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Decision

Matter of: Contingency Management Group, LLC; IAP Worldwide Services, Inc.

File: B-309752; B-309752.2; B-309752.3; B-309752.4; B-309752.5; B-309752.6; B-309752.7

Date: October 5, 2007

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DIGEST

1. Agency's favorable evaluation of an awardee's proposal, submitted in response to a solicitation for logistics support on a global basis, was unreasonable and evidenced unequal treatment, where the proposal stated that it was predicated upon assumptions that expressly differed from the assumptions set forth in the solicitation's scenario on which proposals were to be based, and there is nothing in the contemporaneous evaluation record indicating that the agency considered, or was even aware of, the proposal's stated assumptions.

2. Agency's favorable evaluation of an awardee's proposal was unreasonable and evidenced unequal treatment, where the agency misunderstood an aspect of the

proposed technical approach, and the agency had criticized and assessed a weakness in evaluating another offeror's proposal because it included a similar technical approach.

3. Agency's evaluation of an awardee's business systems under a management evaluation factor as "outstanding" is of concern, where the agency's evaluation does not adequately account for negative comments by the Defense Contract Audit Agency that were provided to the procuring agency as part of the proposal evaluation.

4. Agency's evaluation of proposals under the technical factor that considered the percentages set forth in the offerors' proposals of host country nationals, third country nationals, and U.S. citizens/expatriates proposed to perform the work was unreasonable, where the record provides unsupported, or inconsistent and alternative, explanations regarding what percentages should be considered acceptable or as weaknesses or strengths.

DECISION

Contingency Management Group, LLC (CMG), and IAP Worldwide Services, Inc., protest the award of contracts to Kellogg, Brown & Root Services, Inc. (KBRSI), Fluor Intercontinental, Inc., and DynCorp International under request for proposals (RFP) No. W52P1J-06-R-0049, issued by the Army Sustainment Command, Department of the Army, for logistics support on a global basis. The protesters argue that the agency's evaluation of proposals was unreasonable.

We sustain the protests.

BACKGROUND

This acquisition is for Logistics Civil Augmentation Program (LOGCAP) Combat Support and Combat Service Support (CS/CSS) augmentation on a global basis.¹ The solicitation provided that the LOGCAP services will be made available to the Army as

¹ CS/CSS is defined by the agency as "[t]he essential capabilities, functions, activities, and tasks necessary to sustain all elements of operating forces in theater at all levels of war." Agency Report (AR) at 1 n.1. CS services are specifically defined by the RFP as including, but not limited to, the base camp services of food service, billeting, clothing exchange, waste management, facilities and construction management, morale and recreation, fire protection and fire fighting, sanitation, and security. CSS services are defined by the RFP as including, among other things, supply operations (requisition, storage, issue, accountability, and material management) for water, clothing and administrative supplies, petroleum, construction materials, ammunition, and medical supplies, as well as maintenance operations of tactical and non-tactical vehicles and equipment, and port/ocean terminal operations. RFP 16-17.

well as “other military services, coalition and/or multinational forces, and other governmental/non-governmental agencies.” RFP at 14-17.

The solicitation provided for the award of up to three indefinite-delivery/indefinite-quantity (ID/IQ) contracts for a base period of 1 year with nine 1-year options. RFP at 2, 79. The RFP noted that “[t]he minimum requirement for each of the Global LOGCAP IV contracts is for a core program office,” and that “[t]he maximum permitted on each LOGCAP IV performance contract is \$5 billion per year.”² RFP at 2. The solicitation provided that multiple task orders (TO) will “be issued during the performance period” of the contracts, and that the agency’s “intent is to compete future LOGCAP task orders between the awardees.” RFP at 4; AR, Tab 22, Source Selection Decision Document (SSDD), at 1. The solicitation further advised offerors that the “LOGCAP IV contractors will be required to submit a proposal for every Task Order RFQ [request for quotations] the Government sends them,” and that the awarded ID/IQ contracts would “utilize Firm Fixed Price, Fixed Price Incentive, Cost Plus Award Fee, Cost Plus Fixed Fee, Cost Plus Incentive Fee, Cost Plus No Fee, or Time and Materials Task Orders.” RFP at 2; amend. 2, at 2.

The solicitation included detailed proposal preparation instructions, and requested, among other things, that proposals include management, past performance, technical, and cost/price volumes. RFP at 86. The RFP requested that the management volume consist of sections addressing the offeror’s approach, capabilities and experience, the offeror’s business systems, and the offeror’s approach to using small businesses in the performance of the contract. RFP at 89-91.

The RFP advised that the offeror’s technical proposal was to respond to an attached scenario. RFP at 94. The scenario, which “reminded [offerors] that [it] was fictional and not related in any way to any current or proposed military or diplomatic real world situation,” required “the offeror to provide construction and 22 CSS functions, including supply, transportation, life support, and maintenance support to US Forces in a contingency combat environment in the nation of Sierra Leone.” AR at 2; Tab 4, Initial Scenario, at 1. The scenario provided certain “background” regarding Sierra Leone and the “situation” for purposes of establishing the scenario, including information relating to the hypothetical diplomatic and economic situation in Sierra Leone. For example, the assumptions stated in the scenario included that the “Sierra Leone president has reported ties with international terrorist organizations,” “Sierra Leone is an extremely poor African nation with tremendous inequality in income distribution,” and there was “long term conflict between the Government of Sierra Leone” and a “liberation movement.” AR, Tab 4, Initial Scenario, at 1-2. The scenario also provided information regarding the security situation in Sierra Leone, weather,

² As the agency explains, “This is the fourth in a series of LOGCAP contracts awarded by the Army since the 1990s and is commonly referred to . . . as LOGCAP IV.” Contacting Officer’s Statement at 3.

and Sierra Leone's infrastructure (such as "road network considered passable for all vehicular traffic throughout the region," and "basecamp site prep[aration] in all locations may require extensive jungle clearing"). Id. at 2. The scenario continued by outlining the "Initial Support Concept," which included certain assumed "facts," such as "[a]ll facets of Sierra Leone's infrastructure are severely damaged due to prolonged insurgency and gang related conflict," "Sierra Leone is a declared combat zone," and the "United Nations has requested United States peacekeeping assistance through [the] U.S. Ambassador." Id.

The scenario also provided a detailed "scope of work," which required the establishment and operation of an aerial port of debarkation and a forward operating base (FOB) supporting a total population of 600 people, and detailed the "support required" (such as "[p]rovide retail fuel support at all bases for U.S. forces and U.S. inter-agency use" and "[l]atrines, showers, and wash stands will be required"). AR at 2; Tab 4, Initial Scenario, at 3-33. In addition, the scenario provided a schedule timeline (such as "NTP [notice to proceed]+72 hours Contractor Advance Team on ground at [aerial port of debarkation]," and "NTP+30 days begin mission support at FOB1"). AR, Tab 4, Initial Scenario, at 5.

Offerors were instructed that their technical proposals were to include technical execution plans (TEP) in response to the scenario that included a "sound and realistic approach" as to how the offeror would meet the scenario's requirements. Specifically, each offeror's TEP was to include a description of the methodology proposed to execute the requirements, and a scenario staffing and mobilization plan that included the necessary labor hours broken out by labor category as well as by whether the individuals proposed were U.S. citizens/expatriates (ExPat), host country nationals (HCN), or third country nationals (TCN). RFP at 94-95. The TEP was also to detail the sources and origins of materials, equipment, and supplies, as well as the transportation delivery routes, air and sea ports, fuel sources, and staging locations to be used. Additionally, the TEP was to address command and control, communications, and deployment site control processes, and was to include a property/equipment control plan and a quality control approach, as well as a "schedule for meeting the critical scenario timeline under this solicitation." RFP at 95. The technical proposal was also to include the offeror's unpriced basis of estimate, further detailing, among other things, the equipment, materials and supplies required by the offeror's approach. Id.

The RFP further informed offerors that during the course of the procurement they would receive through amendment to the solicitation a technical change to the scenario that was to be addressed in generally the same way as described for the initially issued scenario. RFP at 94. When issued, the change to the technical scenario provided for the establishment and operation of a sea port of debarkation and five additional FOBs, as well other construction activities and 69 CSS functions supporting a total of 11,500 people at eight locations. AR, Tab 22, SSDD, at 2; Tab 26, Changed Scenario, at 3.

The RFP requested that the cost/price proposal volume consist of a section proposing a fixed price for the maintenance and staffing of “a program office for the base plus all evaluated option years,” and a section consisting of a cost-plus-award-fee proposal for the Sierra Leone technical scenario. RFP at 96. Specifically, offerors were informed that they were to submit a cost proposal for the initial scenario, and that they would also be required to submit a cost proposal responding to the changed scenario that clearly delineated all costs associated with the scenario changes. The solicitation provided for the submission of detailed cost proposals in specified formats that included, for example, a “Grand Summary for all applicable proposal CLINs [contract line items] (including Technical Scenario) by cost element and by performance year,” and direct labor costs, material costs, equipment costs, and subcontract costs “by year . . . , by CLIN, by WBS [work breakdown structure],” and by location (and by labor category for labor costs). RFP at 97-98. Offerors were also instructed to detail their proposed subcontract costs and other direct costs, by year, by CLIN, by WBS, and by location, as well as their indirect rates. RFP at 97-98.

Offerors were requested to submit a priced basis of estimate with their cost proposals, and were informed, through amendment to the RFP, that “to support the Government evaluation process, the offeror’s basis of estimate should be augmented as necessary to present a comprehensive explanation of the proposed labor, equipment, material, and other direct costs for the revised scenario.” RFP, amend. 12, at 2. The agency added here that “[t]he purpose of the [basis of estimate] is to provide a thorough explanation of the resources being brought to bear for the performance of the sample task; and the basis and methodology for determining the types, amounts, and costs of these resources.”³ Id.

³ The record reflects that the offerors’ basis of estimates played a critical role in the evaluation process. In this regard, the agency explains that during the course of the acquisition it decided to “conduct a detailed analysis to ensure consistency between the resources proposed in the basis of estimate and the approach expressed in the technical execution plan.” AR, Tab 1.1.2, Source Selection Evaluation Board (SSEB) Post Protest Statement, at 3. To facilitate this, the agency requested that the offerors restructure their proposals to include “mapping and resource allocation summary documents . . . designed to provide the technical evaluation team the means to connect proposed resources (labor, equipment, and material) in the basis of estimate, to the proposed approach articulated in each offeror’s TEP, to the PWS [performance work statement] requirements at the subparagraph level.” Id. The agency also requested that the offerors submit “a set of consolidated resource listings in an excel file,” and reports that these “consolidated [basis of estimate] resource listings provided the technical evaluation team with an efficient, reliable mechanism for tracing the offeror’s approach, . . . [basis of estimate], and corresponding resources to the specific requirements of the PWS.” Id. at 4-5.

Offerors were informed that the agency would award contracts to the offerors submitting proposals determined to provide the best value to the government, considering the evaluation factors of management, past performance, technical (scenario), and cost/price. The solicitation advised offerors that in determining which proposals represented the best value to the government, the evaluation results under the management factor would be considered moderately more important than the evaluation results under either of the equally important past performance and technical factors, and that the evaluation results under the past performance and technical factors individually would be considered moderately more important than cost/price. RFP at 99-102. Offerors' responses to the management factor would be considered under the following three subfactors listed in descending order of importance: capability, approach, experience; business systems; and small business participation. RFP at 99. The RFP also noted that the offerors' responses to the initial scenario would be considered under the feasibility and completeness of scenario approach subfactor, and that the offerors' responses to the changed scenario would be considered under the ability to handle requirements changes to the scenario subfactor, both subfactors to the technical evaluation factor.⁴ RFP at 100.

With regard to the cost/price factor, the solicitation stated that a "cost realism analysis" would be performed "to determine if the costs in an offeror[']s proposal are realistic for the work to be performed," and that "[c]ost realism will also be used as the basis for the development of Most Probable Cost adjustments (MPCs)." RFP at 102. Further, offerors were advised that the "total evaluated price will be determined by adding the prices for all Firm Fixed Price CLINs (including option years), and the Most Probable Costs for the Cost Reimbursable CLINs." RFP at 102.

The Army received proposals from six offerors, including Fluor, KBRSI, DynCorp, IAP, and CMG. The proposals were evaluated, and all proposals were included in the competitive range. AR, Tab 8, SSEB Report, at 7. Written and oral discussions were held, and ultimately final proposal revisions were received and evaluated. The SSEB reviewed the offerors' submissions "to determine if they adequately addressed each issue," and where "additional information was required, follow-up inquiries were prepared and sent through the contracting officer to the respective offeror on an iterative basis until the SSEB obtained all data necessary to complete the evaluations." *Id.* The agency subsequently removed the proposal of one offeror from the competitive range, and again requested and evaluated final proposal

⁴ The RFP advised that these technical evaluation subfactors would be considered equal in importance. RFP at 100.

revisions. AR, Tab 22, SSDD, at 5. The final evaluation results were as follows:⁵

		CMG	IAP	FLUOR	KBR	DYNCORP
<u>Management</u>		<u>Outstanding</u>	<u>Outstanding</u>	<u>Outstanding</u>	<u>Outstanding</u>	<u>Outstanding</u>
	Capability, Approach, Experience	Outstanding	Outstanding	Outstanding	Outstanding	Outstanding
	Business Systems	Good	Outstanding	Outstanding	Outstanding	Outstanding
	Small Business Participation	Outstanding	Outstanding	Outstanding	Outstanding	Outstanding
<u>Technical</u>		<u>Outstanding</u>	<u>Acceptable</u>	<u>Good</u>	<u>Good</u>	<u>Outstanding</u>
	Feasibility & Completeness of Scenario Change	Outstanding	Acceptable	Good	Good	Outstanding
	Ability to Handle Requirements Changes to the Scenario	Outstanding	Acceptable	Good	Good	Outstanding
Past Perf.		<u>Low Risk</u>	Low Risk	Low Risk	Low Risk	Low Risk
<u>Cost/Price</u>		\$335.8M	\$237.4M	\$152.8M	\$155.2M	\$275M
	PMO	\$14.9M	\$11.7M	\$4.1M	\$10.3M	\$15.6M
	Scenario	\$320.9M	\$225.7M	\$148.7M	\$144.9M	\$259.4M

⁵ The proposals were evaluated under the management and technical factors as either “Outstanding” (defined as “satisfies all of the Government’s requirements with extensive detail to indicate feasibility of the approach and shows a thorough understanding of the requirements, with an overall low degree of risk in meeting the Government’s requirements”); “Good” (defined as “satisfies all of the Government’s requirements with adequate detail to indicate feasibility of the approach and shows an understanding of the requirements, with an overall low to moderate degree of risk in meeting the Government’s requirements”); “Acceptable” (defined as “satisfies all of the Government’s requirements with minimal detail to indicate feasibility of approach and shows a minimal understanding of the requirements, with an overall moderate to high degree of risk in meeting the Government’s requirements”); “Susceptible to Being Made Acceptable”; or “Unsatisfactory.” AR, Tab 30, Briefing Charts to the SSA, at 6.

Id. at 6.

The Source Selection Authority (SSA) determined that the proposals submitted by Fluor, KBRSI, and DynCorp represented the best value to the government, and contracts were awarded to those firms. AR, Tab 22, SSDD, at 21. IAP and CMG requested and received debriefings, and these protests followed.

The protests (considered together) argue that the agency failed to conduct meaningful discussions, and challenge the agency's evaluation of KBRSI's and CMG's proposals under the business systems subfactor to the management evaluation factor, the agency's evaluation of all of the proposals (to some extent) under the technical and cost/price factors, as well as the agency's ultimate source selection. As explained below, while not addressing all of the sundry issues raised by the protesters, we find that the agency's evaluation of proposals was flawed in four respects, and sustain the protests on these bases.

EVALUATION OF FLUOR'S TECHNICAL PROPOSAL

First, CMG argues that the agency's evaluation of Fluor's technical proposal was unreasonable because the agency improperly allowed Fluor to base its TEP on "assumptions [that] clearly deviate from the ground rules established by the Scenario." CMG's Supp. Comments (Sept. 3, 2007) at 11; see CMG's Comments (Aug. 23, 2007) at 4-6; CMG Supp. Protest (Aug. 17, 2007) at 10-12.

The scenario ground rule in question here stated that "NTP is the start date of the period of performance," and that "[t]he period of performance will commence on 1 March 2007." AR, Tab 26, Changed Scenario, at 3. In addition, the agency provided the following question and agency answer to the offerors:

203. What date should the offerors use as the task order award date for the Sierra Leone contingency? We know NTP for the task order is March 1, 2007. We would like to know the time between notice of task order award and task order NTP.

Award date and NTP are the same.

Final RFP Questions and Answers.

However, Fluor's TEP included the following as one of its stated "Assumptions":

The Fluor Team's Technical Execution Plan (TEP) assumptions are:

Post Award and Pre-NTP Period. The period between TO award (including event scenario change requirements) and NTP includes incremental funding and is sufficient to accommodate ocean transport of equipment and material required to meet operational timelines.

Fluor TEP, Scenario Approach, at 4. Fluor's stated assumption that there will be a period of time between TO award and NTP is again reflected in a flow-chart, entitled "Construction Process, Staffing, and Schedule," included in Fluor's TEP, which depicts as a step in the chart "TO award with incremental funding," followed by a step identifying a number of tasks, such as "[p]rocur[e] material" and "[d]eploy equipment," which in turn is followed by the "NTP for mobilizing" step. Fluor TEP, Scenario Approach, at 33-34.

CMG argues that the Army's apparent acceptance of this assumption "enable[d] Fluor—and Fluor alone—to develop both its technical and cost proposals based on an entirely different ground rule than all other offerors."⁶ CMG's Supp. Protest (Aug. 17, 2007) at 18. The protester contends that this assumption provided Fluor with, for example, "the time and money to have three . . . freight ships [DELETED]" prior to the NTP, thus allowing Fluor to accomplish the requirements of the scenario by "send[ing] everything by ocean transport" at a considerable savings in freight costs. CMG's Comments (Aug. 23, 2007) at 34-35. In this regard, CMG points out that Fluor's proposed freight costs were \$40 million lower than those proposed by CMG, and lower than those proposed by any offeror other than IAP.⁷

In response, the Army does not point to anything in the contemporaneous record (nor are we aware of anything) evidencing that it was even aware that Fluor's TEP included the assumption regarding a period of time between TO award and NTP during which incremental funding would be available, nor does the Army's response to the protests explicitly acknowledge the Fluor assumptions. Rather, the Army explains that, in its view, because Fluor's TEP proposed the use of a regional equipment supplier, in addition to shipping certain materials and supplies from its proposed base of operations in [DELETED], "Fluor's proposal was built so that if the TO award and NTP were issued simultaneously, Fluor would meet all scenario milestones." Contracting Officer's Supp. Statement at 10. The Army also correctly points out that Fluor's cost proposal stated as a general assumption that TO award and NTP would occur on March 1, 2007. *Id.*; Fluor Proposal, Cost Volume, at 5. With regard to CMG's argument that Fluor's pre-NTP "incremental funding" assumption provided that Fluor would be compensated for its actions in the time period between TO award and NTP, the agency states only that "[o]ther than Fluor's reference to

⁶ As noted by CMG, all of the other offerors based their TEPs on the scenario ground rule that TO award for the scenario and NTP would occur on the same date (Mar. 1, 2007).

⁷ IAP's proposal's lower cost arose from its proposal to purchase materials and supplies in Sierra Leone, and as discussed later in this decision, the agency evaluated this aspect of IAP's proposed approach unfavorably under the technical evaluation factor and upwardly adjusted the MPC associated with IAP's proposal to account for this.

incremental funding, the Agency can find no support for . . . CMG’s concern,” but that “[i]n either event, the Agency would not compensate Fluor for services prior to NTP issuance.”⁸ Contracting Officer’s Supp. Statement at 11.

The evaluation of proposals is a matter within the discretion of the contracting agency, and in reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency’s judgment was reasonable, in accord with the evaluation factors set forth in the RFP, and whether the agency treated offerors equally in its evaluation of their respective proposals and did not disparately evaluate proposals with respect to the same requirements. Hanford Env’t. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4; Rockwell Elec. Commerce Corp., B-286201 et al., Dec. 14, 2000, 2001 CPD ¶ 65 at 5.

As stated above, the contemporaneous record does not evidence any consideration, or even awareness, by the Army of the stated “assumptions” in Fluor’s TEP that there would be a period between TO award and NTP during which it would receive incremental funding and could perform various tasks, such as procuring material and deploying equipment. See Fluor TEP, Scenario Approach, at 3, 33-34. The fact that the agency may have been unaware of the assumptions on which Fluor’s TEP stated it was predicated does not change the fact that Fluor’s assumptions were not consistent with the terms of the scenario that the other offerors, as well as the agency, treated as mandatory. It is a fundamental principle of federal procurement that a contracting agency must treat offerors equally, and the agency’s acceptance of Fluor’s proposal stating that it was predicated on the above-mentioned assumptions was improper and unfair to the other offerors.⁹ See Farmland National Beef, B-286607; B-286607.2, Jan. 24, 2001, 2001 CPD ¶ 31 at 8 (a proposal that fails to conform to one or more of a solicitation’s material terms is technically unacceptable and cannot form the basis for an award); Loral Terracom; Marconi Italiana, B-224908; B-224908.2, Feb. 18, 1987, 87-1 CPD ¶ 182 at 9 (agency’s acceptance of a proposal

⁸ Fluor now states that it “had assumed in preparing its initial proposal that there would be a period of time between TO award and the NTP,” and that while Fluor became aware that the scenario provided “that these events would occur simultaneously . . . Fluor overlooked correcting the clause in its TEP on which CMG now focuses.” Fluor’s Supp. Comments (Sept. 3, 2007) at 5 n.3.

⁹ The fact that Fluor’s cost/price proposal states that it is based upon the assumption that the TO issuance date and NTP date are the same does not cure the agency’s having disregarded the detailed assumption to the contrary that Fluor placed in its TEP; if anything, it adds the further problem of an inconsistency between the technical and cost proposals. See TRW, Inc., B-254045.2, Jan. 10, 1994, 94-1 CPD ¶ 18 at 4-6, 9-11 (agency’s source selection was unreasonable where the awardee’s technical proposal was inconsistent with its cost proposal).

based upon a methodology different than that set forth in the solicitation was improper where the agency did not inform all offerors that the agency's requirements were not as rigid as indicated in the solicitation).

Moreover, we cannot find the agency's evaluation of Fluor's TEP under the technical evaluation subfactors reasonable, given that it was based upon a misreading of Fluor's proposal with regard to the stated "assumptions." The record does not show that this is an instance where an agency noted that a proposal was taking exception to a solicitation requirement in some respect, but ultimately determined that the proposed approach would meet the agency's needs. Rather, the contemporaneous record, as well as the agency's arguments during the course of these protests, evidence that the Army simply misread or altogether overlooked the stated "assumptions" in Fluor's proposal regarding the period of time and availability of funding for tasks to be performed between TO award and NTP.¹⁰

EVALUATION OF KBRSI'S TECHNICAL PROPOSAL

The protesters argue that the agency's evaluation of KBRSI's TEP under the technical evaluation factor and its subfactors was unreasonable and evidenced unequal treatment vis-à-vis the agency's evaluation of IAP's TEP.

This contention is based upon KBRSI's TEP's use of [DELETED] as KBRSI's source for leasing heavy equipment.¹¹ KBRSI TEP at 35. KBRSI's revised TEP, in addressing the changed scenario, stated that KBRSI's "analysis demonstrates that leasing all heavy equipment and vehicles through [DELETED] in Sierra Leone provides the best value for this exercise scenario," and identified [DELETED] as an "in-country vendor" that could "immediately provide" KBRSI with the heavy equipment required. KBRSI TEP at CS-94. KBRSI's TEP explained that KBRSI would "maximize the use of [its] local and regional partners to leverage existing lease/use agreements . . . to take advantage of equipment presently available in country," and that the use of

¹⁰ There is at least some evidence in the record that Fluor's technical approach may have been predicated upon its stated assumption. In this regard, we note that the contemporaneous record of the evaluation evidences that the agency was concerned with Fluor's proposed approach, commenting that "the majority of equipment is still shipped from the U.S. increasing risk to arriving per schedule," with these concerns pertaining to Fluor's ability to meet the scenario's required schedule being reflected as an assessed "weakness" in Fluor's proposal under both subfactors to the technical evaluation factor. AR, Tab 8, SSEB Report, at 32-33, 340.

¹¹ [DELETED] is also identified in the section of KBRSI's TEP describing its overall "technical experience and teaming arrangements" as a "[c]ritical subcontractor for firefighting and security services." KBRSI TEP at 3.

“rental equipment that was available locally . . . eliminates the need to ocean freight the heavy equipment.” KBRSI TEP at CS-94; KBRSI Cost/Price Proposal at 792. The SSEB found, in evaluating KBRSI’s proposal as “good” under both technical evaluation subfactors, and “good” overall under the technical factor, that KBRSI’s TEP “provided a feasible approach with adequate detail that demonstrates a thorough understanding of the requirements and risks associated with the scenario.” AR, Tab 8, SSEB Report, at 46. The SSEB specifically found that one of the “strengths” of KBRSI’s TEP was that it “shows that the Offeror has the ability to procure local and regional resources that will enable them to meet the requirements.” *Id.* at 382, 386.

Both protesters argue that the agency’s conclusions regarding KBRSI’s proposed use of [DELETED] as its source of supply for heavy equipment were unreasonable, given the protesters’ views that there is nothing in the record, including KBRSI’s proposal, that evidences that [DELETED] “has or can provide the type of heavy equipment necessary for this mission, in Sierra Leone or anywhere else.” IAP Supp. Protest (Aug. 17, 2007) at 11; *see* CMG Supp. Protest (Aug. 17, 2007) at 6-7. In this regard, IAP asserts, for example, that “[DELETED] entire inventory of equipment was [DELETED],” which IAP argues “is inconsistent with KBR[SI]’s purported plan to lease [DELETED] in equipment from [DELETED].” IAP Supp. Protest (Aug. 17, 2007) at 11. The protesters also note that neither KBRSI’s proposal, nor the information furnished by [DELETED] during the course of the procurement, identified “the origin, the logistics, the transportation, and the timing” of the arrival of the heavy equipment necessary to accomplish the scenario. CMG’s Supp. Comments (Sept. 3, 2007) at 39.

The protesters, and IAP in particular, argue that the agency’s evaluation of KBRSI’s TEP here “is particularly striking,” given the fact the IAP’s TEP “received a weakness for proposing to acquire equipment from real Sierra Leone suppliers who have actual equipment.” IAP Supp. Protest (Aug. 17, 2007) at 12; *see* CMG Supp. Protest (Aug. 17, 2007) at 7. In this regard, the record reflects that IAP’s TEP proposed to obtain the heavy equipment necessary to perform the requirements of the scenario from vendors in Sierra Leone. IAP TEP at 93-95. The SSEB evaluated this aspect of IAP’s TEP as one of the three “weaknesses” assigned in rating IAP’s proposal as only “acceptable” overall under the technical factor (as compared to KBRSI’s “good” rating), commenting that IAP’s

[a]pproach relies predominantly on obtaining equipment in Sierra Leone, with a back-up plan relying on its partner in Spain to coordinate procurements from regional and European sources. However, given the depleted state of the Sierra Leone economy, the Offeror will most probably need to implement its back-up plan, resulting in schedule delays and increased costs.

AR, Tab 8, SSEB Report, at 38. In reaching this conclusion, the SSEB noted that “Sierra Leone does not have [the] resources needed to perform the tasks required in the PWS.” *Id.* at 352. The SSEB further commented that “Sierra Leone is almost entirely dependent on imports for machinery and equipment, and that most of the local contractors do not have their own equipment.” *Id.* at 353.

With regard to the protesters’ contention that [DELETED] is not capable of acting as KBRSI’s heavy equipment supplier because [DELETED] does not currently have equipment or an equipment acquisition/leasing business in Sierra Leone, the agency concedes, without citation to anything in the contemporaneous record, that this “was of concern to the Agency when we were evaluating this particular issue.” Contracting Officer’s Supp. Statement at 25. The agency asserts, however, that [DELETED] is capable of providing the heavy equipment required for the performance of the scenario based upon the Army’s understanding of [DELETED] website, which according to the agency “identifies capabilities such as construction of new facilities” and the “renovation of existing, but outdated structures,” and the fact that [DELETED] “carries a current contract with GSA.”¹² *Id.*

The agency further responds that its evaluation was reasonable and did not evidence unequal treatment because “the bid tab documents give no indication that equipment being leased from [DELETED] was being acquired in-country.” Contracting Officer’s Supp. Statement at 6. Rather, as characterized by the agency, KBRSI’s proposal (which includes supporting documents provided by [DELETED]) “indicate[s] merely that [DELETED] committed to having the equipment and vehicles needed by KBR[SI] to perform the requirements of the scenario.” *Id.* In support of its position that the equipment to be acquired by [DELETED] and then leased to KBRSI was not “being acquired in-country,” the agency points out that KBRSI’s TEP included a paragraph explaining certain Sierra Leone economic and geographic conditions, and stating that “[t]hese circumstances mean that the majority of the materials and equipment needed to support this large force must be procured elsewhere and transported to Sierra Leone.” Contracting Officer’s Supp. Statement at 7; KBRSI TEP at CS-4. The agency asserts that this statement demonstrated KBRSI’s recognition of “the limited availability of equipment and supplies in-country.” Contracting Officer’s Supp. Statement at 6.

¹² The agency does not identify or describe in any manner the “contract with GSA” that [DELETED] holds. IAP, on the other hand, identifies [DELETED] GSA contract as a MOBIS, or “Management, Organizational and Business Improvement Services” contract, under which it offers certain management-oriented services that appear totally unrelated to the use, acquisition, sale, or leasing of heavy equipment. IAP Supp. Comments (Sept 3, 2007) at 25-26. KBRSI, in commenting on the agency’s position, makes no mention of [DELETED] GSA contract as support for its position that [DELETED] is capable of providing the heavy equipment KBRSI would require for the scenario.

We need not reach the broader issue of the reasonableness of the agency's assessment of [DELETED] as KBRSI's supplier of heavy equipment because there is a more specific, and more problematic, flaw in the agency's evaluation of this aspect of KBRSI's TEP. This resulted in an evaluation that both failed to reflect the content of KBRSI's proposal and caused the disparate treatment of IAP's and KBRSI's proposals. The agency understood, and has continued to contend during the protest process, that KBRSI had proposed that [DELETED] would acquire the heavy equipment for lease to KBRSI from outside Sierra Leone. The agency, however, is simply wrong on this point.

As stated above, KBRSI's TEP describes [DELETED] as an "in-country vendor" who could "immediately provide" KBRSI with the heavy equipment required, and added that the use of "rental equipment that was available locally . . . eliminates the need to ocean freight the heavy equipment." KBRSI TEP at CS-94; KBRSI Cost/Price Volume at 792. The fact that [DELETED] planned to obtain the equipment from a source within Sierra Leone is confirmed by a written statement from KBRSI's counsel during the course of this protest that "[i]t is KBR[SI]'s position, as stated in KBR[SI]'s proposal, that the equipment IS available locally." KBRSI's Counsel E-mail (Aug. 28, 2007). Again, since the agency's evaluation and rating of KBRSI's proposal under the technical evaluation factor as "good" overall was at least, in part, predicated on the agency's apparent misunderstanding of this aspect of KBRSI's TEP, we cannot find it to be reasonable.¹³

¹³ We note that KBRSI, in commenting on this issue, does not explain its understanding of how [DELETED] would obtain or acquire the heavy equipment for KBRSI. Instead, KBRSI addresses the issue by explaining what its proposal did not say. For example, KBRSI points out that its "proposal does not state that [DELETED] already had the vehicles standing by and ready to go, nor does it state that [DELETED] was going to obtain all of vehicles in Sierra Leone." KBRSI Supp. Comments (Sept. 3, 2007) at 7. KBRSI comments in a similar manner that "the fact that [DELETED] is only a [DELETED] in no way proves that it cannot acquire and lease equipment in Sierra Leone." *Id.* In addition, KBRSI comments at the beginning of one paragraph that "although [DELETED] never said that it would acquire the vehicles and equipment in Sierra Leone, there is good reason to believe that some portion of this equipment would be available in-country even in the fictionalized Scenario," and concludes the same paragraph by stating that, nevertheless, "nothing prevents [DELETED] from purchas[ing] this equipment outside of Sierra Leone and hav[ing] it ready when construction activities began." *Id.* at 7-8.

To the extent that KBRSI is arguing that the agency's evaluation of this aspect of its TEP was reasonable because KBRSI's TEP did not specifically state either how or from where KBRSI, through [DELETED], would acquire the heavy equipment needed to perform the requirements of the scenario, we disagree. Assuming for the sake of argument that KBRSI's proposal was unclear as to where the heavy equipment KBRSI would obtain through [DELETED] was located (that is, whether the

(continued...)

Additionally, it is a fundamental principle of government procurement that the contracting agency must treat all offerors equally, and in so doing must evaluate proposals evenhandedly against common requirements. CRAssociates, Inc., B-282075.2; B-282075.3, Mar. 15, 2000, 2000 CPD ¶ 63 at 5. The Army, which viewed IAP's proposed approach of obtaining the heavy equipment needed to perform the scenario requirements from within Sierra Leone as a "weakness" (which was one of the factors that led to IAP's proposal being rated as only "acceptable" overall under the technical factor), did not adhere to the standard of "equal treatment" in rating KBRSI's proposal differently, even though it proposed a similar approach of acquiring the equipment from in-country sources.¹⁴

EVALUATION OF KBRSI'S MANAGEMENT PROPOSAL

The protesters argue that the agency's evaluation of KBRSI's proposal as "outstanding" under the business systems subfactor and "outstanding" overall under the management evaluation factor was unreasonable. Specifically, the protesters argue that this aspect of the agency's evaluation did not adequately consider the results of an audit requested by the Army and performed by the Defense Contract Audit Agency (DCAA) as part of the evaluation process.

The RFP required, in connection with the business systems subfactor to the management evaluation factor, that proposals were, among other things, to "identify the Accounting, Estimating, Billing, Purchasing, Property, Supply Chain Management System, Earned Value Management Systems or any other business systems" that the offeror proposed to "use to support LOGCAP, and how they will use these systems to track costs, subcontracts, equipment, personnel, and changes in requirements." The solicitation added here that "[t]he offeror must identify whether the systems to be used on LOGCAP have been approved or determined compliant by DCAA or DCMA [Defense Contract Management Agency], or are in the process of becoming approved/compliant." RFP at 90.

(...continued)

equipment was in Sierra Leone or not), it would have been incumbent upon the agency to assure itself, through discussions if necessary, regarding the details of KBRSI's and [DELETED] proposed approach to obtaining the heavy equipment, particularly where, as here, it was a matter of concern to the agency as evidenced by its evaluation of IAP's proposal. See Mine Safety Appliances Co.; Interspiro, Inc., B-247919.5; B-247919.6, Sept. 3, 1992, 92-2 CPD ¶ 150 at 4; recon. denied, National Draeger, Inc.--Recon., B-247919.7, Nov. 6, 1992, 92-2 CPD ¶ 325.

¹⁴ As noted by IAP, in contrast to KBRSI's use of [DELETED] as the source of heavy equipment and vehicles, IAP's proposal was based on quotes for equipment from "real" Sierra Leone vendors.

The solicitation informed offerors that in evaluating proposals under the business systems subfactor to the management evaluation factor, the agency would consider how well the proposed business systems would be “able to provide effective contract oversight and tracking of costs, subcontracts, equipment, personnel, and changes in requirements in a contingency environment,” as well as “how well the proposed systems will provide complete, reliable, timely, consistent and transparent data to permit effective Government oversight and management.” The solicitation, consistent with the terms of the RFP’s proposal preparation instructions, also provided that the agency would consider here whether the offerors’ proposed business systems were “Government approved or compliant, or in the process of becoming approved/compliant.” RFP at 100.

The record reflects that in addition to considering KBRSI’s representations in its management proposal, the Army requested as part of its evaluation process that DCAA perform an audit of KBRSI’s proposal that took into account both the costs proposed as well as the “contractor’s internal controls.” DCAA LOGCAP IV/KBRSI Audit (Apr. 20, 2007) at 2. With regard to its assessment of KBRSI’s “internal controls,” the DCAA reviewed KBRSI’s business systems, including its accounting system, budgeting and planning system, estimating system, purchasing system, and billing system, and issued a report in April 2007. *Id.* at 34-39. Although this report does not take issue with KBRSI’s budgeting and planning system, it does express a number of concerns with regard to the remainder of KBRSI’s business systems.

Specifically, DCAA notes that, in a previous DCAA audit report dated November 1, 2006, it had reported KBRSI’s accounting system as “inadequate in part.” *Id.* at 34. The April 2007 report reflects that DCAA had determined in the prior report that KBRSI did not “[h]ave an adequate system of monitoring and managing its accounting system process to ensure the system is operating as designed and operating effectively in accordance with Government requirements and management’s intent.” DCAA adds that KBRSI’s accounting system did not have “adequate written policies” for “identifying and excluding unallowable costs,” “ensuring the Cost Accounting Standards Board . . . Disclosure Statements reflect their cost accounting practices,” and “identifying the criterion when cost transfers between final cost objectives are justified.” *Id.* The DCAA report notes that KBRSI has been transitioning to a new accounting system, and that it has “substantially completed the process of implementing” the new system. *Id.* at 35.

The April 2007 DCAA report also states that it had found KBRSI’s estimating system “inadequate in part” in a previous report, and in response to that previous report KBRSI had undertaken certain “corrective actions” that resulted in improvements to KBRSI’s budgeting system, but the system nevertheless required “additional corrective actions . . . in certain areas.” *Id.* at 36. The DCAA report details the “two primary actions that need to be completed” by KBRSI, and concludes that while KBRSI has implemented some corrective actions, DCAA “will continue to assess control risk based on the disclosed deficiencies” in KBRSI’s estimating system until

DCAA has tested KBRSI's "corrective actions and determined the actions to be effective." Id. at 36-37.

DCAA's April 2007 report also notes problems with KBRSI's purchasing system. DCAA noted that a DCMA review team had issued a report in October 2005 that included seven recommendations concerning KBRSI's purchasing system, and that "KBRSI in coordination with DCMA" had "set up" a plan "to identify causes, analyze solutions, and implement changes to clear the seven [DCMA] recommendations." Id. at 37. The DCAA report also notes that it issued, in June 2006, a report identifying "significant deficiencies" regarding KBRSI's purchasing system, with that report recommending "disapproval" of four "portions of KBRSI's purchasing system." Id. at 37-39. The April 2007 report describes in detail each of the four deficient portions of KBRSI's purchasing system and details DCAA's continuing view that certain problems remain. Id. at 38.

With regard to KBRSI's billing system, the April 2007 DCAA report concludes that DCAA continues to consider KBRSI's billing system "inadequate in part as a result of . . . two primary reasons" identified by DCAA in a December 2006 DCAA audit report, which, in DCAA's view, remain uncorrected. Id. at 39.

The SSEB report states that in evaluating KBRSI's proposal as "outstanding" under the business systems subfactor, the agency found that KBRSI's "accounting, estimating, billing, purchasing, property . . . are approved by the government," based on its review of the "DCAA audit reports and DCMA determination letters for [KBRSI's business] systems." AR, Tab 8, SSEB Report, at 240. The SSEB report adds here that "any issues identified by DCAA/DCMA/ACO [Administrative Contracting Officer] were considered to determine the current status of the issue and assessment of risk on the system."¹⁵ Id.

With regard to KBRSI's accounting system, the SSEB refers to DCAA's November 2006 audit report that identified six issues with KBRSI's accounting system, and notes that KBRSI and government representatives have established an "Accounting System Issues Council" that "will monitor [KBRSI's] corrective action plan to address the [accounting system] issues identified in the DCAA audit report." AR, Tab 8, SSEB Report, at 240-41. As to whether KBRSI's accounting system is considered "approved," the SSEB notes that the cognizant DCMA ACO "has not changed the overall system determination of approved" that was issued in July 1997. Id. at 241.

¹⁵ The record reflects that the cognizant DCMA ACO was a member of the SSEB and participated in the evaluation of the offerors' proposals under the business systems evaluation subfactor. See Agency Supp. Submission (Sept. 11, 2007) at 1.

The SSEB found with regard to KBRSI's estimating system that the "ACO [had] determined the system is Acceptable with Corrective Action on Dec. 27, 2004," and that the issues identified by DCAA with KBRSI's estimating system had been resolved with the exception of one issue that "continues to be worked between the government and offeror." AR, Tab 8, SSEB Report, at 241. With regard to KBRSI's purchasing system, the SSEB notes without explanation that while it had been found by DCAA to be "[i]nadequate in part" in a June 2006 audit report, it had subsequently been "[a]pproved" by DCMA in October 2006. Id. The SSEB is similarly brief with regard to KBRSI's billing system, noting only that while it had been determined "[i]nadequate in part" by DCAA in December 2006, it had subsequently been found "[a]dequate" by DCMA in April 2007. Id.

In its report in response to the protester's contentions as to the propriety of the agency's rating of KBRSI's proposal as "outstanding" under the business systems subfactor in light of the concerns expressed by DCAA, the agency contends that it "considered all of the findings and recommendations cited in DCAA audits." Contracting Officer's Supp. Statement at 31.

Specifically, with regard to the DCAA concerns regarding KBRSI's purchasing system, the agency states that the cognizant ACO found that certain of KBRSI's corrective actions were "satisfactory," "adequate," and "acceptable." Id. at 31-32.

With regard to KBRSI's estimating system, the Army argues that while the cognizant DCMA ACO "concurred" with certain of the DCAA findings as expressed in a June 2006 DCAA audit report, the DCMA ACO had also reviewed KBRSI's corrective action plan and found it to be "adequate" and "acceptable." Id. at 32. In a memorandum prepared by the DCMA ACO dated April 20, 2006 referenced by the Army, the ACO states that while "[t]here are some remaining issues and a few new issues" with KBRSI's estimating system, there is "nothing of sufficient significance to place the system in jeopardy," but concludes that he "advised KBR[SI] and DCAA that [he] would not remove the 'with Corrective Action' stipulation on the system determination until all the various changes are fully incorporated." Agency Supp. Submission (Sept. 11, 2007), exh. 1, DCMA ACO Memorandum (Apr. 20, 2006).

With regard to the DCAA's expressed concerns regarding KBRSI's accounting system, the agency explains, without providing any supporting documentation, that it "relied on more current system information than the summary information" included in the DCAA audit report. Contracting Officer's Supp. Statement at 34. The agency also notes that because the DCMA ACO has not withdrawn his determination of April 1997 that KBRSI's accounting system was "adequate," its evaluation of this aspect of KBRSI's proposal was reasonable. Id.

The agency makes a similar argument regarding its evaluation of KBRSI's billing system, pointing to an April 2007 letter from the cognizant DCMA ACO to KBRSI wherein the DCMA ACO states that he has determined KBRSI's billing system to be

“adequate.”¹⁶ Id. at 33; Agency Supp. Report, Tab 7.2, ACO Letter to KBR (Apr. 6, 2007).

In sum, the agency concludes that KBRSI’s proposal provided a “feasible approach with extensive detail in the cost, property, security, and quality areas that demonstrates a thorough understanding of the mission essential requirements of the RFP,” as well as “adequate detail and understanding in the supply chain management and subcontract management area.” Contracting Officer’s Supp. Statement at 35-36; AR, Tab 30, Briefing Charts to the SSA, at 56.

Based on our review, while we recognize that the agency considered the DCAA audit report to some extent during its evaluation of KBRSI’s proposal, we have concern that the record does not support the agency’s rating of KBRSI’s proposal as “outstanding” under the business systems subfactor. Even though the agency has supported its “outstanding” rating for this subfactor with numerous significant strengths, AR, Tab 8, SSEB Report, at 43-44, it is difficult to reconcile that rating with DCAA’s expressed concerns regarding KBRSI’s accounting, estimating, purchasing, and billing business systems. In this regard, as noted above, the business systems were to be evaluated as to “how well it is able to provide effective contract oversight and tracking of costs, subcontracts, equipment, personnel, and changes in requirements in a contingency environment,” and “how well the proposed systems will provide complete, reliable, timely, consistent and transparent data to permit effective Government oversight and management,” to which matters the DCAA concerns are very pertinent. See RFP at 100.

While the agency has pointed out that DCAA’s role in the government approval process and evaluation process of this procurement is advisory, that fact alone does not provide an adequate explanation as to why KBRSI’s proposal merited an “outstanding” rating, given DCAA’s expressed concerns.¹⁷ Moreover, we find unreasonable the agency’s explanation that, despite DCAA’s expressed concerns regarding KBRSI’s accounting system, the simple fact that the ACO has not withdrawn its 1997 approval of the accounting system supports an “outstanding” rating under the business systems subfactor. The same conclusion can be drawn with regard to the deficiencies found by DCAA with regard to KBRSI’s billing system, where the agency explains only that KBRSI’s billing system was found “adequate” by

¹⁶ With regard to KBRSI’s billing system, the agency argues that contrary to the protester’s characterizations, DCAA’s April 2007 report “stated that the revised procedures are acceptable.” Contracting Officer’s Supp. Statement at 34. As indicated above, this DCAA report found KBRSI billing system procedures to still be “inadequate.” DCAA LOGCAP IV/KBRSI Audit (Apr. 20, 2007) at 39.

¹⁷ The Army does not specifically take issue with the accuracy of the observations made in DCAA’s April 2007 report.

DCMA in April 2007. Similarly, in addressing DCAA’s continuing view that KBRSI’s purchasing system has “significant deficiencies,” the agency points out that the DCMA ACO “continue[d] the approved status” of KBRSI’s purchasing system in October 2006. Agency Supp. Report, Tab 7.6, DCMA Letter to KBRSI (Oct. 3, 2006), at 1.

In sum, although the record indicates that the Army considered or was at least aware of DCAA’s concerns regarding KBRSI’s business systems, it appears that DCAA had ongoing concerns with KBRSI’s business systems that had not been completely addressed by the time of the evaluation here. The Army does not explain why these concerns did not remain a factor in the evaluation or why the DCMA ACO’s “approv[al]” (either previous or subsequent) of the business systems in question addressed DCAA’s concerns regarding the merits of the business systems proposed. We also have concerns about the apparent inconsistency between the numerous instances in which the record characterizes KBRSI’s business systems as “adequate” and the agency’s ultimate evaluation of KBRSI’s proposal under the business systems subfactor as “outstanding.”

HCN EVALUATION

The protesters argue that the solicitation was fundamentally flawed, in that it either was misleading or lacked necessary information regarding the use and mix of HCNs, TCNs, or ExPats in the performance of the scenario requirements.

As set forth previously, each offeror’s TEP was to include, among other things, a scenario staffing and mobilization plan that included the necessary labor hours broken out by labor category as well as by whether the individuals proposed were HCNs, TCNs, or ExPats. RFP at 94-95. The offerors’ proposed percentages of HCNs, TCNs, and ExPats were as follows:

	IAP	CMG	Fluor	KBR	DynCorp
HCN	82%	47%	57%	62%	21%
TCN	0%	32%	36%	31%	64%
ExPat	18%	21%	7%	7%	15%

AR, Tab 8, SSEB Report, at 291, 295, 312, 315, 327, 332, 348, 355, 382, 386.

The record reflects that the agency evaluated the HCN, TCN, and ExPat percentages proposed, and noted as a “strength” of CMG’s TEP that “[t]he Offeror has a good staffing plan for mitigating lockouts or force protection events by having less than 50% HCN staff.” *Id.* at 291, 295. The agency evaluated DynCorp’s TEP as having a “significant strength” on the basis that DynCorp proposed “a high percentage of EXPAT and TCN labor, providing a highly skilled/flexible workforce, mitigating risk associated with lockouts and increased force protection, appreciably increasing the probability of successful performance.” *Id.* at 312, 315.

In contrast, the agency found that IAP's TEP posed a "significant weakness" because of its proposed "workforce that is 82% HCN overall and 91% of all drivers in transportation," and commented, among other things, that "[t]his approach, under requirements of the scenario, leads to an appreciably increased risk to execution of the PWS requirements which were not sufficiently reduced by the Offeror's risk mitigation plan." *Id.* at 348. Similarly, the agency found with regard to Fluor's TEP that "[a]lthough the rationale for HCN/TCN/EXPAT ratio was provided, a substantial percentage of the workforce remains comprised of HCN labor [57 percent], which increases the force protection burden and risk to performance during lockouts and force protection events"; this aspect of Fluor's TEP was assigned a "weakness" by the SSEB.¹⁸ *Id.* at 327, 332. The agency made a similar finding with regard to KBRSI's TEP, and assessed this aspect of KBRSI's TEP as a "weakness" because "[a] majority of workforce is HCN [62 percent] which increases the force protection burden and risk to performance."¹⁹ *Id.* at 382, 386.

IAP argues throughout its protests that the offerors were essentially required by the scenario to maximize the use of HCNs in their technical proposal, given the scenario's statement that "[t]he contractor shall make full use of host nation . . . labor." AR, Tab 4, Initial Scenario, at 11; Tab 26, Changed Scenario, at 10; IAP Protest (July 13, 2007) at 1, 7-8, 17-25; IAP Protest (Aug. 6, 2007) at 2-4; IAP Protest (Aug. 17, 2007) at 8. IAP contends that because of the agency's position regarding the use of HCNs articulated in the RFP, its proposal should have received a favorable rating, given its relatively high percentage of HCNs proposed. In the alternative, IAP argues that given the agency's position as reflected in the evaluation documents, the "[s]olicitation suffered from a latent ambiguity regarding the Army's true views on the use of local labor." IAP Comments (Aug. 17, 2007) at 12.

CMG, on the other hand, which proposed a relatively low percentage of HCNs to TCNs and ExPats that was evaluated as a "strength" by the agency, argues that because of the "divergent assumptions" made by the offerors with regard to the appropriate percentages of HCNs, TCNs, and ExPats, and the fact that this mix was a "major cost driver" in the offerors' proposals, the agency should have either "baseline[d]" the HCN, TCN, ExPat ratio by amendment to the solicitation, or made "reasonable MPC adjustments" depending upon the agency's view of the percentages proposed. AR, Tab 8, SSEB Report, at 17-18; CMG Comments (Aug. 23, 2007) at 7; CMG Protest (Aug. 17, 2007) at 12.

¹⁸ The agency also found Fluor's "mitigation plan did not substantially reduce the risk to mission execution." AR, Tab 8, SSEB Report, at 327, 332.

¹⁹ Similarly, the agency also found KBRSI's "mitigation plan did not substantially reduce the risk to mission execution." AR, Tab 8, SSEB Report, at 382, 386.

In short, both protesters, in addition to challenging the propriety of this aspect of the agency's evaluation, argue to some extent that the solicitation should have included more specific information regarding appropriate percentages of HCNs, TCNs, and ExPats in light of their importance to the agency as reflected in the evaluation documents, and the impact of the percentages on the offerors' evaluated costs.²⁰

We do not agree with the protesters that the RFP was flawed or otherwise suffered from a latent ambiguity, and find much of the agency's evaluation here, including the general underlying agency proposition that too high a percentage of HCNs poses certain risks, to be unobjectionable. In this regard, the solicitation should be read and interpreted as a whole, and therefore, the solicitation's statement regarding the use of HCNs must be read together with the remainder of the solicitation that set forth the requirements of the scenario and the conditions under which those requirements will be performed. See Brown & Root, Inc., and Perini Corp., a joint venture, B-270505.2; B-270505.3, Sept. 12, 1996, 96-2 CPD ¶ 143 at 8.

In our view, and as found by the agency, IAP's position places undue importance on the use of HCNs at the risk of successful performance. This is apparent from IAP's TEP, where IAP identifies the possibility that, even with IAP's mitigation plan, if during the performance of the scenario "Base Command directs camp lock down and removal or scale back of HCN workforce," there would be "[s]ubstantial risk with significant doubt that [IAP] can be successful" in performing the scenario's requirements, given its relatively high proposed ratio of HCNs to TCNs and ExPats. IAP TEP at 6. Although the scenario encouraged the use of HCNs, it cannot reasonably be read to require or otherwise mandate the use of HCNs at a level that may jeopardize or put at risk the successful performance of the scenario's requirements.

Nor do we agree with the protesters that the solicitation was flawed because it did not provide sufficient information regarding what proposed percentages of HCNs, TCNs, and ExPats the agency may evaluate as, for example, a "weakness" or a "strength." The agency argues that the provision of more information regarding the ratios of HCNs to TCNs and ExPats "would have eliminated the Agency's ability to evaluate the offeror's expertise, judgment, and understanding of how to provide critical CS/CSS services in a third world combat environment." AR at 23. The agency explains that "[t]he ability of the contractor to understand such an environment, identify and balance performance risks, and then formulate a feasible approach for providing services, is at the very heart of the LOGCAP program," and that "[t]o have dictated a certain level of local resourcing . . . would have greatly

²⁰ CMG argues that "Fluor and KBR[SI] . . . enjoyed over \$50 million in cost savings" as a result of their "differing staffing assumptions." CMG Supp. Protest (Aug. 17, 2007) at 24.

reduced the Agency's ability to assess an offeror's understanding in performing these critical requirements." Id.

In this regard, the record reflects that each of the offerors proposed differing percentages of HCNs, TCNs, and ExPats to fill the various positions dictated by their own unique approaches (as well as differing levels of effort), and made differing judgments as to the benefits and risks associated with their proposed percentages. In addition to the information set forth in the solicitation, including the scenario, the record reflects that the agency raised during discussions with KBRSI, Fluor, and IAP the agency's belief that the relatively high percentages of HCNs proposed posed certain risks that had not been, in the agency's view, adequately addressed in the respective offerors' proposals. AR, Tab 8, SSEB Report, at 340, 371, 395. We agree with the agency that the RFP, as well as the conduct of the agency during discussions, provided sufficient information to allow for offerors to compete intelligently and on an equal basis while providing sufficient latitude to allow for offerors to make their own judgments regarding HCNs, TCNs, and ExPats based upon the offerors' expertise and approach to accomplishing the scenario's objectives and requirements. See American Contract Servs., Inc., B-256196.2, B-256196.3, June 2, 1994, 94-1 CPD ¶ 342 at 4-5.

As to the merits of the agency's evaluation of the percentages of HCNs, TCNs, and ExPats proposed by the offerors, we find much of the agency's evaluation here to be reasonably based (except as discussed below). In this regard, the record reflects that the agency had "concerns in using an HCN labor force under the conditions set out in the scenarios," commenting with regard to the ratio of HCNs proposed by IAP that "HCN access to the facilities will be limited during elevated threat conditions, adversely affecting the Offeror's ability to meet the contractual requirements in support of the warfighter." Contracting Officer's Statement at 44; AR, Tab 8, SSEB Report, at 348. The agency's concern with the use of too high a percentage of HCNs to perform the scenario requirements is also reflected in the agency's discussions with KBRSI, Fluor, and IAP, regarding their relatively high proposed percentages of HCNs, as well as in the agency's evaluation of proposals, where the relatively high proposed percentages of HCNs, as set forth in the proposals of KBRSI, Fluor, and IAP, were considered a "weakness" or "significant weakness," and the relatively low percentages of HCNs proposed by CMG and DynCorp were considered a "strength" or "significant strength." The agency states in this regard that "[a]ll experienced contractors are very aware of the security concerns with using HCN labor." AR at 20. As such, we see no basis to question the reasonableness of the agency's general proposition, evident throughout the record, that too high a percentage of HCNs poses certain risks that can adversely affect security as well as the performance of the scenario's requirements. We also note here that the agency's evaluation of the percentages of HCNs proposed was consistent with the RFP's technical evaluation factors.

However, while an agency properly may evaluate technical proposals for adequacy against an undisclosed estimate of appropriate staffing where the RFP notifies offerors that staffing is an area of evaluation and the estimate is reasonable, see Doss Aviation, Inc.; Dominion Aviation, Inc., B-275419 et al., Feb. 20, 1997, 97-1 CPD ¶ 117 at 5, we find that the agency's evaluation was not reasonable insofar as the agency, in both the contemporaneous documentation as well as in arguments made during these protests, provides unsupported, or inconsistent and alternative, explanations, regarding what percentages of HCNs, TCNs, and ExPats should be considered as acceptable or as "strengths" or "weaknesses."²¹

Most notable is the agency's explanation during the course of these protests of the basis for the 46 percent HCNs that was reflected in the agency's independent government cost estimate (IGCE):

As stated in [a previous] response, . . . there is no documentation to support this figure. It was generated by the IGCE generator based on the skill mix required to execute the performance work statement. The IGCE generator did not take security considerations into account because of the generic nature of this tool. HCNs were assigned to accomplish low skill tasks. The technical evaluators, during the course of the evaluation considered the security implications associated with ratio of HCN labor hour, and determined that, all factors considered, this ratio was acceptable.

Contracting Officer's Supp. Statement, at 39. Although this explanation provides that the technical evaluators considered a staff comprised of 46 percent HCNs to be "acceptable," there is no explanation in the record for the agency's conclusion here. Additionally, we note that the same evaluators found that CMG's TEP's proposed percentage of 47 percent HCNs constituted a "strength," commenting that "[t]he Offeror has a good staffing plan for mitigating lockouts or force protection events by having less than 50 percent HCN staff."²² AR, Tab 8, SSEB Report, at 291, 295.

Moreover, the agency also repeatedly refers to Amendment 15 to the solicitation that informed offerors that they "should assume conditions similar to those currently existing in Iraq for the purpose of assessing . . . the ratio of [HCNs] represented in its proposed workforce." RFP amend. 15, at 3; see AR at 13, 20; Contracting Officer's Statement at 42. The agency notes that "[a]t the time Amendment 15 was issued, the

²¹ The decision in Doss Aviation, Inc.; Dominion Aviation, Inc., supra, recognizes, however, that it is inappropriate to determine the acceptability of proposals by the mechanical application of the undisclosed estimate, where, as in the present case, the RFP encourages innovative staffing approaches. Id. at 5-6.

²² There is no explanation of the 50-percent figure in the record.

overall HCN workforce in Iraq was 28%,” and that “at the time Amendment 15 was issued the HCN labor ratio in Iraq on the LOGCAP contract was approximately 8%.” Contracting Officer’s Statement at 42, 44; see AR at 20, 28; Tab 4.5.1, Contractor Census. The agency, referring to the 28-percent figure for overall HCN workforce in Iraq, clarifies that “[t]his census number was unknown to the evaluators at the time of the evaluation” (and presumably, the offerors),²³ but states that “[n]onetheless, these census numbers reflect the realistic security concerns and performance risks involved with the use of HCN labor.”²⁴ AR at 21.

Another document that was available to the agency and offerors (and which was referenced in the RFP, IAP’s TEP, and the SSEB in its evaluation of IAP’s proposal) is the LOGCAP “Worldwide Management and Staffing [Plan] (WMSP).” AR, Tab 23. As pointed out by IAP, the WMSP states that “[t]he Contractor will use a preponderance of locally and/or regionally available labor,” and describes a number of “distinct advantages” associated with the “[e]mployment of HCNs.” *Id.* at 15. Additionally, and most relevant here, the WMSP provides as a “typical labor breakout” the following percentages: ExPats (10%-15%), TCNs (5%-30%), and HCNs (65%-85%). *Id.* Although the SSEB’s explanation, in its evaluation of IAP’s TEP and determination that its proposed 82-percent HCN workforce represented a “weakness,” that “the highest use of HCNs contemplated in the WMSP *in any type of contingency operation* is 85%,” and that while “[t]he Government would expect a relatively high use of HCNs . . . for humanitarian relief type missions in non-combat environments, but not for the combat environment that is provided in the Solicitation’s scenario,” seems reasonable, the SSEB does not explain or provide any further insight regarding the WMSP, which shows a percentage of 65-percent HCNs as the lowest part of the range in the typical labor breakout for LOGCAP task orders. AR, Tab 8, SSEB Report, at 350.

In short, the agency has failed to adequately explain what percentage or range of percentages of HCNs to TCNs and ExPats constituted a “weakness” or “strength,” or simply evidenced technical acceptability. The agency’s arguments here can be read as supporting percentages of HCNs for performance of this scenario ranging from 8 to 10 percent, to 28 percent, to 46 percent to 50 percent and above. This lack of a

²³ It appears that the SSEB was aware of the approximate census numbers (8 percent) regarding the percentage of HCNs working on the LOGCAP requirements in Iraq, as evidenced by its statement in evaluating IAP’s TEP that at the time of the issuance of Amendment 15, “the workforce performing the LOGCAP requirements in Iraq was comprised of approximately 10 percent HCNs.” AR, Tab 8, SSEB Report, at 350.

²⁴ That the agency gives weight to this percentage is demonstrated by the agency’s response to IAP’s protest that “IAP proposed an HCN ratio that was a staggering 54% higher (or approximately three times) than the reality in Iraq.” AR at 20.

reasonable explanation, considered in conjunction with the agency's apparently alternative arguments, undermines the reasonableness of the agency's evaluation here, notwithstanding our view that the agency's determinations in evaluating proposals that an offeror could propose too high a percentage of HCNs were reasonably based. See Doss Aviation, Inc.; Dominion Aviation, Inc., supra, at 5.

Additionally, though the solicitation stated that “[t]he contractor shall make full use of host nation . . . labor,” which we believe clearly encouraged offerors to maximize the use of HCNs in their technical proposals, there is nothing in the evaluation record or the agency's arguments here that indicates that this statement was considered in evaluating the offerors' TEPs. See AR, Tab 4, Initial Scenario, at 11; Tab 26, Changed Scenario, at 6. While, as indicated, we find reasonable the agency's view that an offeror could propose too high a percentage of HCNs, we also believe that an offeror under the terms of the RFP here could also have proposed too few HCNs, given the RFP's statement that offerors were to “make full use” of HCNs.²⁵

We sustain the protests. Because resolving the concerns discussed above requires reopening discussions, we recommend that the Army do so, request and review revised proposals, evaluate those submissions consistent with the terms of the solicitation, and make a new source selection. In the event a proposal or proposals other than KBRSI's, Fluor's, and DynCorp's are found to represent the best value to the government, one or more of the contracts previously awarded should be terminated and a contract be awarded to the successful offeror or offerors in accordance with the terms of the RFP. We also recommend that the agency reimburse IAP and CMG the costs of filing and pursuing their protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2007). IAP's and CMG's certified claims for the costs, detailing the time expended and costs incurred, must be submitted directly to the Army within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protests are sustained.

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²⁵ This could adversely affect the rating of DynCorp's proposal, given its low HCN percentage.