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## Decision

**Matter of:** CSI, Inc.; Visual Awareness Technologies and Consulting, Inc.

**File:** B-407332.5, B-407332.8, B-407332.9

**Date:** January 12, 2015

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Gerald H. Werfel, Esq., and Todd Whay, Esq., Pompan, Murray & Werfel, P.L.C., for CSI, Inc., and Steven J. Koprince, Esq., and Amanda M. Wilwert, Esq., Petefish, Immel, Heeb & Hird, LLP, for Visual Awareness Technologies, Inc., the protesters. Alexander J. Brittin, Esq., Brittin Law Group, PLLC, and Jonathan D Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for CoSolutions EIS JV, LLC, the intervenor.

Clea B. Efthimiadis, Esq., and Randall Kemplin, Esq., Department of the Navy, for the agency.

Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protests challenging the agency's cost realism analysis and adjustments to the protesters' probable costs are denied where the record shows that the agency was reasonably concerned that the protesters' final revised proposals did not adequately explain the basis for significant reductions in the proposed costs.

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### DECISION

KNWEBS, Inc., d/b/a CSI, Inc., of Oklahoma City, Oklahoma, and Visual Awareness Technologies and Consulting, Inc. (VATC), of Tampa, Florida, protest the award of a contract to CoSolutions EIS JV, LLC, of Sterling, Virginia, under request for proposals (RFP) No. N65236-11-R-0014, issued by the Department of the Navy, Space and Naval Warfare Systems Center, Atlantic, for base operations and administrative support services. CSI and VATC challenge the agency's cost evaluation, and the reasonableness of the award decision.

We deny the protests.

## BACKGROUND

The Navy operates a computer data center in New Orleans, Louisiana, which is responsible for maintaining various computer systems, software programs, and help-desk services to assist on-line users of its programs. Agency Report (AR) (CSI) at 2; AR (VATC) at 2.<sup>1</sup> The center supports the Navy's personnel and pay systems and its Program Executive Office Enterprise Information System programs, such as Navy Future Pay and Personnel, Navy Single Integrated Personnel and New Order Writing. Id. In addition, the center provides support for other government activities, including: Commander, Naval Reserve Force; Navy Recruiting Command; Navy Personnel Command; Department of Homeland Security; and Veterans Administration. Id.

On December 9, 2011, the Navy issued RFP No. N65236-11-R-0014, as a set-aside under the Small Business Administration 8(a) program, for an indefinite-delivery, indefinite-quantity contract that contemplated the issuance of cost-plus-fixed-fee and fixed-price task orders, for a base period of 1 year, and two 1-year options. The RFP sought to acquire customer support center, systems administration, and network security support. See RFP at 6.

The RFP provided for award on a best-value basis considering three evaluation factors: (A) technical capability, (B) past performance, and (C) cost/price. RFP at 104-107. The technical capability factor was comprised of four subfactors: A1, customer support center; A2, data operations center support; A3, systems administration support; and A4, network security support. Subfactor A1 was more important than subfactors A2, A3, and A4, combined. Subfactors A3 and A4 were of equal importance, and each was more important than subfactor A2. Id. at 105. For purposes of award, the technical capability factor was significantly more important than past performance; the non-cost factors, when combined, were significantly more important than cost. Id. at 104.

As relevant here, the RFP stated that the cost/price evaluation would be based on information in an offeror's proposal, as well as information from sources, such as the Defense Contract Audit Agency (DCAA), the Defense Contract Management Agency (DCMA), other contracts, and commercial sources. Id. at 107. The RFP provided for the evaluation of the reasonableness and realism of offerors' proposed cost/price. The RFP stated that an offeror's proposed costs could be adjusted, for purposes of evaluation, based on the results of the cost realism evaluation. Id. Offerors were required to propose their costs using a pricing model provided in the RFP. Id. at 100; AR, exh. 7, Pricing Model, at 1-3. As relevant here, the pricing model provided fixed labor categories and hours, including a labor hour estimate

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<sup>1</sup> The Navy provided separate reports for each protest; the exhibits for both reports followed the same numbering system.

breakdown for each labor category as either professional or Service Contract Act (SCA). AR, exh. 7, Pricing Model, at 1-3; RFP at 101-102. Offerors were required to propose rates for direct labor, fringe benefits, overhead, subcontracted labor, general and administrative (G&A) expenses, and escalation rates, as well as other direct and indirect costs and the offeror's fee. AR, exh. 7, Pricing Model, at 1-3.

The Navy received proposals from 13 offerors, including CSI, eAlliant, VATC, and CoSolutions, by the initial closing date of March 2, 2012. Based on the initial evaluation results, the source selection authority (SSA) found that eAlliant's proposal, which had an overall technical capability rating of good, a past performance rating of substantial confidence, and a proposed cost of \$66,677,565 provided the best value.<sup>2</sup> Award was made to eAlliant on the basis of initial proposals on September 7, 2012.

TRESCOS Joint Venture, an unsuccessful offeror, filed a protest with our Office on September 14 challenging the award. The agency subsequently advised our Office that it would take corrective action, and we dismissed the protest. Based on its reevaluation of the proposals, the Navy made award to eAlliant for the second time on January 25, 2013. On January 29, TRESCOS filed a protest in our Office challenging this award. On March 15, the Navy again decided to take corrective action, and our Office subsequently dismissed the protest.

The Navy issued RFP amendment No. 0006 to the RFP on May 17, 2013, which included the following instructions regarding costs:

If your proposed cost is lower than your original proposed cost submitted on 02 MAR 2012, you will need to provide [a] rationale to support this lower price (i.e., changes to the technical proposal, changes in team members, changes in indirect rate(s), etc.). This should be no more than 5 pages that is included in the Cost Narrative portion of the Business Proposal. This document is not included in the page count.

RFP, amend. 6, at 2.

The Navy conducted discussions with offerors and received final proposal revisions (FPRs). On July 29, 2014, after evaluating the revised proposals, the agency again

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<sup>2</sup> The possible ratings for the technical capability factor, and its subfactors and sub-subfactors, were outstanding, good, acceptable, marginal, and unacceptable. The possible ratings for the past performance factor were substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence.

made award to eAlliant. See AR, exh. 12, Source Selection Decision Document (SSDD) (Sept 18, 2014), at 2. While conducting debriefings, the agency found that an apparent mistake had been made in the CoSolutions cost realism analysis, and the Navy again concluded that corrective action was required. Id. at 4. On August 1, TRESKOS filed a third protest with our Office. Based on the agency's decision to take corrective action, our Office dismissed TRESKOS's protest.

On August 12, the Navy reevaluated offerors' technical and cost proposals. The final results were as follows:

	eAlliant	CoSolutions	VATC	CSI
TECHNICAL CAPABILITY	ACCEPTABLE	GOOD	GOOD	GOOD
Customer support center	Acceptable	Good	Good	Good
Data operations center	Acceptable	Acceptable	Good	Acceptable
Systems administration	Acceptable	Acceptable	Acceptable	Acceptable
Network security	Acceptable	Acceptable	Acceptable	Acceptable
PAST PERFORMANCE	SUBSTANTIAL CONFIDENCE	SUBSTANTIAL CONFIDENCE	SUBSTANTIAL CONFIDENCE	SUBSTANTIAL CONFIDENCE
PROPOSED COST	\$66,300,100	\$66,074,102	\$61,754,929	\$66,073,338
EVALUATED COST	\$66,332,857	\$67,105,449	\$73,693,659	\$74,645,382

AR, exh. 12, SSDD (Sept. 18, 2014), at 21.

With respect to costs, the Navy made upward adjustments to VATC's proposed costs in the amount of \$11,938,730.18. These adjustments were made to VATC's and its proposed subcontractors' labor rates, professional escalation rates, health and welfare rates, and indirect cost rates. Id. at 20-21. With respect to CSI, the Navy made upward adjustments to CSI's proposed costs in the amount of \$8,572,043.79. These adjustments were made to CSI's and its proposed subcontractors' labor rates, professional escalation rates, and indirect cost rates. Id. at 12.

Based on the revised evaluations, the SSA concluded that CoSolutions provided the best value. Id. at 33. With respect to CSI, the SSA did not make a specific comparison to CoSolutions' proposal, but discounted CSI's proposal due to its higher evaluated cost. See id. at 26-28. With respect to VATC's proposal, the SSA noted that CoSolutions' evaluated cost was 9 percent lower than VATC's, and that the protester's proposal did not provide any specific strengths or benefits that warranted paying this cost. See id. at 30. The SSA selected CoSolutions for award on September 18. These protests followed.

## DISCUSSION

CSI and VATC challenge the Navy's evaluation of the realism of the protesters' proposed costs.<sup>3</sup> Specifically, the protesters challenge the agency's cost realism adjustments that resulted from the agency's rejection of proposed reductions in the protesters' FPR costs. CSI and VATC challenge the agency's evaluation of their proposed professional escalation rates and direct labor rates; VATC also challenges the agency's evaluation of its proposed indirect cost rates. For the reasons discussed below, we conclude that the agency's evaluations were reasonable and therefore find no basis to sustain the protests.<sup>4</sup>

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive 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); Palmetto GBA, LLC, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 7. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work

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<sup>3</sup> CSI also argues that the Navy unreasonably assigned its proposal less than the highest possible rating under the technical capability factor, despite assigning it the highest rating of substantial confidence under the past performance factor. In this regard, the protester notes that the technical capability factor largely addressed offerors' experience, and that the agency evaluated the same contract references for this factor and the past performance factor. As our office has held, an offeror's experience is different from its past performance, and an agency may reasonably provide for separate evaluation of these factors in a solicitation. See Shaw-Parsons Infrastructure Recovery Consultants, LLC; Vanguard Recovery Assistance, Joint Venture; B-401679.4, Mar. 10, 2010, 2010 CPD ¶ 77 at 14. In this regard, the former focuses on the degree to which an offeror has actually performed similar work, whereas the latter focuses on the quality of the work. See Commercial Window Shield, B-400154, July 2, 2008, 2008 CPD ¶ 134 at 3. Here, the RFP stated that the agency's evaluation under the technical capability factor would evaluate an offeror's experience performing similar work to "develop insight into the offeror's relative capability" to perform the technical requirements of the work. RFP at 104. In contrast, the past performance factor evaluation was to assess the quality of an offeror's performance in areas including quality of service, schedule, cost control, business relations, and management of key personnel. Id. at 106. On this record, we find no merit to CSI's argument that the agency was compelled to assign identical ratings under the experience and past performance subfactors.

<sup>4</sup> Although we do not address every issue raised by the protesters, we have reviewed each argument and find that none provides a basis to sustain the protests.

to be performed. FAR § 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. FAR § 15.404-1(c); Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Further, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

As an initial matter, the record here shows that the Navy was concerned that eAlliant's evaluated cost had been disclosed in three awards prior to the request for FPRs. AR (CSI) at 14-15; AR (VATC) at 17. For this reason, the agency required offerors to "provide [a] rationale to support" such reductions. See id.; RFP, amend. 6, at 2. The agency's price analyst explains that her evaluation of the offerors' FPR costs was informed by her concern that some offerors, such as CSI and VATC, appeared to have reduced their proposed costs in order to remain competitive with eAlliant's lower evaluated costs, and did not provide an independent explanation for lowering their earlier proposed costs. See AR, exh. 16A, Price Analyst Affidavit (CSI) at 1; exh. 16C, Price Analyst Affidavit (VATC) at 3. As discussed below, the agency's concern regarding the realism of offerors' cost reductions was of central importance to the evaluation of their FPR cost proposals.

#### Professional Labor Escalation Rates

We first address CSI's and VATC's arguments concerning the Navy's evaluation of their professional labor (non-SCA) escalation rates. The RFP required offerors to propose escalation rates for the contract option years, as follows:

NOTE: All labor categories shall be escalated for the option years.  
. . . For the non-SCA (exempt) labor categories, offerors shall use actuals, if known, or rates based on historical data, standard practice, or those accepted by DCAA for bidding purposes. The narrative to the Business Proposal must include supporting rationale for the escalation rate proposed.

RFP at 92.

CSI and VATC, as well as their proposed subcontractors, reduced their proposed professional escalation rates in their FPRs. CSI reduced its proposed escalation rate from [DELETED] percent to [DELETED] percent; CSI's proposed

subcontractors, [DELETED], reduced their proposed escalation rates from [DELETED] percent to [DELETED] percent and from [DELETED] percent to [DELETED] percent, respectively. AR, exh. 21, SSDD, at 12-13. VATC reduced its proposed escalation rate from [DELETED] percent to [DELETED] percent; VATC's proposed subcontractors, [DELETED], reduced their proposed escalation rates from [DELETED] percent to [DELETED] percent and from [DELETED] percent to [DELETED] percent, respectively. Id. at 19-21. In each case, the Navy concluded that the protesters and their subcontractors had failed to adequately explain the basis for the reductions; the agency therefore adjusted the proposed escalation rates to the initially-proposed levels.

CSI and VATC each argue that the Navy's adjustment of their proposed escalation rates was unreasonable because the agency did not identify a probable cost for each protester, nor did it specifically find that their proposed rates were unrealistic. Instead, the protesters argue that the agency merely returned their proposed escalation rates to their prior levels.

We think that the record shows that the Navy reasonably evaluated the realism of the protesters' proposed costs in the context of the reductions proposed for the FPRs. As discussed above, the RFP advised offerors that they were required to provide a rationale to support the reductions in their proposed costs from the initial proposals. RFP amend. 6 at 2. Additionally, we think the agency's consideration of the protester' initially-proposed rates is consistent with the FAR cost realism provisions which contemplate a comparison of an offeror's proposed costs to its prior cost estimates or data. See FAR § 15.404-1(c)(2)(iii).

Next, we think the agency reasonably concluded that the protesters failed to explain the basis for their reductions, and that the lack of support demonstrated that the proposed reductions--and resulting costs--were not realistic. As the RFP explains, the escalation rates for non-SCA (exempt) personnel was to be based on actual data, such as prior current escalation rates, historical data, standard business practices, or DCAA-approved rates. See RFP at 92.

In fact, as discussed below, each protester explained in its proposal that its escalation rate was based on historical data or analyses. See, e.g., AR, exh. 18A, CSI Business and Price Proposal (Jun. 2013) at 8; exh. 18C, VATC Business and Price Proposal (Jun. 2013), Cost Differential Explanation, at 1. VATC's proposal provided the following explanation for its reduced escalation rate: "Annual escalation on professional labor was adjusted to be consistent with our historical rate use." AR, exh. 18C, VATC Business and Price Proposal (Jun. 2013), Cost Differential Explanation, at 1. CSI's proposal stated that it reduced its proposed escalation rate based on a "comprehensive analysis" of the following data points:

- Analysis of historical actual cost increases (i.e. benefits, training...)

- Financial results Forecasts
- Salary increases projection based on performance rewards and annual “salary/compensation analysis.”

AR, exh. 18A, CSI Business and Price Proposal (Jun. 2013) at 8. The protesters’ subcontractors also provided either similar generic explanations for the reductions, or omitted explanations. See, e.g., AR, exh. 18A, [DELETED] (CSI subcontractor) Business and Price Proposal (Jun. 2013) at 4 (“The escalation rate for exempt employees was reviewed and reduced to [DELETED]% annually. This rate is more in line with the current economic outlook than the previously proposed rate.”); exh. 18C, GCS (VATC subcontractor) Business and Price Proposal (Jun. 2013) at 1-4 (no explanation for reduction).

The Navy explains that it accepted the protesters’ initial proposal escalation rates as an indication of realism for purposes of evaluating the realism of the decreased FPR escalation rates. AR (CSI) at 18-20, 30-31; AR (VATC) at 17-19, 26-27. Because the escalation rates were required to be based on an offerors’ actual data, the agency states that it assessed, consistent with the direction in RFP amendment No. 6, whether offerors adequately explained the basis for a reduction in the proposed rate. Id. On this record, we find that the agency reasonably concluded that the protesters failed to explain the basis for their reductions.

With regard to the adjustments to CSI’s and VATC’s proposed escalation rates, the protesters argue that the Navy unreasonably adjusted the proposed costs to the initial proposal levels. The protesters argue that the agency was required to independently identify a most probable cost, and to adjust to that level. The protesters contend that the agency in fact established a 2 percent escalation for professional labor as the realistic level for this procurement, based on the following discussion in the agency’s business clearance memorandum (BCM):

Prior to evaluation it was determined that escalation for professional categories would be at least 2%, and that escalation below 2% was considered a risk, and adjusted to 2% in the cost realism analysis if not supported by strong and convincing data.

AR, exh. 13, BCM, at 19.

To the extent the protesters argue that the Navy’s internal estimates identified a 2 percent escalation rate as the realistic level for all offerors, and that the Navy was therefore prohibited from adjusting offerors’ proposed rates above this level, we disagree. The Navy explains that it considered any initially-proposed escalation rate below 2 percent to be unrealistic, and that it adjusted any escalation rates below this level to 2 percent. AR (CSI) at 30-31; AR (VATC) at 25-26. The agency, however, did not consider 2 percent to be a ceiling where, as here, an offeror



proposed an initial escalation rate above 2 percent. See id. Consequently, if an offeror reduced its initially-proposed escalation rate in its FPR, but did not provide an explanation for that reduction, the agency concluded that the rate was unrealistic and should be adjusted to its initial level. Id.

We think that the agency's adjustments were reasonable because, as discussed above, the RFP required offerors to use actual data for their professional escalation rates. To the extent the protesters provided escalation rates in their initial proposals that were higher than the government's estimates, we think the agency reasonably concluded that the protesters' intended for those escalation rates to be accurate. See The S.M. Stoller Corp., B-400937 et al., Mar. 25, 2009, 2009 CPD ¶ 193 at 14-15 (agencies are not required to make downward adjustments to an offeror's proposed costs if the agency concludes that higher than estimated costs are the result of factors unique to the offeror). On this record, we think the agency reasonably concluded that the protesters failed to justify their proposed rate reductions, and reasonably adjusted the proposed escalation rates to their previously-proposed level.

#### Direct Labor Rates

Next, VATC and CSI argue that the agency unreasonably adjusted their proposed labor rates. We find no merit to these arguments.

VATC argues that the Navy unreasonably rejected the proposed reductions to its FPR labor rates. VATC's FPR stated that it had reduced its proposed labor rates, based on the following rationale:

Team VATC conducted updated market research to include salary surveys dated June, 2013 and a team-wide salary review board for individuals categorized as Professional Personnel performing similar or like services in the PWS service areas. Based on this research we determined that wages have decreased from our original proposal and we have adjusted these labor categories accordingly.

AR, exh. 18C, VATC Business and Price Proposal (Jun. 2013), Cost Differential Explanation, at 1.

Here again, the protester contends that the agency failed to evaluate the realism of its proposed rates, and merely adjusted the proposed costs to the initial proposal levels. As with the labor escalation rates, the Navy explains that it evaluated whether an offeror's FPR provided an explanation for cost reductions, as required by RFP amendment No. 6. The agency concluded that VATC's FPR did not support the proposed decreases for certain labor rates because the explanation for the reductions did not identify the surveys it cited, or provide other specific data. AR (VATC) at 16-19, 32-33; exh. 16C, Price Analyst Affidavit (VATC), at 3-5. In light of

the generic, nonspecific citation to market research cited in VATC's FPR, we conclude that the agency reasonably found that the protester failed to provide an adequate explanation for its proposed reductions.<sup>5</sup>

CSI argues that the Navy unreasonably adjusted certain of its proposed labor rates based on a standard deviation analysis which compared the protester's proposed rates to those proposed by other offerors. CSI argues that this analysis, and the resulting adjustments to its proposed costs for these positions, was unreasonably mechanical.

In general, an agency must independently analyze the realism of an offeror's proposed costs based upon its particular approach, personnel, and other circumstances; a cost estimation method which mechanically adjusts proposed labor rates fails to satisfy the requirement for an independent analysis of an offeror's proposed costs. The Jonathan Corp.; Metro Mach. Corp., B-251698.3, B-251698.4, May 17, 1993, 93-2 CPD ¶ 174 at 11. Our Office has recognized, however, that where, as here, a solicitation provides a cost model that specifies the labor mix and level of effort for offerors' proposals--thereby making offerors responsible for proposing costs based on their own rates, but not differing technical approaches--an agency may reasonably evaluate the rates proposed for those established labor categories based on other data such as the rates proposed by other offerors. See Energy Enter. Solutions, LLC; Digital Mgmt., Inc., B-406089 et al., Feb. 7, 2012, 2012 CPD ¶ 96 at 9-10. Additionally, our Office has held that an agency may reasonably adjust an offeror's proposed labor rates where the offeror fails to provide adequate detail to support its rates, and where the agency relies on reasonable sources of data to support its adjustments. See Science Applications Int'l Corp., Inc., B-408270, B-408270.2, Aug. 5, 2013, 2013 CPD ¶ 189 at 6-7.

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<sup>5</sup> VATC also argues, generally, that offerors could not have provided detailed information in their FPRs concerning their rationales for the proposed cost reductions because RFP amendment No. 6 limited offerors to five pages for their explanations. VATC, however, used only approximately one and a quarter pages of its available five pages for its explanation. See AR, exh. 18C, VATC Business and Price Proposal (Jun. 2013), Cost Differential Explanation, at 1-2. The protester does not explain why it could not have, for example, provided citations to the unnamed salary surveys that it referenced in its FPR cost proposal. Additionally, the protester argues that offerors could not have known that they were expected to provide detailed information to support their proposed cost reductions, such as salary surveys, because the solicitation stated that offerors could provide "any rationale for submittal of a cost proposal lower than the original proposed submission." VATC Comments at 12-13, citing RFP amend. 6 at 2. To the extent the protester argues that the use of the term "any" meant that the agency was not requesting specific details, we do not think that this interpretation of the solicitation is reasonable.

Here, the Navy found that certain labor rates proposed by CSI and its subcontractors were significantly below the average of other offerors' proposed rates. For example CSI's proposed hourly rate of \$[DELETED] for its program manager was below the \$61.68 average proposed by other offerors for this category. AR, exh. 12, SSDD, at 13. The agency also found that CSI's proposed rate was below survey data from Salary.com, which showed a rate of \$55.00. AR, exh. 16A, Price Analyst Affidavit (CSI), at 2. Based on these data, the agency adjusted the protester's proposed costs for this labor category to \$[DELETED], which was -1 standard deviation from the other offerors' rates. Id. at 3.

We think that the Navy's evaluation of CSI's labor rates, and the adjustments, were reasonable. See Energy Enter. Solutions, LLC; Digital Mgmt., Inc., supra; Science Applications Int'l Corp., Inc., supra. Additionally, even if we were to conclude that the agency's adjustment of CSI's proposed costs for these positions based on a standard deviation of -1 was an overly-mechanical adjustment, we think the record shows that the agency reasonably found that some adjustment was required. In light of the significant difference between CSI's proposed costs and the costs reflected in other offerors' rates and the salary surveys, we think that there is no possibility of prejudice to CSI because a reasonable adjustment would have been within the range of the standard deviation calculation.

#### Fair Labor Standards Act Adjustment to Direct Labor

Next, CSI and VATC argue that the Navy unreasonably adjusted their proposed costs for labor categories for computer-related services. The agency found that each protester's FPR reduced its proposed labor rates for computer-related services to levels below the minimum hourly rate that is required for that position to be exempt from the Fair Labor Standards Act (FLSA) under applicable Department of Labor regulations. Specifically, the agency adjusted the protesters' rates based on 29 C.F.R. § 541.400(b), which mandates a minimum hourly rate of \$27.63 for computer-related labor categories. AR, exh. 21, SSDD, at 12, 19. The agency concluded that rates for each protester was below the minimum FLSA hourly rate, and therefore adjusted those rates to the \$27.63 level set forth in the regulation.

As the protesters each note, however, 29 C.F.R. § 541.400(b) provides two conditions under which an individual can be exempt from FLSA coverage: if the individual is paid an hourly rate of at least \$27.63, or receives a salary of at least \$455 per week. The protesters argue that the agency's evaluation improperly focused on the hourly rate, and ignored the exception for employees paid in excess of the weekly salary rate.

CSI stated in its comments on the agency report that it intended to pay three positions on a weekly salaried basis, and that those salaries would exceed the rate of \$455 per week. CSI Comments (Nov. 18, 2014) at 5 ("CSI and its subcontractors

intend to pay its Analyst I, Analyst II, and Programmer III employees on a weekly basis.”). For this reason, the protester contends that the agency should not have adjusted the hourly rates for these labor categories, each of which was below \$27.63 per hour, to the FLSA-mandated rate. As the Navy notes, however, CSI’s proposal did not state that the protester intended to pay the employees identified in its comments on a weekly basis. The Navy argues that it had no basis to understand that the CSI would pay its employees on a salaried, rather than hourly basis; for this reason, the agency states had no reason to understand that the FLSA exemption for salaried employees would apply to the protester and its subcontractors. We agree with the agency, and therefore find no basis to sustain CSI’s argument.

VATC argues that it reclassified certain of its computer professionals as non-SCA (exempt). VATC Comments at 8-9; see AR, exh. 18C, VATC Business and Price Proposal (Jun. 2013), Cost Differential Explanation, at 1 (“Several labor categories were reclassified from exempt to SCA non-exempt ([DELETED]).”). For this reason, the protester argues that the Navy should not have adjusted the rates for the labor categories whose hourly rates were below \$27.63.

The Navy argues that VATC does not clearly explain why the classification of its employees as non-SCA exempts it from the FLSA provisions cited by the agency. In this regard, VATC does not dispute that it proposed hourly rates of lower than \$27.63 for certain categories, and does not contend that it reclassified its proposed personnel as salaried, rather than hourly employees. We agree with the agency, and therefore find no basis to sustain the protest.

In any event, the record shows that the rationales that the protesters offer for the exemption of their employees from 29 C.F.R. § 541.400(b) apply to only a small number of rates for each protester, each of which was adjusted by several dollars per hour. The protesters did not attempt to calculate the effect of these adjustments, but we conclude that there is no evidence that such adjustments would amount to any substantial portion of the \$6.5 million difference between VATC’s and CoSolution’s evaluated costs, or the \$7.5 million difference between CSI’s and CoSolution’s evaluated costs. Thus, even if this handful of rate adjustments had not been made, we think there is little possibility that the protesters would have had a reasonable chance for award.

#### Indirect Cost Rates

Finally, VATC argues that the Navy unreasonably rejected its proposed reduction of its indirect cost rates. VATC’s FPR explained that it had reduced its indirect rates based on the following rationale:

VATC utilized indirect rates that are lower than those included in our DCAA Provisional Billing Rate correspondence. VATC deviated from

these rates because the revenue generated from this award was not captured in the labor base utilized to develop said rates. When the revenue from this award is included VATC's labor base, we realized a corresponding drop in our overall rate structure. VATC has not deviate[d] from our standard accounting methodologies in preparing this proposal response.

AR, exh. 18C, VATC Business and Price Proposal (Jun. 2013), Cost Differential Explanation, at 2.

VATC contends that the Navy does not dispute the protester's explanation for the reduction. See AR, exh. 16C, Price Analyst Affidavit (VATC), at 10. In fact, the agency's price analyst explains that she did not specifically dispute the protester's representation that the projected revenue from the contract award was not previously reflected in its cost pool, and that including this revenue could result in indirect rates that are lower than the DCAA provisional rates. Id. The price analyst nonetheless concluded that, because the protester did not provide any documentation or analysis explaining how it developed the revised indirect rates, the agency could not accept the lower proposed rates. We conclude that the agency's concern here was reasonable.

In sum, we find no basis to sustain either protesters' challenges to the agency's cost realism evaluation. Because we find no basis to conclude that the agency's evaluation of the protesters' proposals was unreasonable, and because neither protester specifically challenges the evaluation of the awardee's proposal, we find no basis to conclude that the award decision was unreasonable.

The protests are denied.

Susan A. Poling  
General Counsel