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Understanding Cost Realism Evaluations

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Objectives & Points of Reference

This is the 4th seminar segment of seven segments on Understanding Source Selection Evaluations

In this short period, we provide you a broad forum for discussion of Cost Realism Evaluations

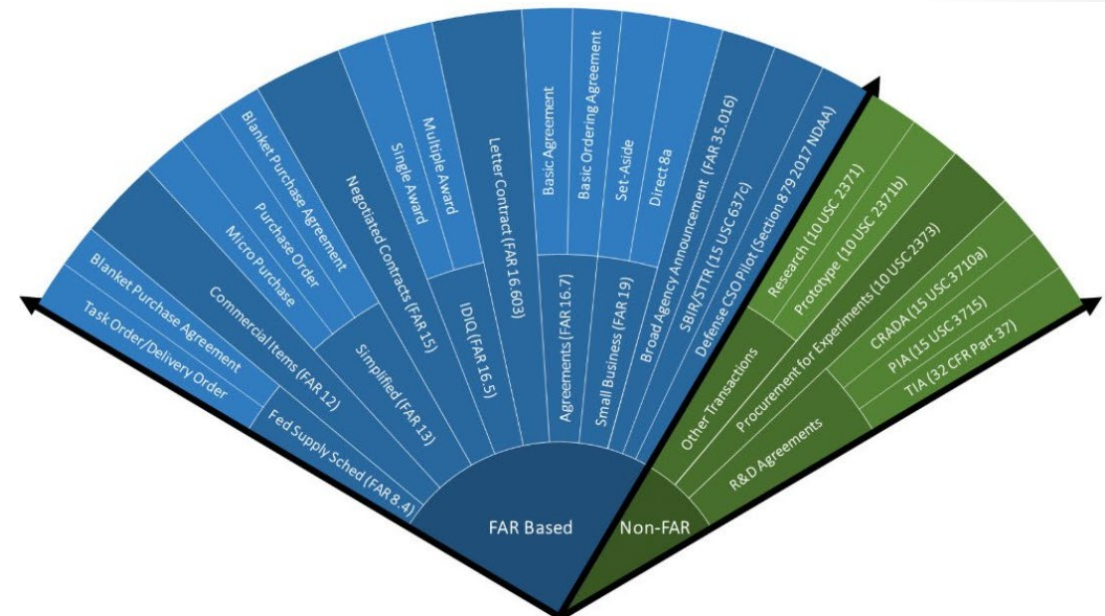
Multiple personalities abide here: “Am I source selection (former)?”, or “Am I industry (currently)?”

- I will talk from both perspectives (I will try to be clear as to role) – if not, ask please

We use selected guidance references, including Protest Case outcomes, though evaluation specifics can vary between agencies (slightly, in the big scheme of things)

- E.g., Is it FAR or an Agency specific supplement, e.g., DFAR for DoD, or NFS for NASA, etc. ...or is it not even FAR based?
- We refer to multiple FAR Clauses, USC’s, and Protest Cases to: Agency / Court of Federal Claims / Government Accountability Office
 - We WILL be splitting hairs (that’s the name of the game with the FAR – rules are very detailed and specific – following a “well it seems...” course of thinking is VERY dangerous – LOOK IT UP – key reference links are provided below

Small Print!



Discussion Topics...

Statutory and regulatory provisions affecting cost realism evaluations

The why, when, and what of cost realism evaluation

Further analysis of the standard of review

Sources of Cost Realism Information

Looking at **common agency mistakes**

Looking at **common contractor mistakes**

Cost realism as it affects technical evaluations

Authorities For Cost Realism Evaluations

Cost to the government must always be considered in the award of a contract

- CICA, 10 USC § 2305(a)(3)(A); 41 USC § 253(c)(1)(B)
 - Competition in Contracting Act – 1984 (Foundation for the FAR)
 - Overarching requirement – includes the variants of how important price is
- FAR Subpart 15.4
 - Contract cost or pricing guidance for negotiated contracts – determining contract type is all about risk (and fairness)
- FAR 15.304(c)(1)
 - Outlines Agency (DoD, NASA, USCG) guidance & limitations on setting evaluation criteria (factors & subfactors)

Medical Staffing Joint Venture; B-400705.2, B-400705.3, Mar. 13, 2009, 2009 CPD ¶ 71

- Protested not being included in the competitive range (because of technical score, based on CO statement) - 14 proposals received
 - Note: Agencies can not eliminate an acceptable technical score from the range, unless cost is too high
 - Medical Staffing protested Past Performance at first – Agency re-evaluated, raised Past Performance score – protested again
 - “Agency response was not meaningful” but still excluded, justified - **denied**
 - On assessment, pre-protest documentation from the Government showed they indeed included all evaluation factors in determining the competitive range
- Evaluation criteria must provide for a reasonable assessment of the cost to the government of performance of competing proposals and in this case, per the RFP the competitive range was to be set by Price and other factors
 - Technical scores can indicate risk, and therefore cost to the Government of performance as was documented
- Also – protestor changed their basis of protest part way through (you can’t credibly do that)

The COFC/GAO Standard of Review

Protests to: Agency / Court of Federal Claims / Government Accountability Office

Was the agency's evaluation reasonable and consistent with stated evaluation criteria and applicable procurement statutes and regulations

Mere disagreement with an agency's judgment is insufficient to render an evaluation unreasonable

Agencies are in the best position to judge the cost realism of offerors

Agencies get tremendous deference – if they adequately document conclusions and treat offerors equally

Proposal Analysis Techniques

The proposal analysis technique(s) used when assessing the cost to the government depend on who bears the cost risk of contract performance/contract type

- FAR 15.404-1
 - For significant additional insight in “how the Government evaluates price & cost (per the FAR)”
 - “The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a five-volume set of Contract Pricing Reference Guides (5) to guide pricing and negotiation personnel.”
 - They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only.
 - [Contract Pricing Reference Guides | www.dau.edu](http://www.dau.edu) Note: These are NOT just for DoD (942 pages)

Understanding Terms of Art:

- “Price Reasonableness” (FAR 15.404-1(b)(2))
- “Price Realism” (FAR 15.404-1(d)(3))
- “Cost Reasonableness” (FAR 15.404-1(c)(2))
- **“Cost Realism”** (FAR 15.404-1(d))

Avoiding Confusion Across Class Segments

Price Realism in Fixed Price versus Cost Plus

In our second class in this series “Understanding Price Evaluations” back on 26 Jan, we discussed Price Realism evaluation – that material was focused on those conditions justifying Price Realism in Fixed Price Environments

- Although the FAR does not use the term “price realism,” it states that cost realism analyses may be used to evaluate fixed-price proposals for purposes of assessing proposal risk
 - FAR Section 15.404-1(d)(3) for
 - ...competitive fixed-price incentive contracts
 - ...in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors’ proposed costs have resulted in quality or service shortfalls
 - Note: Results of the analysis may be used in performance risk assessments and responsibility determinations
 - However, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis

The Why of Cost Realism Evaluation

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling (governing) since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its reasonable, allocable, allowable costs

Metro Machine Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132

- Protested the contract award of a CPAF/IF to BAE Systems (DDG-51 Arleigh Burke-Class Guided Missile Destroyer maintenance, repair, modernization, and alteration) by US Navy based on improper evaluation of proposals and source selection – **denied**
 - Notional work package included with the RFP, Government IGE included with the RFP for referencing labor hours and material costs (if IGE not used, offerors instructed to provide “clear and compelling evidence” to substantiate)
 - Both proposals included in competitive range – held discussions (ENs) and required an FPR
 - When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs
- Protest challenging agency's cost realism evaluation of awardee's proposal is denied where the record demonstrates that agency's conclusions were reasonable
 - Protested that agency's evaluation of awardee's proposal failed to consider the conclusions of a Defense Contract Audit Agency audit report regarding the awardee is denied where the record shows the allegation is without basis
 - Protest of agency's technical evaluation is denied where record shows evaluation was reasonable and consistent with evaluation criteria; mere disagreement with agency's evaluation is insufficient to show it was unreasonable

Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 17; see FAR Section 16.301

The When of Cost Realism Evaluation

A cost realism analysis must be performed by the contracting agency to determine the extent to which an offeror's proposed costs represent what the contract costs are likely to be under the offeror's unique technical approach, assuming reasonable economy and efficiency

FAR Sections

- 15.404-1(d)(1), (2)
 - Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal
 - Cost realism analyses shall be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror

The Futures Group Int'l, B-281274.2, Mar. 3, 1999, 2000 CPD ¶ 147

- Protests the CPAF contract award of a contract to Deloitte Touche Tohmatsu (by USAID) to implement a project intended to increase access to family planning and other reproductive health products and services obtained through the commercial and private sectors in developing countries – **sustained**
 - Best value Technical, Past Performance, Cost Realism
 - Discussions, and BAFO
- Conclusion was that the evaluation lacked a reasonable basis and was sustained
 - Deloitte did not have a negotiated indirect rate agreement – a previous proposed rates agreement proposed higher rates than the proposal – rates in proposal used for evaluation not the rates previously proposed – and though Deloitte stated that new reduced rates were based on a “new office” in DC, cost analyst testified they did not review the details of the proposal regarding indirect rates – nor did submission support Deloitte claims

The What of Cost Realism Evaluation

A cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's own proposal

FAR Section

- 15.404-1(d)(1)

Advanced Commc'n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3.

- Protest award of the Cost reimbursement LOE Multi-Award (team award) contract to BAH (by USN SPAWAR) for a base 1 year + four 1-year options for services at fixed sites and mobile platforms (technical, orals, most probable cost) – **denied**
 - All offerors, including subcontractors, were also required to submit current, actual, unloaded direct labor rates for all proposed key personnel
 - Protest was primarily on the basis that the cost realism analysis was flawed (claimed that BAH rates were unreasonably low hourly rates for certain labor categories) and that the Government did not evaluate BAH compensation structure
 - BAH came in below Government in-house estimate by ~40%
- The FAR does not require the agency to conduct an in-depth cost analysis (FAR Sec. 15.404-1(c)), nor the verification of each and every item in the conduct of such analysis
 - The evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess the realism of cost and technical approaches and must bear the difficulties or additional expenses resulting from a defective cost realism analysis

The What of Cost Realism Evaluation

It is the estimated cost (i.e., the evaluated cost), and not the offeror's proposed cost, that must be the basis of the agency's source selection determination

- Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81
 - Protest award of the cost-reimbursement contract to Ceridian Corporation (by HHS) to perform the Employee Assistance Program services needed to assist employees in their efforts to resolve personal problems that may adversely affect work performance - **sustained**
 - Cost Realism evaluation determined unreasonable where the agency did not consider cost adjustments made by its own cost analyst to awardee's proposal, they used awardee's proposed costs as the basis for its source selection
 - Cost Realism evaluation was improper where, although knowing the awardee had proposed to recruit the incumbent workforce and match all existing salaries, but had also failed to propose direct labor rates consistent with existing salaries, agency failed to adjust awardee's proposed labor rates as part of its cost realism evaluation

“Cost realism” is essentially “cost realistic-ness” considering two things:

- What the offeror proposes to do technically
- What it takes in order to accomplish the PWS/SOW

Further Analysis of the Standard of Review

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 agency's conclusions about the most probable costs under an offeror's proposal are reasonable and realistic in view of the cost information **reasonably available to the agency as of the time of its evaluation**

Metro Machine Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 (see slide 9 also)

- Protested the contract award of a CPAF/IF to BAE Systems (DDG-51 Arleigh Burke-Class Guided Missile Destroyer maintenance, repair, modernization, and alteration) by US Navy based on improper evaluation of proposals and source selection – **denied**
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- Both proposals included in competitive range – held discussions (ENs) and required FPRs
 - Protest challenging agency's cost realism evaluation of awardee's proposal is denied where the record demonstrates that agency's conclusions were reasonable
 - Note: In this case-part of the basis of the protest was Union negotiations taking place that may increase BAE contribution to pension costs – **was not available** at time of evaluation and award

Further Analysis of the Standard of Review

GAO reviews an agency's judgment in this area to see that the cost realism evaluation was reasonably based and not arbitrary, and was adequately documented

- Honeywell Tech. Solutions, Inc., B-400771; B-400771.2 Jan. 27, 2009, 2009 CPD ¶ 49
 - Protests the contract award of a to ITT (for space communications network services (SCNS)) by NASA Goddard Space Flight Center based on Agency's evaluation and source selection were improper – based on Honeywell's assessment the ITT staffing levels were dramatically lower than its own (no Agency requirement to normalize competitor estimates) - **denied**
 - **(1)** Post-submission protest that the awardee had a impermissible OCI (NASA ruled pre submission), **(2)** ITT gained an unfair competitive advantage by retaining a former NASA official, **(3)** The agency discussions with the protestor were inadequate and misleading, **(4)** Technical evaluation was faulty, **(5)** Agency evaluation of awardees proposed staffing levels were unreasonable, and **(6)** agency evaluation of offeror Past Performance was not reasonable or consistent with evaluation criteria
 - Sustain the Past Performance Protest, deny the remainder of the allegations
 - Protestor claimed Agency failed to reasonably evaluate the cost realism of ITT's staffing levels for the SCNS core requirements, which were dramatically lower than the amounts proposed by incumbent Honeywell - protestor argues that a proper cost realism evaluation would have resulted in upward adjustments to ITT's proposed costs, thereby increasing the evaluated cost difference between the two offerors' proposals
 - Agency held discussions with ITT on some of the areas of concern for adequacy of core requirement staffing levels
 - ITT resolved these in an FPR with full BOEs justifying them – and were evaluated to have resource realism consistent with their proposed solution
 - Agency evaluation was found reasonable to both the technical evaluation (mission suitability found adequate staffing levels) and cost realism
- Jacobs COGEMA, LLC, B-290125.2, Dec. 18, 2002, 2003 CPD ¶ 16

The COFC reviews an agency's judgment in this area to see whether the evaluation was arbitrary, capricious, an abuse of discretion, or otherwise not IAW law

- PAI Corp. v. U.S., 2009 U.S. Claims LEXIS 320 Fed. Cl., (Sept. 14, 2009)
- University Research Co., LLC v. U.S., 65 Fed. Cl. 500 (2005)

Sources of Cost Realism Information

There are many possible sources of information that an agency may consider as part of its cost realism evaluation:

- The offeror's proposal
- DCAA audits (not your “white knight”)
- DCMA information
- Forward Pricing Rate Proposals, Audits, Agreements
- Prior contracts performed (historical rates, incurred cost submissions, historic productivity rates, etc.)
- IGCE
- Salary Survey Data

Common Agency Mistakes

Not comparing an offeror's cost proposal to its technical proposal for consistency

Not comparing the cost evaluation against the technical evaluation findings

Not Believing that the cost evaluators can examine an offeror's technical submission when performing the cost realism evaluation

Not comparing an offeror's proposed rates to its historic rates (or proposed productivity levels to historic ones)

Not accepting rate caps as binding (or not determining if a rate cap is really binding)

Not documenting why, the agency accepted proposed direct (or indirect) rates that differed substantially from the offeror's historic ones

Thinking that a cost realism evaluation is the same as a cost negotiation analysis/evaluation

Cost realism is not cost reasonableness

How Not to Conduct an Agency Evaluation

Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81

- re: slide 12
- No comparison between technical and cost proposals
- Removed other proposed costs because unsupported
- Removed proposed fee from evaluated cost
- Used proposed cost rather than the evaluated cost as basis of source selection determination

Common Contractor Mistakes

Failing to thoroughly substantiate proposed costs

Deciding not to use rate caps (fee?)

Deciding not to have FFP quotes or subcontracts

Not ensuring consistency between technical and cost proposals

Trying to game costs, not raise ambiguities

Common Inadequate Contractor Arguments

“Their staffing levels are lower than mine, so they must be unrealistic”

“Their average subcontractor rates are lower than my average subcontractor rates”

“My proposed costs are consistent with my technical solution, so therefore they must be realistic”

Cost Realism as it Affects Technical Evaluation

An agency can decide to take the cost realism evaluation results into account as part of the evaluation of the offeror's technical proposal, if provided for in the solicitation

- If the solicitation provides for this, the agency is then required to do so

“Any inconsistency, whether real or apparent, between promised performance and cost should be explained in the supporting cost data volume.

- The burden of proof for cost credibility rests with the offeror.
- Offerors are cautioned that to the extent proposed costs appear unrealistic, the Government may infer either a lack of understanding of the requirements, increased risk of performance, or lack of credibility on the part of the offeror

The agency must take the nature and size of any cost realism adjustments into account as part of its technical evaluation

Keys to Succeeding In Cost Realism

Both Government & Contractor

- Understand what a cost realism evaluation is intended to achieve
- It's the offeror's burden to support its proposed costs
- Be consistent, be fair
- Document, document, document
- And simple math mistakes can kill you!

Contact

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“Rick A to Z” leads CorVantage Program Execution of client strategies and programs to achieve their Business Objectives through Market Analysis, Pipeline and Business Development, Capture, Negotiations, and Public Sector Program Execution.

Professional Experience:

“A to Z” has over 45 total years of Government and Industry experience in operations and government acquisition across R&D and operational programs, complex program management, systems development engineering, Information Assurance, Information Operations/Cyber Development & Special Technical Operations, and business capture.

During his preceding 30-year career with the U.S. Air Force, he held positions from B-52 operational squadron level up to that of Director at the Air Force Information Warfare Center. He has spent 20+ years as an industry senior executive working with over 50 clients winning and executing programs. This includes leading over 170 campaigns across 42 Federal Agencies and 17 State & Local Governments as well as commercial business-to-business. He has worked in defense, homeland security, intelligence, Special Operations, energy, health and human services, biotechnology & life sciences, IT/telecommunications, and transportation.

“A to Z” is actively involved in the Professional Services Council, Washington Homeland Security Roundtable, Coast Guard Industry Academy Alumni Association, University advisory boards, and Technology Incubators & Accelerators. He is a guest lecturer at Defense Acquisition University DAWIA Senior Program Management and Contracting Officer courses. He also is a professional educator in Accessing Government non-dilutive R&D Funding, Source Selection Evaluation, Innovative Contracting, DoD Adaptive Acquisition Framework, and Best Practices in Business & Capture Leadership with George Mason University, Public Contracting Institute, and Federal Publications Seminars as well as directly with CORTAC Clients.

About CorVantage, LLC. For more than 14 years, our team has worked together providing proven leadership to help our clients succeed in Business Expansion & Capture, and Public Sector Program execution. We bring a team of seasoned professionals which have demonstrated success and a commitment to foster a collaborative team environment. Our team leaders have an average of more than 25 years of experience capturing and managing multi-billion-dollar projects.



Richard “A to Z” Agopsowicz

Selected Previous Experience

EVP, Business Capture & Program Sector Execution, CORTAC Group, Inc.

Managing Director, Business Development, Robbins-Gioia, LLC.

Senior Vice President, Capture Practice, Steven Myers & Associates

Director, US Air Force Information Warfare Center (AFIWC/RM), and Technical Director, Advanced Programs “Skunk Works”

Planner and operational lead conducting special operations in support of SOCOM, EUCOM, CENTCOM, LANTCOM, Intelligence Community, and UK MOD

Conceptualized, organized, and led the development & employment of National level capabilities during Desert Storm Joint Force Component/Task Force Activities

Program Manager, Air Force Information Systems Security Research & Development

B-52 Squadron and Wing Combat Crew Flight Instructor (Defensive Air tactics, techniques, and procedures) and Combat Crew Training School Flight Instructor

Strategic Air Command, 1st Combat Evaluation Group, COMBAT SKYSPOT instructor, as well as assigned to multiple 1CEVG Sites

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