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**Comptroller General
of the United States**

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

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Decision

Matter of: Team BOS/Naples--Gemmo S.p.A./DelJen

File: B-298865.3

Date: December 28, 2007

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Damon Martin, Esq., Department of the Navy, for the agency. Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging evaluation of offerors' technical and price proposals is denied where agency's evaluation was reasonable and supported by the record.
2. Protest challenging the adequacy and reasonableness of the agency's source selection decision is denied where the record supports the source selection authority's explanation that certain errors in the selection decision did not affect underlying rationale.

DECISION

Team BOS/Naples--Gemmo S.p.A./DelJen (BOS) protests the award of a contract to Joint Venture Penauillie Italia S.p.A.; Cofathec S.p.A. (JVP) under request for proposals (RFP) No. N33191-06-R-0001, issued by the Department of the Navy, Naval Facilities Engineering Command, for base operations services. The protester argues that the Navy unreasonably evaluated offerors' technical proposals, failed to conduct a reasonable price realism evaluation, and that the agency's selection decision was flawed both because of the above-referenced evaluation errors, and because of certain other errors in the information relied upon by the source selection authority (SSA) in his selection decision.

We deny the protest.

BACKGROUND

The RFP was originally issued on January 24, 2006, and sought proposals to provide base operations services for the Navy in the Naples, Italy area. Offerors were required to propose facilities management, facility investment, janitorial, pest control, refuse collection and recycling, ground maintenance, street sweeping and external area cleaning, service calls, and miscellaneous support services. The solicitation consolidated requirements that had been provided under separate contracts; JVP was the incumbent for most of these contracts. Agency Report (AR) at 2-3. The RFP anticipated the award of a fixed-price contract, with both fixed-price work and indefinite-delivery orders, for a 1-year base performance period and nine 1-year option periods. The RFP stated that proposals would be evaluated on the basis of the following factors: organizational experience, organizational past performance, management plan, staffing plan and resources, and price. The non-price factors were of equal importance and, combined, were “approximately equal in importance” to price. RFP § M-1.

With regard to the organizational experience criterion, the RFP instructed joint venture offerors to “provide a single page that lists the joint venture partners along with the percentage of work each partner is proposed to perform for the [contract] and that briefly describes the specific work that each partner will be performing.” RFP § M-2. The RFP further advised that “if the Joint Venture offeror fails to comply with the requirement in this paragraph, then the Joint Venture offeror cannot be assigned a rating of satisfactory or better for this factor.” Id.

As relevant here, the RFP stated that the agency would evaluate offerors’ price proposals as follows:

FACTOR 5, PRICE:

2. Price proposals will not be given an adjectival rating but may be evaluated for realism, completeness, balance and reasonableness using methods described below:

i) Realism. Prices are compatible with the scope of solicitation, performance requirements, and proposed technical approach. . . .

3. Unrealistic, unreasonable, or unbalanced pricing may cause a proposal to be determined unacceptable, or cause a reduction in price proposal rankings.

RFP § M-2.

The agency received proposals from 12 offerors by the April 4, 2006, proposal due date. The agency convened a technical evaluation board (TEB) and price evaluation board (PEB) to evaluate offerors' proposals. The TEB and PEB evaluations were reviewed by a source selection board (SSB), whose purpose was to make an award recommendation to the contracting officer (CO), who also served as the SSA. As relevant here, the initial ratings of the offerors, based on the TEB and PEB evaluations, were as follows:

	JVP	BOS
OVERALL TECHNICAL	EXCELLENT	EXCELLENT
-- Organizational Experience	Excellent	Excellent
-- Organizational Past Performance	Excellent	Good
-- Management Approach	Excellent	Excellent
-- Staffing Plan and Resources	Excellent	Excellent
PRICE	[deleted]	€55.6 million

AR, SSB Report, Sept. 1, 2006, at 7.¹

The SSB noted that three offerors, including JVP, submitted incomplete price proposals. The SSB recommended, and the SSA agreed, that these offerors should not be considered further for award. With regard to the remaining offerors, the SSB disagreed with the evaluation methodology of the TEB because of "several inconsistently-, or wrongly-, applied strengths, weaknesses, deficiencies, and ratings to the proposals." AR, SSB Report, Sept. 1, 2006, at 2-3. The SSB reevaluated the nine remaining offerors' technical proposals, using revised evaluation methodologies to correct the TEB's errors. As relevant here, the agency identified four strengths for BOS's proposal under the staffing plan and resources evaluation factor:

- (1) proposed staffing plan is very well detailed and shows a more than adequate number of Managers and QCs;
- (2) proposed number of FTEs is more than adequate and well distributed among the various Annexes;
- (3) proposed number of FTEs for both the Prime and Subcontractor Management system is also more than adequate;
- (4) proposed list of equipment includes all required instruments for each different ELIN in a more than adequate number.

AR, TEB Report, Aug. 29, 2006 at 7; SSB Report, Sept. 1, 2006, at 9-10. The SSB also assigned a strength that the TEB had recognized under the management approach factor to BOS's evaluation under the staffing plan and resources factor: "proposal

¹ The agency used an evaluation scheme of Excellent, Good, Satisfactory, Marginal, and Poor. Offerors without relevant past performance were assigned a rating of Neutral.

describes in detail the implementation of quality control and safety programs.” AR, TEB Report, Aug. 29, at 7; SSB Report, Sept. 1, 2007, at 9-10. In the end, however, the SSB did not change BOS’s overall technical rating of “excellent.” Id. at 8-9.

Following the SSB’s reevaluations, the board recommended award to BOS because its proposal was the lowest-priced and highest technically rated. Id. at 19. The SSA agreed with the SSB’s recommendation, and the Navy awarded the contract to BOS on September 15. Following a debriefing by the Navy, JVP filed a protest with our Office challenging the Navy’s determination that its proposal was ineligible for award. On January 3, 2007, we denied the protest, concluding that the Navy had reasonably rejected JVP’s proposal as incomplete based on the company’s failure to submit required pricing information. See Joint Venture Penaullie Italia S.p.A.; Cofathec S.p.A.; SEB.CO S.a.s.; CO.PEL.S.a.s., B-298865; B-298865.2, Jan. 3, 2007, 2007 CPD ¶ 7. Following our Office’s decision in that protest, JVP filed a protest at the Court of Federal Claims (COFC), challenging the award to BOS. Prior to the COFC’s resolution of the protest, the Navy took voluntary corrective action by reopening the competition. AR at 6.

In February 2007, the Navy reevaluated the technical proposals of the three offerors, including JVP, that had been eliminated from award consideration due to their incomplete price proposals. AR, Business Clearance Memorandum (BCM), Feb. 26, 2007. After applying the revised technical evaluation methodology adopted in the September 2006 SSB report, the SSB revised JVP’s proposal ratings under the organizational experience and organizational past performance evaluation factors from “good” to “excellent.” Id. at 3-4. The agency determined that JVP’s proposal remained at the “excellent” level under the management approach and staffing plan and resources evaluation factors. Id. at 4.

On March 23, the agency requested revised proposals from offerors. The agency provided offerors’ with their technical evaluation ratings, a summary of their evaluated strengths and weaknesses, and an assessment of their proposed price relative to the government’s estimate and the lowest-priced offeror’s proposal. The Navy also issued amendment No. 7 to the RFP, which added new requirements to the performance work statement, including, as relevant here, a recycling program.

The Navy received revised proposals from the offerors, including JVP and BOS, which were evaluated by the SSB; the agency did not, as it did in the initial competition, use a TEB or PEB. In its evaluation of BOS’s revised proposal under the staffing plan and resources factor, the SSB credited the company with a strong recycling plan and noted updates to BOS’s corporate experience and past performance references. AR exh. 9, SSB Report, June 5, 2007, at 4-5. The SSB concluded, however, that the individual and overall technical evaluation ratings for BOS did not merit revision. Id. In its price realism analysis, the agency identified areas where it concluded that BOS’s proposed price either was too low or unbalanced. Id. at 15-17.

In evaluating JVP's revised proposal, the SSB similarly credited JVP with a strength for its recycling plan, but—as in its evaluation of BOS—concluded that the technical ratings did not merit revision. Id. at 5-6. In its evaluation of JVP's revised price proposal, the SSB noted that JVP had proposed the lowest overall price of all offerors, and had lowered its proposed price by €[deleted] from its previous proposal. Id. at 11-12. The agency also cited concerns regarding the realism of JVP's price proposal. Id. at 12.

The SSB concluded that the agency could not make award based on the revised proposals, and should instead conduct additional discussions because “at this time no proposal is eligible for award, as submitted, due to the assessment of technical deficiencies, pricing deficiencies, or both.” Id. at 28. The SSB recommended narrowing the competitive range to five offerors, including JVP and BOS. The SSA concurred with the SSB report and determined that further discussions would be required to address concerns regarding the remaining offerors' proposed prices. AR exh. 8, SSA Determination, June 7, 2007, at 1.

In its discussions with JVP, the Navy identified four concerns regarding the realism of JVP's prices. These concerns were as follows: (1) JVP's overall price was low, (2) the proposed price escalation was “erratic and negative in the first two [option] periods,”² (3) the revised proposal contained a significant increase in phase-in costs, despite a reduction in the overall price, and (4) there was “significant variance” between certain of JVP's proposed line item prices and the government estimates. AR exh. 11, JVP Discussions Questions, July 31, 2007, at 1-2.

With regard to the first concern, the agency advised JVP that its “total evaluated price is significantly low.” AR exh. 11, JVP Discussions Questions, July 31, 2007, at 1. The Navy explained that the concerns arose because JVP had lowered its price from €[deleted] in its initial proposal, to €50,698,224.66 in its revised proposal. In its response, JVP stated that “we stand by our pricing as provided in our revised price proposal” based on the following rationale:

The retention of the Naples BOS contract is a key part of our overall corporate strategy to [deleted] to provide an economy of scale that allows management and staffing efficiency for [deleted]. Maintaining this economy of scale allows us to provide the outstanding services we do at a lower price than our competitors. Furthermore, the intense competitive pressures caused by the re-evaluation of proposals following release of general pricing for all offerors has required us to reduce our offer to the fullest extent prudent.

² By negative escalation, the agency meant that JVP's proposed prices decreased in the first two option years from the base period price.

AR, exh. 13, JVP Discussions Responses, at 2.

JVP also responded with charts showing the actual full-time equivalent (FTE) staffing for the various contract requirements, Id., attach. 1. Finally, JVP stated that its average profit anticipated for the work was [deleted] percent, which JVP viewed as “an acceptable return for the company.” Id. at 2. The Navy concluded that JVP’s response regarding its efficiencies accomplished through economies of scale, as well as the detail in the breakdown of proposed prices, showed that JVP “demonstrates a thorough review and understanding of the requirements,” and therefore addressed the agency’s first concern. AR, exh. 14, SSB Report, Aug. 16, 2007, at 5.

Second, the agency expressed concern that the escalation of JVP’s pricing “is erratic and negative in the first two periods.” AR exh. 11, JVP Discussions Questions, July 31, 2007, at 1. JVP responded that its “escalation of pricing is part of our overall strategy to [deleted].” AR, exh. 13, JVP Discussions Responses, at 2. JVP stated that its “escalation [rate] is negative for the first two years,” but increases [deleted] percent per year starting in the third year. Id. JVP explained that this approach was based on the company’s proposal [deleted]. Id. JVP also noted that its revised proposal included [deleted], which accounted in part for the negative escalation in the first option year. Id.

The Navy concluded that JVP had addressed the second concern because the pricing structure was intended to maintain a competitive advantage, and the offeror had provided a “detailed breakdown of the cost savings related to [deleted].” AR, exh. 14, SSB Report, Aug. 16, 2007, at 5.

Third, the agency noted that “[t]here is a significant increase in the Phase In costs and, at the same time, a significant decrease in total price from the original proposal to the revised proposal.” AR exh. 11, JVP Discussions Questions, July 31, 2007, at 1. JVP responded that the addition of the recycling services to the RFP statement of work required an increase to the start up costs from €[deleted] to €[deleted]. AR, exh. 13, JVP Discussions Responses, at 3. JVP noted, however, that its increase in costs for the transition was “independent from our overall proposal pricing,” which was explained in JVP’s responses to the other discussions questions. Id. The Navy concluded that JVP had adequately explained the increase to the phase-in costs, and that the price proposal overall was realistic and reasonable.³ Id.

After evaluating offeror’s responses to the discussions questions, the SSB concluded that all of the concerns regarding JVP’s and BOS’s price realism had been

³ Although the Navy identified a fourth price realism concern regarding JVP proposed ELIN pricing, the protester does not specifically challenge JVP’s response or the agency’s evaluation of that response. Thus, we do not discuss this matter in this decision.

satisfactorily addressed. In its final evaluation, the SSB did not revise the technical evaluations for either BOS or JVP. The agency’s final evaluation of BOS’s and JVP’s proposals was as follows:

	JVP	BOS
OVERALL TECHNICAL	EXCELLENT	EXCELLENT
-- Organizational Experience	Good	Excellent
-- Organizational Past Performance	Good	Good
-- Management Approach	Excellent	Excellent
-- Staffing Plan and Resources	Excellent	Excellent
PRICE	€50.7 million	[deleted]

AR exh. 15, SSD, Aug. 27, 2007, at 1.

The SSA selected JVP’s proposal for award, concluding that JVP’s lower-priced, lower-technically rated proposal was the better value as compared to BOS’s higher-priced, higher-technically rated proposal. Id. at 2. Specifically, the SSA found that because “the weight of the technical factors combined is approximately equal to price, the slightly superior technical proposal and somewhat higher price proposal of Team BOS does not present the best value or decrease the performance risk to the Government.” Id.

During the course of this protest, the agency acknowledged that a portion of the selection decision document contained erroneous references to documents relied upon by the SSA in his determination. As discussed above, the reevaluation of offerors’ proposals performed by the Navy following the protests at our Office and the COFC was performed by the SSB; thus, the TEB and PEB did not conduct new technical evaluations or price evaluations or produce new reports. In the selection decision, however, the CO stated that the proposals had been evaluated by the “Technical Evaluation Board/Source Selection Board/Price Evaluator assigned for this contract,” and that he relied upon his “review of the reports provided by the TEB and SSB” in conducting “an independent assessment of the proposal and report information.” Id. at 1. The CO now acknowledges that the references to TEB and PEB evaluations were in error. Decl. of CO, Nov. 7, 2007, at 1. In this regard, the CO explains the error as follows:

The admittedly erroneous [TEB] and [PEB] references in my Source Selection Authority Decision dated August 27, 2007 (“the SSAD”), resulted when a staffer using Microsoft WORD to cut text from previous sample SSADs that included [TEB] and [PEB] references, pasted such text into the SSAD. I inadvertently failed to delete such [TEB] and [PEB] references from my final version of the SSAD. . . . Despite the unfortunate typo, I did not rely therefore upon any reports

other than the SSB [report] to reach my evaluation and award decisions. Id.

Id. at 2.

Following its selection determination, the Navy notified BOS that the contract had been awarded to JVP. After receiving a debriefing by the Navy, BOS filed this protest.

DISCUSSION

BOS raises three primary arguments: the technical evaluation was flawed because the agency improperly evaluated BOS's proposal to provide a 24-hour staffing presence at the Naval Hospital and treated JVP and BOS unequally regarding this matter; the agency's price realism analysis was unreasonable; and the selection decision was unreasonable because of the alleged flaws in the technical and price evaluations cited by BOS, and because of certain errors regarding citations to the record, which have been acknowledged by the CO. For the reasons discussed below, we find that none of these protest grounds have merit.⁴

A. Technical Evaluation

BOS first argues that the agency's technical evaluation failed to credit the protester for its proposal to provide, as part of its staffing plan, "the 24-hour presence of a BOS employee at the Naval Hospital for preventative maintenance and inspection [PMI] . . . response." Protester's Comments on the AR at 11. The protester further argues that the agency treated BOS and JVP unequally because, the protester contends, the agency may seek to obtain the 24-hour services from JVP, and JVP may not have included the costs of such services in its proposal.

The evaluation of an offeror's proposal is a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method for accommodating them. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218

⁴ In addition to these protest grounds, BOS filed a supplemental protest challenging the agency's evaluation of the level of JVP's proposed staffing for hospital maintenance. The documents pertaining to this protest allegation, specifically, the February 2007 BCM, were not provided by the Navy in its report on the protest, despite the agency's assurance that all relevant documents had been provided. Instead, the agency produced the documents after BOS and JVP filed their comments on the agency report, in response to the protester's argument that the record regarding the evaluation of JVP's technical proposal was not complete. Because this new protest ground arose too late to be considered in this decision, we will consider the challenge to the evaluation of JVP's proposed staffing in a separate decision.

at 2. In reviewing a protest against an agency's evaluation of proposals, including technical evaluations, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. 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. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

BOS states that after it was awarded the contract in September 2006, the Navy "informed BOS at the pre-performance meeting that they [placed] substantial value on this round-the-clock presence." Decl. of BOS Project Manager, at 1. Additionally, BOS states that, following our Office's denial of JVP's protest in January 2007, the Navy reinstated the award to BOS and "confirmed its position as to the importance of the PMI service during the second pre-performance meeting, and requested confirmation that BOS would continue to provide such service." Id. Finally, the protester contends that after the recent award to JVP, "BOS learned that the Navy desired and was implementing the same round-the-clock PMI service from JVP." Id.

To the extent that the protester believes the Navy should have credited BOS with a strength for proposing to provide 24-hour PMI, we disagree. As the protester acknowledges, the RFP did not contain a requirement for 24-hour PMI services, nor did the agency state that it would evaluate offeror's proposals to provide such services. Protester's Comments on the Supplemental AR (SAR) at 7. Thus, the Navy's determination as to whether it would give credit to BOS for proposing to exceed the minimum technical requirements is a matter of the agency's discretion. See U.S. Textiles, supra. The protester's disagreement with the agency's judgment here provides no basis to sustain the protest. See C. Lawrence Constr., supra. Furthermore, even if, as BOS contends, certain unnamed agency officials stated during pre-performance meetings that they valued the 24-hour PMI services, such statements could not bind the evaluators or SSA to favorably evaluate BOS during the subsequent recompetition.

The protester also argues that the Navy treated the offerors unequally because the protester "learned" that the agency still valued the services and would obtain them from JVP. BOS contends that JVP did not propose similar services, and that, if the agency intends to obtain the same level of these services from JVP, the agency should have determined that JVP's prices were unrealistic because they did not account for such staffing costs. As the Navy and intervenor note, however, JVP proposed services that were similar to those proposed by BOS, e.g., dedicated personnel for preventative maintenance and operations at the Naval Hospital, including [deleted]. AR, JVP Technical Proposal, at 6. To the extent that BOS argues that the agency may ask JVP to provide a level of services that is exactly the same as those proposed by BOS, or that such services will have higher costs to JVP than those JVP already proposed, such allegations are speculative at best and provide no

basis to sustain the protest. See, e.g., Ogden Logistics Servs., B-257731, et al., Dec. 12, 1994, 95-1 CPD ¶ 3 at 13-14 (concluding that protester's speculation that protester will not perform contract as proposed does not provide an effective challenge to the agency's evaluation). In sum, we find no basis to question the agency's evaluation of BOS's or JVP's proposals with regard to the provision of 24-hour PMI services.⁵

Next, the protester contends that the agency evaluated JVP under the organizational experience factor in a manner inconsistent with the solicitation. As discussed above, the RFP stated that offerors were required to submit in their proposals "a single page that lists the joint venture partners along with the percentage of work each partner is proposed to perform for the [contract] and that briefly describes the specific work that each partner will be performing." RFP § M-2.

The Navy effectively acknowledges that JVP did not submit its organizational information in the manner specified in the RFP. SAR at 15. However, the Navy contends that all of the required information was submitted, and that the agency was able to evaluate JVP's proposal. Id. at 15-16. Thus, even if the agency did waive the requirement, there was no harm to BOS because the requirement was "merely informational" and did not affect the substance of JVP's proposal.

In our view, the agency's decision to waive the single-page requirement has not, in any way, prejudiced the protester. Our Office will not sustain a protest without evidence of prejudice to the protester; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). With regard to the protester's argument, our Office will only sustain a protest that an agency has waived or relaxed its requirements for the awardee where the protester establishes a reasonable possibility that it was prejudiced by the agency's actions; that is, had it known of the changed requirements, it would have altered its proposal to its

⁵ In its comments on the agency report, the protester argued that the Navy failed to reevaluate JVP's proposal following the SSB's disagreement with the TEB's August 2006 evaluation. As discussed above, the record shows that this argument is factually incorrect because the agency did reevaluate JVP's technical proposal in February 2007. In arguing that it was prejudiced by the agency's failure to reevaluate JVP's technical proposal, BOS also argued that the agency should not have determined that JVP's proposed staffing was "more than adequate" to perform the solicitation requirements. Although the protester notes that it proposed more FTEs than JVP under certain labor categories, the protester does not explain how these isolated differences rendered unreasonable the Navy's overall evaluation of the offerors' proposals as equal under the staffing plan and resources factor. To the extent that the protester believes these differences warranted a lower evaluation for JVP, this disagreement does not provide a basis to sustain the protest.

competitive advantage. XTec, Inc., B-299744.2, B-299744.3, Aug. 6, 2007, 2007 CPD ¶ 148 at 11-12.

The protester has not alleged that it would have changed its proposal had it known that the agency would relax this requirement. Indeed, given that the requirement pertained solely to the format in which information was submitted, we find no possibility that other offerors such as BOS could have been prejudiced by the agency's decision to accept the required information in a different format.

B. Price Realism Evaluation

The protester contends that the agency failed to reasonably evaluate JVP's proposal for price realism. As discussed above, the agency identified four areas in which it had concerns regarding the realism of JVP's proposed prices. The protester contends that JVP's responses failed to address the Navy's concerns in three of those areas, and that the agency's evaluation after receipt of those responses unreasonably concluded that JVP's proposed prices were realistic. For the reasons discussed below, we disagree.⁶

Agencies are required to perform a cost realism analysis when the solicitation anticipates 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 Envt'l Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9-10.

⁶ The Navy and intervenor argue that BOS's protest of the agency's price realism analysis should be denied because the RFP stated only that offerors' proposed prices "may be evaluated for realism." RFP § M-2 (emphasis added). This argument is without merit. Although the RFP states that the agency "may" conduct a price realism analysis, the RFP also advised that "[u]nrealistic, unreasonable, or unbalanced pricing may cause a proposal to be determined unacceptable, or cause a reduction in price proposal rankings." Id. Thus, offerors were told that they risked a negative evaluation if they did not propose realistic prices. Furthermore, the Navy conducted discussions with offerors during the recompetition, instructing them to specifically address the agency's concerns regarding price realism. Finally, the agency conducted a price realism analysis, concluded that JVP's proposed prices were realistic, and relied upon that conclusion in its decision to select JVP's proposal for award. AR exh. 14, SSB Report, Aug. 16, 2007, at 4-6; exh. 15, SSD, Aug. 27, 2007, at 2. On this record, our Office will review the price realism analysis actually conducted and relied upon by the agency to determine whether it was reasonable and consistent with the record.

In contrast, where, as here, an RFP contemplates the award of a fixed-price contract, or fixed-price portion of a contract, an agency may 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. 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).

As an initial matter, the protester contends that the agency's price realism evaluation was unreasonable because the agency failed to consider JVP's technical proposal in its evaluation. The protester draws an inference that because the SSB did not perform a new technical evaluation at the same time it evaluated JVP's responses to the agency's price realism discussions questions, the agency must have ignored JVP's technical approach. The record does not support this assumption.

While, as discussed above, the SSB identified errors with the TEB's evaluation methodology during the initial competition, the record shows that the Navy reevaluated both JVP's and BOS's technical proposals to correct these errors. AR, SSB Report, Sept. 1, 2006, at 8-9 (correcting BOS's evaluation); BCM, Feb. 26, 2007, at 3-4 (correcting JVP's evaluation). Subsequently, the SSB's report of June 5, 2007, evaluated JVP's and BOS's revised technical proposals, and also evaluated the proposals for price realism. AR exh. 9, SSB Report, June 5, 2007, at 5-6, 11-12, 33-34. Finally, although the SSB's report of August 16, 2007, evaluated JVP's and BOS's responses to discussions questions regarding price realism, the SSB did not reevaluate the offerors' technical proposal ratings at that time. AR, exh. 14, SSB Report, Aug. 16, 2007, 4-6.

The fact that the SSB did not reconsider or revise the technical evaluation factor ratings in its final August 16, 2007, report does not necessarily mean, as the protester suggests, that the agency ignored the existing technical evaluations or JVP's proposal in the course of conducting its price realism analysis. Rather, the SSB's final evaluation of offerors' proposals, including its evaluation of JVP's response to the agency's price realism discussions questions, shows that the agency did consider

JVP's technical approach to meeting the RFP requirements. For example, the SSB stated that, with regard to the refuse collection requirements, "[JVP] provided a detailed breakdown of the cost savings related to refuse collection and the implementation of a recycling program." AR exh. 14, SSB Report, Aug. 16, 2007, at 5. With regard to the Navy's concern regarding certain unbalanced prices, the SSB stated the "response provided by [JVP] demonstrates a thorough review and understanding of the requirements, and confirmation of its proposed price." *Id.* Overall, the Navy concluded that JVP's "price proposal is determined to be realistic and reasonable for the requirements of the RFP." *Id.* On this record, we find no merit to the protester's argument that the agency failed to consider JVP's technical approach in its evaluation of the realism of that offeror's proposed prices.⁷

With regard to the four specific concerns about JVP's price proposal identified by the Navy, BOS argues that JVP failed to adequately address three of them, and that the agency failed to reasonably evaluate JVP's responses. In general, the protester disagrees with the level of scrutiny applied by the agency to JVP's responses. The depth of an agency's price realism, however, is a matter within the sound exercise of the agency's discretion. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 4-5. Although agencies must identify a most probable cost to the government when conducting a cost realism analysis, no such requirement exists for a price realism analysis. Rather, a price realism analysis addresses whether an offeror understands the technical requirements and whether its proposed price presents risks to the government. Puglia Eng'g, supra. In reviewing protests challenging price realism evaluations, our focus is whether the agency acted reasonably and in a way consistent with the terms of the solicitation. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5.

As set forth below, BOS contends that its challenges to three of the four Navy concerns about JVP's price proposal fall into two primary categories—JVP's overall low price and its negative price escalation. Our responses in both areas follow.

⁷ The protester also notes that, throughout the course of this protest, the Navy's counsel has argued that the evaluation of JVP's technical proposal is not relevant to the price realism evaluation. See, e.g., Email from Agency Counsel, Nov. 7, 2007; SAR at 4, n.2. To the extent that the Navy takes the position that the technical proposals and the agency's understanding of offerors' technical approaches are irrelevant to our consideration of the agency's price realism analysis, we disagree. However, as discussed above, the contemporaneous evaluation record shows that the agency did consider JVP's technical approach in the evaluation of price realism consistent with the RFP language and FAR guidance.

1. JVP's Overall Low Price

First, the protester notes that the first and third discussions questions regarding JVP's price addressed similar concerns, specifically, why JVP's price was low overall, and why JVP's revised price decreased by approximately €[deleted] from its initial proposal. As discussed above, JVP cites three primary reasons for its low price, and why it was reduced: (1) JVP will take advantage of economies of scale; (2) JVP can perform at those prices, as evidenced by its supporting data; and (3) JVP recognized the need to lower its price during the recompetition, and intends for the contract to be part of its overall strategy to [deleted].

The protester contends that the economies of scale cited by JVP are illusory, and that the Navy did not understand or properly evaluate JVP's response. Specifically, BOS argues that JVP's response anticipates efficiencies and cost savings based on economies of scale from contracts that JVP might win in the future, rather than economies of scale that it can currently leverage to achieve lower costs.

Although the protester contends that JVP's response permits only one possible interpretation, *i.e.*, that JVP is hinging its prices on assumptions of winning future contracts, we disagree. JVP's response states that the [deleted]. AR exh. 13, JVP Discussions Responses, at 2. While the protester may parse JVP's response to draw the conclusion that JVP's efficiencies will occur in the future, we think another reasonable interpretation is that JVP currently has an economy of scale which it seeks to maintain through winning the contract. The record indicates that the agency interpreted JVP's response consistent with this view, *i.e.*, that the company currently benefits from an economy of scale: "[JVP] explains that the low price is achieved by a robust presence that provides an economy of scale." AR, exh. 14, SSB Report, Aug. 16, 2007, at 5. On this record, we conclude that the Navy's determination was reasonable.

Next, the protester argues that the chart of supporting data provided by JVP does not demonstrate that the prices themselves are realistic. Put differently, BOS contends that merely listing the information does not demonstrate that the prices are reasonable, and that the agency failed to adequately scrutinize the data provided by JVP.

We think that the Navy reasonably relied on JVP's information. As the Navy notes, the agency's technical evaluation determined that JVP's proposed staffing approach was adequate for the contract requirements. AR, BCM, Feb. 26, 2007, at 4. Thus, JVP's chart, which details its prices in terms of FTEs assigned to each work requirement, provides further transparency into JVP's claim that it could provide the staff it proposed at the price offered. AR exh. 13, JVP Discussions Responses, at 2, attach. 1. To the extent that the protester contends that the Navy should have given the data more scrutiny, this argument merely expresses disagreement with the depth of the agency's analysis and provides no basis to sustain the protest. See Citywide Managing Servs., supra.

Finally, the protester argues that the primary motive for JVP's reduction of its proposed price was merely to win the contract, and was not based on actual achievable savings. JVP stated in its response to the Navy's discussions questions that "the intense competitive pressures caused by the re-evaluation of proposals following release of general pricing for all offerors has required us to reduce our offer to the fullest extent prudent." AR exh. 13, JVP Discussions Responses, at 2. BOS contends that this statement should have caused the agency to subject JVP's proposal to heightened scrutiny regarding JVP's explanations for why its prices were realistic.

To the extent that BOS argues that JVP improperly lowered its proposed price simply to respond to what JVP called "intense competitive pressures," this argument is unavailing. As a general matter, it is unobjectionable for an offeror to submit a below-cost proposal for a fixed-price contract, since fixed-price contracts generally are not subject to adjustment during performance and the contractor, not the agency, bears the financial risk. Crown Title Corp., B-298426, Sept. 21, 2006, 2006 CPD ¶ 145 at 5-6. In any event, the agency reasonably concluded that JVP's response to the Navy's discussions questions indicates that it can perform at its proposed price. AR exh. 13, JVP Discussions Responses, at 2. Moreover, as discussed above, the Navy determined that JVP's explanation regarding its ability to achieve lower prices satisfied the agency's concerns. We find no basis on this record to question the reasonableness of the agency's conclusions.

2. JVP's Negative Price Escalation

Next, the protester argues that JVP did not adequately respond to the agency's concern that its proposed pricing escalation was "erratic and negative." The Navy asked JVP to address why JVP's proposed price declined following the base period and first two option years of the contract. AR exh. 11, JVP Discussions Questions, July 31, 2007, at 2. JVP acknowledged that its proposed prices decrease in the first and second option years, but stated that JVP's proposed prices increase by [deleted] percent per year in the third and succeeding option years. AR exh. 13, JVP Discussions Responses, at 2. JVP explains that its price escalation approach was part of its overall pricing strategy, *i.e.* to remain competitive. The price decreases were based, in part, on JVP's assumption that [deleted]. Id. at 2-3. JVP provided data detailing its anticipated savings from [deleted]. Id. at 3.

The protester argues that the data regarding JVP's recycling proposal do not address the Navy's negative escalation concerns. Specifically, BOS argues that JVP's statement in response to the discussions questions that it would achieve savings through [deleted] stands in contrast to more qualified language in its technical proposal that JVP [deleted]. See AR, JVP [deleted], at 1 ("[deleted]").

We do not think that BOS's challenges regarding the tone JVP used in describing its [deleted] provides a basis for our Office to conclude that the agency's evaluation in

this area was unreasonable. As discussed above, the fixed-price nature of this contract places the financial risk on the contractor, rather than the government. The Navy identified a concern regarding the negative escalation, and reasonably concluded that the protester's response addressed this concern.

In sum, although the protester disagrees with the level of scrutiny the Navy applied to JVP's responses to the discussions questions, we conclude the record here shows that the agency reasonably satisfied its obligation under the FAR and the RFP to perform a price realism evaluation.

C. Source Selection Decision

Finally, the protester contends that the selection decision here cannot withstand scrutiny because of certain factual errors in the document that have been acknowledged by the CO.⁸ We disagree.

As discussed above, the CO acknowledges that the selection decision erroneously states that the record considered when selecting JVP for award included evaluations by TEB and PEB evaluators. Decl. of CO, Nov. 7, 2007, at 1. As the record shows, the Navy used a TEB or PEB to evaluate offerors' proposals for the initial award in 2006, but did not use these teams in its reevaluation of proposals in 2007. Instead, all of the 2007 reevaluations were conducted by the SSB. The CO explains that the misstatements in the selection decision were due to Navy personnel who assisted in the drafting of the document using an outdated model document. Id. The CO further states that he relied solely on the SSB reports produced during the recompetition, and that he "did not rely . . . upon any reports other than the SSB [reports] to reach my evaluation and award decisions." Id.

The CO's clarification is consistent with the record. Although the selection decision refers to "recommendations reported by the TEB and Price Evaluator," AR exh. 15, SSD, at 1, the source of the information relied upon in the tradeoff determination clearly comes from the SSB report. First, the technical ratings for JVP reflect the SSB's reevaluation of that offeror's proposal that were conducted in February 2007, following the Navy's decision to take corrective action in response to JVP's COFC protest. See AR, BCM, Feb. 26, 2007. The record shows that the TEB, in contrast, had no input as to technical evaluations after its final August 2006 report.

⁸ BOS also argues that the selection decision was flawed based on the underlying technical and price realism evaluation errors that the protester identified in its protest. As discussed above, however, we find no basis to sustain any of the protester's arguments concerning the underlying technical or price realism evaluations.

Next, the prices cited in the selection decision are clearly those from the offerors' final proposals, submitted during the 2007 recompetition. Both JVP's and BOS's revised prices, and the differences between them, are cited in the selection decision and reflect the 2007 proposals, rather than the initial proposals which were evaluated by the PEB in 2006.⁹

In sum, all of the information cited by or relied upon in the selection decision for the award determination is clearly based on the August 16, 2007, SSB report; conversely, none of the information cited is based on the outdated TEB or PEB evaluations. In our view this essentially cosmetic error--misidentifying the source of the final assessments when the record clearly shows that the assessments were drawn from different sources (which were provided to protester's counsel during the course of this protest)--does not provide a basis to challenge the reasonableness of the selection decision here.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁹ Additionally, the selection decision states that the proposal submitted by another offeror, [deleted], was considered ineligible for award due to a rating of "marginal" under the management approach evaluation factor. AR exh. 15, SSD, at 2. This evaluation rating was assigned to [deleted]'s proposal for the first time in the SSB's August 16 evaluation; prior to that evaluation, [deleted]'s proposal had received a rating of good under the management approach factor. AR exh. 14, SSB Report, Aug. 16, 2007, at 3; exh. 9, SSB Report, June 5, 2007, at 7. This updated reference to the evaluation of [deleted]'s proposal further evidences that the SSB report was the basis for information relied upon by the SSA in his selection decision.