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

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Decision

Matter of: CGI Federal Inc.

File: B-403570; B-403570.2; B-403570.3; B-403570.4

Date: November 5, 2010

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Carl J. Peckinpugh, Esq., and Jill R. N. Chung, Esq., for Computer Sciences Corp., an intervenor.

Christine Simpson, Esq., Centers for Medicare and Medicaid Services, for the agency.

Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of evaluation of cost proposals submitted in connection with task order competition was reasonable where the record reflects that the agency adequately documented its evaluation of firms' proposed direct costs, including labor categories, labor rates, and labor hours, on a task basis, as well as the firms' indirect costs, and reached reasonable conclusions regarding the realism of the proposed costs.

2. Protest alleging that agency's oral discussions regarding its cost proposal were misleading, thereby causing the protester to significantly increase its level of effort and total estimated cost, is denied where the allegations are not consistent with the underlying procurement record and, even assuming the facts alleged by the protester to be true, they fail to establish that the agency's discussions were misleading.

DECISION

CGI Federal Inc., of Fairfax, Virginia, protests the issuance of the Development Effort Consolidation Contract (DECC) phase 4 task order to Computer Sciences Corporation (CSC) of Falls Church, Virginia, under task order request for proposals (TORP) No. 100677, issued by the Centers for Medicare and Medicaid Services (CMS) to streamline the design, development, operation and maintenance of four different information technology systems that support the Health Care Quality Information System (HCQIS). CGI argues that CMS's discussions with CGI were misleading and unequal as compared with those the agency held with CSC; CMS improperly evaluated and failed to properly document its evaluation of the cost

proposals submitted by CGI and CSC; CMS's past performance and technical evaluations were improper; and, as a consequence, the award decision was flawed.

We deny the protest.

BACKGROUND

On February 3, 2010, CMS issued the TORP to holders of CMS Enterprise System Development (ESD) contracts. The TORP sought proposals for the issuance of the DECC phase 4 task order--a cost-plus-award-fee task order, with a 6-month base period, plus six 1-year option periods.

As explained by the parties, the issuance of the DECC phase 4 task order is the culmination of a four-phase process. In phases one through three, CMS solicited assistance in developing program management and business requirements (phase 1), infrastructure, support, and testing (phase 2), and ad hoc reporting, analytics, and data management (phase 3). The phase 4 task order is for the design and development of an enterprise architecture (EA) solution and the consolidation of the HCQIS application groups. CMS explains that HCQIS is a major application environment that uses application groups, shared servers, and a Wide Area Network to monitor and improve utilization and quality of care for Medicare and Medicaid beneficiaries. According to CMS, "[t]his Enterprise Architecture solution will promote optimal efficiency to HCQIS by reducing efforts across program applications and optimizing productivity and cost savings to the Agency." Agency Report (AR), Matos Decl., Oct. 1, 2010, at 1.

The TORP provided that CMS would select the contractor for the phase 4 task order in accordance with Federal Acquisition Regulation (FAR) § 16.505, "based on an assessment of the ESD Contractor's technical and business proposals that, in the government's estimation, provides the best value. The Government seeks to award this Task Order to the ESD Contractor who gives the Government the greatest confidence that it will best meet or exceed the requirements for a fair and reasonable cost." TORP, Attach. 2. Under the TORP, CMS's evaluation was to be based on the following non-cost criteria, with A and B considered most critical: (A) technical architecture (TA) framework; (B) oral presentation; (C) key personnel and staffing; and (D) past performance. The non-cost evaluation criteria, when combined, were more important than cost.

While the TORP did not provide any further detail regarding the evaluation of contractors' costs, which were to be set forth in their business proposals, the TORP did contain detailed instructions regarding the information contractors were to submit in their business proposals. Among other things, contractors were required to identify all direct labor categories that they intended to use in performance of the task order, as well as the number of labor hours and labor rates for each labor category, as well as fringe benefits and overhead rates. TORP at Attach. 1.

Contractors also were instructed to structure their proposals, including their business proposals, based on 14 different task groups. TORP, Attach. 7. Each task group corresponded to requirements set forth in the TORP statement of work (SOW). By way of example, the TORP advised that Task Group 1, Enterprise Services, Administration and Management, included “all the work required to operate and oversee the contract. Examples of this would be the senior director level positions and Other Direct Cost such as desktops, software, etc. to perform the management of this [SOW].” TORP, Attach. 7.

In response to the TORP, CMS received timely proposals from two ESD contract holders, CSC and CGI. CSC proposed a total estimated cost plus award fee of \$149,908,445, while CGI’s total proposed cost plus award fee was \$286,322,227. For the purpose of evaluating the proposals, CMS constituted a technical evaluation panel composed of five members and numerous subject matter experts, as well as a business evaluation panel composed of three members. After CSC and CGI completed oral presentations, the evaluation panels performed their initial evaluations in early May. CSC and CGI were rated as follows:

Contractor	Technical Architecture	Oral Presentation	Key Personnel and Staffing	Past Performance
CSC	Good	Good	Fair	Fair
CGI	Fair	Fair	Fair	Good

AR, Tab 37, Initial Technical Evaluation Memorandum, May 4, 2010, at 1.

Based on the initial evaluations, CMS forwarded questions to both contractors on May 12. In addition, the agency held telephone conference calls with both offerors to review and clarify, as necessary, the written questions sent to them.

CSC and CGI submitted their first revised proposals on June 4. CSC proposed a total estimated cost plus award fee of \$148,361,196, and CGI proposed a total estimated cost plus award fee of \$258,764,026.

Based on their first revised proposals, CSC and CGI were rated as follows:

Contractor	Technical Architecture	Oral Presentation	Key Personnel and Staffing	Past Performance
CSC	Very Good	Very Good	Very Good	Fair
CGI	Good	Good	Fair	Good

AR, Tab 38, Revised Technical Evaluation Memorandum, June 18, 2010, at 1.

CMS then sent both firms a second round of questions and held a second round of telephone conference calls to review and provide any clarifications with respect to the questions.

On July 12, CSC and CGI submitted their second revised proposals; both increased their total estimated cost plus award fee, as follows: CSC--\$223,326,832, and CGI--\$395,985,078. Based on CMS's evaluation of their second revised proposals, CSC and CGI were rated as follows:

Contractor	Technical Architecture	Oral Presentation	Key Personnel and Staffing	Past Performance
CSC	Very Good	Very Good	Very Good	Good
CGI	Very Good	Good	Fair	Good

AR, Tab 39, Second Revised Technical Evaluation Memorandum, July 23, 2010, at 1.

Considering CSC's technical and cost advantage as compared to CGI, the contracting officer determined that CGI did not have a reasonable chance of receiving the task order. In making this decision, the contracting officer considered CSC's advantages under the non-cost evaluation factors, and its significant cost advantage (even after factoring in an anticipated \$20 million upward cost adjustment to CSC's total cost). AR, Tab 49, Negotiation Memorandum, at 5-7. With regard to cost, the contracting officer noted that the large cost differential stemmed from the fact that CGI's average fully burdened labor rate was approximately [DELETED] percent higher than CSC's, and the fact that CGI had proposed significantly more hours to perform the requirements. AR, Tab 49, Negotiation Memorandum, at 11. CMS then notified CGI on August 6 that it had been eliminated from the task order competition. That same day, CMS sent CSC a letter with additional questions regarding its business proposal to address areas where CMS believed CSC's costs should be higher. CSC submitted its third revised proposal on August 9, with a total estimated cost of \$230,134,644. CMS determined that CSC had satisfactorily addressed the questions raised, and issued the task order to CSC on August 13. Shortly after CMS issued the task order to CSC, CGI filed this protest.

DISCUSSION

CGI principally argues that the discussions the agency held with CGI regarding its cost proposal were misleading, and therefore unequal, where CMS directed CGI to substantially raise its total cost during the second round of oral discussions. CGI also argues that the agency's cost realism evaluation was fundamentally flawed and not properly documented; CMS unreasonably evaluated CGI's past performance as merely "good"; CMS unequally assessed CGI and CSC under the key personnel and staffing evaluation factor; and, based on these errors, the agency acted unreasonably in deciding to exclude CGI from the competition and issue the task order to CSC.

Cost Evaluation Issues

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1); 15.404-1(d); Tidewater Constr. Corp., B-278360, Jan. 20, 1998, 98-1 CPD ¶ 103 at 4.¹ Consequently, the agency must perform a cost realism analysis to evaluate the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1); Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9. An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(c), or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Further, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7; Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 10-11. We review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and not arbitrary. Hanford Env'tl. Health Found., supra, at 10.

Notwithstanding CGI's assertions to the contrary, the record reflects that CMS thoroughly evaluated and documented its evaluation of the cost proposals submitted by CSC and CGI. Specifically, the record reflects that CMS extensively analyzed the direct costs proposed by CSC and CGI with respect to each task group, to include performing detailed analyses of the labor categories, labor hours, and labor rates proposed by both firms. Based on this review, CMS determined that CGI's labor rates were approximately [DELETED] percent higher, on average, than those proposed by CSC and that it proposed significantly higher labor hours than did CSC

¹ We recognize that the procurement was conducted using the procedures established under FAR § 16.505, not FAR part 15. We also recognize that the TORP did not expressly state that CMS would evaluate proposals for "cost realism," as contemplated by FAR § 15.404-1(d); rather, the TORP indicated that CMS would consider whether a contractor had proposed "a fair and reasonable cost." TORP, Attach. 2. The record, however, reflects that CMS did in fact evaluate the firms' costs for realism. Since the TORP was for the issuance of cost-reimbursement task order, CMS's evaluation in this regard was consistent with FAR § 16.505(b)(3), which requires agencies to establish prices for task orders consistent with the policies and methods established in FAR subpart 15.4, which, in turn, provides for performing cost realism analyses when awarding a cost-reimbursement contract. See FAR § 15.404(d)(2).

to perform the requirements. Throughout this process, CMS held several rounds of discussions with both CSC and CGI, in which CMS addressed areas where both firms had proposed inappropriate labor categories or inadequate labor hours, or where the labor rates appeared to be either too high or too low, and used the firms' responses for the purpose of evaluating their costs.

By way of example, in its evaluation of CSC's second revised cost proposal, with respect to Task Group 14, Inquiry Support, CMS advised CSC that the labor categories proposed for its subcontractor lacked the specialized expertise required to successfully perform specific support functions. AR, Tab 44a, Evaluation of CSC's Second Revised Business Proposal, at 35 and Attach. 1. In its review of CSC's final business proposal, CMS noted that CSC responded by altering the labor categories for its proposed subcontractor labor for Task Group 14. CMS specifically identified and considered the changes by CSC, noted the associated increase in CSC's cost proposal, and determined that CSC had adequately addressed the issue. AR, Tab 44aa, Evaluation of CSC's Final Business Proposal at 26, 32. The record also reflects that CMS utilized the expertise of the technical evaluators to assess whether the labor hours proposed were realistic to perform the requirements associated with the various task groups. See, e.g., AR, Tab 44aa, Evaluation of CSC Final Business Proposal, at 4 (stating that both the technical and business panels concurred that overall CSC's proposed costs were realistic for Task 1 and noting that CSC's approach provided appropriate staffing for coordination, management, program level standards and process enforcement, program reporting, and related management activities necessary to perform the work identified in CSC's technical approach).

In support of its contention that CMS's cost evaluation was undocumented and unreasonable, CGI characterizes the agency's cost judgments, specifically those concerning the adequacy of CSC's proposed labor hours, as conclusory and without a reasonable basis since CMS did not use the government estimate as a basis for assessing whether CSC's costs were realistic. CGI also argues that the evaluation was flawed because it failed to consider the risk associated with CSC's low cost proposal. CGI's arguments are without merit.

As explained above, CMS conducted and documented a thorough, probing cost evaluation, one which considered the most significant and critical cost elements of CSC's and CGI's business proposals, to include consideration of specific areas in the various iterations of both CSC's and CGI's proposals where CMS identified proposed labor hours as either excessive or inadequate to perform specific task group requirements. See, e.g., AR, Tab 44a, Evaluation of CSC Second Revised Business

Proposal, at 9 (addressing CSC's responses to CMS' concerns regarding its level of effort for Task 2, how CSC needed to further increase its level of effort, and CMS quantification of the cost impact associated with the required changes). In response to the concerns raised by CMS, CSC made various adjustments to its various proposal submissions, which included specifically identifying increases to the number of labor hours it proposed for each task group in question. Guided in part by the expertise of the technical evaluators, CMS separately analyzed and concluded, for each task group, that CSC's adjustments adequately addressed the agency's concerns regarding CSC's level of effort. Id. Given the record of the agency's cost evaluation, there is no basis for CGI's contention that it was inadequately documented.

Moreover, there is no basis for CGI's contention that the agency's cost evaluation was flawed because it was not based on the government estimate. As a preliminary matter, CMS explains that it did not utilize the government estimate because it was not a good indicator of cost since it was largely based on costs associated with non-competitively awarded work. Thus, the agency had a reasonable basis to disregard its estimate in this case. See The S.M. Stoller Corp., B-400937, et al., Mar. 25, 2009, 2009 CPD ¶ 193 at 16 n.8. Further, as a general matter, when assessing cost realism, there is no per se requirement that an agency compare offerors' proposed costs with the government estimate. See, e.g., Advanced Commc'n Sys., Inc., B-283650, et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 6. Rather, the relevant question is whether the methodology used by CMS to evaluate CSC's costs was reasonable. While CGI contends it was not possible to determine whether CSC's proposed level of effort for the various task groups was reasonable without reference to the government estimate,² or some other type of cost baseline, as explained above, CMS's business and technical evaluators carefully examined CSC's level of effort for each task group, and, based on their expertise, concluded that CSC's level of effort

² Other than the total amount of the government estimate, CGI does not provide any analysis or support for its general contention that CSC's proposed level of effort for the various task groups was understated or otherwise unrealistic, notwithstanding the fact that the agency report included CSC's cost proposal, which specifically set forth CSC's proposed level of effort and labor categories for each task group.

and proposed approach were realistic to perform the requirements.³ CGI has not provided any basis for our Office to conclude that the agency's exercise of its considered judgment in this regard was unreasonable or otherwise improper.

Regarding CGI's contention that the agency failed to properly consider the performance risks associated with CSC's low cost, the argument is without merit. First, the TORP did not provide for the type of separate risk analysis suggested by CGI. Second, CGI's argument is based on an assumption that CSC's price in fact presented risk. This assumption lacks any basis, however; as noted above, the agency reasonably found CSC's costs to be realistic, and CGI has not identified or

³ In its comments on the agency report, CGI argues for the first time that CMS failed to properly consider CSC's approach to pricing in the option years. CGI Comments at 36-38. Aside from the fact that the arguments are untimely since they were raised more than 10 days after CMS received the relevant cost evaluation documents as part of the agency's early document production, see note 7, infra, the arguments are also internally inconsistent and do not suggest that the agency's evaluation of CSC's costs was unrealistic. Specifically, CGI on the one hand argues that the agency failed to use the government estimate, which incorporated a 25% cost savings based on implementing a service oriented architecture (SOA), while also complaining that CMS could not have reasonably analyzed CSC's reduced level of effort for the out years based on cost savings stemming from SOA. In any event, there is nothing in the record to indicate that the agency found CSC's level of effort realistic based on a particular level of cost savings associated with operating in a SOA environment. Rather, the record merely indicates that CMS had concerns about the adequacy of its cost estimate, in part, because the cost estimate was based on a 25% SOA cost savings, yet the SOA cost savings could not be adequately determined, and that the evaluation team reviewed CSC's proposed hours task-by-task and, based on their expertise, determined that the hours proposed were adequate to perform the requirements. AR, Tab 50, Selection Decision, at 4.

explained how any of the specific cost elements of CSC's proposal, such as its labor hours, labor rates, labor categories, or indirect rates, were unrealistic.⁴

Throughout its protest, CGI also argues that CMS held fundamentally misleading discussions with CGI regarding its cost proposal, which led CGI to significantly increase its costs in its third proposal submission--CGI increased its total cost by approximately \$137 million--which then led to CGI being eliminated from the competition.

When conducting a task order competition under FAR § 16.505, agencies are required to provide contract holders with a "fair opportunity" to be considered for task orders. FAR § 16.505(b)(1). While FAR § 16.505 does not establish specific requirements regarding the conduct of discussions under a task order competition, exchanges occurring with contract holders of multiple award contracts in a FAR § 16.505 procurement, like other aspects of such a procurement, must be fair. In this regard, discussions, when conducted, must be meaningful, that is, they may not be misleading. *See, e.g., Sabre Sys., Inc.*, B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 6 (explaining, in the context of a task order procurement, that discussions must be meaningful). The record reflects that the agency's discussions with CGI regarding the costs in its business proposal were meaningful and not misleading.

⁴ CGI argues that when CMS eliminated CGI from the competition (after the submission of the second set of proposal revisions), significant risk remained with CSC's proposal due to outstanding cost issues identified by CMS, and that it was therefore inappropriate for CMS to have eliminated CGI from the competition at that juncture. *See* CGI's Comments at 33. In this regard, CGI specifically cites an issue with CSC's proposal regarding Task Group 11, Reporting Hospital Quality Data Annual Payment Update Enhancement. Reference to this task group is misplaced, however, since CMS in fact concluded that CSC had adequately addressed the agency's concerns for this task group in its second revised proposal submission and that the only remaining cost issue for this task group was specifically quantified in the amount of \$600,000. *See* AR, Tab 44a, Evaluation of CSC's Second Revised Business Proposal, at 29-30. Moreover, the record reflects that CMS did in fact account for the remaining cost issues where CMS quantified specific probable cost increases for task groups 2, 5, 9, and 11. *See id.* at 9, 17, 25 and 29. Moreover, the record reflects that CMS identified an overall cost increase associated with the outstanding issues in CSC's second revised proposal of approximately \$20 million. *See* AR, Tab 49, Negotiation Memorandum, at 7. Thus, it is evident that CMS had in fact considered and quantified the risks associated with CSC's proposal when it eliminated CGI from the competition and acted reasonably in eliminating CGI given its significantly higher costs and lower ratings under the non-cost technical evaluation factors.

In the first set of written discussion questions sent to CGI, CMS generally advised that CGI's business proposal should reflect various assumptions regarding requirements for option years 2 through 6. CMS also pointed to specific areas where CGI's level of effort appeared to be either high or low for a particular task group and asked CGI to make adjustments or verify how it would complete the effort with the proposed level of effort. See AR, Tab 27, CGI Negotiation Letter, May 12, 2010, at 3-5. For example, with respect to Task Group 3, End Stage Renal Disease (ESRD) System Development, CMS advised CGI to revise its proposal to include the appropriate labor hours needed to support CMS's plans to develop and deploy quarterly releases of the ESRD System during option years 2 through 6. Id. at 4. CMS also advised CGI that it had proposed zero hours in option years 3 through 6 for Task Group 5, SOW Quality Improvement Organization (QIO), despite the fact that CMS is planning to develop and deploy quarterly releases of the 10th QIO SOW system during option years 2 through 6. CMS specifically advised CGI to revise its proposal "to include the appropriate labor hours to support the 10th [SOW] System during option years 2 through 6." Id. CMS provided similar guidance with respect to Task Group 4, Hospital Reporting, and Task Group 6, Physician Quality Reporting Initiative (PQRI) 2011 and beyond. Id.

After CGI submitted its revised proposal, in which it reduced its total overall cost to \$258,764,026, the agency sent CGI a second set of written discussion questions, advising CGI that it had again underestimated the level of effort in the option years for task groups 3, 4, 5, and 6. AR, Tab 30, CGI Negotiation Letter, June 29, 2010, at 2.

The record reflects that, in its second revised proposal, CGI increased its level of effort for task groups 3, 4, 5, and 6, with the largest increases occurring in task groups 4 and 6. CGI Second Revised Proposal, Vol. II, Cost Proposal, Cost Spreadsheets. More specifically, for task group 4, CGI increased its level of effort by 335%, and for task group 6, CGI increased its level of effort by 424%, whereas for task groups 3 and 5, CGI increased its level of effort by 57% and 41%, respectively. AR, Tab 50, Selection Memorandum, at 5.

According to CGI, the large increase in its level of effort, and concomitant significant increase in cost, resulted from the second round of oral discussions CMS held with CGI, during which CMS expressed concern regarding CGI's "[Operation and Maintenance (O&M)] pricing." Protest at 16. CGI states that it was puzzled by this concern since the agency had not previously raised any issues regarding CGI's O&M prices. See Protest, exh. 5, Decl. of CGI Vice President for Consulting, at ¶¶ 8, 10. CMS allegedly advised CGI that it would have to add more level of effort to O&M tasks in the out years and "CMS hinted at what it wanted with respect to increased staffing and directed CGI to confer with [DELETED]," which CGI had proposed as a member of its team. Id. CGI maintains that it pressed the agency to clarify how CGI could increase its level of effort in the out years and the agency stated that "CGI will not pass the cost realism test and that CGI needs to have a 'come to Jesus' with [DELETED] regarding [CGI's] sizing of these efforts and re-estimate what it will take

to do the job,” and “[y]ou guys have the [DELETED] on your team. You should know what they’re doing. If you don’t, go talk to them.” Protester’s Comments, exh. A, Second Decl. of CGI Vice President for Consulting, at ¶ 11. According to CGI, this was “essentially code, or a formula for how CGI should fill in the blanks for the out-years using [DELETED] [level of effort] data.” CGI Comments at 10 n.3.

Evidently, due to concerns about remaining competitive and not knowing how high to increase the level of effort, CGI states that it asked CMS what would happen “if CGI swings the pendulum too far?”, referring to its level of effort; according to CGI, the agency responded, “we are still in negotiation.” Protest, exh. 5, Decl. of CGI Vice President for Consulting, at ¶ 11. Following CMS’s “formula” spoken in “code,” CGI maintains that it used “[DELETED] as a guidepost for how to increase its [level of effort]” and “added in [level of effort] for O&M accordingly.” Protest at 16-17.

CGI also alleges that during the second round of oral discussions CMS identified CGI’s costs for Task Group 5, 10th SOW QIO, as being too low, and informed CGI that it “should assume a complete re-write of these systems.” Protest, exh. 5, Decl. of CGI Vice President for Consulting, at ¶ 7. CGI maintains that it was surprised by CMS’s position since during the first round of oral discussions, CMS led CGI to believe that its costs for this task group were too high. *Id.* According to CGI, based on these second oral discussions, in its second revised proposal it added back [DELETED] million, which it had previously removed based on the first round of oral discussions. Protest at 15-16.

Setting aside the fact that the agency expressly denies that the oral discussions actually transpired as characterized by CGI, the facts, as CGI’s has alleged, are at odds with the written record. CGI contends that CMS’s oral discussions with CGI were misleading with respect to its O&M pricing for the out years, which led it to significantly increase its level of effort for O&M in the out years as part of its second revised proposal. The flaw in this contention, as pointed out by CMS, is that the O&M tasks were within task groups 7 through 10 of the solicitation and CGI did not make any changes to its level of effort for these task groups.⁵ See AR, Tab 50, Selection Memorandum, at 5. Rather, as noted above, CGI significantly increased its level of effort for task groups 3, 4, 5, and 6. Thus, any purported conversations about CGI’s O&M level of effort would not appear to account for the significant cost increase in its second revised proposal.

⁵ The O&M task groups, as set forth in the TORP, were as follows: Task Group 7, Steady State Ongoing Maintenance (O&M) Web Based Systems; Task Group 8, Steady State O&M Warehouses; Task Group 9, Steady State Ongoing Maintenance O&M Application Based Systems; and Task Group 10, Steady State O&M Report Systems. TORP, Attach. 7.

To the extent CGI's references to the oral discussions about its O&M level of effort actually relate to its staffing for task groups 3, 4, 5, and 6--CGI has not explicitly made such a connection notwithstanding the fact that the agency report pointed to the disconnect between the O&M task groups and CGI's assertions--CGI's allegations are again inconsistent with the record. Specifically, as noted above, CGI alleges that it was "puzzled" or confused by CMS's indication during the second round of oral discussions that its level of effort was too low since CMS had not previously raised any such concerns. To the extent CGI's allegations relate to task groups 3, 4, 5, and 6, CGI's asserted puzzlement is inconsistent with the record of CMS's written discussions with CGI. As noted above, CMS expressly advised CGI, in the first set of written discussions, which CGI received before the submission of CGI's first revised proposal and before the agency held its second round of oral discussions, that CGI's level of effort for task groups 3, 4, 5, and 6 was too low. For example, as noted above, in the first set of written discussions CMS expressly advised CGI to revise its proposal for Task Group 3, to include the appropriate labor hours need to support CMS's plans to develop and deploy quarterly releases of the ESRD System during option years 2 through 6, and for Task Group 5, CMS noted that CGI had failed to propose any hours for option years 2 through 6.⁶ See AR, Tab 27, CGI Negotiation Letter, May 12, 2010, at 3-5.

Moreover, even assuming that the oral discussions transpired as CGI has alleged, it is evident that CGI read significantly more into the agency's comments than was reasonable. While CGI states that it interpreted the agency's "hints" or "code" as an express "formula" for how CGI was to increase its level of effort based on [DELETED] current level of effort, CGI's interpretation was unreasonable given that the alleged comments merely raised general concerns regarding CGI's level of effort and directed CGI to look internally to discern how to properly estimate the level of effort needed to accomplish the work. Simply put, nothing in the alleged remarks can reasonably be understood to have provided CGI with express guidance regarding the appropriate level of effort needed to accomplish the requirements or as having

⁶ While CGI claims it was surprised that the agency advised CGI to raise its level of effort for Task Group 5 in the second oral discussions, CMS evidently was surprised when CGI reduced its level of effort for Task Group 5 after the first written discussions, since they advised CGI that its level of effort for the out years of Task Group 5 was too low. Moreover, CGI's assertion that CMS led CGI to remove [DELETED] million in its first revised proposal for task group 10, and then add it back in its second revised proposal, appears to be inconsistent with the record, which reflects that CGI removed approximately 200,000 hours for Task Group 5 from its initial proposal to its first revised proposal, but then only added back approximately 122,000 hours in its second revised proposal. It is not apparent how CGI could have on the one hand removed approximately 200,000 hours, then added back approximately 122,000 hours (78,000 fewer hours), yet claim that the two changes had an identical dollar impact on its proposal.

directed CGI to raise its level of effort in the manner that it did. Rather, the record reflects that CMS led CGI to the areas of its concern regarding CGI's level of effort and left CGI to devise appropriate adjustments based on its business judgment. The fact that CGI ultimately made adjustments which were well beyond what the agency had expected, and what was considered appropriate, does not demonstrate that the agency's discussions were not meaningful, or were misleading.

In addition, to the extent CGI believed that CMS would hold additional rounds of negotiation in the event that CGI overestimated its level of effort, this too was based on an unreasonable interpretation of oral statements allegedly made by CMS. CMS's alleged statement--"we are still in negotiation"--is ambiguous at best, and therefore does not support CGI's interpretation that it represented a commitment by CMS to allow CGI to submit yet another revised proposal, particularly where such an understanding was inconsistent with CMS's second written discussion letter, which advised CGI to submit a "final proposal revision" and thereby put CGI on notice that CMS was not anticipating another round of revised proposals. AR, Tab 30, CGI Second Negotiations Ltr., at 3.

Past Performance Evaluation

CGI maintains that it should have received higher than a "good" rating under the past performance factor.⁷ In this regard, CGI argues, at some length, that its past performance record was exceptional. In addition, to the extent there were performance issues with one of its subcontractors, specifically [DELETED], which CGI had proposed to perform approximately [DELETED] of the work under the task

⁷ CGI also challenges the agency's evaluation of CSC's past performance and argues that it was irrational for CMS to have rated both firms as "good" given CSC's inferior past performance record. These arguments are untimely as they were raised more than 10 days after CGI knew or should have known the bases for protest. See 4 C.F.R. § 21.2(a)(2) (2010) (protests based on other than solicitation improprieties must be raised within 10 days of when a protester learns its basis of protest). Specifically, the allegations were apparent from documents provided by CMS in advance of the agency report--CMS provided the parties with all relevant documents as part of an early document production by September 13--yet CGI first raised these issues in its October 12 comments on the agency report, approximately 1 month after it learned these bases for protest.

order, CGI maintains that it had identified corrective measures to address the performance issues in response to discussion questions raised by CMS. Having, in its view, adequately addressed the concerns raised regarding [DELETED], CGI argues it was improper for CMS to have continued to consider [DELETED] performance issues to be weaknesses in assessing its past performance, particularly where CMS failed to further advise CGI of any remaining concerns in subsequent rounds of discussions.

In reviewing protests of an agency's evaluation in a task order competition as here, we do not reevaluate proposals but examine the record to determine whether the evaluation was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. See Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 6-7.

The record reflects that both CGI and [DELETED] had received "outstanding," "excellent," and "good" ratings on several recent and relevant CMS contracts, as well as contracts with other federal agencies. See generally, AR, Tabs 40, 40a, and 41, CGI and [DELETED] Past Performance Information. CMS expressly noted these facts as strengths for CGI in its evaluation of CGI's past performance. AR, Tab 39, DECC Technical Evaluation Revised Summary Memorandum, July 23, 2010, at 8. The record also reflects, however, that CGI's positive ratings were somewhat tempered by the fact that [DELETED] had received "fair" ratings on one of its relevant contracts and that CGI's performance had also been rated as "fair" on another contract, which CMS deemed relevant to the phase 4 task order requirements. See AR, Tab 40 CGI Past Performance Reports, at 16-20 (rating CGI's performance as "fair" for all categories rated); AR, Tab 41, [DELETED] Past Performance Reports, at 1-5 (rating [DELETED] performance as "fair" under three of four categories and "good" for the remaining category). CMS considered the "fair" ratings for CGI and [DELETED] to be weaknesses, and overall assigned CGI a past performance rating of "good." AR, Tab 39, supra, at 8. The record also reflects that CMS asked CGI to specifically address [DELETED] "fair" ratings in the first round of written discussions and CGI provided a detailed response explaining how it intended to address the concerns with [DELETED] such that they would not occur in its

performance of the task order.⁸ Notwithstanding this response, CMS continued to evaluate CGI's overall past performance as "good" and CMS did not address the matter further in the second set round of discussions with CGI.

We have no basis to conclude that CMS's assessment of CGI's past performance as "good" was unreasonable or otherwise improper. As noted above, CGI's past performance ratings and those of its principal subcontractor, [DELETED], were mixed, ranging from "outstanding" to "fair." Thus, in our view, a rating of "good" was entirely reasonable. To the extent CGI advised CMS how it intended to address concerns with [DELETED] performance in the future, these future plans evidently did not affect CMS's perception of past performance risk stemming from the fact that CGI proposed to use a subcontractor which had a prior history of only "fair" performance. To the extent CMS's concerns remained after CGI had addressed them, CMS was not required to raise them again with CGI in subsequent rounds of discussions. See Portfolio Disposition Mgmt. Group, LLC, B-293105.7, Nov. 12, 2004, 2004 CPD ¶ 232, at 2 (agency is not required to provide an offeror with additional discussions on an issue remaining in its proposal where the issue had previously been the subject of discussions).

Other Evaluation Issues

CGI also challenges CMS's evaluation of CGI's proposal under the key personnel and staffing evaluation factor, arguing that the evaluation was unreasonable, undocumented, and unfair. Specifically, in its initial protest CGI argued that CMS

⁸ The record reflects that CMS did not raise any concerns with CGI's own "fair" performance ratings. CGI argues that CMS was required to raise this information with CGI in discussions, citing FAR § 15.306(d)(1), which requires agencies, when discussions are conducted in negotiated procurements, to allow offerors to address adverse past performance information to which they have not had a prior opportunity to respond. This issue was not timely raised--this specific basis of protest should have been known to CGI based on the agency's early document production, yet it waited to raise the issue in its comments on the agency report, more than 10 days later. See note 7, infra. Nor does CGI address the fact that FAR § 15.306(d)(1) does not expressly apply here since this procurement was conducted under FAR part 16, not FAR part 15. CGI's contention is without merit in any event since the record reflects that the adverse performance assessment was contained in the Contractor Performance System database, and CGI had previously been given an opportunity to address the negative past performance information but failed to do so. See AR, Tab 40, CGI Past Performance Reports, at 19-20; TLT Constr. Corp., B-286226, Nov. 7, 2000, 2000 CPD ¶ 179 at 7-8; A. G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6.

unreasonably assigned CGI a weakness for having failed to adequately describe or justify its staffing for the program management office. In a supplemental protest, CGI also asserted that CMS unfairly and unequally credited CSC's proposed key personnel with SOA experience, without crediting CGI's key personnel for similar experience. There is no merit to CGI's allegations.⁹

The record reflects that CMS asked CGI in the second round of discussions to "rationalize the need for 34 [project management office (PMO)] staff in August 2010 and a peak PMO staff of 39 in July 2011," and asked CGI to "detail the specific activities and role of each PMO staff." AR, Tab 30, Second Discussion Questions for CGI, Question No. 3, at 1. The agency found CGI's response on this issue wanting because it failed to "rationalize the number of PMO staff" and failed to detail the specific activities and role of each PMO staff member. AR, Tab 39, supra, at 8. The record supports the reasonableness of CMS's evaluation; CGI's response was general in nature, and CGI submitted information regarding the roles of only 13 individuals. Initial Protest, exh. 8. CGI's allegation that CMS failed to properly credit its staff with SOA experience is also without merit since the record reflects that while CMS had initially identified this issue as a weakness, it removed the weakness based on CGI's discussion response, which specifically addressed the SOA experience of its key personnel. Compare AR, Tab 37, DECC Initial Technical Evaluation Memorandum, May 4, 2010, at 13-14 (identifying the lack of SOA experience as a "major weakness") with AR, Tab 39, DECC Revised Technical Evaluation Memorandum, July 23, 2010, at 7-8 (where the major weakness had been removed from the evaluation of CGI's proposal). Given this record, we see no basis to conclude that the agency's evaluation of CGI's proposal was inconsistent with the terms of the solicitation or otherwise improper.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁹ CGI also raised several challenges regarding CMS's technical evaluation in its comments on the agency report. See, e.g., CGI's Comments at 49-51 (raising specific allegations concerning the agency's evaluation of the firms' oral presentations). These arguments are untimely because, as explained in note 7 supra, they were raised more than 10 days after CGI's receipt of documents produced by the agency in response to the protest, at which time CGI knew or should have known the bases for protest.