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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: National City Bank of Indiana

File: B-287608.3

Date: August 7, 2002

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DIGEST

1. In implementing prior GAO recommendation to amend solicitation and request revised proposals, agency properly permitted awardee to change various portions of its cost and technical proposal where solicitation amendment specifically advised all offerors that they were permitted to "change any or all portions of their proposal."

2. In performing past performance evaluation, agency reasonably declined to attribute the past performance of an offeror's affiliate to that offeror where, based on the agency's independent research, it determined that the affiliate was a separate legal entity, that the two entities had substantially differing workforces, management, and facilities, and that the offeror's affiliate was not likely to be involved in performing the contract being competed.

3. Agency's cost realism analysis of awardee's proposed staffing costs is not supported where the record is devoid of any meaningful explanation from the agency evaluators of their basis for accepting as realistic the awardee's proposed [deleted] reduced staffing levels.

DECISION

National City Bank of Indiana (NCB) protests the award of a contract by the Department of Defense (DOD), Defense Finance and Accounting Service (DFAS), to Bank of America (BOA) under request for proposals (RFP) No. MDA210-00-R-CPB3 to provide banking services for United States personnel stationed overseas. NCB protests that DFAS improperly permitted BOA to revise its proposal, improperly evaluated BOA's past performance, improperly evaluated BOA's proposed costs, and failed to perform an appropriate cost/technical trade-off.

We sustain the protest because the cost realism evaluation is unsupported.

BACKGROUND

On January 13, 2000, DFAS published the solicitation at issue, seeking proposals to provide commercial banking services to U.S. personnel stationed overseas under the authority of DOD's Overseas Military Banking Program (OMBP).[1] The solicitation contemplated award of a multi-year, cost-reimbursement contract for a 5-year base period with five 1-year option periods.[2] The RFP provided that award would be based on the proposal offering the best value to the government considering cost, past performance, and technical factors, and stated that technical factors were more important then either cost or past performance, which were of equal importance.

In April 2001, the agency selected NCB for contract award. Following that selection, BOA filed a protest with our Office challenging the source selection decision on several bases. In July 2001, we sustained BOA's protest based on the agency's failure to conduct meaningful discussions. Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137.[3] Our decision also noted that the agency had apparently applied certain, undisclosed technical evaluation "standards," and had made various errors in evaluating cost proposals. Id. at 12 n.23. We recommended that the agency amend the solicitation to disclose all evaluation criteria, conduct meaningful

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[1] Under the OMBP, DOD provides banking services overseas for military members, civilian employees of DOD and other government agencies, and authorized dependent family members. The OMBP includes approximately 110 military banking facilities and 240 automated teller machines, with operations in nine countries. The OMBP contractor is expected to maintain approximately 170,000 customer accounts, valued at over $650 million and to annually process approximately $30 billion in monetary transactions.

[2] The solicitation also contemplated two 6-month extension options for transition and contract administration closeout.

[3] As discussed in that decision, we found that the solicitation contained conflicting provisions regarding the permissible length of technical proposals, that BOA apparently interpreted the solicitation as limiting the length of its proposal to half the proposal length permitted for NCB, that the agency was clearly aware of BOA's apparent misinterpretation, and that the agency's evaluation repeatedly criticized BOA's proposal for containing informational deficiencies--yet the agency advised BOA during discussions that its proposal contained "no identifiable technical weaknesses." Bank of Am., supra.

discussions with the offerors, request final proposal revisions (FPR), evaluate those proposals consistent with the terms of the amended solicitation, and make a source selection decision based on that evaluation. Id. at 14.

By letters dated September 21, the agency advised the offerors that it was implementing our recommendations. With those letters, the agency provided the offerors with RFP amendment No. 10,[4] and asked various questions regarding each offeror's proposal.

On October 3, the agency issued RFP amendment No. 11, formally notifying both offerors that they would be permitted to change "any or all" portions of their prior proposals.[5] Specifically, this amendment published various questions and the agency's response to those questions, including the following:

> Question: Is it the Government's plan to re-evaluate the entire technical proposal or to evaluate only the changes made?
>
> Answer: The Government will evaluate the response to the questions and any impact they may have to the technical proposal. The Government may re-evaluate other areas of the proposal as deemed necessary.
>
> [Question:] Will DFAS allow the contractor to change any or all portions of their existing proposals as deemed appropriate prior to award?
>
> Answer: Yes, the offeror will be afforded the opportunity to submit a final proposal upon the government[']s call for final proposal revision.

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[4] Among other things, RFP amendment No. 10 replaced the prior technical evaluation criteria, identifying 28 standards/subfactors that would be applied under 6 primary technical evaluation factors, and eliminated the prior page limitation on technical proposals.

[5] This RFP amendment appears to respond to--and reject--an NCB suggestion that responses be limited. The record contains correspondence from NCB's outside counsel to the agency, dated July 23, 2001 (3 days before GAO's decision sustaining BOA's protest), in which counsel suggested: "If the [BOA] protest is sustained," the agency "can limit the information that BOA can provide in its second [FPR]," adding that "BOA should not be free to make substantive modifications to its proposal," and "should not be permitted to revise its cost proposal." Letter from NCB Counsel to DFAS, July 23, 2001, encl. 1 at 1-2.

> At this time the contractor can change any or all portions of their proposal.

Agency Report (AR), Tab H, RFP amend. 11 (emphasis added).

The agency engaged in ongoing discussions with both offerors regarding various aspects of their cost and technical proposals, and both offerors responded by submitting various proposal revisions. Among other things, NCB's submissions indicated that it intended to perform the contract using staffing levels roughly equivalent to the current levels. In contrast, BOA's submissions indicated that it intended to [deleted] decrease current [deleted] staffing levels [deleted]. BOA explained that it had successfully decreased staffing levels during recent years, and that its proposed staffing reduction "[deleted]." AR, Tab T-2, BOA Updated Cost Proposal, Nov. 20, 2002, at 9.

The offerors' cost submissions were reviewed and evaluated by the agency's cost review board (CRB); technical submissions were reviewed and evaluated by the agency's technical evaluation board (TEB). By letter dated November 30, the agency asked BOA to provide additional information regarding its reduced staffing approach. Among other things, the agency asked:

> 1. What is the basis for the assigned salaries and wages reduction from [deleted] to [deleted] in CY01 and please provide rationale?
>
> 2. Please specify the efficiencies planned that would offset increases due to inflation and provide calculations by expense account? (Reference Page 11 of the Narrative Discussion)
>
> 3. What are the proposed FTEs [full time equivalents] for CY04 thru CY11 for the overseas staff by location?
>
> 4. Actual overseas FTEs at September is 1,037, the proposed FTEs for Y01 is [deleted], but the proposed salaries increase from Actual 2001 to proposal CY01. What is the basis for this difference?
>
> 5. Year 3 Appendix C [staffing table] does not reconcile to the summary on Cost proposal YR-03 for salaries and wages [deleted].
>
> 6. In Appendix C [staffing table] what does the FTE CHNG mean? The year to year FTE changes do not appear to have a relationship with the FTE CHNG column.
>
> . . . . .

8. Provide the staffing reductions/change [deleted] by location by year. In addition please explain how [deleted] to decrease staffing?

AR, Tab P, Letter form DFAS to BOA, Nov. 30, 2001, at encl. 1.

On December 7, BOA provided responses and some supporting information. Regarding the agency's request that BOA identify proposed staffing reductions "[deleted] by location by year," BOA listed only [deleted] positions, by location, that would be eliminated; further, BOA acknowledged that only [deleted] of these position reductions could be [deleted]. AR, Tab T-1, Cost Proposal Questions & Answers, at 23.

On December 12, the CRB conducted a telephone conference with members of the TEB, seeking input from the TEB regarding various matters, including the feasibility of BOA's proposal to reduce staffing. The TEB responded that, although it had been able to account for a portion of the reductions from the face of BOA's proposal, BOA should be required to explain its approach in greater detail. AR, Tab O, Memo to File, at O.3.a.1.

By letters dated December 21, the agency sought FPRs from both offerors. In the letter to BOA, the agency stated "you propose to eliminate over [deleted] FTEs [deleted]. We have identified the following reductions: [deleted] FTEs in [deleted], [deleted] FTEs [deleted] and [deleted] FTEs for the [deleted]." The agency again directed BOA, among other things, to "provide a summary of the planned reductions detailed as follows: (i) identify the position/functions [deleted] by bank location by country that are eliminated plus the [deleted]." AR, Tab P, Letter from DFAS to BOA, Dec. 21, 2001, attach. 1.

Both offerors submitted FPRs by the January 11, 2002 due date. Consistent with the solicitation requirements, both offerors discussed various technologies and/or innovations they were proposing to implement.[6] In its FPR, BOA also provided a staffing table [deleted]. AR, Tab T-3, BOA FPR, app. C, at C-9 through C-176. BOA summarized its proposed staffing approach as resulting from "[deleted]," and

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[6] Under the heading "Proposal of New and Relevant Products, Technologies, and Process (Innovation)," the solicitation stated: "At a minimum, the following technologies or products to support the OMBP are required to be addressed in the offeror's proposal: a. Web banking[;] b. Imaging[;] c. Credit card[;] d. Full range of investment products [;] e. Worldwide OMBP telecommunications upgrade proposal." RFP § L-2(5).

maintained that its staffing plans “are credible (realistic) in light of [deleted].” AR, Tab T-6, Updated Technical Proposal, Jan. 11, 2002, at 2-72; AR, T-3, BOA FPR Response to Cost Questions, at 2. Although BOA tied some of the proposed reductions to [deleted], it also indicated that the majority of the proposed reductions would be based on “[deleted].” AR, Tab T-6, BOA FPR, Response to Final Cost Questions, at 14.

In evaluating BOA’s FPR, the CRB again consulted with the TEB regarding the realism of BOA’s proposed staffing.[7] The record contains no documentation created by the TEB or its designated representative regarding the realism of BOA’s proposed staffing approach. Rather, the record contains an undated, unsigned “Memo to File,” that states: “The CRB asked [the designated TEB member] if [BOA’s proposed] cuts were realistic. He answered that given the [deleted] the proposed FTE reductions were realistic and reasonable.” AR, Tab O, Memo to File, at O.1.a.a. Based on this TEB input, along with BOA’s history of successful staff reductions in performing the incumbent contract,[8] the agency concluded that BOA’s proposed staffing costs were reasonable and realistic. AR, Tab N, Final Cost Evaluation Report, at A-3, A-4.

Overall, the agency evaluated both offerors’ proposals as resulting in positive income for the government, as reflected in the following summary of proposed income, expenses, fees, and CRB adjustments[9]:

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[7] The TEB designated one of the TEB members to respond to the CRB on this matter. Agency Response to Protester Comments, June 20, 2002, at 5 n.4. That individual had extensive experience with the OMBP and with BOA’s performance as the OMBP contractor.

[8] BOA’s past performance evaluation states, in part, that “[BOA] did an outstanding job in reducing Program full-time employees (FTE) and implementing other significant cost reducing measures through consolidation of workload and streamlining of operations.” AR, Tab K, Contractor Performance Evaluation, at 4. However, under the heading, “Areas for Improvement,” that same evaluation also states: “[BOA] has been reluctant to implement new product offerings. . . . [I]n meetings with the government . . . [BOA] strongly supports (verbally) the introduction of new products or services with zeal. The reality is once a . . . modification is issued . . . [BOA] loses the ‘can do’ attitude and builds roadblocks preventing timely implementation.” Id. at 11-12.

[9] In evaluating cost proposals, the CRB made some, relatively minor, adjustments to each offeror’s proposed costs and/or projected income. These adjustments resulted in a slight decrease in BOA’s proposed total income and a small increase in NCB’s proposed total income. The protest does not challenge the validity of any of these adjustments.

	BOA	NCB
Total [Gross] Income	[deleted]	[deleted]
Total Expenses	[deleted]	[deleted]
Total Operating Income	[deleted]	[deleted]
Proposed Fixed Fee	[deleted]	[deleted]
Total [Net] Income	[deleted]	[deleted]
CRB Adjustments	[deleted]	[deleted]
Evaluated [Net] Income	[deleted]	[deleted]

AR, Tab K, Comparative Summary, at 17-18.

In sum, the final evaluated costs reflected a [deleted] cost advantage for BOA's proposal.[10]

In evaluating the technical proposals, the TEB used an adjectival rating scheme applying the terms "outstanding," "better," "acceptable," "marginal," and "unacceptable," along with the risk assessment ratings of "high," "moderate," and "low." The FPR ratings were as follows:

Factors/Subfactors	BOA	NCB
1. Banking Operations and Delivery of Products and Services	Better Low Risk	Better Low Risk
A. Timely and accurate updates to accounts	Acceptable	Acceptable
B. Timelines of rendering statements	Better	Better
C. Method used to process checks and financial papers	Acceptable	Acceptable
D. Float management	Better	Better
E. Management of staffing	Better	Better
F. Risk management	Acceptable	Acceptable
G. Quality control	Acceptable	Better
H. Expertise in managing foreign currencies	Better	Better
I. Quality of key personnel	Acceptable	Acceptable
J. Customer service	Better	Better
K. Employee development programs	Better	Better
L. Loan processing	Acceptable	Acceptable

[10] Under the terms of the RFP, the net income realized by the contractor is paid over to the government. Thus, the higher net income constitutes a cost advantage to the government.

2. Proposal of New and Relevant Products, Technologies and Processes	Better Low Risk	Better Low Risk
A. Web banking	Better	Better
B. Imaging	Acceptable	Better
C. Credit card	Better	Better
D. Full range of investment products	Better	Better
E. OMBP telecommunication upgrade proposal	Acceptable	Acceptable
3. Plan to Standardize Worldwide Infrastructure	Better Med. Risk	Better Med. Risk
A. Teller system	Better	Better
B. General ledger	Acceptable	Acceptable
C. Customer service	Better	Better
D. Property book	Acceptable	Acceptable
4. Transition Approach	Acceptable Low Risk	Acceptable Med. Risk
A. Level of management	Acceptable	Acceptable
B. Detailed transition plan	Better	Better
C. Retention of personnel	Acceptable	Acceptable
D. Alternative plan for all major processes	Acceptable	Acceptable
E. Programming and data conversion	Acceptable	Acceptable
5. Permanent Operations Center	[Acceptable] Low Risk	[Acceptable] Low Risk
A. Permanent operations center	Acceptable	Acceptable
6. Investment Strategy	Better Low Risk	Better Low Risk
A. Alternative investment diversification strategy	Better	Better

AR, Tab K, Comparative Summary of Technical Evaluation, at 14.

Under the past performance factor, both proposals were rated "better."[11] Based on the overall ratings, the agency concluded that the two proposals were "essentially equal" under the non-cost evaluation factors. AR, Tab J, Source Selection Decision, Apr. 15, 2002. Accordingly, BOA's proposal was selected for award on the basis of its evaluated cost advantage. This protest followed.

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[11] As discussed below, in evaluating BOA under the past performance factor, the agency considered whether to include potentially adverse past performance information related to a BOA affiliate's performance of a contract with the General Services Administration to provide travel card services, but ultimately did not rely on this information.

DISCUSSION

NCB first protests that, in implementing GAO's recommendations under the prior protest, the agency improperly permitted BOA to change any and/or all portions of its cost and technical proposals. NCB maintains that, contrary to such unlimited revisions, the agency had instructed offerors that only a "narrow" re-evaluation would occur, and that offerors were limited to "only provide answers to the narrow and offeror-specific questions [the agency] posed." Protest at 2, 35. The record does not support NCB's position.

As discussed above, in implementing the recommended corrective action, the agency rejected NCB's suggestion that responses be limited in the manner NCB now asserts was required. Specifically, in response to the question, "Will DFAS allow the contractor to change any or all portions of their existing proposal as deemed appropriate prior to award?" the agency unambiguously stated: "Yes . . . the contractor can change any or all portions of their proposal."[12] RFP amend. 11. In light of this explicit language, formally incorporated by amendment to the RFP, we fail to see any basis for NCB to assert that offerors were required to limit their proposal revisions in any way.

NCB also protests that the agency improperly evaluated BOA's proposal under the past performance evaluation factor because the agency "ignored BOA's poor past performance on the highly relevant Government Travel Card contract." Protest at 46.

The record shows that, in evaluating BOA's proposal under the past performance factor, the agency specifically considered whether performance of the travel card contract was relevant to the evaluation of BOA's past performance. On January 19, the agency advised BOA that "[t]he government is aware of what may be considered adverse past performance information concerning Bank of America . . . . That information pertains to the General Services Administration Travel Card Contract." AR, Tab Y, Evaluation Summary, Tab Y-2.

BOA responded by advising the agency that the contract in question had been awarded to NationsBank of Delaware in 1998 and, subsequently, that bank had merged with another wholly-owned subsidiary of BOA's parent corporation to become Bank of America, N.A. (USA). BOA stated that Bank of America, N.A. (USA) was a separate legal entity from BOA, and provided information indicating that the two entities did not share workforce, management, facilities or other resources.

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[12] This provision in RFP amendment 11 is clearly consistent with GAO's recommendation. As discussed above, GAO specifically recommended that the agency amend the solicitation to disclose all evaluation criteria, conduct meaningful discussions, and seek revised proposals.

In determining whether one company's performance should be attributed to another, the agency must consider not simply whether the two companies are affiliated, but the nature and extent of the relationship between the two--in particular, whether the workforce, management, facilities, or other resources of one may affect contract performance by the other. ST Aerospace Engines Pet. Ltd., B-275725, Mar. 19, 1997, 97-1 CPD ¶ 161 at 3. In this regard, while it is appropriate to consider an affiliate's performance record where the affiliate will be involved in the contract effort or where it shares management with the offeror, Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 12, it is inappropriate to consider an affiliate's record where that record does not bear on the likelihood of successful performance by the offeror. ST Aerospace Engines Pet. Ltd., supra.

Here, the record establishes that DFAS performed its own research regarding the status of BOA and Bank of America, N.A. (USA), concluding that, although both companies were wholly-owned subsidiaries of Bank of America Corporation, they are, in fact, separate legal entities. AR, Tab Y, Evaluation Summary, Tab Y-4. The agency further determined that the two entities have substantially different workforces, management, and facilities. Id. Finally, based on these considerations, along with the fact that DFAS has been responsible for administering both the travel card contract and the OMBP contract and has interfaced with different legal and managerial entities for the two contracts in the past, the agency concluded that Bank of America, N.A. (USA) would not be involved in performing the OMBP contract and that it would be inappropriate to consider performance of the travel card contract in connection with the evaluation of BOA's past performance for the OMBP contract. On this record, we have no basis to question the reasonableness of the agency's determination.

NCB next protests that the agency failed to perform a reasonable cost realism analysis of BOA's proposal. NCB points out that the CRB made only a few adjustments to each offeror's cost, and asserts that the agency's analysis was "cursory" and "inadequate." Protest at 22. Focusing specifically on BOA's proposal to reduce staffing, NCB asserts that "[t]he fundamental flaw in the CRB's cost realism analysis is that it failed to undertake any hard look at BOA's proposed numbers." NCB Comments, June 10, 2002, at 6. We agree that the record lacks any meaningful documentation supporting the agency's cost realism analysis.

A procuring agency is generally required to perform a cost realism analysis in connection with award of a cost-reimbursement contract, such as the one at issue here. In performing such analysis, an offeror's proposed costs are not controlling since, regardless of the costs proposed, the government is bound to pay the actual and allowable costs incurred. Although an agency need not verify each and every cost item, it must take reasonable, documented, steps to assess what costs are likely to be incurred under each offeror's technical approach, assuming reasonable economy and efficiency. See Federal Acquisition Regulation § 15.404-1(d)(2). Our Office will review an agency's cost realism analysis, when it has been protested, to determine whether it 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.

Here, the agency had before it two technical proposals that received virtually identical technical evaluations. [Deleted.] In view of these evaluations, where BOA's claimed cost savings could be expected to be, and were, in fact, dispositive in the award determination, and BOA's proposed savings were justified, in part, by [deleted], it was particularly important that the agency perform and document a meaningful realism assessment regarding the proposed savings. The record before our Office does not establish that the agency had a reasonable basis to accept BOA's proposed staffing costs as realistic.

The agency clearly recognized that BOA needed to provide more support for its proposed staff reductions than it initially did; as discussed above, the agency repeatedly asked BOA to provide additional, detailed explanation regarding the bases for its proposed reductions. The agency did not, however, satisfy the requirement for a meaningful cost realism analysis simply by asking, repeatedly, for such support.

The fact is that, despite the agency's repeated requests, BOA failed to provide the information requested. While BOA did provide a [deleted] of its proposed staffing reductions, it failed to provide any link between the majority of these reductions and any particular aspect of its technical approach. Rather, as the protester accurately points out, BOA's proposal revisions, including its FPR, contain, primarily, vague and cursory explanations for its proposal to dramatically eliminate staff. For example, BOA's proposal states the following:

> [For Year 1], we will implement [deleted] and continually assess the staffing levels of all banking locations in view of [deleted]. We estimate current staffing levels can be reduced by [deleted] FTEs.
>
> [For Year 2], continued evaluation of [deleted], combined with [deleted] will allow for further staffing reductions. In addition, [deleted]. This action will contribute to the ability to reduce staff [deleted]. In all, [deleted] FTEs will be eliminated from [deleted].
>
> [For Year 3], realization of the full benefits of [deleted] will contribute to the ongoing staff reductions in the [deleted]. Other reductions will be made possible by [deleted]. A total of [deleted] FTEs will be eliminated from [deleted].
>
> [For Year 4], we will reduce staffing at [deleted] by [deleted] FTEs. This is related to the [deleted].

> [For Year 5], we will reduce staffing at [deleted] by [deleted] FTEs, and reduce [deleted] in [deleted] by [deleted] FTEs. This is related to [deleted].
>
> [For Years 6-10], an additional [deleted] FTEs will be eliminated in the [deleted] meeting management's goal of reducing staff by [deleted].

AR, Tab T-6, BOA FPR, Response to Final Cost Questions, at 13-18.

The BOA proposal also contains the following summarizing statement regarding its proposed staffing:

> In summary, [deleted] will eliminate [deleted] FTEs from the [deleted] and [deleted] FTEs in [deleted]. This reduction is less than [deleted]. These reductions are based upon [deleted].
>
> . . . . .
>
> [E]xperience [deleted] provides management with confidence it can attain targeted reductions presented in this proposal.

Id.

Regarding the agency's evaluation of BOA's FPR, the record contains no evidence of any meaningful analysis regarding the likelihood that BOA would actually achieve the significant staff reductions that were proposed.[13] As noted above, neither the TEB as a whole, nor the TEB member designated to address this matter, created a single document discussing any aspect of BOA's proposed staffing reduction.

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[13] We note that the record contains various "sensitivity analysis worksheets" regarding aspects of the offerors' proposed costs. These documents reflect the CRB's attempts to project the impact on proposed costs if certain cost reductions are not actually achieved. However, in response to various criticisms regarding the accuracy of this CRB analysis, the DFAS adamantly maintains that its "sensitivity analysis" was "immaterial" to the ultimate acceptance of BOA's proposed staffing cuts. Specifically, DFAS states: "[T]he Agency stresses that it accepted BOA's proposed overseas staffing costs as complete, realistic, and reasonable. Because of that fact, it is immaterial whether NCB, DFAS, and GAO come to a meeting of the minds as to the optimal approach to accomplishing a staffing sensitivity analysis." Agency Response to Protester Comments, June 20, 2002, at 19. Similarly, DFAS states, "GAO should not look to NCB's [criticisms of the agency's 'sensitivity analysis'] to gauge where a break even point might be if BOA, for whatever reason, does not implement proposed FTE reductions." Id. at 21. Accordingly, our decision does not consider the agency's "sensitivity analysis."

Rather, as noted above, the evaluation record contains only an unsigned, undated "Memo to File" indicating that the CRB asked the TEB whether the proposed cuts were realistic, and stating that the designated TEB member answered that, "given [deleted], [BOA's] proposed FTE reductions were realistic and reasonable." AR, Tab O, Memo to File, at O.1.a.a. The CRB's final cost evaluation report does little more than repeat this representation, stating:

> The CRB thoroughly reviewed and analyzed the proposed costs and revenues of each offeror and found the majority of proposed costs and revenues to be reasonable, realistic and complete. The CRB realized that because this will be a Cost Plus Fixed Fee contract that actual costs and revenues are likely to vary during contract performance. The CRB consulted with a member of the [TEB] designated by the Source Selection Authority regarding the feasibility of the proposed FTE reductions by BOA. The TEB representative indicated that the reductions are realistic considering the [deleted].

AR, Tab N, Executive Summary of CRB Final Evaluation Report, at 2.

While it is true that BOA's FPR discussed BOA's achievement of significant cost cutting [deleted], and the CRB relied on this past performance, the record also suggests that BOA's cost cutting was the result of a number of other factors outside of BOA's control, including a decrease in customer accounts. Protester Comments, June 10, 2002, at 18. Moreover, it is not clear that BOA would actually reduce materially more staff than NCB.[14] As the CRB noted, "NCB stated that they could not identify any FTE reductions at this time, however, they indicated that . . . some reductions could be realized and they would work with the Government to achieve them."[15] AR, Tab N, CRB Executive Summary, at 2.

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[14] [Deleted], the evaluation record regarding BOA's performance under the predecessor contract reinforces our concern with the agency's undocumented, conclusory acceptance of BOA's proposed staff reductions. As noted above, in evaluating BOA's past performance, the agency stated: "[BOA] has been reluctant to implement new product offerings. . . . [I]n meetings with the government . . . [BOA] strongly supports (verbally) the introduction of new products or services with zeal. The reality is once a . . . modification is issued . . . [BOA] loses the 'can do' attitude and builds roadblocks preventing timely implementation." AR, Tab K, Contractor Performance Evaluation, at 11-12.

[15] While it may not have been legally obligated to do so, the agency could have addressed this matter with NCB during discussions, since the record does not identify any unique technology or innovation in BOA's proposal that justified its dramatic staff reductions. This is particularly true in light of the award-determinative nature of BOA's proposed staff reductions and the extensive discussions the agency conducted with BOA regarding this matter.

In sum, the record does not contain adequate support for the agency's acceptance of BOA's claim that it would [deleted] reduce staffing [deleted]. That defect is critical here, because the selection decision was entirely premised on BOA's evaluated cost advantage. Accordingly, we sustain NCB's protest and recommend that the agency perform and document a proper cost realism analysis, including a documented assessment regarding the feasibility of BOA's proposed reductions. If the agency believes that it has an adequate record on hand to perform and document a proper cost realism analysis, it need not reopen the competition to permit further discussions.

After a documented cost realism analysis has been performed, the SSA should make a new source selection decision. If NCB is selected for award, DFAS should terminate the award to BOA. We also recommend that NCB be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2002). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel