm proposed on a part-time basis. Presearch argues that this was an invalid criticism of its proposal since it proposed no part-time personnel and none were required by the RFP.<sup>10</sup>

Our Office will not engage in an independent evaluation of proposals nor make an independent determination of their relative merits. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114 at 9. Rather, we review the agency's evaluation to ensure that it was reasonable and consistent with applicable statutes and regulations as well as with the terms of the solicitation. Sensis Corp., B-265790.2, Jan. 17, 1996, 96-1 CPD ¶ 77 at 6. Based on our review of the record here, including the TERP's narrative in support of the evaluation, we conclude that the "satisfactory" rating assigned the protester's proposal under the resumes subfactor within the "relative capability" area is reasonably supported.

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<sup>9</sup>The Navy argues that the protest should be dismissed because Presearch is not an interested party under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1998). The agency asserts that, since Presearch's technical proposal was ranked third behind SIR's, even if its protest were sustained Presearch would not be next in line for award because there is a higher-rated intervening offeror. The agency's argument overlooks the substance of Presearch's challenge--that the agency improperly evaluated its proposal. Specifically, Presearch argues that had the agency conducted a proper evaluation of the resumes subfactor within the "relative capability" area, its proposal would have received a higher overall technical rating and that with its lower proposed cost, it would have been selected as offering the best value to the government. Thus, if we found that Presearch's arguments had merit and sustained its protest, it is possible that upon reevaluation, Presearch's proposal would be in line for award. We therefore consider Presearch an interested party to maintain the protest. See Pan Am World Servs., Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446 at 6.

<sup>10</sup>In its protest, Presearch also argued that the agency improperly failed to consider Presearch's responses to the oral presentation sample tasks (submitted in response to the CO's May 19, 1998 letter reopening the competition), and that the Navy conducted improper discussions regarding those responses. Presearch later withdrew these allegations. Comments, Dec. 21, 1998, at 19 n.3.

Section L-3.1 of the RFP instructed offerors to submit detailed resumes for all key personnel proposed. In addition, the RFP instructed that "[i]f a proposed individual is a contingent hire (i.e. not already working for the offeror and available to work on the solicited effort)," the resume was to state that the proposed employee was a contingent hire and identify all contingencies. RFP, amendment No. 0004, at 100. The RFP listed the following labor categories as comprising key personnel: program manager, deputy program manager, senior engineers, senior analysts, information manager, risk and schedule expert, and special consultants. *Id.* at 98.

Section M of the RFP explained that in evaluating resumes, the government would assess each offeror's relative understanding of the requirements. The Navy was also to consider the relevance and quality of the education, experience, knowledge, skills, and abilities of the proposed key personnel. In addition, the RFP stated that the government would consider the dedication of the proposed key personnel to the effort and the risk associated with any contingent hires. RFP § M, ¶ 1.2.1, at 130-31.

In its BAFO, Presearch proposed one unnamed senior engineer as a "new hire," with no direct labor hours for the base year (although it appeared that this individual was a full-time employee in the option years of the contract). Presearch's cost volume at 4. In addition, Presearch listed one unnamed senior analyst as a "new hire" with 2,080 direct labor hours listed for the first option year, but with no direct labor hours listed for the base period or the other option periods. Although both individuals were to fill "key personnel" positions as specified in the RFP, contrary to the RFP's explicit instructions Presearch did not submit resumes or any additional information for these "new hires." Further, Presearch failed to explain whether these individuals were proposed on a full-time or part-time basis, or whether they were subcontractor employees. Presearch also failed to provide a resume or any information concerning another key personnel employee identified only as [DELETED] a senior analyst.

Under the resumes subfactor, the TERP assigned Presearch's proposal an overall rating of "satisfactory," identifying three strengths, two weaknesses, and no risks in this area. In support of the strengths, the TERP recognized Presearch's proposed program manager, a proposed senior engineer, and the proposed information manager to have extensive experience and recognized expertise in their respective fields. The TERP identified two weaknesses under this subfactor, however. The TERP found that because of lack of information for key personnel, the TERP could not evaluate whether the level of effort Presearch proposed would adequately support the requirement, and noted this as a weakness in the proposal. The TERP also noted that Presearch had provided no resume for employee [DELETED], whom Presearch proposed as a full-time employee, and noted this as a weakness. TERP Report, Aug. 24, 1998. The record shows that the CARP reviewed the TERP's findings and, contrary to the protester's assertions, recognized the strengths that the

TERP had identified in Presearch's proposal in the resumes area. Further, the TERP did not downgrade its proposal for proposing part-time employees; rather, the evaluators were primarily concerned with the lack of resumes and information for several of Presearch's proposed key personnel.

In our view, the TERP's rating of "satisfactory" under the resumes subfactor reasonably reflected the evaluators' concern that by failing to provide resumes or any other information for the proposed "new hires" or the employee identified as [DELETED] in direct contravention of the RFP's instructions, the agency could not reasonably evaluate the quality, education, experience, knowledge, skills and abilities of the proposed key personnel, or their dedication to the effort. Presearch's disagreement with the TERP's conclusions in this regard does not render the evaluation unreasonable.<sup>11</sup> ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7.

In its comments on the agency report, Presearch raises several issues for the first time. For example, Presearch argues that the Navy's evaluation of its proposal under the "oral presentation" subfactor was flawed because the TERP failed to assign its proposal a strength concerning its facilities, and failed to assign a strength to its proposal in the management philosophy area for adding another firm to its team. The protester also maintains that the agency failed to conduct meaningful discussions with Presearch regarding the weaknesses the TERP identified under the resumes subfactor. As explained in greater detail below, these contentions, raised for the first time in the comments on the agency report, are untimely.

Under our Bid Protest Regulations, protests not based upon alleged solicitation improprieties must be filed not later than 10 days after the basis for protest is known. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest and supplements it with new and independent grounds of protest, the new allegations must independently satisfy these timeliness requirements; our Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. Litton Sys., Inc., Amecom Div., B-275807.2, Apr. 16, 1997, 97-1 CPD ¶ 170 at 4 n.1.

While Presearch's initial protest was filed in a timely manner, that protest did not challenge the evaluation of its proposal under the "oral presentation" subfactor. Presearch either knew or should have known that the TERP did not assign a

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<sup>11</sup>Presearch asserts that the evaluation was unreasonable because in evaluating its initial proposal, the TERP found no weaknesses in the resumes area. The agency points out, however, and the record shows, that the TERP had assigned four risks to Presearch's initial proposal under the resumes subfactor. The agency explains that as defined in the source selection plan, a risk "implies that action must be taken to avoid future failure," and that risks in this context are similar to weaknesses. Supplemental Agency Report, Dec. 31, 1998, at 10-11 n.4.

strength to its proposal for its facilities capability or management philosophy questions under the "oral presentation" subfactor since its November 4 debriefing, when the contracting officer informed the protester of the strengths, weaknesses, and risks identified in its proposal by the TERP in its report. In addition, in response to the protest, the agency provided Presearch with a copy of the TERP report showing that Presearch's proposal received no strengths under the "oral presentation" subfactor on December 2.

Presearch's objections were not raised until December 21, when its comments on the agency report were submitted to our Office--more than 45 days after Presearch learned of the bases for those objections from its debriefing and more than 10 days after the agency provided Presearch with the TERP report. Accordingly, we will not consider Presearch's challenge that its proposal should have received strengths under the "oral presentation" subfactor. See Watkins-Johnson Co., B-252790, July 7, 1993, 93-2 CPD ¶ 8 at 3-4.

In its comments, Presearch also argues that the agency failed to conduct meaningful discussions regarding the weaknesses the TERP had identified under the resumes subfactor. This allegation is also untimely. In the CO's letter to Presearch dated May 19, 1998, reopening the competition, the agency specifically notified Presearch of the weaknesses and risks the TERP identified in its proposal for discussions in the past performance, oral presentation, and resumes areas. In addition, as already explained, during the November 4 debriefing, the contracting officer informed Presearch of all of the strengths, weaknesses and risks assigned to its BAFO by reading them from the TERP report, including the weaknesses assigned in the resumes area. Thus, by the November 4 debriefing, Presearch had in its possession the CO's May 19 letter listing the discussion items, and knew the weaknesses the TERP assigned to its BAFO under the resumes area. Accordingly, if Presearch believed that the agency failed to conduct meaningful discussions with the firm, Presearch should have raised this allegation, at the latest, within 10 days from its November 4 debriefing. Presearch did not raise this issue until it filed its comments in our Office on December 21. Accordingly, this ground is untimely and will not be considered.

#### The Cost/Technical Tradeoff

SIR and Presearch argue that the agency's cost/technical tradeoff decision was flawed because the underlying evaluations on which it was based--specifically, the evaluation of DTI's cost and technical proposals in the areas discussed above, and the evaluation of Presearch's proposal in the resumes area--were flawed. As discussed above, we conclude that the evaluation of DTI's technical and cost proposals was reasonable, and that the evaluation of Presearch's technical proposal



was unobjectionable. Given these conclusions, there is no basis to object to the tradeoff on the grounds asserted by the protesters.<sup>12</sup>

The protests are denied.

Comptroller General  
of the United States

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<sup>12</sup>In its protest, SIR also asserted that the agency's decision to select DTI's lower-cost, lower-technically rated proposal was inconsistent with the evaluation criteria, which stated that an offeror's "relative capability" in the areas of personnel, past performance, and oral presentation, was more important than cost. The protester abandoned this contention in its comments on the agency report, however, confining itself to the argument, set out above, that the tradeoff decision was improper because the underlying evaluation of DTI's proposal was flawed. In any event, we have reviewed the tradeoff decision and see no basis to question it. The record shows that the agency properly compared the strengths and weaknesses of SIR's and DTI's proposals and reasonably concluded that SIR's technical superiority--principally in one area, personnel--was not worth the cost premium--approximately \$6 million--involved in award to SIR. See Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321 at 4.