



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Science & Technology, Inc.; Madison Services, Inc.

File: B-272748; B-272748.2; B-272748.3; B-272748.4

Date: October 25, 1996

E. Manning Seltzer, Esq., and Mark E. Davis, Esq., Seltzer & Rosen, for Science & Technology, Inc., and Lynn Hawkins Patton, Esq., Ott & Purdy, for Madison Services, Inc., the protesters.

Nancy O. Dix, Esq., Gray Cary Ware Freidenrich, for Steinhoff & Sadler, Inc., an intervenor.

Major Michael J. O'Farrell and Gregory A. Lund, Esq., Department of the Army, for the agency.

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

DIGEST

1. Protest that contracting officials misrepresented protester's past performance record is denied where past performance conclusions are reasonably supported by the record, and there is no evidence that contracting officials were biased against the protester or otherwise acted in bad faith.
2. Protest that awardee was improperly permitted to rely on subcontractors' experience under various technical evaluation factors is denied where the solicitation did not restrict offerors from proposing subcontractors or relying on their experience.
3. Protest that contracting agency improperly relied on an unstated evaluation factor concerning offeror's phase-out approach is denied where the solicitation proposal preparation instructions clearly put offerors on notice that a detailed phase-out plan was required and would be evaluated under the general management evaluation factor.
4. Protest that agency arbitrarily deducted points from second-ranked offeror's general management score is denied where the lower point score does not reflect deductions, but rather reflects what the agency reasonably determined was the level of quality indicated in this area of the offeror's proposal.

5. Protest that awardee proposed a key employee which it was not authorized to propose and did not intend to hire is denied where record as a whole indicates that awardee reasonably believed the individual consented to being proposed and that the employee would go to work for the awardee in the event it received the contract.

6. Protest that contracting agency performed improper price realism analysis is denied where: (1) adequate price competition was received; (2) the agency compared offerors' proposed prices with the government's price estimate; and (3) awardee's proposed pricing was consistent with the number of employees it had proposed.

DECISION

Science & Technologies, Inc. (Scitek) and Madison Services, Inc. protest the award of a contract to Steinhoff & Sadler, Inc. (SSI) under request for proposals (RFP) No. DABT63-95-R-0004, issued by the Department of the Army for all engineering and maintenance services at the Directorate of Engineering and Housing (DEH) at Fort Huachuca, Arizona. Scitek, the incumbent--which has been performing these services since 1991 under a cost-plus-award-fee (CPAF) type contract--contends that the Army misrepresented its past performance history in bad faith, leading to a misevaluation of its proposal. Madison also contends that the agency misevaluated both the awardee's and its own proposal, and further alleges that SSI engaged in an improper "bait and switch" by proposing a key employee without proper authorization to use that individual's resume.

We deny the protests.

BACKGROUND

The RFP was issued as a total small business set-aside on August 18, 1995, and contemplated the award of a fixed price contract with some indefinite quantity line items for a base year and 4 option years. Collectively, the range of DEH services being procured is analogous to those required to "run a small city"; under the RFP, the successful contractor is responsible for performing various tasks in 22 areas encompassing road work, construction work, facilities maintenance, environmental work, and supply/storage. The RFP required price and technical proposals, and provided that award would be made on a "best value" basis. Price was slightly less important than technical factors, which were identified in the RFP as: General Management (25 percent); Past Performance (25 percent); Technical Approach

(20 percent); Quality Control (15 percent); and Price Realism (15 percent).¹ Under the General Management, Technical Approach, and Quality Control factors, proposals were numerically scored; under the Past Performance and Price Realism factors, proposals were evaluated using high, moderate, or low risk ratings.

By the October 27 closing date, 11 proposals were received--including those submitted by Scitek, Madison, and SSI. The source selection evaluation board (SSEB) that conducted the technical and price proposal evaluations was divided into five committees, corresponding to the five evaluation factors specified above. Although each evaluation factor was evaluated separately, the record shows that several committees were comprised of identical staff. Of significance to this protest, the General Management Committee (GMC) and Past Performance Committee (PPC) were comprised of the same personnel.²

The initial proposal evaluations (discussed in more detail below) were completed in early March; on April 4, the Army issued written discussion letters to each offeror. After best and final offers (BAFO) were submitted and evaluated, the SSEB's final evaluation identified the top three offers as:

Offeror:	<u>SSI</u>	<u>Madison</u>	<u>Scitek</u>
General Management Score (Maximum 250 points)	199	170	169
Technical Approach Score (Maximum 200 points)	108	109	116
Quality Control Score (Maximum 150 points)	<u>86</u>	<u>90</u>	<u>90</u>
Total	393	369	375

¹The evaluation percentage weights for each evaluation factor were not disclosed in the RFP but are included above for ease of reference; in this regard, the RFP apprised offerors of each factor's relative weight by stating:

"Management and past performance are of equal importance. Technical is slightly less important than management and past performance. Quality control and price realism are of equal importance and slightly less important than technical."

²The Technical Approach and Quality Control committees were also comprised of the same personnel.

Offeror:	<u>SSI</u>	<u>Madison</u>	<u>Scitek</u>
Past Performance Assessment (Low, Moderate or High Risk)	Low Risk	Low Risk	Low Risk
Price Realism Assessment (Low, Moderate or High Risk)	Low Risk	High Risk	Low Risk
Proposed Price	\$34,081,561	\$36,096,190	\$39,571,006

On June 17, 1996, after reviewing each offeror's proposal and all the evaluation documentation, the source selection authority (SSA) selected SSI for contract award since it had the highest cumulative technical point score (393 points); a low risk assessment for both its past performance and price proposal; and the lowest total price (\$34,081,561). After attending separate debriefings, Scitek and Madison filed these protests.

DISCUSSION

Scitek's Allegation of Bad Faith

In the first week of November 1995, the Fort Huachuca contracting officer asked the Fort Huachuca contract administrator who had monitored Scitek's incumbent performance to complete the RFP's past performance questionnaire for Scitek.

Of significance to this protest, the contract administrator included the following information on the past performance survey form. For question No. 8, regarding "the contractor's ability to solve business management problems without extensive guidance from the procuring activity," the contract administrator assigned Scitek a score of "between 2 [and] 3" (on a scale of 1 to 5), and under the "comments" portion of this question wrote:

"[o]ld problem of paying their subcontractors/vendors; has improved this rating period."

For question No. 9, which asked if there "[w]ere any changes due to contractor's inability to meet requirements," the contract administrator responded "yes" and wrote:

"[g]overnment brought supply function back under [government] control; contractor failing until [contracting officer] change[d] award fee plan."

For question No. 10 of the survey, which asked whether unsatisfactory performance reports, cure notices, show cause notices, or terminations for defaults had ever been issued, the contract administrator indicated "yes" and wrote:

"UIRs [Unsatisfactory Inspection Reports] & CDRs [Contractor Deficiency Reports] mostly about timeliness of work (response time)."

For question No. 12, which asked whether the contractor had any financial problems, the contract administrator indicated "yes" and wrote:

"[t]here have been several complaints from vendor/subcontractors of nonpayment. Condition improved over last 3 months."

Finally, in response to question No. 16, which asked for a description of "[c]ontractor's strengths and weaknesses," the contract administrator indicated that Scitek's weakness was "[v]oucher preparation; finances."

The survey form also contained a blank wherein the contract administrator was asked to record the award fee percentages "earned for [the] last four quarters"; in response, the contract administrator listed the four quarter award fees earned by Scitek from July 1994 through June 1995.³

In its protest, Scitek contends that the five questionnaire responses discussed above are false and misleading. Scitek maintains that it only had difficulty paying its subcontractors and suppliers in the early phases of contract performance--and that these difficulties arose only because the Army delayed reimbursing Scitek for the subcontractor vouchers and invoices it submitted. Scitek also contends that the contract administrator's statement about the government's taking over the supply function is misleading because the transfer of this function did not result from any poor performance on Scitek's part, but rather was the result of an independent efficiency audit by the Army. Scitek also maintains that contrary to the contract administrator's survey response, the firm has never received any UIRs or CDRs. Finally, Scitek contends that the bad faith of the contract administrator is apparent because the administrator did not list Scitek's most recent quarter fee (July 1995 to September 1995) in the survey, which reflected superior performance by Scitek.

³A CPAF contract is a cost-reimbursement contract that provides for payment of an "award fee" to the contractor at stated intervals (in Scitek's case, every 3 months). The amount of award fee corresponds to and is based on how well the contracting agency believes the contractor is successfully performing. Federal Acquisition Regulation (FAR) § 16.404-2(a).

Although the record shows that Scitek received the highest rating possible under the past performance factor ("low risk"), Scitek maintains that the contract administrator's misleading past performance survey nevertheless prejudiced the firm's competitive position and evaluation since the PPC personnel also served on the GMC. Scitek maintains that the contract administrator's negative past performance survey responses caused the GMC to improperly downgrade Scitek under the General Management factor; in making this argument, Scitek maintains that as the successfully performing incumbent, it should have received the highest score possible for the General Management factor.

Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of mere inference or supposition. See Lancaster & Co., B-254418, Dec. 14, 1993, 93-2 CPD ¶ 319. Where, as here, a protester alleges bias or bad faith on the part of a procurement official, a protester must present virtually irrefutable evidence that the official directed his actions with the intent to injure the protester. Information Resources, Inc., B-271767 *et al.*, July 24, 1996, 96-2 CPD ¶ 38; Prose, Inc., B-259016, Feb. 28, 1995, 95-1 CPD ¶ 123.

To resolve the protester's allegations of bad faith, we held a hearing on the protest. Based on testimony obtained at the hearing, as well as additional documents introduced by the agency during that proceeding, we see no basis to conclude that the contract administrator--or any other Army official--misrepresented Scitek's past performance or otherwise acted in bad faith.

First, although Scitek claims that the contract administrator misrepresented the firm's ability to pay subcontractors and suppliers, the record supports the contract administrator's remarks. While Scitek maintains that any difficulties in reimbursing its subcontractors and suppliers resulted solely from Fort Huachuca's delay in reimbursing the contractor for submitted invoices and vouchers, the record shows that such delay resulted from the fact that Scitek submitted incorrect and incomplete reimbursement data. The contract administrator and contracting officer testified that when Scitek began contract performance, the firm did not know how to prepare vouchers properly; the record also shows that Scitek's invoicing/accounting software proved to be incompatible with the Army's computer system, and caused several years of accounting and invoicing difficulties.

The contract administrator stated that Scitek continually submitted vouchers and invoices for unallowable costs such as dining expenses. Other sources corroborate the contract administrator's statements. For example, the record provided by an

"independent" consultant--the SCORE Team⁴--confirms the contract administrator's and contracting officer's contentions. According to the SCORE Team's contemporaneous notes, Scitek's first 2 years of contract performance were hampered by weak management, unqualified staff, and "inattention to detail and incompleteness of documentation." The contract administrator's remarks also are confirmed by an April 1992 Defense Contract Audit Agency (DCAA) audit of Scitek's accounting practices, which details various areas of vouchering deficiencies, including an accounting system which did not support voucher requests, billing for costs before incurring them, and duplicate billings.

Moreover, the record shows that as late as March 1995, subcontractors were calling the Fort Huachuca contract administrator and contracting officer to complain about non-payment by Scitek. If the Army was unfairly delaying reimbursement as alleged by the protester, Scitek never advised the Army of this problem; in fact, the record indicates that the Army consistently reimbursed the firm within 8 days of receiving Scitek's invoices. Under these circumstances, we think the evidence in the record overwhelmingly contradicts Scitek's current contention that vendor/subcontractor payment problems were limited to the contract start-up time period or should be construed solely as the Army's fault; consequently, we find the contract administrator's survey response on this topic to be unobjectionable.

The record also supports the contract administrator's representations regarding the transfer of the supply function. Originally, Scitek was responsible for monitoring and purchasing all required supply inventory. However, as noted above, due to vouchering and invoicing difficulties, Scitek began to fall behind in this function. While the protester correctly notes that an Army audit report recommended transferring the supply function back to the agency so that the Army could realize significant administrative savings and take advantage of Arizona state tax exemptions, we think the record indicates that Scitek's performance difficulties provided the impetus for the timing of the supply function transfer.

In this regard, although Scitek contends that a September 21, 1993, contract modification proves that defective performance work specifications caused Scitek's performance difficulties by omitting inherited backlog estimates, this contention is

⁴In late 1991, at Scitek's request, the Army agreed to fund a consultant--the Scitek Contract Operations Review and Evaluation (SCORE) Team--to determine the basis of Scitek's performance problems. At the hearing, the Army and SSI maintained that the SCORE team should not be classified as an "independent" consultant because it was hired by Scitek; recorded its findings on Scitek stationery; and the SCORE Team leader came to work as Scitek's project manager. Scitek disagreed, and maintained that because the Army funded the SCORE Team's evaluation, the team should be viewed as a neutral source of information for this protest.

not supported by the record. First, despite Scitek's claim, the SCORE team's March 4, 1992, status report concluded that:

"Although inheritance of a previous contractor's backlogs . . . caused start-up problems, lack of qualified management and delays in rectifying automation problems⁵ were the main contributors to the cited deficiencies."

Next, the contemporaneous documentation surrounding the 1993 modification indicates that the contract's performance work specifications were modified (reducing the supply/service order workload by 25 percent) because the Army recognized that based on Scitek's past performance, "the contractor [was] unable to meet the full requirements of the Performance Work Statement (PWS) within the remaining contract funds." The contracting officer testified that in executing the modification, the Army was attempting to show its good faith towards Scitek by changing the contract document to reflect a requirement which the firm could successfully perform.

Scitek's contention that it never received negative performance reports is similarly unsupported by the record. Despite sworn statements by the Scitek contract administrator (CA) and program manager that particular UIRs or CDRs were never received by the firm, at the hearing the Army produced a plethora of these documents--each of which was signed and dated by the Scitek CA and acknowledged with a "N[o]/C[omment]" notation.

Further, while Scitek contends that the Fort Huachuca contract administrator's failure to include the September 1995 quarter award fee in the past performance survey indicates bad faith, we are convinced by the contract administrator's testimony that the reason this information did not appear on the form is because it was not available. The record shows that after an award fee board meets and evaluates a contractor's performance, the award fee recommendation is then forwarded to the base commander for review and ratification as a contract modification. The hearing testimony indicated that the award fee review process is often delayed by such factors as trying to accommodate each award fee panel member's schedule, paperwork processing, and obtaining the base commander's concurrence.

In any event, we think that any positive impression which the September 1995 quarter award fee data would have conveyed about Scitek's past performance was

⁵The automation problems arose because Scitek's proposed accounting software did not work with the Army's computer system. In its 1992 report, the SCORE team recommended that a consultant assist Scitek in resolving its software malfunctions.

otherwise evident from the contract administrator's survey form; that is, we disagree with Scitek's basic premise that the past performance questionnaire conveys a negative impression of Scitek's capabilities. For the majority of numerical ratings, the contract administrator awarded Scitek a "3" (satisfactory) rating; for question No. 4--which required the surveyor to rate the "contractor's effort to provide a high quality product versus just meeting government minimum needs"--the contract administrator gave Scitek a "4" rating (good). Next, although the contract administrator identified paying subcontractors as a problem, she also gave credit for Scitek's improvement by noting that the condition "has improved this rating period" and "over the last 3 months." The survey also conveyed other positive aspects of Scitek's performance. For example, despite the above-referenced responses to question Nos. 8, 9, 10, 12, and 16, in the survey, the contract administrator indicated that Fort Huachuca was aware of several letters of commendation and awards "from individuals," and that Scitek was not an "administrative burden."⁶ Additionally, the contract administrator wrote that Scitek's "strengths" included a staff of "worker bees" and the firm's quick "response to special requests/emergencies." Finally, at question No. 15, the contract administrator indicated that Fort Huachuca would "choose" to do business with Scitek "[i]f the contract was exactly like [it] is now." In sum, reading each of the contract administrator's responses in the context of the whole questionnaire, we do not think that they convey a negative impression of Scitek's performance.⁷

Our conclusion is borne out by the PPC's actual scoring and evaluation of Scitek's past performance.⁸ In this regard, the record shows that in order to assess each offeror's past performance risk, the PPC converted each response to the past performance questionnaire to a numerical score. For survey question Nos. 1 through 8--which required responses in the range of 1 (unsatisfactory) to 5 (excellent)--the PPC adopted the survey respondents' numerical ratings; for the remaining survey questions, which required "yes" or "no" responses, the PPC scored

⁶The PPC awarded Scitek a "5" for both of these responses.

⁷During this procurement, the record shows that Scitek lost an Air Force contract award for similar services based in part on a September 25, 1995, past performance survey completed by the contract administrator. Although Scitek contends that the September 25 survey establishes a pattern of bad faith, because the September 25 survey is essentially identical to the questionnaire at issue in this protest, we will not consider this contention further.

⁸In its protest, Scitek contends that the agency should have given it the opportunity to address the contract administrator's negative remarks on the past performance survey. However, the record shows that these remarks had no impact on the evaluation, as Scitek received a "low risk" rating for this factor.

all positive responses as a 5 and all negative responses as a 1. The point scores for all 15⁹ responses were then totaled and averaged into a representative "composite" point score.

In Scitek's case, because the contract administrator entered a negative response for question Nos. 9, 10, and 12 (which required a "yes" or "no" response), the PPC scored Scitek with a 1 for these three questions. The PPC also recorded the "between 2 [and] 3" response to question No. 8 as a 2.5. However, these four "low scores" did not alter the generally positive tone of the contract administrator's survey; that is, despite the presence of three 1-point ratings and a 2.5-point rating, Scitek nevertheless received an overall score of 47.5 points for the 15 questions and an average "composite" rating of 3.17--which was translated by the PPC into a "low risk" assessment, the highest rating possible for the past performance factor. Under these circumstances, the negative responses did not adversely affect Scitek's rating.

In making its allegations of bad faith, Scitek provided this Office with several supporting statements written by the firm's assigned Small Business Administration procurement center representative (SBA PCR) and the Scitek CA. At the hearing, the Army proved that these witnesses' statements were unreliable.

For example, although the SBA PCR had proffered a letter in Scitek's behalf, at the hearing he admitted that he was not aware of the exact details of the case, and that he could not offer an opinion on "fault." Additionally, when the Army showed that the Scitek CA had in fact signed the numerous IURs and CDRs which he maintained were never received, the Scitek CA acted surprised, and agreed that he had been mistaken in his testimony to the contrary. Given the number of UIRs and CDRs which the record showed the Scitek CA had received and acknowledged (by affixing his signature and a "No/Comment" remark), we find the Scitek CA's subsequent claim of mistake to be disingenuous at best.

The credibility of the Scitek CA's written and oral testimony was further impeached by several "supporter" witnesses who denied the Scitek CA's version of events. For example, although the Scitek CA claimed in one of his written statements that a DCAA auditor advised him that "the [Army] really gave SCITEK a hard time" and that DEH wanted Scitek to "have a hard time," the DCAA auditor submitted an affidavit in which he denied making these statements, and declared that "I am half quoted and misquoted in such a way that the [Scitek CA's] memorandum becomes deceptive." The DCAA auditor further advised this Office that "Scitek's performance (accounting) was so bad that all the government action was justified and even

⁹Question No. 16 on the past performance survey form merely asked for the reviewer's remarks; consequently, the PPC did not convert this question to a numerical rating.

required" and that "[e]ven if the government didn't do things so perfectly, Scitek's performance was so poor that, all by Scitek's self, they were creating huge problems of inadequacy."

Further, although the Scitek CA had purported to quote the Small and Disadvantaged Business Utilization Specialist (SADBUS), the SADBUS advised this Office by affidavit that his remarks had been grossly quoted out of context. For example, although the Scitek CA stated that the SADBUS described a Fort Huachuca procurement official as being "appalled" and having a pained expression on her face during a discussion of Scitek, the SADBUS explained that he told the Scitek CA that "the reason [she] had the unusual look was due to her illness" and that he "didn't use the word appalled or any other word like appalled because it's not a word I would normally use."

We think it clear from this record that no bad faith or ill will influenced the evaluation of Scitek's proposal. In fact, we think the record demonstrates tenacity by the Army in its support of Scitek's performance. The contract administrator testified that she taught Scitek how to prepare vouchers and invoices properly, and that she believed she had a "great relationship" with the firm. The contracting officer also testified that the Army wanted to help Scitek become competitive, and that she had a "very good working relationship" with the firm. Both the contract administrator and contracting officer stated that there was no institutional bias or animosity against the firm, and that despite continuing performance difficulties, they ensured that the firm's contract was annually renewed for each option year.

Both individuals testified that they did not discuss Scitek with any evaluation member or procurement official; moreover, the contract administrator testified that she would have preferred Scitek to receive this contract award--since the firm had mastered the accounting/invoicing system, and had been working so diligently and successfully in recent months. In fact, the record shows that when the Scitek CA approached the contract administrator with concerns about how the firm's start-up performance could negatively impact its evaluation, the contract administrator executed a performance survey addendum--dated May 14, 1996--in which she pointed out the "excellent" recent performance by Scitek, and stated that she was "proud of SCITEK's improvement this past year and the way they continue to respond to all crisis/perceived crisis situations."

Although Scitek maintains that the GMC must have been negatively influenced by the contract administrator's past performance survey, there is not one scintilla of evidence in this record to support this contention. At the hearing, the GMC chairman denied that any Fort Huachuca official tried to influence either the PPC's or GMC's evaluation; the chairman also testified that the contract administrator's survey played no role in the GMC evaluation. In fact, the record suggests that positive impressions of Scitek--its prompt response time and its diligence--assisted

the firm; at the hearing, the GMC chairman confirmed his earlier debriefing remarks wherein he stated:

"I advised in all candor that an evaluator may be influenced to a small degree by their actual experience with the company's capabilities in making an evaluation judgment. As I stated at the debriefing, when Scitek's current program manager was proposed as the follow-on manager, the words did ring true." (Emphasis added.)

Since the General Management evaluation was conducted before the past performance evaluation, and since there is no evidence that the contract administrator or contracting officer in any way tried to influence the GMC, Scitek's allegations of bad faith are without merit.¹⁰

General Management Evaluation

The record shows that each offeror's proposal was evaluated under the General Management factor (worth 25 percent of the total score) pursuant to the following four "functional areas" or subfactors: General Management Principles & Applications; Related Management Experience; Phase-In Plan; and Phase-Out Plan.

Both Scitek and Madison protest that the General Management evaluation was unreasonable. First, both protesters assert that the awardee was improperly credited with the experience of its proposed subcontractor under the Related Management Experience subfactor. Next, both protesters assert that the agency improperly relied on an unstated evaluation subfactor--Phase-Out Plan. Finally, both protesters challenge their proposals' General Management point scores as unreasonable; Scitek contends that its incumbent status should have resulted in a higher point rating while Madison maintains that its point score reflects an arbitrary downgrading.

Solicitations must identify all significant factors and any significant subfactors that will be considered in awarding the contract, and the evaluation of proposals must be reasonably based on the factors set forth in the solicitation. FAR § 15.605(d) (FAC 90-31). In reviewing protests concerning the evaluation of proposals, we will

¹⁰Scitek alleges that the PPC acted in bad faith because it only requested one performance survey regarding Scitek--whereas several sources were contacted for most other contractors. The PPC chairman testified that because the Fort Huachuca incumbent contract was the most directly relevant experience, and because the PPC awarded Scitek a "low risk" rating, it was not necessary to obtain past performance surveys from other firms. We find this determination to be reasonable.

examine the agency's evaluation to ensure that it had a reasonable basis and was consistent with the RFP criteria. See Diversified Int'l Sciences Corp., B-259925, May 10, 1995, 95-1 CPD ¶ 238.

Although the protesters contend that the Army improperly considered the experience of SSI's proposed subcontractor (Brown and Associates Management Services, Inc.) in evaluating SSI's proposal under the Related Management Experience subfactor, a proposed subcontractor's experience may be considered in evaluating an offeror's experience unless the RFP's evaluation plan expressly prohibits such consideration. Commercial Bldg. Serv., Inc., B-237865.2; B-237865.3, May 16, 1990, 90-1 CPD ¶ 473. In this case, the RFP did not prohibit consideration of subcontractor experience and in fact specifically directed offerors to discuss, as part of their management proposals, the extent to which subcontracting would be "used to satisfy requirements in the solicitation." Moreover, the record shows that like SSI, Madison also proposed a subcontractor for a significant portion of the work, and relied on it for its experience.¹¹

To the extent the protesters maintain that the Phase-Out Plan subfactor was not enunciated in the solicitation, we are similarly unpersuaded. Section L of the RFP clearly stated that "[t]he management proposal will be evaluated against the following subfactors" including "Phase-Out." The solicitation also defined this subfactor as being comprised of: "(1) Plan for Phase-out period"; and "(2) Approach for assistance to Government and incoming Contractor on Phase-out procedures." Finally, section L explained that for the Phase-Out Plan subfactor, the General Management proposal was to include "[a] discussion of those actions, plans, and procedures necessary to ensure a smooth transition from one Contractor to another." While "Phase-Out Plan" was inadvertently left off the list of subfactors in section M, we do not think offerors could reasonably ignore the proposal instructions regarding this subfactor in section L. In reaching our conclusion, we

¹¹Relying on statements made and prepared by the Scitek CA, Madison also contends that its proposal was downgraded because the Army was biased against its proposed subcontractor--Morrison Knudsen (MK); in this regard, Scitek contended that a Fort Huachuca attorney had vehemently advised the Army not to contract with M-K. We find this contention without merit. First, as noted above, we do not believe the Scitek CA to be a credible witness. Moreover, despite Madison's allegations of bias, the record contains evidence that the Army thought highly of M-K--the company that performed this contract prior to Scitek. In this regard, by affidavit, the Fort Huachuca attorney states that he never offered any opinions about M-K, which is corroborated by sworn affidavits proffered by the contracting officer, the SSEB chairperson, and the source selection advisory council (SSAC) chairperson.

note that both Scitek and Madison included a phase-out discussion in their General Management proposals. Under these circumstances, we think offerors were fairly apprised of the Phase-Out Plan subfactor.

Finally, although both protesters challenge their proposal scores as unreasonable, we think the record supports the GMC's analysis. Scitek's key complaint about its evaluation is the GMC's apparent failure to acknowledge the firm's incumbent status; Scitek contends that as the successfully performing incumbent, it should have received a higher related past experience score than did SSI. However, at the hearing, the GMC chairman testified that the GMC did not award Scitek any extra credit for its incumbency because other competitors held the same advantage by proposing incumbent personnel. The GMC testified that SSI received a higher point score than Scitek because it included more detail in its proposal. We think the record supports the GMC chairman's testimony and the GMC's contemporaneous evaluation documentation.

While Scitek's General Management proposal contained statements such as "[o]ur managers who are incumbent personnel understand Fort Huachuca's mission" and made several general references to incumbency advantages, the SSI proposal included more description and detail as to how the various General Management goals and tasks would be accomplished by its proposed staff. Moreover, while Scitek's proposal generally stated that it would use personnel "with a proven track record"; indicated policies of "strict work accountability"; and listed incumbent staff as "seasoned professionals," the SSI General Management Proposal included more detail and analysis. For example, SSI presented a more detailed and itemized work breakdown structure and included a more detailed explanation and flowchart of how various individuals would process work product results and track response time and output. Another superior aspect of SSI's proposal was a risk assessment/mitigation chart which listed areas of perceived work "risks" along with detailed explanations of how SSI's general management approach mitigated each noted risk. In sum, the record substantiates the GMC's conclusions regarding the superiority of SSI's proposal.

Madison's only basis for challenging its General Management proposal score is the agency's failure--at the debriefing--to articulate any "disadvantages" in its proposal. While Madison contends that the lack of articulated disadvantages demonstrates an "arbitrary" grading system, we think the evaluation record confirms the agency's position that Madison's point score under this factor--170--merely reflected the quality of its submission. Our comparison of SSI's and Madison's General Management proposals confirms the agency's assessment that SSI submitted a

superior management approach, for the reasons discussed above. Under these circumstances, we need not consider this aspect of Madison's protest further.¹²

As a final matter, Madison and Scitek challenge the SSI evaluation on the grounds that SSI has engaged in a "bait and switch" tactic with regard to one of its proposed key employees. The protesters contend that despite the proffer of a resume and an "oral" commitment to the Army in its proposal, SSI never intended to provide its proposed deputy project manager candidate.

"Bait and switch," as the term is used here, refers to an offeror's misrepresentation in its proposal of the personnel that it expects to use during contract performance. BMAR & Assocs., B-252273, June 16, 1993, 93-1 CPD ¶ 465. Where such a misrepresentation materially influences an agency's evaluation of an offeror's proposal, it undermines the integrity of the competitive procurement system and generally provides a basis for proposal rejection or termination of the contract award based upon the proposal. Mantech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326.

We have reviewed the testimony by the proposed key employee and the SSI employee who determined that the proposed employee consented to SSI employment in the event of award. We are convinced that while there might have been a miscommunication between the proposed employee and SSI, SSI was not aware that it had misinterpreted the proposed employee's actions or words, and when it proposed this person in its proposal, it did so fully intending to hire and employ this individual.

Offerors were not required by the RFP to provide letters of commitment; moreover, in its proposal, SSI indicated that its basis for proposing the individual was a verbal commitment and further listed the individual's telephone number for direct contact by the agency.¹³ Under these circumstances, we conclude that SSI proposed the

¹²Madison also contends that the agency improperly downgraded its proposal under the Technical Approach evaluation factor for failing to provide letters of commitment. We see no evidence in the evaluation documentation to support this position; moreover, the RFP did not require letters of commitment. Since the agency denies downgrading Madison on this basis, and since the record otherwise supports the technical approach evaluation and shows that Madison's proposal received a higher score than SSI's for this factor, we will not consider this contention further.

¹³In any event, the GMC committee chairman and the SSA have both advised this Office that the availability of this individual would not change SSI's score since this
(continued...)

employee in good faith, and that no intent to "bait and switch" existed. See Diversified Int'l Sciences Corp., B-259925, May 10, 1995, 95-1 CPD ¶ 238.

Price Realism Analysis

As noted above, the RFP provided that prices would be evaluated for reasonableness and realism. In this regard, the RFP specified that:

"Price analysis will be conducted to determine the reasonableness of the proposed prices in the context of the management and technical approach to the work. Compliance with any applicable wage rate determinations will be determined."

Madison challenges the agency's price realism evaluation on the ground that it unreasonably determined SSI's price to be a "low risk." Madison contends that SSI understated its pricing to such a degree that it cannot perform in accordance with the solicitation's wage rate determinations, and consequently should be rated "high risk" for price realism.

Since the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals, an agency in its discretion may, as it did here, provide for a price realism analysis in the solicitation of fixed-price proposals. The FAR provides a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including comparison of prices received with each other, FAR § 15.805-2(a) (FAC 90-39), and comparison of proposed prices with an independent government estimate. FAR § 15.805-2(e). The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Cardinal Scientific, Inc., B-270309, Feb. 12, 1996, 96-1 CPD ¶ 70.

In this case, the record shows that in order to assess price realism and reasonableness, the price evaluation committee (PEC) performed the following analysis. First, the PEC forwarded each of the offeror's price proposals to the DCAA for review; the agency responded that each offeror's overhead, general and administrative cost, and profit rates were unobjectionable.

¹³(...continued)
was but one of six key employees.

Next, the PEC compared each of the nine offerors¹⁴ contract line item number (CLIN) prices to those of the independent government estimate (IGE); the PEC also asked the technical panel to list the number of proposed employees so it could verify each offeror's wage rate compliance and price realism for the number of staff proposed. In response, the technical panel advised the PEC whether the distribution of offerors' employees per function area was realistic. Because SSI had proposed the lowest total price, and because its total number of employees was reasonably close to the IGE and verified as reasonable by the DCAA and realistic by the technical panel, the PEC determined SSI's price was realistic and reasonable.

In view of the agency's use of FAR-authorized price analysis techniques, and given the number of proposals submitted and the proximity of SSI's proposed number of employees to the IGE (as well as the number of employees proposed by other offerors), we have no basis to question the Army's determination that SSI's proposed prices were realistic and reasonable.¹⁵ See Volmar Constr., Inc., B-272188.2, Sept 18, 1996, 96-2 CPD ¶ 119; Northern Virginia Serv. Corp., B-258036.2; B-258036.3, Jan. 23, 1995, 95-1 CPD ¶ 36.

CONCLUSION

The RFP provided that the agency would select the best value offer based on a consideration of technical and price factors. Since we conclude that SSI's proposal was properly ranked as the best technical proposal, and since SSI offered the lowest price, we conclude that the agency's award to SSI as the best value offeror is unobjectionable.

The protests are denied.

Comptroller General
of the United States

¹⁴Nine of the 11 proposals received were included in the competitive range for discussions.

¹⁵Madison also contends that its own price proposal was improperly evaluated as a high risk. We see no reason to consider Madison's challenge against its own price evaluation because even if Madison's price was realistic and "low risk," in light of our conclusions above, SSI would still receive contract award--since it received the highest technical score, and offered the lowest price. As such, Madison is not an interested party to raise this challenge. See 4 C.F.R. § 21.0(a) (1996); ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.