



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

## DOCUMENT FOR PUBLIC RELEASE

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**Matter of:** Source One Management, Inc.

**File:** B-278044.4; B-278044.6

**Date:** June 12, 1998

Alexander J. Brittin, Esq., and Margaret C. Rhodes, Esq., McKenna & Cuneo, L.L.P., for the protester.

William W. Goodrich, Jr., Esq., Matthew S. Perlman, Esq., Richard J. Webber, Esq., Alison Micheli, Esq., and Tenley A. Carp., Esq., Arent, Fox, Kintner, Plotkin & Kahn, for Advanced Integrated Management Services, Inc., an intervenor.

Gena E. Cadieux, Esq., and John D. Bremer, Esq., Department of Energy, for the agency.

Paul Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Evaluation of protester's proposal was reasonable where it was performed in accordance with stated evaluation criteria and reflected valid criticisms of protester's proposed subcontract management and past performance.
2. Where offeror proposed certain employees' wage rates less than comparable Service Contract Act and general schedule wages, without fully supporting feasibility of that approach, agency properly assessed a weakness under evaluation criterion concerning offerors' projected success in obtaining and retaining a highly skilled workforce.

## DECISION

Source One Management, Inc. (SOM) protests the award of a contract to Advanced Integrated Management Services, Inc., (AIMSI) under request for proposals (RFP) No. DE-RP65-97WA14007, issued by the Western Area Power Administration, Department of Energy (DOE) for technical support services. SOM challenges the agency's technical evaluation of AIMSI's and SOM's proposals and the cost/technical tradeoff.

We deny the protest.

## BACKGROUND

The purpose of this procurement is to provide technical support services for DOE's Corporate Services Office (CSO) in Golden, Colorado. The technical support services to be acquired include realty management (Task A); power system training and video production (Task B); engineering support (Task C); three information services support tasks: CSO support (Task D1), Corporate Applications Support (Task D2), and Financial Management System Transition support (Task D3); and project management (Task E). The procurement consolidates four existing support services contracts and aligns them with changes in DOE's organization that have occurred in the past 3 years. The solicitation was issued as a total small business set-aside and contemplated award of a cost-plus-fixed-fee contract for a base year with 4 option years.

Section L of the RFP advised offerors that their proposals would consist of an oral presentation of delineated technical information, supplemented by written documentation. According to section M of the RFP, technical proposals were to be evaluated on the basis of three technical criteria: project management (50 percent), past performance (25 percent), and understanding and approach (25 percent). The project management criterion was divided into four subcriteria: projected degree of success of phase-in and start-up staffing plans, including subcontractors (20 percent); appropriateness and projected degree of success of personnel management programs to ensure a highly skilled workforce and retention of contract staff, including subcontractors (15 percent); anticipated effectiveness of management approach (10 percent); and anticipated effectiveness of proposed on-site organization structure (5 percent). Additional evaluation credit was available under the first and third subcriteria to offerors that proposed to subcontract with small disadvantaged businesses participating in the Small Business Administration's 8(a) program.

Cost, while not scored, was used in determining the offeror's understanding of the requirements, in assessing the validity of the offeror's approach to managing and performing the work, and in determining the best overall value to the government. The RFP advised that the proposed cost estimate would not be controlling and that the government's estimate of the most probable cost (MPC) would be used for evaluation purposes.

While technical factors were more important than cost, the RFP advised that "apparent technical advantages will be weighed against the evaluated price" and "[a]n offer exceeding technical requirements will have an advantage over offers which meet requirements with lower cost, only insofar as the offer exceeding technical requirements is considered to be worth the price differential, if any." Award was to be made to the offer providing the best overall value to the government.

Twelve proposals, including those of SOM and AIMSI, were submitted by the May 20, 1997 closing date. After initial review, the source selection official (SSO) excluded certain offers from the competitive range, and the remaining offerors, including SOM, made oral presentations between July 8 and July 18, 1997. The technical evaluation panel (TEP) evaluated the oral presentations and written proposals and conducted discussions with each offeror immediately following its oral presentation. The cost analyst reviewed offerors' costs and made adjustments to calculate an MPC for each offer. The agency requested and obtained best and final offers (BAFO) from the competitive range offerors. In the final evaluation, AIMSI's proposal received a score of 825 points with an MPC of \$16.9 million and SOM's proposal received a score of 800 points with an MPC of \$16.4 million.

Based on the evaluation, the SSO agreed with the TEP's recommendation to award the contract to AIMSI. After receiving notice of the selection decision and a debriefing, SOM filed a protest with our Office (B-278044). Among other evaluation issues, SOM challenged DOE's upward adjustment of the firm's proposed labor costs for certain personnel whom the agency considered to be subject to the Service Contract Act (SCA). Since the wage rates for these personnel were lower than the applicable Department of Labor wage determination, DOE adjusted SOM's wage rates upward. The agency determined to take corrective action and our Office dismissed the protest as academic.<sup>1</sup> SOM filed a subsequent protest challenging the agency's decision to limit discussions (B-278044.3). Our Office dismissed this protest as academic when the agency decided to allow offerors to completely revise their proposals and/or BAFOs.

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<sup>1</sup>L&M Technologies, Inc. also filed a protest challenging its evaluation. Its protest was rendered academic by the agency's original corrective action. L&M filed a subsequent protest (B-278044.5), which was denied in a separate decision.

DOE conducted additional discussions and reviewed the offerors' proposal revisions and BAFOs. The results of the final evaluation were as follows:

<b>Criteria (Possible Points)</b>	<b>SOM</b>	<b>AIMSI</b>
<b>Project Mgmt (500) (+ 90 Bonus Points)</b>	<b>445</b>	<b>580</b>
Phase-in/Start up (200) 8(a) Bonus (60)	160 + 60	200 + 60
Personnel Mgmt (150)	90	150
Mgmt Approach (100) 8(a) Bonus (30)	70 + 30	90 + 30
On-site Structure (50)	35	50
<b>Past Performance (250)</b>	<b>200</b>	<b>175</b>
<b>Understanding (250)</b>	<b>250</b>	<b>225</b>
<b>Total (1090)</b>	<b>895</b>	<b>980</b>
<b>MPC<sup>2</sup></b>	<b>\$16,252,782</b>	<b>\$17,097,042</b>

Based on the TEP's evaluation and recommendation, the SSO again selected AIMSI for award as providing the best value to the government. After receiving notice of the award and a debriefing, SOM filed this protest challenging the agency's evaluation of its and AIMSI's technical proposals.<sup>3</sup>

Where there is a challenge to the evaluation of proposals in a negotiated procurement, it is not the function of our Office to evaluate the proposals *de novo*. Rather, we will examine an agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of competing proposals is primarily a matter within the contracting agency's discretion. Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3; Information Sys. & Networks Corp., B-237687, Feb. 22, 1990, 90-1 CPD ¶ 203 at 3.

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<sup>2</sup>Each offeror's MPC was the same as its proposed cost.

<sup>3</sup>SOM raised a number of arguments in support of its protest. We have considered them all and find none of them has merit. This decision will address only the more significant matters raised by SOM.

## EVALUATION OF SUBCONTRACTORS

In evaluating SOM's proposal under the project management criterion and its subcriteria, the evaluators identified several weaknesses associated with SOM's proposed subcontractors, [deleted], an 8(a) contractor, and [deleted]. SOM contends that these assessed weaknesses and their impact on its evaluation score under the project management criteria (worth 50 percent of the total available points) are improper because they unfairly penalize SOM simply for proposing subcontractors. Our review of SOM's proposal and the evaluation discloses that SOM's contentions are unfounded. While SOM asserts that the weaknesses are attributable to the mere use of subcontractors, the record shows that the weaknesses are actually attributable to management issues attendant to SOM's proposed team.

For example, the TEP assessed the following weaknesses under subcriterion A (Phase-in/Start-up Staffing): "[c]onfusion may exist with rolling out the separate company policies for initial orientation, for Tasks D1, D2, and D3 with three firms" and "[u]nclear alignment of [deleted] policies and different benefits as compared to [SOM] and [deleted], which may impact phase-in and start-up." Under subcriterion B (Personnel Management), the TEP noted "[d]ifferent benefits for [deleted] employees." These weaknesses are attributable to SOM's decision to add [deleted] to perform a portion of Task D1. SOM had overcome earlier assessed weaknesses concerning benefit differences by ensuring that SOM's and [deleted] benefit plans were comparable. This change was reflected in SOM's revised Executive Summary in which it stated that [deleted]. However, when SOM added [deleted] to its team, no apparent effort was made to conform [deleted] benefit plan to the SOM-[deleted] plans. In this regard, [deleted] benefit plan differs from the SOM-[deleted] plans in virtually every area including leave, health insurance, retirement, and disability plans. Since all three team members will perform various parts of the information services functions (Tasks D1, D2, and D3), the TEP reasonably was concerned with the potential impact of different benefit plans on phase-in and start-up and properly assessed the challenged weaknesses.<sup>4</sup>

We reach the same conclusion with regard to the TEP's assessment of weaknesses under the other "Project Management" subcriteria. Under subcriterion C (Management Approach), the TEP noted that SOM proposed "[t]hree firms providing

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<sup>4</sup>The fact that only two [deleted] employees are proposed to work on the contract does not change our view. While two employees receiving less generous benefits than the majority of employees may be viewed by SOM as a minor problem, that does not mean that it will not be a problem during phase-in or start-up, or in fact throughout contract performance. To the extent the two employees have better benefits than the majority of employees, there is reason for legitimate concern with future management of the contract by SOM.

information services tasks [D1-D3] . . . [which could] contribute to inefficiencies, reduced responsiveness, and lack of flexibility" and under subcriterion D (Organization Structure), they found "[i]nformation [s]ervices tasks are split between two subcontractors and prime, reducing effectiveness of on-site organization." Under these subcriteria, the TEP evaluated the efficiency and responsiveness of the proposed project management approach, including the authority of the project manager, and the effectiveness of the on-site organization structure proposed to manage the work performed. Here, SOM proposed to share task D1 with [deleted] and have [deleted] perform tasks D2 and D3. Further, while SOM's revised proposal showed that the project manager had hiring and firing authority over all other employees, it is not clear from the revised proposal that he had this authority with respect to the [deleted] employees. Contrary to the protester's assertion, these evaluated weaknesses are not attributable to the mere proposal of subcontractors; rather, they are attributable to how SOM intends to use and manage those subcontractors. We find nothing unreasonable in the TEP's assessment that sharing various parts of three related tasks among three contractors could lead to organizational and management problems.

SOM also contends that the TEP improperly penalized it by double-counting through references to the same weaknesses under different subcriteria. It is improper for an agency to exaggerate the stated importance of a single evaluation criterion by considering an identical element of that criterion under other evaluation criteria. J.A. Jones Management Servs., Inc., B-254941.2, Mar. 16, 1994, 94-1 CPD ¶ 244 at 6. However, an agency is not precluded from considering an element of a proposal under more than one evaluation criterion where the element is relevant and reasonably related to each criterion under which it is considered. Teledyne Brown Eng'g, B-258078, B-258078.2, Dec. 6, 1994, 94-2 CPD ¶ 223 at 4-5. Here, the alleged examples of multiple counting of the same weaknesses did not reflect an improper over-emphasis because the agency legitimately concluded that those weaknesses had an impact under more than one subcriterion. For example, use of the three team members to perform portions of three related tasks was reasonably viewed by the evaluators as affecting both SOM's management approach and its on-site structure.<sup>5</sup>

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<sup>5</sup>In a related argument, SOM asserts that AIMSI's proposal was improperly evaluated more favorably under criterion one. In this regard, SOM observes that AIMSI's proposal received the full 90 points for proposal of an 8(a) subcontractor and, while assessed a weakness for lack of a past relationship with that subcontractor, AIMSI's proposal was not downgraded for this weakness. There is no evidence of unequal treatment here. Both SOM and AIMSI received 90 points for proposing 8(a) contractors. Likewise, under subcriterion C, both proposals were assessed weaknesses for lack of a prior relationship with the 8(a) subcontractor, but the evaluators specifically noted for both offerors that the 8(a) subcontractors were performing limited aspects of the contract. While SOM's proposal received only  
(continued...)

## EVALUATION OF "EXEMPT" EMPLOYEES

An agency may properly use SCA wage rates in determining the realism of proposed wage rates in a cost-reimbursement contract, even where the offeror contends that the employees are exempt. T&M Joint Venture, B-240747, Dec. 19, 1990, 90-2 CPD ¶ 503 at 4; see DIGICON Corp., B-275060, B-275060.2, Jan. 21, 1997, 97-1 CPD ¶ 64 at 4 (comparison of offerors' wage rates appropriate for determining risk of performance). While the agency did not adjust the offerors' MPC in this evaluation, we believe it reasonably applied the GS and SCA rates as a benchmark for determining whether the rates were sufficient to obtain and retain the necessary highly skilled workforce to perform this contract.<sup>6</sup>

In discussions with SOM, DOE identified 11 computer systems analyst, programmer, and technician job categories which it believed were subject to SCA minimum wages and for which SOM's proposed wage rates were below the SCA minimums. The agency also identified four job categories, not subject to the SCA, but for which it had provided equivalent general schedule (GS) wage rates, and for which SOM had proposed lower wage rates. DOE requested SOM to "explain [its] ability to pay wages lower than SCA minimums" and "equivalent federal hires," and to "explain how the payment of the lower wages can still provide [DOE] with an adequately skilled staff."

In response, SOM outlined its process for determining when particular labor categories or positions were exempt from the SCA. Specifically, SOM used criteria from a "number of sources" including the Mountain States Employers Council (MSEC) to analyze the positions, including the character of the work, knowledge to

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<sup>5</sup>(...continued)

100 points under this subcriterion and AIMSI's proposal received 120 points, the difference in scores is attributable to the number of other strengths and weaknesses: AIMSI's proposal had eight strengths and two weaknesses, while SOM's proposal had only three strengths and three weaknesses.

<sup>6</sup>SOM notes that, prior to its first protest, the agency adjusted SOM's MPC to reflect the disagreement with SOM's proposed wage rates, and only in the subsequent evaluation of revised proposals did the agency assess a weakness in the technical evaluation (rather than adjust SOM's proposed costs). Section M clearly advised offerors that the agency intended to evaluate their proposed approach to hiring, benefits package, and leave policies in its determination of the "[a]ppropriateness and projected degree of success of . . . personnel management programs to assure . . . a highly skilled workforce and retention of contract staff, including proposed subcontractors." Accordingly, and regardless of how the proposal was evaluated prior to the first protest, there was nothing unreasonable or inappropriate in the agency's evaluation of low wage rates as a matter of technical weakness.

perform, exercise of discretion and independent judgment, and amount of time spent on professional activities. Based on this analysis, SOM concluded that all the questioned positions were exempt. SOM also relied on the eligibility for exemption of computer systems analysts, computer programmers, software engineers, and other similarly skilled workers under the Fair Labor Standards Act. SOM also matched the RFP categories with existing [deleted] labor categories and wage rates, noting that the salary structure was annually updated using sources such as the MSEC and the Economic Research Institute. In addition, SOM stated that it used the actual salaries of proposed key personnel. With regard to those employees being paid less than that of equivalent federal hires, SOM noted that Federal Acquisition Regulation § 52.222-42 provided that such equivalent rates were identified only for "information" and were not intended to be considered a wage determination. SOM explained that one of these employees was an incumbent whose wage rate was the same as his current rate, and the other three categories' wage rates were set using the same methodology as that to determine the exempt employees' wage rates.

Notwithstanding SOM's explanation of its wage rate methodology, the TEP assessed a weakness under the Personnel Management subcriterion (under the Project Management criterion), on the basis that SOM's "[w]age strategy may reduce ability to recruit and retain highly skilled workforce based upon comparison to average labor rates proposed by others and Government initial estimate." SOM challenges the propriety of this assessed weakness, since it believes it fully supported its determination that the employees in question are exempt and thus not entitled to the higher wages. We have reviewed SOM's revised proposal and the agency's rationale for downgrading it based on the lower proposed wage rates and find nothing unreasonable in the agency's action.

According to the agency, and undisputed by the protester, in Golden, Colorado (part of the Denver metropolitan area), where this contract is to be performed, the labor market is large and diverse and includes a large federal employment sector. Thus, in the agency's view, an employer who pays its employees less than a GS or SCA wage rate risks loss of the employee to a federal agency willing to pay more. SOM recognized the state of the labor market in its proposal, stating: "Currently, the labor market in Denver is tight and unemployment is low and workers are harder to obtain." SOM even criticized its competitors stating that they would:

lose large percentages of the incumbent work force through inadequate compensation, and [would] incur large opportunity costs to [DOE] through loss of technical expertise, reduced levels of customer service, delays in contract deliverables, reduced productivity and quality, poor morale, and increased training costs.

SOM Revised Proposal at 47 (emphasis added).



Despite this recognition by SOM, it proposed some rates which were significantly below SCA minimums, equivalent GS rates, and rates proposed by other offerors. In this regard, SOM's final proposed rates for 9 of the 11 SCA job categories in question ranged from approximately [deleted] percent (computer systems analyst III) to approximately [deleted] percent (computer systems analyst II) below the minimum SCA wages for these categories. With regard to the other four categories, SOM's proposed wages were from [deleted] percent (senior electrical engineer) to [deleted] percent (engineering technician VI) below the equivalent GS rate. In addition, SOM's rates, on average, range from approximately [deleted] percent below to [deleted] percent below the rates proposed by the other offerors in the competitive range.

SOM nonetheless contends that some of the wages upon which its proposal is based are equal to those the same employees received under the incumbent contract.<sup>7</sup> In SOM's view, if its proposed employees will be paid the same wages they already make, it is unreasonable for the agency to conclude that there is any risk associated with retaining them at those rates. In this regard, the record shows that the agency questioned some 15 job categories under Tasks A, B, C, D1, and D2. Of these 15, in SOM's response to the agency's questions, the firm identified only 7 key personnel positions as being based on incumbent salaries. The remainder were based on SOM's determination that the positions were exempt, based primarily on [deleted] experience. However, as the agency points out, some of these positions, e.g., the

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<sup>7</sup>SOM also points out that, during the pendency of this protest, [deleted] is performing tasks under an interim contract and that the agency is aware that [deleted] is paying the employees in question the same (relatively low) wages as proposed by SOM. SOM contends that the agency has thereby agreed that the wages are appropriate. Contrary to SOM's view, the agency denies any awareness that [deleted] is paying sub-SCA wages. In this regard, the agency states that the only evidence it has of [deleted] interim contract wages is a salary report which identified employee wages by comparison to GS wages. The agency compared this information with SOM's BAFO wages for the same employees and found that the average wage rate for those employees was higher than that reflected in the BAFO. To the extent the agency may have been aware that any employees working on the interim contract were not being paid SCA or GS-equivalent wages, this does not mean that it agrees that those wages are appropriate or likely to result in the employees' long-term retention during the new contract period. In this regard, the agency points out that its most important consideration in the interim contract was continuation of Task D3 work and that [deleted] is paying those employees at the SCA rates. While the agency states that it would have preferred to have had an alternative for work on Tasks D1 and D2, a "lack of time and contracting efficiency made [deleted] the best choice for those tasks also." The agency's choice of [deleted] for those tasks does not constitute an agency determination that [deleted] wages for the affected employees are adequate for a long-term contract.

realty appraiser, did not represent positions performed by [deleted]-incumbent personnel. Thus, simply stating that the wages represent incumbent wage rates is neither fully accurate, nor sufficient to support the adequacy of the low rates in question.

In this regard, the assessment of this weakness was also based on SOM's lack of adequate support for its lower wages. While SOM argues that the agency was aware of the incumbent's payment of lower than SCA and GS rates, its evidence of that awareness is unpersuasive. For example, in response to the agency report, SOM submitted to our Office the salary structure it proposed in 1993 allegedly showing below-SCA rates and a 1995 detailed salary report. The salary structure reflects a lowest and highest salary range without identifying the specific wage rate to be paid for any particular position. While the lower end of the salary ranges appears to be lower than the SCA rates, the higher end appears to exceed those rates. Such a presentation of broad ranges in a salary structure does not evidence that the agency was on notice that incumbent personnel were being paid less than SCA rates.<sup>8</sup> The 1995 salary report lists annual salaries, while SCA rates are expressed as per-hour rates. Without an explanation of how the hourly rate was to be calculated from the annual salaries, the agency was not necessarily on notice that these wage rates represented below-SCA rates. Moreover, the salary report identifies the salaries by noting only that they are "counted for" various GS grades, without denominating the job responsibilities as properly falling within the "counted for" GS level.<sup>9</sup>

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<sup>8</sup>For example, the salary structure table shows that in 1993 a "systems analyst III" was paid at a rate ranging from [deleted] per hour to [deleted] per hour, while the (current) SCA hourly wage rate for this position is \$26.84, less than the 1993 "highest" rate--but the table does not indicate whether any incumbent was paid above or below the SCA rate. SOM proposed this position at [deleted] per hour.

<sup>9</sup>In addition, while SOM outlined its methodology for calculating wage rates, it did not submit any of the salary surveys on which it relied. In the absence of any evidence that the lower wages proposed, even those actually paid to some incumbent employees, were commensurate with other local wages for comparable positions, the agency reasonably concluded that SOM had failed to adequately support its proposed rates. An offeror is responsible for providing sufficient information in its proposal to support its approach. While agency evaluators may consider evidence from sources outside the proposals, Continental Maritime of San Diego, Inc., B-249858.2, B-249858.3, Feb. 11, 1993, 93-1 CPD ¶ 230 at 6, agencies are not obligated to go in search of information which the offeror has omitted or failed to adequately present. Telos Field Eng'g, B-251384, Mar. 26, 1993, 93-1 CPD ¶ 271 at 6.

In sum, our review of the entire record leads us to conclude that the agency's concern about SOM's wage strategy was reasonable and its assessment of a weakness under the Personnel Management subcriterion was unobjectionable.<sup>10</sup>

## EVALUATION OF PAST PERFORMANCE

In evaluating SOM's past performance, the TEP noted that SOM, which was responsible for performance of Task A (realty management), had "[l]imited realty experience in federal acquisition[s]" and that SOM's subcontractor, [deleted], had "failed to comply with contract administration requirements to provide indirect rate packages (1994-96) to [DOE] within 90 day[s] of contract period completion." SOM challenges the assessment of these weaknesses and the consequent downgrading of its proposal.<sup>11</sup> SOM argues that its proposal provided ample evidence of its and [deleted] experience with realty tasks and an adequate explanation for the late submissions of its rate information. In view of the discretion afforded contracting officials in the evaluation of past performance, our review of the record reveals nothing improper or unreasonable in the agency's evaluation. University of Dayton Research Inst., B-260709, July 10, 1995, 95-2 CPD ¶ 17 at 7.

The realty task under the incumbent contract was performed by another contractor. In its proposal, SOM stated that it would use the incumbent realty personnel in performing the contract. It also noted its and [deleted] own prior experience with realty tasks. In response to evaluators' questions, SOM's first BAFO provided more detail about its and [deleted] realty experience. The evaluators continued to view this as limited experience and so scored SOM's past performance at 200 out of 250 possible points. In its second BAFO, SOM stated that it was providing "substantially more information on its extensive realty experience highlighting Federal Acquisition experience specifically." In this regard, SOM's proposal showed that it had 1 year of realty experience in a contract performed at DOE's Rocky Flats Field Office and that it had realty-task experience on an engineering design contract with the City of Broomfield. [deleted] had some 15 years of realty experience in two different

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<sup>10</sup>In this regard, we note that SOM's evaluation score of 90 out of 150 points under this subcriterion was also based on other weaknesses, including different benefits of [deleted] employees and the cost of family health insurance premiums paid by employees.

<sup>11</sup>SOM also contends that the agency improperly evaluated AIMSI's past performance because the agency failed to take AIMSI's past performance weaknesses into account under the project management criterion. As the agency correctly observes, since past performance was not part of the evaluation factors to be used under the project management criterion, it would have been improper to consider it under that criterion. J.A. Jones Management Servs., Inc., supra.

contracts. Notwithstanding this additional information, the TEP did not eliminate the lack of experience weakness from the evaluation.

While SOM complains that the assessed weakness is unfair, the record fully supports the TEP's assessment that SOM had "limited" realty experience on federal contracts. Its sole federal contract at Rocky Flats involved what DOE terms "clerical work." While there is no reason to doubt that SOM performed some realty related tasks as part of this contract, they were not the major emphasis of the contract and, in any event, represented only 1 year of experience. With regard to the Broomfield experience, the contract was for engineering design services that involved some realty related tasks (e.g., appraisal, land acquisition, and record maintenance), but that experience was limited and was nonfederal. Although [deleted] has more experience, the agency correctly observes that SOM proposed itself, not [deleted], to perform the realty tasks. The fact that [deleted] is available to provide advice does not change the fact that SOM is ultimately responsible for the performance of these tasks. Similarly, while SOM planned to hire incumbents to perform the realty tasks and the TEP noted this as a strength under the project management criterion, this does not equate to anything more than "limited" contract management experience. In this regard, although our Office has recognized that an agency properly may consider the experience of supervisory personnel in evaluating the experience of a new business, see Technical Resources, Inc., B-253506, Sept. 16, 1993, 93-2 CPD ¶ 176 at 5, an agency certainly is not compelled to attribute personnel experience to the contractor. Atlantic Coast Contracting, Inc., B-270491, B-270590, Mar. 13, 1996, 96-1 CPD ¶ 147 at 3.

The other assessed weakness was based on [deleted] late submission of indirect rate information. Under the terms of [deleted] prior contract with DOE, it billed indirect costs using a provisional rate. Within 90 days after the close of each fiscal year, [deleted] was required to submit a final indirect rate package to the agency so that it could determine the final rate. Prompt determinations were important because the agency had obligated reserve funds to cover any reasonable increase in final rates over provisional rates. Until the matter was settled each fiscal year the agency could not use the reserved funds for other requirements. In mid-1995, DOE learned that the Defense Contract Audit Agency (DCAA) had questioned indirect rates associated with an [deleted] ([deleted] parent corporation) contract for fiscal years 1991-93. DCAA also audited [deleted]. Because the amounts involved were substantial and due to the potential for payment of penalties if [deleted] did not prevail, [deleted] did not submit its indirect rate packages for fiscal years 1993 through 1996. Beginning in November 1995, DOE requested [deleted] to comply with its obligation to submit its indirect packages on six contracts. When the agency learned that [deleted] was concerned about penalties for submitting unallowable costs to DOE, the agency advised [deleted] that it would not forward the rate packages to DCAA for audit until after [deleted] resolved the dispute with DCAA. However, DOE advised [deleted] that it still needed the overdue packages. Ultimately, in the summer of 1997, [deleted] settled with DCAA for a fraction of the

original disputed costs from 1991. Subsequently, DOE agreed to a schedule for submission of the overdue rate packages: fiscal year 1994, due in August 1997, fiscal year 1995 by the end of fiscal year 1997, and fiscal year 1996 in December 1997/January 1998. [deleted] met these deadlines.

SOM admits that [deleted] was overdue in submission of the rate packages, but argues that due to the special circumstances surrounding its late submissions, including its positive settlement with DCAA, and because it submitted the rate packages within the time frames agreed to by DOE, the agency should not have assessed a weakness for past performance.<sup>12</sup> We disagree. As explained by the agency, until final indirect rates are settled, it must continue to obligate additional funds in case the final rates legitimately exceed the provisional rates. Thus, in addition to representing a failure to comply with its contractual responsibilities, [deleted] delayed submissions caused DOE additional administrative and fiscal responsibilities. While it was more convenient for [deleted] to wait until it had settled with DCAA, it could have submitted its rate packages, with the caveat that those rates might be reduced if DCAA did not agree with its position in the ongoing audit. Under these circumstances, the TEP reasonably concluded that [deleted] late submissions were relevant to the past performance evaluation and justified the assessment of a weakness. In this regard, despite the assessment of this weakness, SOM's proposal received a higher past performance score than AIMSI's.

Further, we note that SOM was aware of the agency's assessment of both these weaknesses and attempted to resolve them through multiple proposal revisions. However, with each revision, SOM failed to provide any appreciable new information which would have warranted elimination of the weaknesses. An offeror is responsible for affirmatively demonstrating the merits of its proposal, DBA Sys.

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<sup>12</sup>SOM also argues that it understood that an agency cost analyst agreed to advise the TEP not to consider the matter negatively. We have reviewed declarations from both the cost analyst and [deleted]. Although [deleted] representative requested the cost analyst to talk with the TEP, the cost analyst denies agreeing to advise the TEP how they should view [deleted] late submissions. Rather, the analyst states that he was not aware of the rating system and did not get involved in telling the technical evaluators how to score proposals. Instead, he told [deleted] that once [deleted] became current, he would so inform the TEP. However, at the time of that discussion, [deleted] was not current and did not become current as to fiscal year 1996 until January 1998. The fiscal year 1997 package was not submitted until March 1998 (beyond the 90-day deadline after the beginning of fiscal year 1998). Since the submissions, even under the "agreed to" deadlines, were extremely late, and in view of the analyst's position that he would not advise evaluators how to score a proposal, we believe the analyst's statement represents the more likely scenario. On balance, it appears that the [deleted] representative simply misunderstood the cost analyst's stated intentions.

Inc., B-241048, Jan. 15, 1991, 91-1 CPD ¶ 36 at 4, and here SOM, in revising its proposal, did not eliminate the basis for the agency's assessment of past performance weaknesses.

#### COST/TECHNICAL TRADEOFF

Finally, SOM argues that the cost/technical tradeoff was suspect because of the evaluation errors it alleged in its protest. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Cost/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. General Servs. Eng'g. Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44 at 9.

Based on the detailed analysis and evaluation performed by the TEP on the competitive range proposals, the SSO selected AIMSI's proposal for award. In this regard, the TEP observed that AIMSI had submitted the proposal with the highest technical score with all evaluation criteria rated "successful" to "outstanding." AIMSI's proposal had the highest project management score, received additional points for proposal of an 8(a) subcontractor, and represented the second lowest MPC. The TEP noted that SOM's proposal was technically very good with the highest rating under the understanding and approach criterion, and the lowest MPC. The TEP also observed that SOM had improved its score by proposing an 8(a) subcontractor, but found SOM's technical weaknesses could cause technical problems in the future, which would outweigh the estimated cost savings.

In selecting AIMSI, the SSO noted that AIMSI was very strong in all phases of project management and was highly rated in understanding and approach. While AIMSI's past performance was rated relatively lower, the SSO concluded that the overall technical advantages of its BAFO were "clearly superior to the other three firms seeking the CSO's technical support service contract." While AIMSI's MPC was higher than SOM's, the SSO found that the technical superiority reflected in AIMSI's higher score (85 points higher than SOM's) "more than outweighs the additional estimated cost of the contractual services." Since, as discussed above, there was nothing unreasonable or objectionable in the agency's evaluation, we have no basis to question the award determination.

The protest is denied.

Comptroller General  
of the United States