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Decision

Matter of: University Research Company, LLC

File: B-294358.6; B-294358.7

Date: April 20, 2005

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Devon E. Hewitt, Esq., John E. Jensen, Esq., Daniel S. Herzfeld, Esq., and Orest J. Jowyk, Esq., Pillsbury Winthrop Shaw Pittman, for IQ Solutions, Inc., an intervenor. Mogy E. Omatete, Esq., and Douglas Kornreich, Esq., Department of Health and Human Services, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging selection official's treatment of concerns raised by agency project officers, under provisions of the Department of Health and Human Services (HHS) Acquisition Regulation which anticipate that selection officials will receive input from agency project officers in addition to the input received from a traditional evaluation panel, is denied where the selection official's award decision document acknowledges receipt of the project officers' views (which recommended award to the protester), makes reasonable changes in the selection analysis in response to those concerns, and, in some cases, makes no change because the selection official reasonably decides to adopt the views of the evaluation panel on matters more appropriate for evaluator review.

2. The principle that selection officials are not bound by the recommendations or evaluation judgments of lower-level evaluators applies equally to evaluation input received from project officers in procurements conducted under HHS procedures; HHS selection officials are no more bound by the views of agency project officers than they are by the views of agency evaluators.

3. Protester's contention that agency past performance evaluation was unreasonable because the agency did not distinguish between degrees of relevance in evaluating each offeror's past performance is denied where the evaluation was reasonable, and

consistent with the stated evaluation criteria; there is no per se requirement that an agency weight differently the experience ratings given each offeror based on an assessment of the relative relevance of the offeror's prior contracts, and there is no requirement that incumbents be given extra credit for their incumbent experience.

4. Challenge to agency's review of cost realism is denied where the record shows that the agency had a reasonable basis for the adjustments it made.

DECISION

University Research Company, LLC (URC) protests a decision by the Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS), to reselect IQ Solutions, Inc., for the award of a contract pursuant to request for proposals (RFP) No. 277-04-6091, issued for the operation of the SAMHSA Health Information Network. URC argues that the technical evaluation, the assessment of past performance, and the cost realism review were unreasonable. URC also challenges the adequacy of the selection official's decision not to adopt certain assessments of these proposals made by HHS project officers.

We deny the protest.

BACKGROUND

Our Office sustained an earlier protest by URC challenging the initial selection of IQ to perform this work. University Research Co., LLC, B-294358 et al., Oct. 28, 2004, 2004 CPD ¶ 217. The contract here realigns SAMHSA's health information dissemination efforts, which were previously performed under multiple contracts. Specifically, this solicitation includes the operation of the National Clearinghouse for Alcohol and Drug Information (NCADI), the National Mental Health Information Clearinghouse (NMHIC), and certain support services for the SAMHSA Office of the Administrator.

As indicated in our earlier decision, the RFP was issued on December 19, 2003, was set aside for small businesses, and anticipated the award of a cost-plus-award-fee contract for a base period of 1 year followed by four 1-year options. RFP at 1, 56. Section M of the RFP advised that "[a]lthough technical factors are of paramount consideration in the award of the contract, past performance and cost/price are also important to the overall contract award decision." RFP at 70. The RFP also identified four technical evaluation criteria (totaling 100 points) and advised that past performance would be worth 36 points. RFP at 70-73. The four technical evaluation criteria and the weight assigned to each were: (1) understanding the project, 15 points; (2) technical approach, 35 points; (3) key personnel, 35 points; and (4) management plan and facilities, 15 points.

The Initial Selection Decision and Earlier Protest

HHS received proposals from six offerors by the February 6, 2004 closing date. After an initial review, the agency established a competitive range for award, which included the proposals submitted by three of the offerors: IQ, URC, and a third company. After holding discussions, receiving revised proposals, and reevaluating the proposals, the results of the agency's review were as follows:

	IQ Solutions	URC	Offeror A
Technical	93.3 points	88.7 points	83.8 points
Past Performance	31.2 points	29.8 points	28.9 points
Total Evaluated Cost	\$57.9 million	\$65.2 million	\$77.9 million

Source Selection Determination, Dec. 22, 2004, at 4.¹

The selection official in place at the time reviewed this information and concluded that the proposal submitted by IQ offered the best value to the government. In addition to basing her decision on the results of the evaluation panel's review, her award determination reflected that she had received a memorandum from SAMHSA project officers also recommending award to IQ. Agency Report (AR), Tab 21, at 3. As a result, the contract was awarded to IQ on July 9, 2004.

The initial selection decision was followed by a protest to our Office by URC. During the course of that protest, the agency did not initially produce the memorandum from the SAMHSA project officers that was described in the award determination. Instead, the document was produced late in the course of our protest process in answer to one of several supplemental document requests submitted by the protester. Upon review, the memorandum—contrary to the representation in the selection official's written determination—recommended award to URC, not to IQ. AR, Tab 72. In a hearing convened to explore this apparent discrepancy, the selection official testified that she misstated the project officers' recommendation in her award determination document, and that she knew the statement was incorrect when she wrote it. Hearing Transcript (Tr.) at 49-50, 53-57, 125.

¹ Unless otherwise indicated, citations in this decision to the Source Selection Determination are to the determination associated with the most recent selection decision—*i.e.*, the determination prepared subsequent to our October 24, 2004 decision sustaining URC's earlier protest of this award.

We sustained URC's protest and held that the agency selection official acted improperly in not accurately reflecting the project officers' views in her award determination document, and in not stating a basis for either accepting or rejecting those views. Our holding was based, in part, on the fact that HHS has supplemented the Federal Acquisition Regulation (FAR) with a process for agency project officers to provide input to selection decisions. See HHS Acquisition Regulation, 48 C.F.R. Part 315 (2004). To remedy the situation, we recommended that the agency make a new selection decision, correct the misstatements in the original determination document, and state a sufficient basis for the decision to either accept or reject the views of the project officers, or the views of the technical evaluation panel. Our decision also recommended that HHS use a different selection official to prepare the new selection decision.

The Revised Selection Decision

HHS implemented the recommendations in our decision, and on December 22, 2004, a new selection official prepared a revised Source Selection Determination. AR, Tab 75. Although the new selection document continues to recommend award to IQ, there are several areas where it modifies and supplements the previous analysis. These are explained below.

In the area of past performance, the selection official noted an error in the previous evaluation that more than double-counted a very favorable past performance score given URC by one of the companies now identified as a URC subcontractor. Source Selection Determination, Dec. 22, 2004, at 6-7. In the selection official's analysis, correction of this error would have lowered one portion of URC's average past performance score by 0.75 points. The selection official viewed this matter as a minor discrepancy and continued to use the slightly higher erroneous score for URC. Id.

In the area of the technical evaluation, the selection official observed that one evaluator gave a notably lower score to URC under each evaluation criterion than the scores given by the other five evaluators. Id. at 11. The selection official explained that "[t]his discrepancy was not addressed in any documentation made available, so it [is] unknown whether the contracting officer attempted to negotiate or document this discrepancy." Id. To remedy the situation, the selection official elected to eliminate the lowest technical score given to both URC and IQ. (These scores were not, however, given by the same evaluator.)

In the area of cost realism with respect to IQ, the selection official made three types of adjustments to IQ's proposed costs. First, in response to concerns expressed by the project officers regarding the number of labor hours proposed for speechwriters, the agency added the cost of two full-time speechwriters to IQ's proposal. Id. at 7-8. Second, the agency identified four elements of other direct costs applicable to all offerors that it thought should be normalized. Id. at 8. For two of these cost

elements--postage/shipping costs and the cost of special initiative projects--the RFP advised offerors of the amount they should use in preparing their proposals. RFP, attach. 1 (Statement of Work (SOW)), at 25, 28. For the other two cost elements--telephone/fax costs and the costs of reproduction--the agency adopted URC's proposed costs of telephone/fax costs as its "plug number" (see Source Selection Determination, Dec. 22, 2004, at 8-9), and used its own estimate for the cost of reproduction. AR at 15-16. The third type of adjustment--similar to the normalization of estimated costs--was a normalization of the estimated savings to be recovered through user fees. Source Selection Determination, Dec. 22, 2004, at 8-9. In this area, HHS normalized the estimated savings by using the highest proposed savings number, resulting in a downward adjustment to all of the proposals but one. In total, IQ's proposed costs were adjusted upward by approximately **[deleted]**.²

In the area of cost realism with respect to URC, the selection official's adjustments were limited to the use of normalized costs for the four elements of other direct costs identified above (in the description of the adjustments made to IQ's proposal), and the use of a normalized number for the amount recovered through user fees (also discussed above). No other adjustments were made. In total, URC's proposed costs were adjusted upwards by approximately **[deleted]**.³

Finally, the selection official set out a two-page summary of the views of the project officers, as derived from their June 28, 2004 memorandum--the memorandum which had been mischaracterized as supporting award to URC in the previous award determination, and which led to our decision sustaining the earlier protest. Id. at 12-13. After outlining the views of the project officers, the selection official stated her views on their concerns, and stated what actions had, or had not, been taken in response. For example (and as described above), the source selection official explained that the cost of two additional speechwriters was added to IQ's proposal in answer to the concern of the project managers that IQ had not sufficiently addressed this issue after it was raised during discussions. Id. at 12.

At the conclusion of the determination document, the selection official set out a summary of the final technical and past performance scores of both offerors (as modified during the reevaluation), and the total proposed and evaluated costs. This summary is reflected below.

² See Source Selection Determination, Dec. 22, 2004, at 14 (showing IQ's proposed costs as **[deleted]**, and its evaluated costs as \$61.130 million).

³ See Source Selection Determination, Dec. 22, 2004, at 14 (showing URC's proposed costs as **[deleted]**, and its evaluated costs as \$67.274 million).

	IQ Solutions	URC
Final Technical Score	94.4 points	92.8 points
Final Past Performance	33.12 points	32.33 points
Total Proposed Costs	[deleted]	[deleted]
Total Evaluated Costs	\$61.130 million	\$67.274 million

Source Selection Determination, Dec. 22, 2004, at 14. The selection official reasoned that “[a]lthough technical considerations were paramount in this acquisition, since the technical scores were almost equal with IQ slightly higher,” IQ’s lower evaluated costs made award to IQ the best value to the government. Id.

Notice of IQ’s reselection for award was provided to URC on December 28, and a written debriefing was provided on January 11, 2005. This protest followed on January 14.

DISCUSSION

URC’s protest issues fall into two categories mirroring the HHS selection process used in this procurement. As our prior decision explained, and as discussed further below, the HHS selection process here envisions that the selection official will receive input from two discrete sources: an evaluation panel (like the panels seen in any other complex federal government procurement); and the agency’s project officers (i.e., the agency personnel with direct management responsibility for providing these services). After receiving input from both of these sources—which reached divergent conclusions about these proposals—the selection official largely adopted the views of the evaluation panel and awarded to IQ.

URC raises several issues related to the conclusions reached by the evaluation panel, and the actions taken by the selection official in response to those conclusions. These arguments assert that the agency’s technical evaluation, its evaluation of past performance, and its cost realism review, are all unreasonable.

A significant portion of URC’s protest, however, is drawn from the assessments reached by the agency’s project officers which were memorialized in a memorandum to the selection official. In instances where the project officers’ views were not adopted by the selection official, URC argues that the agency has acted unreasonably. Specifically, URC contends that the selection official fails to state a sufficient basis (or in some cases, URC asserts, any basis) for not adopting the views of the project officers. Since these issues are closely related to the situation we

considered in the earlier protest, and are related to the HHS-unique selection process used here, we will consider these issues first.

Arguments Based on the Assessments of the Project Officers

URC contends that in several areas the agency's replacement selection official has not provided a sufficient basis for her decision to reject the conclusions of the project officers. These include that the selection official: (1) wrongly concludes that adding the cost of two speechwriters to IQ's proposal addresses the project officers' concerns about IQ's staffing (Protester's Comments at 2, 22-23); (2) wrongly concludes that an emphasis on training addresses the project officers' concerns about IQ personnel lacking experience in mental health and substance abuse (*id.* at 2-3); (3) fails to refute the project officers' assertion that the IQ staff is inferior (*id.* at 4); and (4) fails to answer the project officers' concern that IQ does not have sufficient experience to manage a project of this magnitude (*id.* at 18-19).⁴

Part 315 of the HHS Acquisition Regulation (HHSAR), 48 C.F.R. Chap. 3, anticipates that contracting officers (CO) will receive input from agency project officers, in addition to the input received from a technical evaluation panel. See generally 48 C.F.R. § 315.305(a).⁵ Specifically, the HHSAR advises that COs "should request" project officers to review proposed labor hours, labor mix, use of consultants, travel, and other components of cost or price. 48 C.F.R. § 315.305(a)(1). In addition, COs "may require" the assistance of project officers to assist in the past performance

⁴ In a few other areas, URC raises general challenges to assessments of the evaluation panel on the ground that the panel did not consider issues raised by the project officers. To the extent that URC is suggesting that the technical evaluation is per se flawed because it does not identify the same issues as the project officers did, we deny the protest. We do not look to parallel panels to judge the adequacy of a technical evaluation. Rather, we review whether evaluation panels reach conclusions consistent with stated solicitation requirements and applicable statutes and regulations. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. To the extent URC is suggesting that the evaluation panel had to review the project officers' concerns and make judgments about them, see, e.g., Protester Comments, Feb. 28, 2005, at 4, we know of no such requirement, nor has URC shown us where one might be found.

⁵ The HHSAR sections referenced in this discussion refer to the agency project officer as a singular entity. Since this procurement involves the consolidated operation of two clearinghouses, NCADI and NMHIC, there is more than one project officer, hence we will use the plural in this decision.

review. 48 C.F.R. § 315.305(a)(2). Input from the project officers on technical evaluation matters was not envisioned for this procurement.⁶

The project officers from NCADI and NMHIC, the two clearinghouses to be operated under this contract, reviewed these proposals and, shortly before the initial award, prepared a five-page memorandum for the selection official setting out their views. This memorandum raised detailed concerns about IQ's staffing proposal and questioned whether IQ's proposed costs were realistic. The memorandum ultimately concluded that URC's proposal offered the best value to the government and recommended award to URC. AR, Tab 72.

As described above, the new selection decision document--prepared subsequent to our decision sustaining URC's earlier protest, and prepared by a new selection official--sets forth the modifications being made to the previous analysis as a result of the project officers' concerns. In addition, in awarding to IQ, the selection official rejects the project officers' recommendation that award be made to URC. Source Selection Determination, Dec. 22, 2004, at 12-14.

We note first the significant distinction between the situation here, and the situation we found during the earlier protest. We sustained URC's earlier protest because the previous selection official misrepresented the recommendation of the project officers in her written selection determination. While we found no express requirement in the HHSAR for selection officials to document their reasons for rejecting input received from project officers, we concluded that the agency's formal acknowledgment that such input might be provided (via its supplement to the FAR), together with the fact that detailed input was in fact received, triggered the requirements of FAR § 15.308 to document--and document accurately--source selection decisions. University Research Co., LLC, supra, at 9-10.

Here, in contrast, the selection official accurately acknowledged receipt of the project officers' views, and at several junctures in the written decision document referenced changes in the analyses that were made in response to concerns stated by the project officers. Source Selection Determination, Dec. 22, 2004, at 7, 9, 10. In addition, at the conclusion of the document's summary of the evaluation results, the selection official sets forth two pages of detailed explanation of her views about the conclusions in the project officers' June 28 memorandum, and identifies additional changes to the evaluation which, in her view, address all of the project officers'

⁶ The HHSAR anticipates a possible role for project officers on some technical evaluation panels (48 C.F.R. § 315.305(a)(3)(ii)), but these regulations do not apply to project officers at SAMHSA. 48 C.F.R. § 315.305(a)(3)(ii)(F). During the hearing in the previous protest, the selection official testified that, as a practical matter, SAMHSA project officers do not participate on technical evaluation panels. Tr. at 5-11.

concerns. Id. at 12-13. Given the selection official's acknowledgment of the project officers' views, and given her detailed explanation of how she addressed those views, we are now in a position to undertake a review of the reasonableness of her judgments about those views—a position we could not reach in the earlier protest.

We begin our analysis by recognizing that there is nothing per se improper about the selection official's decision not to adopt the recommendation of the project officers here. Selection officials, including officials at an intermediate level, are not bound by the recommendations or evaluation judgments of lower level evaluators, even though the working level evaluators may well have technical expertise in the matters under their review. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶115 at 12; Loral Aeronutronic, B-259857.2, B-259858.2, July 5, 1995, 95-2 CPD ¶ 213 at 8. The judgments of selection officials are governed not by the views of those who advise them, but by the tests of rationality and consistency with the stated evaluation criteria.⁷ Id.

Turning to URC's specific contentions, we think the record supports a conclusion that the selection official acted reasonably here. To illustrate, we set forth below a pair of examples of the selection official's stated rationale for not adopting the recommendation of the project officers.

The project officers' memorandum enumerates six areas where, in their view, IQ's proposed staff "do not provide a substantial advantage to the Government to carry out the activities of SAMHSA's Health Information Network." AR, Tab 72, at 2. The first five enumerated paragraphs identify by name senior IQ personnel that the project officers think lack experience; the sixth paragraph indicates that IQ failed to increase its speechwriting staff, despite being told it needed to do so. Id. at 2-3. Specifically, with respect to the speechwriters, the memorandum stated:

⁷ For the record, in terms of a selection official's discretion to reach a different conclusion from the recommendations of those who advise them, we view the recommendations of HHS project officers in the same way that we view the conclusions of evaluation panels. Put simply, both entities advise selection officials, they do not bind them. In addition, our prior decisions recognize that evaluators sometimes possess greater technical expertise than the selection officials they inform, just as the HHS project officers here may well be more familiar with the operation of the agency programs they manage than the agency's selection official. Moreover, the record here and the applicable regulations indicate that HHS project officers perform a more limited review than the broader review undertaken by evaluators. Compare AR, Tabs 42 and 57 (project officers technical questionnaire) with AR, Tabs 37, 44, 52 and 59 (initial and final individual evaluation scoresheets for both IQ and URC); see generally 48 C.F.R. Subpart 315.3. Accordingly, we conclude that HHS selection officials are no more bound by the views of agency project officers than they are by the views of agency evaluators.

Despite the Government's request to increase the speechwriting staff, IQ Solutions chose not to change its offer. Based on past and present experience with this task, program staff regards this staffing response as unresponsive to our request. This is also an indication that the offeror may not fully grasp the complexity inherent in this task.

Id. at 3.

In response to these concerns, the selection official directed that the cost of two speechwriters be added to IQ's proposal. Source Selection Determination, Dec. 22, 2004, at 7-8, 12. In answer to the concerns raised about the specifically-named IQ personnel, the selection official reviewed the requirements of the RFP and reached a conclusion that the project officers were holding several of them to higher standards than were imposed by the solicitation. Id. at 12. In addition, the selection official pointed out that the evaluation team reviewed both offerors' proposed personnel against the key personnel criteria in the RFP and awarded essentially equal scores. URC contends that neither of these responses addressed the real concerns of the project officers, and that they are therefore unreasonable.

With respect to the speechwriters, we set out the quote above to tie this dispute more closely to the precise comments made by the project officers on this subject. The closest URC comes to a direct challenge to the selection official's response to this concern is its general argument that cost realism adjustments do not address the project officers' objection that IQ's proposal is technically inferior, and their concern that IQ's proposal does not give confidence that it can successfully execute this program. Protester's Comments, Feb. 28, 2005, at 2.

The paragraph quoted above clearly expresses a concern that IQ had not increased its speechwriting staff. In response, the selection official made that increase. The second sentence notes that IQ's failure to make the increase was unresponsive; the third sentence extrapolates from IQ's failure to respond that IQ may not grasp the complexity of the procurement. In our view, the selection official reasonably addressed the concern stated, then based her judgments about IQ's grasp of this project on the generally good ratings it received from the evaluation panel--the entity whose job it was to make judgments about whether the proposal captured the requirements for this work set out in the RFP.

With respect to the senior IQ personnel that the project officers identified as lacking in experience, AR, Tab 72, at 2-3, the selection official expressed concerns that the project officers appeared to be judging IQ's proposed personnel against requirements not found in the RFP. In addition, and as indicated above, the selection official noted that the experience of key personnel had been reviewed and assessed by the evaluation panel, and that the proposals of both URC and IQ had received fairly high, and essentially equal ratings in this area. In our view, there was

nothing unreasonable in the selection official's decision to look to the evaluators' assessment in this area as the more reliable indicator of whether the personnel proposed by URC and IQ had sufficient backgrounds to meet the requirements of the solicitation.⁸

Moreover, the HHS regulations lend support to the selection official's judgment about which of the two panels to look to for an informed assessment about the qualifications of proposed personnel. Specifically, our review of the regulations leads us to conclude that they do not anticipate that project officers will undertake the job of reviewing the backgrounds of proposed key personnel.⁹

Finally, we recognize that URC apparently views the project officers' memorandum in this record as an attempt by agency managers most familiar with the requirements of this effort to ensure that this evaluation fairly assessed the capabilities of these two offerors to perform this work. On the other hand, this memorandum's unusual timing,¹⁰ its unusual scope,¹¹ its unusual level of detail,¹² and the unusually high level

⁸ For the record, URC also argues that the selection official's analysis is unreasonable in its treatment of the project officers' concerns about IQ's senior personnel because the selection official expresses uncertainty about how many of the enumerated IQ personnel can properly be considered "key personnel." We do not agree. As the selection official notes, the personnel proposed by IQ were assessed by the evaluation panel against the requirements of the RFP. If the evaluation panel's conclusions about the relative merit of IQ's personnel (or about whether those personnel met the standards in the RFP) strayed from the solicitation's stated requirements, URC could have challenged those conclusions. URC did not raise any such challenge, and we will not use the vehicle of the selection official's review of project officer concerns to adjudicate the key personnel requirements of this procurement.

⁹ See 48 C.F.R. §§ 315.305(a)(1) (COs "should request" project officers to analyze proposed labor hours, labor mix, hours of consultants, logic of proposed subcontracting, travel costs, etc.); 315.305(a)(2) (COs "may require" assistance with the past performance review; and 315.305(a)(3)(ii)(F)(1) (exempting SAMHSA from the HHSAR's anticipated involvement of project officers in some elements of technical evaluation); see also Tr. at 5-11 (project officers do not participate in technical evaluations at SAMHSA and NIH).

¹⁰ The document was provided 1 day prior to award rather than after the initial evaluation, as anticipated by the HHSAR process. See 48 C.F.R. § 315.305(a)(1).

¹¹ The document addresses issues not normally reviewed by HHS project officers, as discussed above.

¹² See Tr. at 46, 135 (selection official explains that project officer input is often based on e-mail notes of three sentences).

of the agency officials involved in ensuring its consideration,¹³ lend support to other views. Specifically, evidence in this record supports a view that this memorandum represents an effort by agency officials resistant to installing a new contractor in the place of a long-time incumbent, with a good performance history. Tr. at 20-21, 23-27, 29, 34-37, 59-60, 100, 101.¹⁴ Looking at the context of this procurement and the facts in the record, we conclude that the selection official dealt reasonably with the recommendations of the HHS project officers.

Challenge to the Technical Evaluation

We turn next to URC's only challenge to the results of the technical evaluation not based on the assessments of the project officers.

In URC's earlier protest, it argued that one of the evaluators scored both URC and IQ in a manner that was irrational, and urged that the scores given by this evaluator be discarded. After the current protest was filed, but prior to submission of the report, the agency provided the parties and our Office with the new source selection determination. As explained in the selection document, the selection official elected not to defend the very low score given URC by the evaluator in question; the selection official recognized that the score was significantly out of line with the other scores given, and that there was no available explanation for the several instances of the score being crossed out and lowered. In response, the selection official decided to eliminate the lowest score given to URC, and the lowest score given to IQ. Source Selection Determination, Dec. 22, 2004, at 11.

In a supplemental protest filed within 10 days of the agency's distribution of the new source selection determination, URC argued that the selection official's remedy solved only half of the problem. In URC's view it was unreasonable not to also remove this evaluator's near-perfect score for IQ, rather than to also remove the lowest score given IQ, as was done here. In its protest, URC urged that the selection official's actions were especially irrational since IQ's lowest score was given by a different evaluator, was not significantly out of line with other scores IQ received, and there was no suggestion in the record that anything was wrong with that score.

¹³ See Tr. at 45 (selection official explains she does not often receive project officer input signed by directors of the centers involved).

¹⁴ We acknowledge that many of these transcript citations are to comments by the previous selection official who ultimately misrepresented the thrust of the project officers' memorandum in her source selection determination. That said, we find credible her descriptions of the discussions she held with the project officers in the final hours before the award. We also note that the events she described were largely corroborated by two other witnesses.

As a preliminary matter, we reach no conclusion here about whether or not the evaluator in question scored URC and IQ irrationally. That said, the agency's decision to remedy the issue—rather than defend it—leaves us no choice other than to review the steps taken to be sure that the remedy was a rational response to the issue raised. Our review leads us to conclude it was not.

In our view, the selection official's action addressed URC's challenge to the very low score given by this evaluator to URC, but does not address the corresponding challenge to this evaluator's award of a very high score (99 out of 100 possible points) to IQ. In addition, we find no support in the record for removing IQ's lowest score in that the score was given by a different evaluator, and there has been no suggestion that this score was unreasonable. Instead, given that URC's challenge, in essence, raises a question about the impartiality of this evaluator, and given that the agency chose not to respond substantively to this issue, we know of no reason to have removed only one of this evaluator's scores.

The record here shows that the total scores given by each evaluator to URC and IQ, before the selection official made the partial remedy described above, were as follows:

	Eval. 1	Eval. 2	Eval. 3	Eval. 4	Eval. 5	Eval. 6
URC	94	95	68	92	97	86
IQ	88	94	99	96	88	95

Id. These scores resulted in an average score for URC of 88.7, and an average score for IQ of 93.3. Removing Evaluator No. 3's scores for both URC and IQ (and restoring IQ's lowest score) results in average scores of 92.8 for URC, and 92.2 for IQ.¹⁵ At the conclusion of this decision we will set forth each of the adjustments to the evaluation scores resulting from our review, and consider whether the record supports a conclusion that the protester was prejudiced by errors identified in this record.

¹⁵ These scores were calculated as follows (there is no change in URC's total score as the selection official already performed this part of the calculation):

For URC: $94 + 95 + 92 + 97 + 86 = 464/5 = 92.8$.

For IQ: $88 + 94 + 96 + 88 + 95 = 461/5 = 92.2$.

Challenges to the Evaluation of Past Performance

URC raises two past performance challenges that require consideration here.¹⁶ These are that the agency: (1) used a flawed method to average past performance scores, and as a result, distorted the results; and (2) failed to distinguish between degrees of relevance within each offeror's past performance information.

In reviewing URC's challenges to the adequacy of the past performance evaluation, we note first that an agency's past performance evaluation is a matter within its discretion, and we will not substitute our judgment for reasonably based past performance ratings. However, we will question such conclusions where they are not reasonably based, or are inconsistent with the terms of the solicitation or applicable statutes and regulations. Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 9. The critical question here is whether the evaluation was conducted fairly, reasonably, and in accordance with the stated evaluation terms, and whether it is based upon relevant information sufficient to make a reasonable determination of the offeror's overall past performance rating, including relevant information close at hand or known by the contracting personnel awarding the contract. OSI Collection Servs., Inc., B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18 at 6; International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5.

With respect to URC's first contention that the agency made averaging errors in its spreadsheet, and as a result, distorted the past performance scores, our decision can

¹⁶ With respect to URC's contention that HHS failed to consider negative information about IQ's performance that was too close at hand to ignore, we think URC has failed to make a sufficient factual showing that such information exists, or that such information—if it could be developed—falls within the time period set in the RFP for reviewing past performance information. Specifically, URC contends that its subcontractor, SHS, took over a contract on which IQ had performed poorly, and that the agency's review of SHS's performance was included in the performance assessment, but IQ's earlier poor performance of the same work was not. The RFP here included time limits on the information that would be considered relevant—i.e., “the last 5 contracts completed during the past THREE years and ALL CONTRACTS currently in process” RFP at 62 (emphasis in original). Given that URC acknowledges that SHS has already completed performance of this work (after taking it over from IQ), it appears IQ's performance of this work might fall outside the three-year time limit on past performance set in the RFP. URC could have helped with this matter by providing more information about when SHS began performance, but did not. In addition, the identity of this contract remains undetermined. If the information about this contract, at this juncture and on this record, remains unknown, it is hard to see how the information was so close at hand that the agency erred in not considering it.

be brief. We reviewed URC's arguments on this issue and indicated very early during the course of this protest that we agreed.

To that end, our Office distributed a worksheet that corrected the averaging errors--the specifics of which need not be recounted here--and then convened a conference call to air any remaining dispute about either the argument itself, or the amount of the recalculation. There was none. In short, correction of these errors resulted in a past performance score for URC of 33.12 (down from 33.23, as previously calculated), and a past performance score for IQ of 32.16 (down from 33.12, as previously calculated). As with the adjustments to the technical scores, discussed above, we will consider the effect of these scoring changes at the conclusion of this decision.

With respect to URC's second contention, a more detailed discussion is required. URC argues that the agency failed to distinguish between degrees of relevance in evaluating each offeror's past performance. Specifically, URC contends that the agency unreasonably gave less weight to URC's prior performance as an incumbent for a portion of this work than it did to its other less relevant experience, and less weight than it gave to IQ's prior performance as an incumbent for a portion of this work.

HHS answers that the solicitation asked offerors to limit their submissions of past performance information to information that was "similar in nature to the solicitation work scope." RFP at 62. Thus, in the agency's view, the universe of past performance information under review was already limited to similar work. In addition, HHS points out that URC has not argued that the agency considered work that was not relevant, but instead argues that the agency should have given more weight to contracts that, in URC's view, are more relevant. In this regard, HHS argues that it was not required to give more weight to URC's performance as an incumbent for some of these services, and even if it were, the work is not as similar in scope to the current work as URC contends. HHS points out that IQ also provided portions of these services in the past, that both URC and IQ provided the services as subcontractors, not prime contractors, and that both provided the work under smaller value contracts than here. Thus, HHS contends, in essence, that even if there were a general requirement to give greater weight to more relevant experience, the record here does not show that the experience warrants the greater weighting that URC advocates.

In an attempt to provide an overview of all that follows, we think it is useful to state clearly what URC is not arguing in this protest. URC is not arguing that the agency considered performance that was not relevant for either it or IQ. URC is not arguing that the agency wrongly concluded that both offerors had relevant experience. And URC is not arguing that the agency failed to distinguish between its relevant experience and IQ's. Rather, URC contends that HHS erred as a matter of law when it did not weight differently--within its assessment of URC's collective experience,

and again within its assessment of IQ's collective experience--the experience ratings given each company.

Put more starkly, URC argues that its high performance score received while serving as an incumbent subcontractor for a portion of the work now covered by this solicitation was improperly diluted when it was averaged with its other less relevant performance scores and those of its subcontractors. Moreover, URC argues that the agency erred as a matter of law by similarly diluting IQ's slightly lower performance score also received while serving as an incumbent subcontractor for a portion of this work, so that the agency evaluation no longer captures the difference in their performance scores for this more relevant experience.

We disagree. We recognize that an agency might reasonably--and perhaps even routinely--weight differently the experience ratings given a single company. We likewise recognize the possibility that there could be a factual situation where an agency's failure to distinguish between degrees of relevance within a single offeror's past performance history could result in an unreasonable evaluation result. Nonetheless, in a situation where both offerors have admittedly relevant performance experience, we know of no per se requirement that an agency weight differently the experience ratings given each offeror based on an assessment of the relative relevance of the offeror's prior contracts. As explained below, we see no such requirement in the applicable regulations or our case law. Moreover, if there were such a general requirement, based on this record, we are not convinced that URC was prejudiced by the agency's failure to perform such an analysis. Our reasons for these conclusions are set forth below.

Before turning to a discussion of what was required by the solicitation and the regulations, and a discussion of our cases, we set forth below additional information about the solicitation and about the agency's review of past performance.

The past performance review in this procurement was undertaken prior to the initial selection decision, and was subjected to several challenges during the earlier protest. Our decision sustaining the earlier protest did not reach those challenges because the selection decision was unresolved at that point, and because other actions of the agency had impeded our review within the timeframes set for resolution of a bid protest. University Research Co., LLC, *supra*, at 9-10. As a result of these circumstances, the most comprehensive explanation of the past performance review was provided by the previous selection official during the earlier protest, in a declaration dated September 15, 2004. During the instant protest, additional detailed information was provided by the new selection official in a Supplemental CO's Statement, dated February 17, 2005.

The previous selection official explained that the past performance review was based on evaluations received, in the main, from the sources identified by the

offerors in their proposals. In this regard, section L of the RFP requested that offerors provide

A list of the last 5 contracts completed during the past THREE years and ALL CONTRACTS currently in process that are similar in nature to the solicitation work scope.

RFP at 62 (emphasis in original). Section L also advised that “[e]ach offeror will be evaluated on its performance under existing and prior contracts for similar products or services,” and that the agency “will focus on information that demonstrates quality of performance relative to the size and complexity of the acquisition under consideration.” Id.

The evaluation section of the solicitation, section M, advised that the agency would allocate 36 points to past performance, compared to the 100 points allocated to the technical criteria. Id. at 73. The evaluation section also advised that the agency “will consider the offeror’s effectiveness in quality [of] product or services; timeliness [of] performance; cost control, business practices; customer (end user) satisfaction; and key personnel past performance.” Id. Section M of the RFP was silent on the subject of whether and/or how an offeror’s past performance information would be evaluated for relevance.

The previous selection official advised that in some cases the past performance assessment was obtained via an evaluation form that was provided in the RFP and sent to the references, see RFP attach. 13; in other cases the assessment was retrieved directly from the National Institutes of Health (NIH) database. Declaration, Sept. 15, 2004, at 1. Since the RFP’s evaluation forms resulted in a possible score of 20 points, while the NIH database resulted in a possible score of 24 points, scores from both sources were multiplied by a fixed factor (1.8 for the evaluation forms, 1.4 for the NIH database scores), to translate the scores to the 36-point scale used for the current evaluation scheme. Id.

With respect to URC, whose proposal contains two major subcontractors, SHS and Macro, the selection official explained that she received past performance information for all three entities. For URC, she received nine evaluation forms from references, and retrieved five evaluations from the NIH database. For SHS, she received one evaluation form from a reference, and retrieved two evaluations from the NIH database. For Macro, she received no forms from references, but was able to retrieve seven evaluations from the NIH database, five of them for SAMHSA contracts. She stated the following about URC’s (and its subcontractors’) 24 past performance evaluations before adding them up, averaging them, and assigning the resulting score to URC:

All evaluations received were considered. All evaluations indicated a high level of competency, reliability and customer satisfaction.

Nothing in the past performance evaluations raises doubts as to this Offeror[’s] ability to perform the work specified in this acquisition and no issues regarding past performance were discussed during negotiations.

Id. at 3.

With respect to IQ, whose proposed subcontractors were not considered major, the selection official explained that she received five evaluation forms from references, and retrieved one evaluation from the NIH database. She stated the following about IQ’s six past performance evaluations before totaling them, averaging them and assigning the score for IQ, as she did for URC:

All evaluations received and all those found in the NIH [database] were used. None of [IQ’s] subcontractors were considered major, and therefore, [their] past performance was not evaluated. All evaluations indicated a high level of competency, reliability and customer satisfaction. Nothing in the past performance evaluations raises doubts as to this Offeror[’s] ability to perform the work specified in this acquisition and no issues regarding past performance were discussed during negotiations.

Id. at 3.

The RFP here, like most solicitations, provided information about the agency’s intended past performance review in two places—section L, titled “Instructions, Conditions, and Notices to Offerors”; and section M, titled “Evaluation Factors for Award.” RFP at 52, 70. As indicated above, section M advised that the agency “will consider the offeror’s effectiveness in quality [of] product or services; timeliness [of] performance; cost control, business practices; customer (end user) satisfaction; and key personnel past performance.” Id. at 73. There is nothing in section M addressing whether and/or how an offeror’s past performance information would be evaluated for relevance; such language is found only in section L.

While the language in section L of this solicitation may have caused the protester to anticipate that the agency would distinguish between degrees of relevance in evaluating past performance, we agree with the agency that there is nothing in the RFP that requires it to do so. Simply put, information provided in section L of an RFP is not the same as evaluation criteria in section M; rather than establishing minimum evaluation standards, section L generally provides guidance to assist offerors in preparing and organizing their proposals. All Phase Env’tl, Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 4. In addition, information required by section L does not have to correspond to the evaluation criteria in section M. Cascade Gen’l, Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 10. Thus, we see nothing in the requirement that offerors provide information about contracts “that are similar in nature to the solicitation work scope,” RFP at 62, or in the other

section L provisions quoted above, that dictates that the agency must weight differently--within its assessment of each offeror's collective experience--the ratings given each company.¹⁷

URC also contends that the evaluation here violated a requirement in FAR § 15.305(a)(2)(ii) that selection officials must determine the relevance of similar past performance information. Again, we disagree.

FAR § 15.305(a)(2)(ii) provides that solicitations must state how past performance will be evaluated, provide offerors an opportunity to identify contracts for efforts similar to the agency's requirement, and authorize offerors to provide information about performance problems encountered on the identified contracts (as well as how the problems were corrected). The provision then states that this information must be considered, along with information obtained from any other sources, and provides that "[t]he source selection authority shall determine the relevance of similar past performance information." Id.

Our review of the evaluation scheme shows that the solicitation requested certain information from offerors, and also advised that the agency would look to other sources about an offeror's past performance. RFP at 62. In addition, the evaluation sheets completed by the identified references, and the information stored in the NIH database, rated the offeror's past performance using the criteria identified in section M of the RFP. Compare RFP at 73 (past performance evaluation criteria) with RFP, attach. 13 (contractor rating form); see also Declaration, Sept. 15, 2004, at 1; CO's Supp. Statement, Feb. 17, 2005, at 4. Upon receipt of this information, it was reviewed by the selection authority, who made certain judgments about whether it should be used. See, e.g., CO's Supp. Statement, supra (where CO explained the change made in one case to the score given to URC by one respondent). In addition, the selection authority indicated whether all of the completed evaluations received were used (in each case they were) see Declaration, supra, at 2-4, and indicated that

¹⁷ For the record, we see little point in an expanded discussion of URC's apparent view that the section L instruction to provide information about contracts "that are similar in nature to the solicitation work scope," RFP at 62, was limited to all contracts in progress, and did not apply to the requested "list of the last 5 contracts completed during the past THREE years." Id. Based on this interpretation, URC argues that the clause anticipated the collection of both relevant and not relevant information, and anticipated that the agency would have to make a determination about how to treat the disparate information received. To the extent that this clause is ambiguous, it was patently ambiguous. Thus, for URC to argue that only its interpretation of this clause can prevail, URC was required to raise its interpretation prior to the closing date submitting proposals here; its argument is untimely at this juncture. U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10; 4 C.F.R. § 21.2(a)(1) (2005).

the evaluations evidenced a high level of competency, reliability and customer satisfaction, and raised no doubts about the ability of the offerors to perform the work here. Id.

With respect to the requirements of FAR § 15.305(a)(2)(ii), we think HHS met its regulatory obligations, albeit implicitly. The solicitation stated how past performance would be evaluated, and provided each of the other opportunities identified in the provision. In addition, the information received was clearly considered in making past performance assessments. Implicit in the selection authority's acceptance and use of this data was her determination that this data was relevant.¹⁸ We also know of no obligation that this determination be documented beyond the documentation required to support the reasonableness of the selection authority's assessments. Moreover, we do not think that the language of the regulation supports the expansive interpretation urged by URC, which would require the selection authority's determination that data is relevant to also include distinguishing between degrees of relative relevance.

We also see no support in our prior decisions for URC's contention that selection authorities must distinguish between degrees of relevance within an offeror's past performance score.

As an initial matter, we think there is very little difference between URC's position here, and the position of protesters who complain that they were not given extra credit in an evaluation for their status as the incumbent. See Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 5; Modern Techs. Corp., et al., B-278695 et al., Mar. 4, 1998, 98-1 CPD ¶ 81 at 7; Cubic Applications, Inc., B-274768 et al., Jan. 2, 1997, 97-1 CPD ¶ 98 at 6. In each of the cases cited above we found reasonable evaluations that did not provide such credit. Here, in a slight wrinkle, URC would have both its and IQ's most relevant experience given greater weight so that URC might reap the benefit of its higher score while serving as an incumbent subcontractor—i.e., so the evaluation will capture the fact that URC received a past performance score of 36 on its incumbent subcontract involving a portion of the work here, while IQ received a score of 30.6 for its performance of a similarly relevant subcontract. See URC's Comments, Feb. 28, 2005, at 14-16. We know of no per se requirement that greater weight be given to those past performance scores that represent an offeror's incumbency.

The other cases raised by URC involve solicitations that provided specific direction in the evaluation scheme about the past performance evaluation—such as, for example, indicating that the agency would look at information involving the same or similar experience, or experience of similar size, scope, or complexity as the

¹⁸ In this regard, as stated above, URC does not dispute the relevance of any of the former contracts considered for it or IQ.

solicited effort. Where the solicitation includes such provisions, we review the agency's adherence to the solicitation's stated evaluation scheme just as we would any other area of the evaluation. See, e.g., Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 9-12 (RFP required "same or similar" experience); Si-Nor, Inc., B-292748.2 et al., Jan. 7, 2004, 2004 CPD ¶ 10 at 15-18 (RFP required experience of "similar size, scope, and complexity"). Here, since we find there was no such requirement set forth in the solicitation's evaluation scheme, these decisions do not support the protester's contentions.

Similarly, our decision in Beneco Enters., Inc., B-283512, Dec. 3, 1999, 2000 CPD ¶ 175, does not reach the conclusions urged here, despite the protester's arguments to the contrary. In Beneco, an agency gave a past performance rating of "excellent," and subsequently gave the award, to an offeror who had never served as a prime contractor on a job order contract (the type of contract contemplated under the solicitation at issue), and whose experience was largely as a subcontractor on small orders. The protester, however, received a rating of "good" based on its slightly lower ratings earned over an extensive performance history of serving as the prime contractor on job order contracts valued between \$1 million and \$40 million. While the solicitation language quoted in the decision appears to be identical to the section L language used in this solicitation, we think the decision's conclusion that the evaluation unreasonably failed to consider the similarity of the protester's past performance information is different by several orders of magnitude from the decision here.

Here, for example, both URC and IQ have experience performing portions of the work to be included in the instant consolidated contract. Thus, this is not a situation where an agency failed to distinguish between offerors with vastly different experience. In addition, the protester here seeks a significant expansion in the basic principle that an agency must be mindful of the relative differences in the experience levels of offerors. URC seeks a review that will distinguish between its own more relevant higher-rated experience, and its less relevant less highly-rated experience, and weight them differently. Nothing in our prior decisions leads us to conclude that such an approach was required.

As a final matter, we note that even if there were a requirement to consider the relative relevance of an offeror's past performance, it is not clear that doing so would have resulted in URC's selection. The agency points out that it does not share URC's views about the heightened relevance of URC's work as an incumbent subcontractor, suggesting that even if it had made such a review, the agency might not have reached the conclusion URC contends was likely. Specifically, HHS points out that URC was a subcontractor, not the prime contractor for that work; that the value of that subcontract (less than \$10 million) was significantly less than the approximate \$67 million evaluated value of the instant contract, as performed by URC; and that the agency envisions that the work will be different than the work URC performed. Agency Report, Feb. 15, 2005, at 23-24; Source Selection Determination, Dec. 22,

2004, at 14. In our view, these considerations appear reasonable and suggest that the relative weighting advocated by URC would not have had a material effect on the source selection decision in any event.

Cost Realism Evaluation

URC raises several distinct challenges to the adjustments made (or, in some cases, not made) to the proposed costs identified in its and IQ's proposals. Specifically, URC contends that HHS improperly normalized reproduction and shipping costs, failed to make needed upward adjustments in IQ's warehouse and call center costs, and improperly adjusted URC's costs related to special initiative projects. We set forth below our views on each of these challenges to the agency's review of cost realism.

Where an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated costs of performance are not dispositive, since, regardless of the costs proposed, the government is required to pay the contractor its actual and allowable costs. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26; CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 3. Accordingly, a cost realism analysis must be performed when a cost-reimbursement contract is contemplated in order to determine the probable cost of performance for each offeror. FAR § 15.404-1(d)(2). A cost realism analysis is the process of independently reviewing and evaluating elements of each offeror's proposed cost estimate to determine whether the proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the methods of performance and materials described in the offeror's technical proposal. FAR § 15.404-1(d)(1). Our review is limited to determining whether an agency's cost realism analysis was reasonably based and not arbitrary. NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 7.

With respect to HHS's decision to normalize reproduction and shipping costs, URC argues, in both cases, that HHS failed to consider unique features about its approach that would achieve savings for the agency. In addition, URC argues it was especially unreasonable to normalize IQ's reproduction costs given information in IQ's final proposal revision (FPR) that leads URC to argue that IQ's costs for reproduction may exceed by approximately \$10.7 million HHS's estimate of costs.

The RFP here advised offerors to anticipate copying approximately 1.6 million single sheets per month during the first year, with copying to increase approximately 15-20 percent for each year thereafter. RFP, attach. 1 (SOW), at 29. In addition, the provision advised offerors to anticipate that 60 percent of copying would be black and white, and 40 percent would be color copying. *Id.* Although URC argues that its all-Xerox solution was better than IQ's all-Canon solution, HHS responds that it did not accept that there would be significant differences between offerors on copy costs. In addition, HHS noted that there was ambiguous information in the

proposals on copy costs. In particular, HHS expressed concern that IQ lowered its overall proposed copying costs in its FPR while appearing to significantly increase its estimated cost per page of copying. AR, at 16. Given the questions raised by these matters, and the agency's continuing view that there should not be a significant difference in these costs, HHS elected to replace the offerors' proposed costs with a government estimate for those costs, thus normalizing them.

Our Office has recognized that when an agency is performing a cost realism analysis, it may be appropriate to normalize certain costs in order to achieve a greater degree of cost realism. Cost normalization involves the measurement of offerors against the same baseline where there is no logical basis for the differences in approach or where there is insufficient information in the proposals. The purpose of such an analysis is to segregate cost factors which are "company unique"--depending on variables resulting from dissimilar company policies--from those which are generally applicable to all offerors and therefore subject to normalization. SGT, Inc., B-281773, B-281773.4, Apr. 1, 1999, 99-1 CPD ¶ 77 at 7; The Research Found. of State Univ. of New York, B-274269, Dec. 2, 1996, 96-2 CPD ¶ 207 at 5.

Despite URC's claims that its approach to copying is unique, we see nothing unreasonable in the agency's view that there should not be significant differences between offerors in the cost of making copies. We also think the agency acted reasonably in deciding to normalize these costs based, in part, on concerns about the cost anomaly in IQ's FPR, rather than attempting to choose between conflicting information about copying costs within the same proposal.

HHS made a similar normalization adjustment to each offeror's proposed shipping costs. On this issue, the RFP advised offerors to assume shipping costs of \$1.8 to \$2 million per year, RFP, SOW at 29, which translates to a 5-year cost of \$9 to \$10 million. URC instead proposed costs of **[deleted]** over the life of the contract, and argued that it had developed special relationships as a major shipper with both the U.S. Postal Service and UPS, and was able to pass on to HHS the savings resulting from those relationships.

In response, HHS added back to URC's proposed costs an additional **[deleted]** for shipping, along with the associated increase in overhead costs. HHS posited that any contractor doing all of the shipping required by this contract would develop a similar relationship with the Postal Service and other delivery companies. We see nothing unreasonable about the agency's view on this matter, and we see no basis to conclude that adjusting URC's proposed costs back to the level recommended in the RFP was improper.

With respect to URC's contention that the agency should have made an upward adjustment to IQ's proposal for warehouse costs, URC appears to be right, and IQ essentially concedes this point. See IQ's Comments, Feb. 28, 2005, at 32. However, our review indicates that there may also have been a need for a similar upward

adjustment to URC's proposed warehouse costs, suggesting that the relative change to URC's and IQ's proposed costs may be less than URC suggests. Our reasoning is set forth below.

The RFP here required that offerors propose a warehouse providing at least 2.7 million cubic feet of storage. RFP, SOW at 28. All parties agree that a warehouse totaling 90,000 square feet of floor space with a standard 30-foot high ceiling would meet this requirement ($90,000 \times 30 = 2,700,000$). IQ offered a 90,000 square foot warehouse in its technical proposal, but computed the lease cost to the government in its cost proposal using 60,000 square feet. See AR, Tab 35, p. I-10. Since HHS did not catch the error, URC suggests, and IQ concedes, that IQ's proposal should be adjusted upwards by the cost per square foot of the remaining 30,000 square feet, which comes to **[deleted]** in increased rental over 5 years, plus **[deleted]** in increased overhead. The total amount of the upward adjustment is **[deleted]**.

On the other hand, IQ points out that URC also may have failed to propose sufficient costs for warehouse space. IQ's Comments, Feb. 28, 2005, at 11, 35. In this regard, IQ points to URC's offer of a **[deleted]** square foot facility with a **[deleted]**-foot high ceiling (which yields a total storage capacity of **[deleted]** cubic feet), that would be used for storage and shipment in connection with this contract and other contracts as well. On this point, URC's proposal advises as follows:

In all, NCADI, NMHIC, **and [deleted] other information services contracts** use the warehouse and its distribution center to store and ship publications and other materials in response to requests for information from the general public, health providers, Federal agencies, educational institutions, and private organizations.

AR, Tab 62, at 141 (emphasis added). On this basis, IQ argues that URC has not offered, or priced, the requisite amount of warehouse space. Although IQ raised this matter in its comments filing, URC did not answer this assertion in any way in its own subsequent supplemental comments filing.

In a warehouse with **[deleted]**-foot ceilings, **[deleted]** cubic feet of storage space--the amount by which URC's proposed warehouse exceeds the RFP-required amount of 2.7 million cubic feet--translates to **[deleted]** square feet of floor space available for the **[deleted]** other information services contracts cited in URC's proposal. Given that URC has not addressed in any way how it will meet the storage and shipment requirements of those **[deleted]** other contracts in this relatively small space, it appears that an upward adjustment to URC's proposed costs in this area may be warranted.

In sum, our review of proposed warehouse costs leads us to conclude that URC has clearly shown there should be an upward adjustment to IQ's proposed costs in the amount of **[deleted]**. As with the changes in the technical and past performance

scores, discussed above, we will set forth each of these adjustments at the end of this decision in order to consider whether the record supports a conclusion that URC has been prejudiced. With respect to the question of whether URC's proposed costs also should have been adjusted upwards, and if so, by what amount, we think URC's failure to address this matter supports IQ's contention that some adjustment should be made to URC's costs as well, although we are unable to quantify the amount of any such adjustment without URC's input about how much space it uses to perform the other six contracts.

URC also argues that an upward adjustment should be made to IQ's proposed costs for the operation of a call center. In this regard, URC argued during the earlier protest that IQ proposed only **[deleted]** full-time equivalents (FTE) as its personnel cost for operating the call center. In response, HHS pointed out that URC was misreading IQ's proposal because there were another **[deleted]** FTEs for the call center who were subcontract employees, plus another **[deleted]** FTEs in management, for a total of approximately **[deleted]** FTEs for this task. AR at 18. In its comments, URC concedes the oversight, see URC Comments, Feb. 28, 2005, at 32 n.25, but argues that IQ will need an additional **[deleted]** FTEs to cover nights and weekends, and provide vacations and sick days.

HHS disagrees. In its report in answer to the current protest, the agency points out that the RFP does not require that the call center be staffed 24 hours per day, 7 days per week, as URC seems to suggest. See AR at 19; RFP, SOW at 13. In addition, HHS points out that IQ has proposed changing the ways the contractor handles incoming calls, including increased use of voice recognition technology. AR at 18. Thus, the agency's calculations show that URC has proposed sufficient staff to cover the operation of the call center. Finally, HHS replies that URC itself proposed **[deleted]** FTEs for the operation of the call center, provides citations to URC's proposal to support its claim, and contends that if adjustments to IQ's proposal are needed, they are needed for URC's proposal as well. AR at 19.

In our view, URC's disagreement with the agency's conclusions does not establish that the agency acted unreasonably in not upwardly adjusting IQ's proposed costs for the operation of the call center. In addition, we note that URC again, as with the warehouse issue, simply provides no answer to the agency's contention about its own proposed staffing for the call center.

URC's final challenge to the cost realism review is that the agency wrongly added costs to URC's proposal in the area of special initiative projects, thus double-counting some costs, and applied an improper overhead rate to the amount of the adjustment. In this regard, it appears URC is wrong about the adjustment being improper, but right about its challenge to the applicable overhead rate.

The RFP here instructs offerors to assume they will incur other direct costs for special initiative projects of \$1.5 million per year, or \$7.5 million for the life of the

contract. RFP, SOW at 25. As URC explains, its FPR did not follow these instructions, and included some **[deleted]** hours of direct labor associated with this project; in addition, its FPR did not use the RFP recommendation of \$7.5 million in other direct costs, but included only **[deleted]** million in other direct costs for these projects. URC Comments, Feb. 28, 2005, at 33-34. HHS explains that it evaluated the direct labor costs as related to subcontract management and coordination, and not as part of the \$7.5 million in other direct costs it told offerors to assume for this effort. Supp. AR at 6. Therefore, HHS made an upward adjustment to URC's other direct costs of **[deleted]** to achieve the \$7.5 million level identified in the RFP.

URC does not challenge the upward adjustment of **[deleted]** in other direct costs, but argues that the agency should have deducted the labor costs and corresponding overhead that were associated with this work in its proposal, which total **[deleted]** plus overhead charges. In addition, URC argues that HHS wrongly applied to the **[deleted]** adjustment the general and administrative (G&A) rate of SHS, URC's proposed subcontractor, rather than URC's rate.

We see nothing unreasonable about HHS's conclusion that the direct labor costs in URC's proposal were, in fact, for direct labor associated with managing this anticipated subcontract, and were not a portion of the indirect costs offerors were advised to plan for in the RFP. In addition, given that the amount of direct labor costs were not the same as the amount missing from URC's proposed other direct costs--i.e., **[deleted]** versus **[deleted]**--we are at a loss as to how URC can claim that HHS erred in not recognizing that they were part of the missing amount. Finally, we note that URC's introduction of this ambiguity in its FPR deprived the agency of an opportunity to raise questions about the matter, thus leading us to conclude that URC, not HHS, bears the risk that its actions might be misunderstood.

With respect to the appropriate G&A rate, however, it appears URC is right in its assertion that HHS applied the wrong rate. Although HHS correctly points out that URC's proposal stated that SHS would be incurring all other direct costs for the team, URC points out that there was another provision specifically advising that URC would be the prime contractor for any subcontract for the special initiatives project. If HHS had used URC's G&A rate, rather than SHS's, this adjustment would have been approximately **[deleted]** lower. As with other adjustments identified throughout this decision, we will consider the impact of this matter below.

Prejudice

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 103 F.3d 1577, 1581 (Fed. Cir. 1996).

During the course of the discussion above, we have identified four separate errors in this evaluation. Specifically, we have concluded that: (1) IQ's technical score should be lowered from 94.4 to 92.2 to remove both of the scores given by one evaluator from both URC's and IQ's composite technical ratings; (2) IQ's past performance score should be lowered from 33.12 to 32.16, and URC's score should be lowered from 33.23 to 33.12, to correct averaging errors in the agency's past performance review; (3) IQ's evaluated costs should be adjusted upwards by **[deleted]**, to capture the cost of 30,000 additional square feet of warehouse space; and (4) URC's evaluated costs should be lowered by **[deleted]**, to reflect the application of URC's lower G&A rate, rather than SHS's higher rate, to an otherwise appropriate adjustment to URC's other direct costs.

Entering these changes into the final evaluation results displayed in the selection decision, the corrected final scores and evaluated costs are as follows:

	IQ Solutions	URC
Final Technical Score	92.2 points	92.8 points
Final Past Performance	32.16 points	33.12 points
Total Proposed Costs	[deleted]	[deleted]
Total Evaluated Costs	\$62.118 million	\$67.198 million

In considering the significance of these changes in the evaluations results, we think it is appropriate to keep in mind the conclusions of the selection official, who, at the end of her 14 pages of review, stated as follows:

Although technical considerations were paramount in this acquisition, since the technical scores were almost equal with IQ slightly higher, IQ is 10.05% lower in cost or \$6,144,200 (using cost realism), and it is recommended that the award be made to IQ as the best value to the government.

Source Selection Determination, Dec. 22, 2004, at 14.

The question before us is whether the errors that have been identified in the evaluation lead to the conclusion that, but for those errors, there was a substantial chance the selection official would have awarded to URC. Correcting the errors leaves URC with a 0.6 point advantage in technical merit, a 0.96 point advantage in past performance, and evaluated costs approximately \$5.1 million higher than IQ's evaluated costs.

Our Office has long recognized that point scores and adjectival ratings are only guides to assist source selection officials in evaluating proposals; they do not mandate automatic selection of any particular proposal. Jacobs COGEMA, LLP, supra, at 31; PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 12; Grey Adver., Inc., B-184825, May 14, 1976, 76-1 CPD ¶ 325 at 9. Despite the slight advantage for URC now shown by these point scores, we view the change in the offerors' technical and past performance scores as de minimis. Looking past these slight scoring changes, we have seen nothing during our extensive review of the record in this protest, as well as the record developed during the previous protest, or our consideration of the challenges raised, that, in our view, is sufficiently significant to support the conclusion that, but for the errors here identified, there would have been a substantial chance the selection official would have altered her judgment that these proposals are essentially equal under the technical and past performance evaluation criteria. Further, we note that there are other areas, all of which were discussed above, where additional adjustments could be made to these scores and costs that might reverse the results again, or narrow this already small gap even more.¹⁹

While we recognize that the change in the evaluated cost differential here cannot be termed de minimis (unlike the change in the technical and past performance scores), the selection official concluded that these proposals were essentially equal in merit. Since, as stated above, we have seen nothing in this record that would lead us to conclude that the selection official would change her view that these proposals are essentially equal, we likewise see no reasonable basis to assume that the selection official would conclude that paying an additional \$5.1 million was warranted for the services of an offeror whose proposal is essentially equal in merit to the proposal of

¹⁹ For example, as discussed above, the selection official here noted an error in the previous evaluation wherein HHS double-counted a very favorable past performance score given URC; she stated that correcting the error would have lowered one portion of URC's past performance score by 0.75, but opted not to make the correction because she considered the matter a minor discrepancy. Source Selection Determination, Dec. 22, 2004, at 6-7. As also discussed above, when questions were raised about whether an upward adjustment should have been made to URC's proposed warehouse costs, as was made to IQ's warehouse costs, URC remained silent. Likewise, URC offered no response when HHS suggested that it offered fewer FTEs to operate the call center than IQ offered, and that if an adjustment was needed for one, it was needed for both.

a lower-cost offeror. Under these circumstances, we cannot conclude that URC has shown that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald Bradley, supra.

The protest is denied.

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General Counsel