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

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# Decision

**Matter of:** IBM Corporation

**File:** B-299504; B-299504.2

**Date:** June 4, 2007

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

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## DIGEST

1. Protest challenging agency's evaluation of offerors' price and cost proposals is sustained where agency improperly adjusted upward portions of protester's fixed-price proposal.
  2. Protest alleging unreasonable technical evaluation is denied where record supports agency's evaluation of protester's personnel approach.
  3. Protest alleging misleading discussions is denied where protester unreasonably relied on oral advice allegedly provided by agency during discussions which deviated from solicitation instructions.
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## DECISION

IBM Corporation protests the award of a contract to CGI Federal, Inc. under request for proposals (RFP) No. PR-HQ-05-12521, issued by the Environmental Protection Agency (EPA) for the upgrade of the agency's financial management system. The protester contends that the EPA's evaluation of the offerors' price and technical proposals was unreasonable. The protester also alleges that the agency did not conduct meaningful discussions, and that the source selection decision was flawed.

We sustain the protest.

## BACKGROUND

The EPA's Financial System Modernization Project (FSMP) calls for the acquisition, implementation and hosting<sup>1</sup> of a software solution to provide a new agency-wide financial management system for the agency's Office of the Chief Financial Officer. The RFP sought proposals for the new software solution and anticipated award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract with a 5-year base term, and five 1-year options. The work under the contract will be performed through the issuance of performance-based task orders.

The RFP identified two technical evaluation factors, technical merit (375 total points) and oral presentations and solution demonstration (125 total points).<sup>2</sup> RFP at M-2-M-8. Offerors were required to submit proposals in six volumes, titled: (1) minimum requirements matrix, (2) software solution, (3) technical merit, (4) supporting documentation, (5) price proposal,<sup>3</sup> and (6) solicitation set. RFP attach. 5, Proposal Instructions. The "minimum qualifications matrix" volume was to be used by each offeror to identify whether its proposal met each requirement, and, if not, how the offeror would meet the requirement in the future. *Id.* at attach. 6, Minimum Qualifications Matrix. Each offeror's matrix was evaluated, overall, on a pass/fail basis. *Id.* Offerors were also required to address potential conflicts of interest and provide a subcontracting plan. RFP at M-8-M-9.

The RFP allowed offerors to propose how they would be reimbursed by the agency for the work under each area of the contract, *i.e.*, on a fixed-price, labor hour, or time and materials (T&M) basis. RFP attach. 5, at 17. The RFP also instructed

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<sup>1</sup> Hosting generally means storing and maintaining software or data on one computer, and allowing other computers to access it.

<sup>2</sup> The technical merit evaluation factor had three subfactors: (1) technical and functional, with three elements--(i) software solution, (ii) implementation, and (iii) hosting; (2) experience and past performance, with two elements--(i) organizational experience, and (ii) past performance; and (3) management approach, with two elements--(i) approach, and (ii) personnel. The oral presentations and solution demonstration evaluation factor had two subfactors: (1) oral presentation; and (2) solution demonstration, with four elements--(i) business scenarios, (ii) ability to satisfy the goals of the FSMP, (iii) navigation and ease of use, and (iv) effectiveness of the offeror's team. RFP at M-2-M-8.

<sup>3</sup> Although the RFP requested that offerors submit "price" proposals, the record of the agency's evaluation of proposals refers to both price and cost proposals, and price and cost evaluations. Here, we use the term "price and cost" to refer to both the proposals and the evaluations.

offerors to include any assumptions or exclusions from their price and cost proposals, including “contingency allowances” for expected and unknown risks, RFP attach. 5, at 7, and advised that the agency would evaluate proposals based on cost and price realism. RFP at M-2. The agency further explained, during discussions, that it would evaluate the “total cost of ownership” of each proposed approach, as follows:

[P]ursuant to the definition of cost realism included in provision M.4 of the solicitation, EPA intends to consider the total cost of ownership of the proposed solution as part of its evaluation of overall cost. Total costs of ownership include [the offeror’s] proposed price, the costs to EPA for the operations and maintenance of EPA legacy systems (as identified in Attachment 10 of the solicitation), as well as the costs to EPA of EPA and [program management office] contractor resources allocated to the project (as identified in Attachment 5 to the solicitation).

Agency Report (AR), Tab 26, Agency Request for Final Proposal Revisions, Oct. 19, 2006.

The RFP stated that award would be made to the “responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered,” and that “all evaluation factors other than cost or price when combined are significantly more important than cost or price.” RFP at M-2.

The EPA received four proposals, and performed an initial price and cost and technical evaluation of each of them. Two of the four offerors were eliminated from further consideration, leaving only CGI and IBM. The agency then conducted discussions with these offerors, and requested final proposal revisions (FPRs).

In its FPR, IBM proposed to perform all work on a fixed-price basis, with the exception of one portion of the hosting requirements (described in detail below), which was proposed on a T&M basis. AR, Tab 41, Source Selection Determination (SSD), at 69. CGI proposed to perform [deleted] of the work on a fixed-price basis, and [deleted] of the effort on a T&M basis. Id. There is no dispute in the record that CGI proposed to perform [deleted].

A technical evaluation panel (TEP) evaluated each FPR, and provided separate reports to the contracting officer (CO). AR, Tab 31, TEP Final Technical Report, Tab 38, TEP Final Price and Cost Report. The CO reviewed the separate TEP reports and prepared a selection decision with final technical and price and cost evaluations for each offeror. AR, Tab 41, SSD.

The CO concluded that each offeror proposed an acceptable minimum requirements matrix, subcontracting plan, and conflict of interest plan. Id. at 10-13. For the technical evaluations, the CO evaluated the offerors as follows:

	<b>IBM</b>	<b>CGI</b>
<b>TECHNICAL MERIT</b>	256.2	240
Technical and Functional		
– Software Solution	72	54
– Implementation	40.5	40.5
– Hosting	40.5	40.5
Experience and Past Performance		
– Organization Experience	37.6	37.6
– Past Performance	37.6	28.2
Management Approach		
– Approach	16.8	16.8
– Personnel	11.2	22.4
<b>ORAL PRESENTATIONS AND SOLUTION DEMONSTRATION</b>	90	80
Oral Presentation	20	20
Solution Demonstration		
– Business Scenarios	20	15
– Ability to Satisfy Goals of FSMP	15	15
– Navigation and Ease of Use	20	15
– Effectiveness of Offeror’s Team	15	15
<b>TOTAL SCORE</b> (500 possible points)	346.2	320

AR, Tab 41, SSD at 5.

For the price and cost evaluation, the CO made adjustments to offerors’ proposals based on “cost realism” and “total cost of ownership” analyses. *Id.* at 52-71. As relevant to the protest, the agency made four adjustments to IBM’s price and cost proposal based on two general types of cost concerns. The first two adjustments were based on the agency’s concern that IBM’s proposal did not capture all of the costs of IBM’s approach to the work, and that IBM would seek reimbursement for those costs. The third and fourth adjustments to IBM’s proposal were based on the agency’s concern that additional agency resources would be required based on IBM’s proposed approach.<sup>4</sup>

First, the EPA determined that both IBM’s and CGI’s proposals required upward adjustments regarding the agency’s Superfund Cost Recovery Package and Image On-Line System (SCORPIOS) legacy application. The RFP explained that

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<sup>4</sup> The protester does not challenge adjustments to its proposed price or cost that are not identified here.

“SCORPIOS summarizes the dollars spent on Superfund cleanup sites and supports the recovery of those costs.” RFP attach. 1, EPA Legacy System Table, at 10-2.

Although neither IBM nor CGI proposed to replace SCORPIOS initially, their FPRs both proposed to replace SCORPIOS. IBM’s FPR states that: “The IBM FSMP solution replaces 15 of 19 legacy applications *including SCORPIOS* to realize the benefits of an integrated solution.” AR, Tab 27, IBM FPR, Vol. 3, at 3 (emphasis in original, denoting FPR change). In the cost section of its FPR, IBM stated that “[i]n implementation, IBM is replacing 15 of 19 legacy applications and delivering the systems in two releases over a 26 month period.” *Id.*, Vol. 5, at 2. In its charts and diagrams detailing the replacement of legacy applications, IBM’s FPR stated that SCORPIOS would be replaced in Release Two of IBM’s solution. *Id.*, Vol. 3, at 9, Figures B-4, B-5. With regard to the pricing of the SCORPIOS replacement, IBM stated that for all areas other than a portion of its hosting proposal, “IBM proposes firm fixed price (FFP) as the task pricing type for each of the PWS task areas.” AR, Tab 27, IBM FPR, Vol. 5, at 43.

Despite IBM’s proposal to replace SCORPIOS on a fixed-price basis, the agency concluded that the company had not adequately explained its price and cost proposal or technical approach in its FPR. The agency calculated an adjustment based on what the agency viewed as the likely cost of replacing SCORPIOS. AR, Tab 41, SSD at 54. Similarly, the EPA concluded that CGI’s proposal to replace SCORPIOS on a T&M basis lacked a sufficient number of hours to perform the work, and adjusted its proposal on that basis. *Id.*

Second, the EPA concluded that IBM’s proposal required an adjustment for its Tier 3 hosting solution and contingency allotment. The RFP required offerors to provide hosting for all software applications, other than agency legacy applications, and divided these hosting requirements into three tiers:

Tier 1: Basic Data Center, manage the computers and infrastructure

Tier 2: Tier 1 plus manage the application, help desk, break-fix, run jobs, small patches

Tier 3: Tier 2 plus systems development and integration including major new releases

RFP attach. 5, Proposal Instructions, at 9-10.

During discussions, the agency clarified for both offerors that the Tier 3 hosting requirements would fall into two categories: (1) contractor-driven changes required by an offeror’s own solution; and (2) government-driven changes required by the agency to meet new and updated requirements, such as legislative mandates or

changes to government accounting rules. AR, Tab 29, Summary of Discussions, at 10; see also, Tab 41, SSD, at 54-55; Hearing Transcript (Tr.) at 233:8-14.<sup>5</sup>

Initially, IBM proposed to perform all hosting work, including Tier 3 hosting, on a fixed-price basis. In its FPR, however, IBM proposed to provide Tier 3 hosting on a T&M basis, but expressly estimated \$0 for the effort. Specifically, IBM stated “[t]his scope is zeroed and will be directed on [a] T&M basis as required by EPA.” AR, Tab 27, IBM FPR, Vol. 5, at 13. With respect to the “major new releases” component of Tier 3 hosting, IBM advised as follows:

[deleted].

AR, Tab 27, IBM FPR, Vol. 3, at 80-81.

The EPA concluded that an upward adjustment to IBM’s proposal was required for cost realism because IBM had not included any costs for anticipated future releases of its proposed software solution, [deleted]. AR, Tab 41, SSD at 55. The EPA adjusted IBM’s Tier 3 costs upward to cover future releases and also made an adjustment to provide a contingency allowance relating to Tier 3 hosting. Id. Although IBM had included contingency allowances for other areas of its proposal, it did not do so for Tier 3 hosting. Thus, the EPA calculated an adjustment by using the contingency rate found elsewhere in IBM’s proposal. AR, Tab 41, SSD at 56.

Third, the agency determined that IBM’s proposal would require EPA to incur additional costs for agency personnel in the implementation stage of the work. The RFP required offerors to state their assumptions about the number of hours that EPA staff would need to contribute to the implementation effort here. RFP attach. 5, at 7. IBM’s initial proposal assumed approximately 214,000 hours of EPA staff effort. During discussions, the agency advised both offerors that it could provide only a limited number of staff hours to assist with implementation, as follows:

EPA clarifies that the EPA Resource levels identified during discussions are limited to the development portion of any resultant contract, i.e. EPA can dedicate no more than 20 full time employees to the project until the proposed solution becomes the Agency financial system of record. Additional subject matter experts can be provided by the Government intermittently, but not for more than one week per occasion.

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<sup>5</sup> Our Office conducted a hearing on May 8-9, 2007 to further develop certain protest issues. We took the testimony of the contracting officer and a TEP evaluator who was designated by the agency as a witness who could address issues regarding that panel.

AR, Tab 41, SSD at 57.

IBM's FPR reduced its assumption for the number of EPA staff hours required to a level consistent with the agency's notice that only 20 FTEs per year would be available, but IBM did not increase its proposed hours to cover the estimated 214,000 hours of EPA staff effort it estimated its approach required; rather, IBM increased its proposed staffing by 19,436 hours. The CO assumed that EPA staff would be required to address any short-fall, and calculated the cost of the additional agency staff time and added the amount as an adjustment to IBM's evaluated price and cost. In contrast, the agency did not make any adjustments to CGI's proposal for EPA implementation resources.<sup>6</sup>

Fourth, and finally, the EPA calculated that the agency would incur additional ongoing maintenance costs associated with the timing of IBM's plan to replace the agency's Integrated Financial Management System (IFMS) legacy application.<sup>7</sup> In this regard, for each of the legacy system applications, including IFMS, the RFP identified the agency's annual costs for operations and maintenance. *Id.* Offerors were required to identify the timeframe for replacement of legacy applications, and complete a chart indicating the agency's costs for continuing to provide support for the applications during the transition. *Id.* at 10-4. Although IBM stated that it would replace IFMS during the first stage of its proposed solution, the agency concluded that IFMS could not be replaced until the second stage of IBM's proposed solution. AR, Tab 41, SSD at 53-54. The EPA therefore determined that it would incur operations and maintenance costs during the additional time that the agency would be required to maintain IFMS.

The CO's final evaluation of IBM's and CGI's price and cost proposal, with adjustments, was as follows:

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<sup>6</sup> For the record, EPA's adjustment for implementation costs blurs the distinction between a realism adjustment and an assessment of costs that the government will incur for its own required efforts. Specifically, the EPA lists the adjustment in the selection decision as a realism increase to IBM's price; however, the agency calculates the adjustment as the cost of additional EPA personnel required to assist with the implementation.

<sup>7</sup> IFMS is the EPA's core financial system. It supports budget and accounting functions, such as updating ledgers and preparing financial statements and budget reports. RFP attach. 1, EPA Legacy System Table, at 10-2.

	<b>IBM</b>	<b>CGI</b>
<b>PROPOSED PRICE<sup>8</sup></b>	\$102,585,787	\$84,083,464
<b>TOTAL COST OF OWNERSHIP<sup>9</sup></b>	\$126,658,999	\$110,482,570
– EPA Legacy System Costs	\$17,266,664	\$22,384,000
– EPA Resources	\$4,680,060	\$3,414,840
– PMO Resources	\$2,126,488	\$600,266
<b>COST REALISM ADJUSTMENTS<sup>10</sup></b>		
– IMFS Retirement	\$0 - \$5,038,334	\$249,344
– SCORPIOS Retirement	\$1,250,000	\$2,375,000
– SCORPIOS Replacement	\$7,086,000	\$2,942,540
– Tier III Hosting	\$6,000,000 - \$7,313,829	--
– Tier III Contingency	\$360,000 - \$2,222,800	--
– EPA Resources, Hosting	\$1,735,008	\$98,736
– EPA Resources, Implementation	\$0 - \$7,229,508	--
– PMO Contractor Hours	--	\$360,584 - \$2,634,742
– [deleted]	--	\$(deleted)
– Momentum Budgeting	--	\$1,048,306
– BAS/IRMS	--	\$2,909,982
– Training	--	\$0 - \$1,363,677
– Testing	--	\$500,000
<b>MOST PROBABLE COST<sup>11</sup></b>	\$143,090,007 -- \$158,534,478	\$120,967,063 -- \$125,004,898

AR, Tab 41, SSD at 52.

Based on her evaluations, the CO recommended that the contract be awarded to CGI. The CO concluded that CGI's technical proposal was "highly competitive with

<sup>8</sup> As noted above, these proposals contained both fixed-price and T&M components.

<sup>9</sup> The total cost of ownership in the chart above is comprised of the offerors' proposed price and cost, plus the agency's estimated amounts for resources the agency would need to provide for EPA legacy system operation and maintenance, EPA resources, and program management office contractor (PMO) costs.

<sup>10</sup> The items listed as "cost realism adjustments" in the chart above are the adjustments made by the agency to the offerors' proposals, including cost realism adjustments to offerors' time and materials and fixed-price proposal elements, and additional total cost of ownership adjustments which were not included in the previous category. Several categories, and the totals, reflect a range of the agency's estimate of probable costs.

<sup>11</sup> The most probable cost is comprised of the offeror's proposed price and cost, the total cost of ownership, and all of the cost realism adjustments.



IBM, more so than even the 26.2 point differential over 500 points would indicate due to the significantly greater performance and cost risks [associated with IBM's approach]." Id. at 72. With regard to the price or cost difference between the offerors, the CO stated that "the price savings of CGI's offer of \$18.5 Million as proposed is likely to widen significantly when the Government considers total cost of ownership items such as EPA legacy system costs, EPA and [program management office] resource costs, and cost adjustments related to the realism of the offers." Id.

The CO signed the selection decision on January 1, 2007, and presented it to the source selection authority (SSA) for his approval. In meetings on January 8 and 12, the SSA met with the TEP chair and other representatives of the Office of the Chief Financial Officer, who expressed concerns about the proposed selection decision and about the Office's view that IBM's proposal, and not CGI's, represented the best value to the government. Decl. of SSA, at 1-2; Decl. of TEP Chair, at 1. By memorandum, dated January 23, the TEP chair outlined his recommendation that the agency conduct additional discussions with the offerors. Decl. of TEP Chair, at 1; AR, Tab 41, "FSMP Proposal Further Discussion Items." The TEP chair drafted a second memorandum, dated January 30, titled "Response to Source Selection Document," which further expressed the TEP chair's disagreement with the CO's award recommendation. Although the SSA reviewed the January 23 memorandum, but not the January 30 memorandum, he states that he was fully aware of the concerns expressed about the proposed selection decision.<sup>12</sup> Decl. of SSA, at 1-2. The SSA approved the award to CGI by signing the selection decision on January 31. AR, Tab 41, SSD, at 73; see also Decl. of SSA, at 3. This protest followed.

## DISCUSSION

IBM argues that the EPA improperly evaluated proposals, failed to conduct meaningful and equal discussions and, as a result, made an unreasonable selection decision. As discussed in detail below, we conclude that the agency improperly adjusted fixed-price elements of IBM's proposal and performed an unreasonable evaluation of CGI's price and cost proposal. With regard to IBM's allegations concerning the technical evaluation, we find that the record supports the agency's evaluation, and that the agency conducted meaningful discussions with IBM.

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<sup>12</sup> During the protest, the parties have disputed the accuracy and relevance of this second memorandum, which purports to identify numerous flaws and uncertainties in the selection decision. As, discussed below, we conclude that the record shows that the agency's evaluation of offerors' price and cost proposals was flawed, and that these flaws had a material effect on the award decision. We need not address the parties' contentions regarding the validity or relevance of the TEP chair's criticisms of the selection decision.

Because of the flaws in the price and cost evaluation, however, we conclude that the selection decision was unreasonable.

As a preliminary matter, our discussion of several of the issues set forth below necessarily addresses differences between the contemporaneous written record, and positions taken by the agency in response to the protest. While we consider the entire record in resolving a protest, including statements and arguments in response to a protest, in determining whether an agency's selection decision is supportable, we accord greater weight to contemporaneous evaluation and source selection materials than to new judgments made in response to protest contentions. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. In this regard, we accord lesser weight to post-hoc arguments or analyses because we are concerned that judgments made "in the heat of an adversarial process" may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process. Id. In contrast, post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details will generally be considered in our review of evaluations and award determinations, so long as those explanations are credible and consistent with the contemporaneous record. ITT Fed. Servs. Int'l Corp., B-283307, B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 6. As discussed below, in several areas the agency's response to this protest is not supported by the contemporaneous record.

#### Price and Cost Evaluation Issues

The protester first argues that the EPA made improper "realism" adjustments to certain fixed-price elements of IBM's proposal, and failed to equally or reasonably evaluate CGI's proposal. As discussed above, the agency stated that it would perform both a cost realism and price realism analysis, as well as assess the "total cost of ownership" associated with offerors' proposals. In the discussion that follows, we address the adjustments that were made to IBM's proposal for SCORPIOS replacement, Tier 3 hosting requirements, EPA implementation efforts, and IFMS retirement costs. We conclude with a discussion of EPA's evaluation of certain elements of CGI's costs.

A cost realism analysis is required when an agency evaluates proposals for the award of a cost-reimbursement contract. Under such a contract, an offeror's proposed costs are not considered controlling because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) §§ 15.305(a)(1), 15.404-1(d). Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. FAR § 15.404-1(d)(2); Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8-9. Although there is no requirement that an agency perform a cost realism analysis when offerors propose to perform work on a T&M basis with fixed-price labor rates, agencies may, as here,

provide for such an evaluation in a solicitation. Resource Consultants, Inc., B-290163, B-290163.2, June 7, 2002, 2002 CPD ¶ 94 at n.1. Cost realism may involve adjustments to proposed costs to calculate the most probable cost to the government of the offeror's proposed approach.

In contrast, where an RFP contemplates the award of a fixed-price contract, or fixed-price portion of a contract, an agency may also provide in the solicitation for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal. Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33 at 6-7. Although the FAR does not use the term "price realism," it provides that cost realism analysis may be used to evaluate fixed-price proposals as follows:

Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors' proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis.

FAR § 15.404-1(d)(3).

Thus, as the FAR explains, a price realism analysis may affect the technical evaluation, but cannot result in an adjustment of an offeror's proposed fixed prices. Id.; see also Puglia Eng'g of California, Inc., supra; Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 6 n.3; Marquette Med. Sys., Inc., B-277827.5, B-277827.7, Apr. 29, 1999, 99-1 CPD ¶ 90 at 6. Specifically, an agency cannot make upward price adjustments for cost elements that the agency thinks may be priced too low. All Phase Environmental, Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 8.

### SCORPIOS Replacement

The EPA determined that IBM's proposal for replacing the SCORPIOS legacy application required a cost adjustment to address the agency's concerns that IBM did not adequately understand the effort required. IBM contends that the adjustment

was improper because its FPR clearly commits IBM to replace SCORPIOS at a fixed price.<sup>13</sup> We agree with IBM.

The record shows that the agency did not reject or otherwise criticize IBM's technical proposal based on any deficiencies, weaknesses or lack of details regarding its proposal to replace SCORPIOS.<sup>14</sup> Specifically, the selection decision found that IBM's proposal under the Software Solution and Implementation subfactors met the RFP requirements, and the agency did not identify any concerns regarding SCORPIOS.<sup>15</sup> See AR, Tab 41, SSD at 13-28. Instead, the criticism regarding SCORPIOS was expressed solely in the price and cost evaluation, in the form of an adjustment to IBM's proposed price.

The CO explained during the hearing that she could not determine whether IBM's proposal was offering to replace SCORPIOS on a fixed-price or a T&M basis. Tr. at 125:16-126:4. Since the agency was concerned that SCORPIOS would have to be rebuilt, and that doing so would require approximately 40,000 hours, it calculated the cost of that time as \$7,086,000, using IBM's labor rates. AR, Tab 41, SSD at 54. Specifically, the CO was concerned that, although IBM proposed no costs associated with replacing SCORPIOS, the agency would be required to reimburse IBM the \$7.1 million estimated cost to replace the application.<sup>16</sup> Tr. at 129:8-22.

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<sup>13</sup> The protester does not challenge the agency's evaluation of costs associated with the retirement of SCORPIOS, as opposed to these challenges of the replacement costs.

<sup>14</sup> The RFP did not require offerors to provide SCORPIOS functionality, nor did it require offerors to replace SCORPIOS. The RFP did not discuss SCORPIOS in the "Concept of Operations" summary detailing the agency's requirements, RFP attach. 4, and did not identify SCORPIOS in the list of requirements in the minimum requirements matrix.

<sup>15</sup> The agency notes that the RFP required offerors to provide a detailed approach linking the cost or price proposals to specific areas of offerors' technical proposals. Tr. at 121:7-22 (citing RFP attach. 5, § 1.2.5). During the hearing, the CO and the TEP evaluator also stated that the agency believed that neither IBM nor CGI could perform the work because the functionality for SCORPIOS was inherently beyond the scope of the financial management software solutions proposed by the offerors. Tr. at 159:8-14, 563:18-22, 589:20-590:17.

<sup>16</sup> With regard to CGI's proposal, the contracting officer's concerns were essentially the same. AR, Tab 41, SSD, at 58-59. Although CGI estimated that the replacement effort would require 10,060 hours, the agency increased CGI's cost for this effort to the 40,000 hours estimated by the TEP. *Id.* at 59.

Our review of the record shows that IBM's proposal committed to replacing SCORPIOS. IBM's proposal stated that it "replaces 15 of 19 legacy applications *including SCORPIOS.*" AR, Tab 27, IBM FPR, Vol. 3, at 3. IBM also identified SCORPIOS as being replaced in Release 2 of its proposed software solution. *Id.* at 9, Figures B-4, B-5. In addition, the record shows that the agency understood that IBM proposed to replace SCORPIOS on a fixed-price basis. The selection decision states that "IBM has proposed to perform the entire priced effort on a [fixed-price] basis. This excludes Tier 3 hosting which IBM did not price." AR, Tab 41, SSD at 69. Aside from Tier 3 hosting, the agency did not identify any other area of IBM's proposal that was not proposed on a fixed-price basis. The CO also testified at the hearing that she understood Release Two of IBM's solution, where SCORPIOS replacement would take place, to be proposed as part of the fixed price proposal. Tr. at 169:16-19.

In sum, the EPA's criticism of IBM's approach to SCORPIOS replacement was focused primarily on IBM's understanding of the requirement and whether the firm would be able to perform the work. The contemporaneous record shows that the agency did not specifically challenge IBM's intent to perform the work on a fixed-price basis, but nonetheless adjusted IBM's proposed price based on the concern that there would be additional costs to the government. Because IBM proposed to replace SCORPIOS on a fixed-price basis, the agency's adjustment to IBM's price was improper. As the FAR and our cases make clear, an agency may account for concerns regarding an offerors' understanding of a requirement in the form of a performance risk evaluation, but may not adjust a fixed-price for purposes of evaluation.<sup>17</sup> FAR § 15.404-1(d)(3); Puglia Eng'g of California, Inc., supra, Verestar Gov't Servs. Group, supra; All Phase Environmental, Inc., supra. On this basis, we conclude that the cost and price adjustment here was improper.

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<sup>17</sup> In some respects, IBM's proposal appears analogous to a below-cost offer to the extent that SCORPIOS replacement was added to IBM's FPR, without a clear increase to the fixed price. The fact that a firm, in its business judgment, submits an offer that may not include any profit or be below-cost, or may be an attempted buy-in, does not render the firm ineligible for award. All Phase Environmental, Inc., supra; McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 9. This is so because below-cost pricing is not prohibited and the government cannot withhold an award from a responsible offeror merely because its low offer is, or may be, below cost. All Phase Environmental, Inc., supra. To the extent the agency wanted to question IBM's willingness to perform or its responsibility (which would have involved an inquiry about IBM's capability to absorb these costs itself) the agency could have done so. What the agency could not do in conducting a price realism analysis, was make upward price adjustments for cost elements that the agency thinks may be priced too low. *Id.*

### Tier 3 Hosting Requirements

As discussed above, the EPA concluded that IBM's proposal for Tier 3 hosting, which was offered on a T&M basis, required a cost adjustment because IBM estimated \$0 for this effort. Tier 3 hosting involved two categories of change requirements for offerors' software solutions: contractor-driven changes and government-driven changes.

With respect to contractor-driven changes, the agency determined that IBM's proposal required certain major releases, or upgrades, to its software solution, but did not include any costs in its T&M proposal for Tier 3 hosting to provide these releases. As mentioned earlier, IBM's FPR changed its Tier 3 hosting approach from a fixed-price proposal to a T&M proposal, and estimated \$0 for the effort. AR, Tab 27, IBM FPR, Vol. 5, at 13. The agency thus concluded that IBM's proposal posed a risk because its solution stated that major releases would be required, but identified no costs associated with the effort. *Id.* 54-55; Vol. 3, at 80-81. The protester argues that no adjustment was needed because its proposal stated that, with the exception of government-driven, all other Tier 3 changes would be provided under Tier 2. Protester's Comments on the Agency Report, at 42-43; Protester's Post-Hearing Comments, at 31-32.

In our view, IBM's proposal did not clearly establish that it would provide the required major releases under the fixed-price portion of its proposal for Tiers 1 or 2. Thus, we conclude that the EPA, consistent with the evaluation scheme, reasonably determined that an adjustment to IBM's T&M proposal was necessary to reflect the cost of contractor-driven changes under the Tier 3 hosting requirements. We also think the agency's adjustment for contingency costs related to Tier 3 hosting was similarly reasonable, in that it was based on RFP requirements for contingency allowances. To the extent that IBM believes that the EPA misevaluated its proposal in this regard, the protester has not demonstrated that the agency's evaluation was unreasonable. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. Synectic Solutions, Inc., B-299086, Feb. 7, 2007, 2007 CPD ¶ 36 at 7.

The protester next argues that the agency's evaluation of required major releases under Tier 3 was unequal, because the agency ignored a similar concern regarding CGI's proposal. We agree. CGI's proposal expressly limited the amount of Tier 3 hosting services it would provide on a fixed-price basis. Specifically, the proposal advised that "Team CGI included [deleted] minor releases over the course of the 10 year contract. [deleted]." AR, Tab 28, CGI FPR, Vol. 5, at 17. As the agency evaluators concluded, "CGI has clearly bounded the scope of the services by specifying that the Tier 3 work is limited to [deleted] 'minor releases.'" AR, Tab 38, TEP Final Price and Cost Report, at 16.

Put differently, CGI's approach, on its face, excluded any future major releases. Despite this exclusion of major releases, CGI's proposal explained:

[deleted]

AR, Tab 28, CGI FPR, Vol. 2, at 2-86, Table 5.

The TEP identified this discrepancy between CGI's proposal's anticipated need for major releases, and its limitation of Tier 3 upgrades to "minor releases," as a concern. Specifically, the TEP advised that "[s]ince the distinction is not abundantly clear between a major and minor release, EPA may incur a cost impact if a major release is required." AR, Tab 38, TEP Final Price and Cost Report, at 16. During the hearing, the TEP evaluator stated that the TEP understood that if a major release were required over the 10-year potential term of the contract, CGI's proposed fixed-price would not cover such an event.<sup>18</sup> Tr. at 420-21, 424. Nonetheless, the selection decision did not address the TEP's concern regarding this issue.<sup>19</sup> As a result, we agree that the evaluation of CGI's proposal was unreasonable to the extent that the agency did not resolve this concern, *i.e.*, whether CGI's "bounded" proposal for Tier 3 hosting met the solicitation requirements for major releases.

As to the second category under Tier 3 hosting, government-driven changes, the agency concluded that an adjustment to the T&M portion of IBM's proposal was required. In this regard, the agency clearly advised offerors that certain government-driven changes would be required during contract performance, and IBM stated that it would provide those changes on a T&M basis as directed—but provided an estimate of \$0 for the effort. As with the first category of changes, we find that IBM has not established how it will provide government-driven changes within the context of the \$0 estimate for the effort. We thus conclude that some adjustment by the agency to IBM's proposal to account for government-driven changes was reasonable.

As to the quantum of the adjustment for both categories of changes, however, we conclude the agency did not have a rational basis for the adjustments it made. The

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<sup>18</sup> To the extent that the agency stated in the SSD that IBM's proposal is technically unacceptable because of the failure to propose costs for Tier 3 hosting, AR, Tab 41, SSD at 72, this criticism would appear to apply in equal force to CGI based on that offeror's failure to include major releases in its Tier 3 proposal.

<sup>19</sup> CGI argues in its comments on the hearing that it is not certain that CGI's software would require a major release, and that, in any event, CGI's proposed [deleted] would address such concerns. CGI Post-Hearing Comments, at 26-27. However, the contemporaneous record does not show that the agency considered these arguments in evaluating CGI's proposal, or otherwise understood CGI's proposal in the manner now advanced in CGI's comments.

agency made two adjustments to IBM's Tier 3 proposal: a \$6,000,000 - \$7,313,829 adjustment for Tier 3 hosting, and a \$360,000 - \$2,222,800 adjustment for the contingency reserve for Tier 3. AR, Tab 41, SSD at 54-55. The agency made no adjustments to CGI's proposal.

The record indicates that the EPA never calculated a most probable cost for either category of the potential Tier 3 costs. Rather, in the case of IBM, the agency simply added back to IBM's proposal certain of the costs deleted from its FPR. *Id.* at 55, n.190. The record does not show that the agency had any support for this adjustment. Tr. at 206:15-207:9; 389:12-390:15. For this reason, we conclude the quantum of the adjustment to IBM's proposal is not supported by the record.

Additionally, because the EPA did not have a clear understanding of the scope of the government-driven changes required as part of Tier 3 hosting, the agency had no basis to determine whether CGI's limited commitment to perform Tier 3 hosting met all of the solicitation requirements.<sup>20</sup> Thus, we find that the agency's evaluation of CGI's proposal is not supported by the record

#### EPA Implementation Resources

The EPA determined that for the implementation effort, IBM's proposal did not adequately explain a change to its assumptions regarding the level of effort that the agency would provide to support IBM's proposed solution. IBM contends the adjustment was improper because, regardless of the estimated level of hours it identified in its proposal for the agency and for itself, IBM still committed to perform the implementation work on a fixed-price basis. We agree with IBM.

As discussed above, offerors were required to state their assumptions regarding the level of effort the agency would provide to support the offerors' solutions. During discussions, the agency advised offerors that it would limit the support provided by EPA staff to 20 FTEs per year for the implementation effort. The agency acknowledges that IBM's FPR appropriately reduced the number of EPA hours proposed from 214,000 to 85,026 for the term of the contract, to reflect the 20 FTE level identified during discussions. Agency Post-Hearing Comments, at 14. While IBM decreased EPA staffing hours by 128,974 hours, it increased its own staffing by only 19,436 hours. The EPA determined that an adjustment to IBM's proposal was

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<sup>20</sup> The record here suggests that CGI's proposal for [deleted] may cover government-driven changes. See AR, Tab 28, CGI FPR, Vol. 3, at B-73. To the extent that the agency believed, however, that there would be certain government-driven changes required under Tier 3, CGI's proposal does not appear to address this requirement. The contracting officer did not discuss CGI's Tier 3 proposal in the price and cost evaluation, and thus there is no record as to whether the agency ever determined whether CGI's proposal provided Tier 3 hosting for government-driven requirements.



required because IBM did not adequately explain how it would perform the work under its proposal in light of the revised staffing. Specifically the agency concluded that because IBM did not increase its own staffing to cover the reduction in the EPA staffing effort, the agency would be required to make up the difference by providing more EPA staff resources. AR, Tab 41, SSD at 57.

The CO calculated the adjustment to IBM's proposal based on the difference between the original hours proposed by IBM, less the increase in IBM staff hours, multiplied by a rate of \$66 per hour established for EPA personnel. Id. On this basis, the CO concluded that "the value of this effort, if needed and ultimately performed by EPA staff, would be approximately \$7,229,508 [] dollars. Therefore the CO has established a range for the probable cost impact of \$0 to \$7,229,508." Id.

We find that the agency's adjustment was improper because the agency unreasonably assumed, given IBM's proposal commitments, that agency personnel would be required to perform any additional needed work.<sup>21</sup> This conclusion was not reasonable because IBM's FPR assumptions identified a specific number of hours to be provided by the agency during implementation, and thereby left the balance of the implementation effort to be performed under IBM's fixed-price proposal. Thus regardless of the number of hours IBM estimated for its own effort, it would still be required to perform at its fixed-price. We conclude that the agency's evaluation was unreasonable because: (1) EPA ignored the fixed-price nature of IBM's proposal, and (2) the adjustment made--regardless of how it is categorized--was not supported by the record.<sup>22</sup>

### IFMS Retirement

The CO determined that IBM's proposal for replacing EPA's Integrated Financial Management System required a cost adjustment to reflect additional costs the agency would incur in maintaining that application during the transition to IBM's software solution. IBM argues that the adjustment was improper because the agency

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<sup>21</sup> As the protester notes, the EPA determination conflicts with its own statement to offerors that the agency would not be able to provide more than 20 FTEs per year in support of implementation.

<sup>22</sup> The agency also argues that certain limitations in IBM's proposal meant that a reduction to EPA staff hours would not be made up by IBM efforts under the fixed-price portion of its proposal. See Agency Post-Hearing Comments at 14-15. We do not believe that this post-protest argument provides a basis to support the agency's evaluation here. Although the agency now points to several areas of IBM's proposal suggesting limitations, this analysis is not reflected in the contemporaneous record, and the agency does not argue that the CO considered these issues at the time of the evaluations.

did not establish the likelihood that the agency would incur additional costs with sufficient certainty. We agree with the agency.

The EPA's "total cost of ownership" assessment evaluated the costs to the agency for maintaining legacy system applications such as IFMS, during the contractor's transition to its solution. The selection decision noted that although "IFMS will be retired during the second year of the contract" there were "inconsistencies between when and how accounts receivable and Project/Cost functions would be implemented." AR, Tab 41, SSD at 53-54. These two required functions are currently provided through IFMS. *Id.* at 54. The agency's concern, therefore, was that although IBM's proposal stated that costs to the agency for IFMS would terminate by the end of Release One of IBM's software solution, the fact that the two functions would not be provided under the solution until Release Two, meant that the agency would continue to incur expenses in providing those functions through IFMS.

Under IBM's proposal, Release One is scheduled for months 1 through 14 of contract performance, and Release Two is scheduled for months 15 through 29. AR, Tab 27, IBM FPR, Vol. 3, at 30-31. IBM's proposal stated that IFMS will be replaced in Release One of the IBM solution. IBM FPR, Vol. 3, at 9, Figure B-4. The agency concluded that the retirement of IFMS would take place in month 14 of the contract, based on IBM's calculation of legacy costs for the agency, which terminated at that time.<sup>23</sup> AR, Tab 27, IBM FPR Vol. 5, at 41, Table C-19. The technical volume of IBM's proposal, however, states that the accounts receivable and project/cost functions will be replaced in Release Two of the IBM solution. IBM FPR, Vol. 3, at 9-10, Figures B-5, B-6.

We conclude that the agency reasonably identified a cost risk on the grounds that "it is not clear from IBM's proposal that this functionality will be available prior to [IBM's software] Release 2." AR, Tab 41, SSD at 54. The agency assessed a "range for net cost risk of \$0 to \$5,038,334" for agency operations and maintenance costs through Release Two.<sup>24</sup> *Id.* On this record, we conclude that the adjustment of IBM's total cost of ownership to the agency for continued IFMS legacy costs was

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<sup>23</sup> IBM's proposal lists IFMS legacy costs for the first 12 months as \$6,100,000, and \$1,016,666 for the second 12 months--the agency noted that the second figure was the same annual rate as the first 12 months, prorated to cover only the first 2 months of the second year. AR, Tab 41, SSD at 54.

<sup>24</sup> The \$5,083,334 figure was the difference between the \$6,100,000 identified in the RFP for a 12-month period of agency IFMS costs, and the \$1,016,666 for 2 months already contained in IBM's proposal for the second year of performance. AR, Tab 41, SSD at 54 n.182.

reasonable and consistent with the RFP's evaluation scheme, given IBM's proposed schedule for IFMS retirement.<sup>25</sup>

### Other CGI Costs

The protester also alleges that the EPA unreasonably evaluated several aspects of CGI's proposal. As discussed below, we conclude that the agency's evaluation of CGI's proposal was unreasonable only regarding the [deleted] of its software solution; we deny the remaining IBM challenges to the EPA's evaluation of CGI's price and cost proposal.

CGI proposed to provide its proprietary Momentum software solution to perform the FMSP contract; [deleted] CGI's Momentum software. AR, Tab 28, CGI FPR, Vol. 2, at 2-104-05. In its proposal, CGI stated that it will [deleted]. *Id.* at 2-105. As discussed above, CGI's proposal for Tier 3 hosting was limited to providing [deleted] "minor releases" to its software. *Id.*, Vol. 5, at 17. In contrast, CGI's proposal identified a "major release" as "[deleted]." *Id.*, Vol. 2, at 2-86, Table 5. CGI's fixed-price proposal for Tier 3 hosting included upgrades to Momentum [deleted] as part of the [deleted] minor releases. *See* Tr. 468:3-469:3; AR, Tab 28, CGI FPR, Vol. 3, at B-73-74.

In its final technical report, the TEP concluded that CGI's [deleted] was a strength. AR, Tab 31, TEP Final Technical Report, at 17. In its final price and cost report, however, the TEP concluded that CGI's approach posed other risks because "CGI will have to [deleted]," and that the risks posed a likely cost risk to the agency. AR, Tab 38, TEP Final Price and Cost Report, at 11. The TEP was concerned that if the [deleted] required CGI to "[deleted]," then the effort might be a "major release" that was outside the scope of CGI's fixed-price proposal for Tier 3 hosting. Tr. at 473:14-23, 475:2-476:7, 476:13-477:13. The TEP concluded that the likely cost risk to the government would "not be less than" \$[deleted]. AR, Tab 38, TEP Final Price and Cost Report, at 11.

In the selection decision, the CO agreed with the TEP that CGI's proposed cost should be adjusted to account for the [deleted] risk. AR, Tab 41, SSD at 59-60. The CO determined, however, that because CGI had already proposed to provide

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<sup>25</sup> The adjustment for IMFS can be distinguished from the agency's adjustment for EPA implementation resources. The IFMS adjustment concerned a cost for the agency's own efforts that the RFP advised offerors would be considered; the implementation adjustment addressed IBM's assumptions regarding the level of effort its proposal would require from the agency personnel. We conclude that the EPA implementation adjustment was unreasonable because IBM had stated that it would perform the implementation work on a fixed price basis; thus any reduction in staffing from EPA would be required to be performed by IBM under the terms of its fixed-price proposal.

software upgrades in its fixed-price proposal for Tier 3 hosting, the cost risk would only be \$[deleted], i.e., the difference between the TEP's estimate of \$[deleted] for [deleted] and the \$[deleted] that CGI had already proposed for Tier 3 hosting. Id.

We conclude that the CO's determination was unreasonable because it did not address the TEP's concern that CGI's proposal to [deleted] was an upgrade that might not be covered by its existing Tier 3 hosting proposal.<sup>26</sup> The TEP believed that CGI's [deleted] posed an additional \$[deleted] in cost risk because that effort might constitute a "major," rather than a "minor" release. Thus, it was unreasonable for the CO to conclude that CGI's existing Tier 3 proposal, which by its terms covered only "minor releases," addressed that cost risk. In this regard, the CO did not dispute the \$[deleted] cost risk concern, but rather believed without any support that this amount would be absorbed by CGI's Tier 3 proposal. Although the CO here accepted the TEP's cost risk estimate of \$4.3 million for [deleted], she had no basis to conclude that the actual risk would be limited to \$[deleted].

In sum we conclude that the EPA's evaluation of IBM and CGI's price proposals was flawed and sustain the protest on this basis. Our review of the record shows that the agency should not have included "adjustments" to IBM's proposed price/cost as follows: (1) SCORPIOS Replacement, and (2) EPA Resources, Implementation. These two errors lead to a reduction of between \$7,086,000 to \$14,315,508 in IBM's "most probable cost." The agency's evaluation of CGI's price and cost proposal for providing Tier 3 hosting was also flawed because it did not consider CGI's proposal with regard to the need for major releases. In addition, the agency did not have a clear basis for determining the size of the adjustment for Tier 3 hosting for either offeror's proposal. Finally, we conclude that the agency's evaluation of CGI's proposal to [deleted] was unreasonable.<sup>27</sup>

#### Technical Evaluation Issues

IBM raises several challenges to the EPA's evaluation of its proposal, and argues that the agency treated the offerors unequally. We have considered all of the allegations regarding the technical evaluation, and find that none warrant sustaining the protest.

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<sup>26</sup> The contracting officer also noted that CGI's proposed [deleted] cover the \$[deleted] value. AR, Tab 41, SSD at 59-60. We note that the \$[deleted] would almost cover the \$[deleted] adjustment identified by the contracting officer, but would not cover the \$[deleted] concern identified by the TEP.

<sup>27</sup> The protester has also raised various issues regarding certain other price and cost errors regarding the evaluation of offerors' proposals. We have reviewed all of the protester's arguments, and conclude that only those identified above provide a basis to sustain the protest.

For example, the protester contends that the agency's evaluation of its proposal under the personnel subfactor of the management approach evaluation factor was flawed because it unreasonably criticized the staffing approach for project managers.

The EPA's evaluation of IBM's proposal concluded that IBM had proposed approximately 14,000 hours for the project manager labor category over the 24-month implementation period, but that IBM had identified only two individuals with a project manager title. AR, Tab 41, SSD at 43; Tr. at 335:12-15. Thus, the contacting officer concluded that IBM's proposed staffing of two identifiable project managers did not provide an adequate approach to filling the hours it proposed. This issue—whether the project managers proposed could perform the 14,000 hours identified in IBM's proposal—was the sole criticism discussed regarding IBM's proposal under the personnel subfactor, and led to IBM's score of 11.2 out of 28 possible points for the personnel element of the management approach subfactor.<sup>28</sup>

During the hearing, the CO explained she relied on IBM's technical proposal to determine the hours proposed for the project manager position. Tr. at 348:14-20; see also AR, Tab 41, SSD at 43, Tab 31, TEP Final Technical Report, at 61. The CO states that she also relied on the TEP Final Technical Report on IBM's technical proposal, but also independently calculated the hours in IBM's technical proposal for her conclusion. Tr. at 336:12-338:8.

The protester points to a disagreement between the CO and TEP regarding the staffing proposed in IBM's Price and Cost proposal. AR, Draft TEP Final Price and Cost Report, Dec. 8, 2006, at 26-27. We conclude the CO reasonably relied on the information in the technical proposal for purposes of evaluating the personnel element, and the protester does not provide a reasonable basis to challenge the CO's analysis regarding that proposal.

To the extent that the protester argues that its own proposal was inconsistent as between its technical and price and cost volumes, and that the CO should have relied on the more favorable of the two possible interpretations under its proposal, we disagree. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information, which allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. In this regard, the CO noted that the RFP required offerors' technical and price proposals to match regarding areas such as proposed staffing, and that the protester's proposal did not do so. Tr. at 347:16-348:13.

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<sup>28</sup> During the hearing, the TEP evaluator confirmed that the project manager hour issue was the TEP's "predominant" concern regarding IBM's proposal under this subfactor. Tr. At 607:3-22.

## Discussions

The protester next argues that the EPA failed to conduct meaningful discussions regarding several issues. The record, however, does not support the protester's allegations with regard to any of the areas where it argues that the agency failed to provide meaningful discussions.

For example, IBM argues that it was misled during discussions regarding page limitations. Specifically, IBM claims that the agency advised IBM that Volume 3 of its proposal exceeded the page limitation, but orally advised that IBM could include additional pages regarding its work breakdown structure (WBS) and integrated master plan (IMP) in Volume 5, rather than Volume 3 of its proposal—despite the fact that the RFP expressly required that these matters be addressed in Volume 3. IBM contends that it relied on the agency's advice and placed those items in Volume 5, which, unlike Volume 3, had no page limitations. In evaluating IBM's proposal, the agency did not provide the WBS and IMS documents to the evaluators because they were not contained in Volume 3; the agency evaluators concluded that the absence of a detailed WBS and IMP constituted a weakness in the proposal. AR, Tab 41, SSD at 23.

The protester argues that the agency's discussions here were misleading, and therefore not consistent with the agency's obligation to ensure that discussions are meaningful. See L-3 Comm. Corp., BT Fuze Prods. Div., B-299227, B-299227.2, Mar. 14, 2007, 2007 CPD ¶ \_\_ at 18-19. The agency denies making such a statement, and notes that such instructions would have been contrary to the RFP instructions.

Because the allegedly misleading agency statements would have resulted in a material deviation from the solicitation, namely the page limitation, the protester could not reasonably rely on such oral advice—even if the record demonstrated that the agency made such a statement, which it does not. S3 LTD, B-287019.2 et al., Sept. 14, 2001, 2001 CPD ¶ 165 at 6. Offerors cannot rely on oral modifications to an RFP which are inconsistent with its written terms, absent a written amendment to the RFP or written confirmation of the oral modification. Id. This clear principle provides fairness to all parties by ensuring that competitions are conducted under equal terms, and protects both protesters and agencies from the kind of credibility disputes raised here, as well as protecting the integrity of the procurement process overall. Id.

## Selection Decision

The selection decision states that the difference between the offerors' proposals was \$18.5 million, and that the difference was "likely to widen significantly." AR, Tab 41, SSD at 72. The record shows, as discussed above, that the agency's adjustments to the offerors' price and cost proposals had numerous errors that materially affected the evaluation. In addition, the agency's evaluation of Tier 3 hosting was flawed because the agency lacked a clear basis for the adjustments to IBM's proposal and

because of the errors regarding the evaluation of CGI's proposal. The agency's evaluation of CGI's proposal regarding [deleted] was also flawed. Moreover, the selection decision relied upon its determination that IBM's proposal presented "significantly greater performance and cost risks" as compared to CGI—a determination that may no longer be valid given the evaluation errors discussed above. AR, Tab 41, SSD at 72. Because these evaluation errors in the selection decision result in a material change to the relative difference between the evaluated price and cost of these proposals, we conclude that IBM was prejudiced and thus the selection of CGI's proposal for award cannot stand. See McDonald Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

#### CONCLUSION AND RECOMMENDATION

We recommend that the EPA reevaluate offerors' proposals, consistent with this decision. We further recommend that the agency reexamine its requirements regarding its SCORPIOS application, and provide offerors an opportunity to revise their proposals if the agency believes, as it now argues, that neither offeror's proposed software solution is suitable for addressing the agency's requirements currently met by the SCORPIOS application. At the conclusion of this process, we recommend that the agency make a new source selection decision.<sup>29</sup> If CGI is not determined to offer the best value to the government, the agency should terminate CGI's contract for the convenience of the government.

We also recommend that IBM be reimbursed the costs of filing and pursuing this protest, including reasonable attorney fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2007). IBM should submit its certified claim for costs, detailing the time expended and cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Gary L. Kepplinger  
General Counsel

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<sup>29</sup> The protester also requests that we recommend that EPA's Office of the Chief Financial Officer have significant input into any future source selection decisions. In our view, this is a matter within the agency's discretion; we will not make specific recommendations regarding the staffing or composition of a source selection team absent circumstances not present here, such as clear evidence of bad faith on the part of the agency. See, e.g., Beneco Enters., Inc., B-283512.3, July 10, 2000, 2000 CPD ¶ 176.