

MR. Van Schaik



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Holmes & Narver, Inc.  
**File:** B-239469.4; B-239469.5  
**Date:** January 17, 1991

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William A. Roberts, III, Esq., Howrey & Simon, for the protester.  
Kenneth S. Kramer, P.C., Fried, Frank, Harris, Shriver & Jacobsen, for Raytheon Services Nevada, an interested party.  
Budd B. Bornhoff, Jr., Esq., Department of Energy, for the agency.  
John W. Van Schaik, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. While contracting agency was obligated to consider awardee's past performance on comparable recent contract with another agency in its evaluation of experience, since information on that contract was included in awardee's proposal, the matter was covered in discussions, and contracting agency was aware of the firm's performance on the contract and considered it in the evaluation, the contracting agency did not have an affirmative duty to contact other agency for information on the contract.
2. While awardee's performance on recent, comparable contract was poor, given the authority of the contracting agency in evaluating proposals and the evidence relied on by contracting agency in exercising its judgment, contracting agency had a reasonable basis for its evaluation of awardee's overall experience as "excellent."
3. A party requesting reconsideration must show that prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of decision. Repetition of arguments made during the original protest or mere disagreement with decision does not meet this standard.

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## DECISION

Holmes & Narver, Inc. protests the award of a contract to Raytheon Services Nevada under request for proposals (RFP) No. DE-RP08-89NV10833, issued by the Department of Energy (DOE) for management, operating and technical services. Holmes also requests reconsideration of our decision Holmes & Narver, Inc., B-239469.2; B-239469.3, Sept. 14, 1990, 90-2 CPD ¶ 210, in which we denied in part and dismissed in part its previous protests of the same award.

We deny the protest and the reconsideration request.

## BACKGROUND

The solicitation was for a cost-plus-award-fee management and operating (M&O) type of contract for a wide range of technical, management and engineering services related to both surface and subsurface facilities for underground nuclear explosives testing and other technical projects at DOE's Nevada Test Site and Johnston Atoll complex. The procurement was conducted in accordance with the alternative source-selection procedures set out in DOE's Acquisition Regulations Handbook--Source Evaluation Board (SEB Handbook), which allow limited discussions with offerors in the competitive range and the selection of one or more offerors for final negotiations and award.

The RFP stated that award would be made to the firm whose offer, conforming to the RFP, was most advantageous to the government considering the listed evaluation factors. The solicitation included the following technical evaluation factors: (1) Qualifications of personnel; (2) Qualifications of firm; (3) Organizational structure and staffing plan; and (4) Work plan. Of the four technical factors, which were to be numerically scored, the first two were of equal importance and were to have the greatest weight while the third and fourth were also of equal importance and were to be given less weight than the first and second. The RFP also included the following business and management evaluation factors listed in descending order of importance: (1) Corporate commitment, (2) Work authorization, reporting, and cost control; (3) Labor relations; (4) Recruitment and compensation plans; and (5) Phase-in plan. The business and management factors were to be adjectivally rated.

Six firms submitted proposals in response to the RFP. Based on the initial evaluation, the agency created a competitive range consisting of Holmes, Raytheon and Kaiser Engineers Nevada. The agency's source evaluation board (SEB) held written and oral discussions with the three competitive range

offerors and requested revised offers from each. The SEB reevaluated the proposals after the submission of the revised offers, resulting in the following scores and rankings for the awardee and the protester:

| Evaluation factors    | Raytheon        | Holmes     |
|-----------------------|-----------------|------------|
| Technical:            |                 |            |
| 1. Qual. of personnel | 270             | 240        |
| 2. Qual. of firm      | 270             | 240        |
| 3. Org. structure     | 180             | 160        |
| 4. Work plan          | <u>160</u>      | <u>160</u> |
| TOTALS                | <u>880</u>      | <u>800</u> |
| Business & Management |                 |            |
| 1. Corp. commitment   | O <sup>1/</sup> | G          |
| 2. Work auth./control | O               | G          |
| 3. Labor relations    | O               | G          |
| 4. Recruit/comp. plan | G               | G          |
| 5. Phase-in plan      | <u>G</u>        | <u>S</u>   |
| TOTALS                | <u>O</u>        | <u>G</u>   |

Based on the SEB's evaluation, DOE's source selection official (SSO) selected Raytheon for final negotiations in accordance with the alternative source-selection procedures spelled out in the SEB Handbook. The SSO was impressed that Raytheon's proposal was uniformly excellent under all of the evaluation criteria, that Raytheon was rated highest in seven of the nine evaluation factors and that Raytheon proposed to accomplish the diverse contract requirements using a single integrated contractor. The SSO also considered Raytheon's corporate commitment to be noteworthy. After final negotiations, DOE awarded the contract to Raytheon.

In the previous protests, Holmes principally argued that Raytheon's program manager and a Raytheon consultant had conflicts of interest that afforded that firm an unfair competitive advantage. Holmes also argued that it should not have been excluded from the final negotiations, was improperly criticized for its use of a subcontractor, and was not afforded the opportunity for meaningful negotiations. Further, according to Holmes, DOE failed to properly evaluate cost and corporate commitment and, although Raytheon was given credit for "excellent, and comparable firm experience," that

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1/ For the business & management factors, the SEB used adjectival ratings of outstanding, good, satisfactory, poor and unsatisfactory.

firm did not have experience comparable to Holmes in maintaining and operating facilities.

In denying Holmes' protests, we found that there was no conflict of interest caused by Raytheon's program manager or consultant. We also found reasonable and consistent with the solicitation the agency's conclusion that Holmes' manner of integrating its major subcontractor into its proposed structure was a weakness in the firm's proposal and we rejected Holmes' contention that the agency's evaluation of Raytheon's corporate commitment was inconsistent with the solicitation evaluation criteria. Based on our review of the record, we concluded that there was no basis to disagree with DOE's judgment that Raytheon has "excellent, comparable firm experience in all the technical disciplines." In sum, we found that the SSO reasonably concluded that there existed a meaningful distinction between the Holmes and Raytheon proposals and that Raytheon's proposal was superior. We also concluded that DOE performed the cost evaluation in the manner that it said it would in the amended solicitation and stated that if Holmes disagreed with that evaluation method, it was required to object before the due date for receipt of proposals. Finally, we concluded that, contrary to the protester's contention, the SSO properly considered cost in his decision to select Raytheon for final contract negotiations and we rejected Holmes' contention that DOE failed to afford it meaningful discussions.

#### HOLMES' REMAINING PROTEST

On September 11, before we issued our September 14 decision, Holmes filed this protest contending that, based on information that was not previously available to it and therefore not previously submitted to this Office, it had further reason to believe that DOE unreasonably concluded that Raytheon's proposal was technically superior to its own. Holmes explains that on August 30, it first became aware of a General Accounting Office (GAO) audit report, Chemical Weapons: Stockpile Destruction Delayed at the Army's Prototype Disposal Facility (NSIAD-90-222, July 30, 1990), which, it asserts, establishes that DOE's evaluation of Raytheon's corporate experience and corporate commitment was arbitrary and unreasonable. According to Holmes, that report details serious performance and cost control problems of a Raytheon subsidiary under an Army contract on Johnston Atoll. Holmes argues that DOE must have failed to properly consider Raytheon's poor performance on the Army contract in evaluating Raytheon's experience. Further, in its request for reconsideration, Holmes argues that had we known of Raytheon's deficient performance when we issued our decision, we would have concluded that DOE's evaluation of Raytheon's experience was seriously flawed.

## The GAO Audit Report

In 1986, the Army awarded an 8-year cost-plus-award-fee contract to United Engineers & Constructors International, Inc. (UEC) which, like Raytheon Services Nevada, is a wholly-owned subsidiary of Raytheon Corporation. Under that contract, UEC was to provide operation and maintenance services for the Army's Johnston Atoll Chemical Agent Disposal System (JACADS). Although the original purpose of JACADS was to destroy only M55 chemical rockets, in 1985 Congress directed the Army to destroy the United States' entire chemical weapons stockpile. JACADS is a prototype plant and is to be used to destroy all types of chemical weapons.

In response to a congressional request, on July 30, 1990, this Office released its report on operational delays at JACADS. According to that report, full-scale operations at JACADS are scheduled to start in September 1991, 32 months after the original full-scale start-up date. The report explains that 22.5 months of delay was caused by the Army's efforts to comply with the statutory requirements to destroy all types of chemical munitions and to conduct operational verification tests. The schedule slipped another 9.5 months because of technical and contractor staffing problems and, according to the report, further delays are likely if problems continue at the facility. The report states that the Army estimated that the total JACADS disposal program will cost about \$561 million to complete operations through 1994, an increase of \$190 million over the Army's 1985 estimate.

The report states that most of the JACADS program cost increase can be attributed to the changed statutory requirements and technical and contractor problems.<sup>2/</sup> According to the report, the contractor has suffered from a lack of qualified personnel to fill technical and management positions because of rapidly increasing staffing needs, high employee turnover and inadequate recruitment efforts. The report states that the contractor did not sufficiently staff some technical positions, such as control engineers, control room operators and maintenance personnel, and that many management positions were filled with personnel that did not have the appropriate credentials or experience. The report also establishes that UEC submitted to the Army approximately one-half million dollars in invoices that were disallowed and

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<sup>2/</sup> Holmes refers to the Raytheon subsidiary as Stearns Catalytic Corporation. Nonetheless, although the GAO report does not name the contractor, it is undisputed that UEC, Raytheon's subsidiary, is the Army's JACADS contractor.

that it had not fully implemented/documentated an overtime control procedure as of March 1990.

Among other actions taken to improve the contractor's performance, the Army withheld increasing amounts of the contractor's award fee. The report indicates that from August 1986 until August 1989, UEC earned only 47 percent of the maximum available award fee and, during three successive performance periods from September 1988 through August 1989, it earned only 45 percent, 0 percent and 44 percent of the maximum available fee.

#### DOE's Evaluation of Raytheon's Experience

Under DOE's solicitation, one of the two most important technical factors, Qualifications of the firm, included consideration of current experience providing engineering services, construction, operation and maintenance of plant facilities, in particular "remote location logistical support comparable in kind and in technical complexity to the proposed work." The solicitation instructed offerors to include in their proposals a "[s]ummary of the offeror's experience which is indicative of its ability to perform the work . . . . This should include the scope and nature of comparable work currently being performed by the offeror and its experience for the last five years." The solicitation stated that submission of this information authorized DOE to verify its accuracy. Also, under the Work authorization, reporting, and cost control business and management evaluation factor, the RFP instructed offerors to "[a]ddress experience in administering programs and projects in a cost effective manner, resulting in meeting cost and schedule objectives."

Along with information on a number of other contracts, Raytheon's initial proposal listed the UEC JACADS contract and explained some of the problems it had experienced on that project. The proposal also included UEC's award fee evaluation results which were "excellent" or "very good" from January 1987 through August 1988 and, for the three rating periods from September 1988 through August 1989 were "good," "marginal" and "good." Based on its evaluation of Raytheon's initial proposal, under the firm qualifications evaluation factor, the SEB evaluation report stated:

"Raytheon's performance data on existing contracts appear responsive to agency identification of problems and reflect management action to resolve deficient areas and improve performances in periods following reductions in CPAF ratings. It appears their management continues to strive for excellence."

During discussions, DOE asked Raytheon for more recent JACADS performance ratings, for an explanation of the problems that had contributed to its "marginal" performance rating and the actions taken to correct those problems and for "further information on management, operations and maintenance experience directly applicable to Johnston Atoll."

In its BAFO, Raytheon included its most recent JACADS performance rating, which had improved over the three previous rating periods to "very good," and further explained the problems its subsidiary had experienced on the Army contract and the actions it had taken to correct those problems. Also, in response to the request for information, Raytheon expanded upon the explanation included in its initial proposal on a contract with the Air Force to manage, operate and maintain the facilities of the Eastern Test Range (ETR) in support of the Air Force's Eastern Space and Missile Center. Raytheon's proposal indicated that under the ETR contract it provided approximately 1,800 employees to manage, operate and maintain instrumentation, control and support facilities at Cape Canaveral Air Force Station; Patrick Air Force Base; a series of instrumental facilities on the Florida mainland, Antigua, Ascension, Grand Bahamas and Saipan Islands and Pretoria, South Africa; and two instrumented range ships. According to Raytheon's proposal, its experience on the ETR contract is directly applicable to Johnston Atoll because it is current and it included virtually identical work involving management and operation of remote locations.

The SEB concluded that information provided during discussions and in Raytheon's BAFO "demonstrated a current capability to operate in the Pacific arena." The SEB also concluded that Raytheon's experience in construction, operations and maintenance of plant facilities under cost-type contracts for DOE and the Department of Defense had been successfully demonstrated on projects of greater size and complexity than the proposed work. The SEB evaluation report states that agency officials made telephone checks to several organizations regarding the experience of each of the offerors in the competitive range and this verification process confirmed the SEB's impressions.

In making the selection decision, the SSO was "impressed with Raytheon's uniformity of excellence in all areas of the evaluation criteria." The SSO stated that Raytheon offered "excellent, comparable firm experience in all the technical disciplines" and that its "experience involves projects of greater size and complexity than the proposed contract work."

DOE maintains that it did not rely solely on Raytheon's proposal to judge the performance of Raytheon's subsidiary on the Army contract; it reports that the SSO was kept currently

informed of Johnston Atoll's activities so that DOE was already aware of problems at the JACADS facility. DOE also argues that, consistent with the solicitation, it evaluated the totality of Raytheon's experience in managing a remote location operation, including the ETR contract, which was more comparable to the DOE contract than the Army's JACADS contract. DOE explains that considering the totality of Raytheon's comparable performance experience, including the more relevant ETR contract, the performance deficiencies on the JACADS contract were not considered symptomatic of a larger problem. According to the agency, in light of Raytheon's overall performance history, it viewed Raytheon's experience as exceptional.

#### Holmes' Contentions

Holmes emphasizes that under the RFP, technical factors and specifically firm qualifications, including current experience on comparable projects, were to be given great weight in the evaluation and Corporate commitment and Work authorization, reporting and cost control were the two most important business and management factors. Holmes notes that offerors were required to detail in their proposals their recent experience on similar projects and argues that given Raytheon's subsidiary's poor recent experience on the JACADS contract, Raytheon must have failed to adequately reveal its performance on that contract and DOE failed to properly investigate and consider that contract in the evaluation. In this respect, Holmes argues that if DOE properly considered the performance of Raytheon's subsidiary, it could not reasonably conclude, as the SEB did, that Raytheon "demonstrated exceptional ability" under the firm qualifications factor and that one of Raytheon's strengths under the business and management evaluation was its "extensive experience with . . . Cost Schedule Systems Criteria."

Further, Holmes argues that if the SSO considered UEC's JACADS performance, there was no reasonable basis for his conclusion that Raytheon's firm experience was "excellent" or "comparable" to that of Holmes. Although DOE reports that Raytheon included information on the JACADS contract in its initial proposal and BAFO and the matter was covered in discussions, Holmes maintains that, in light of UEC's poor performance, DOE was obligated to contact the Army to supplement the information in Raytheon's proposal.

Holmes maintains that DOE's disregard of adverse information on the JACADS contract and failure to investigate affected Raytheon's ratings under the firm qualifications factor where Raytheon scored 270 compared to 240 for Holmes, under the Work authorization and cost control factor where Raytheon was rated outstanding compared to good for Holmes and under the

Corporate commitment factor where Raytheon was considered outstanding, in part because of proposed corporate oversight audits. The protester argues that it was prejudiced because an evaluation that gave proper consideration to the JACADS contract would have significantly reduced Raytheon's ratings to the extent that the SSO could not reasonably conclude that a meaningful difference existed between the Holmes and Raytheon proposals.

#### Analysis

A contracting agency, in evaluating proposals, may consider evidence obtained from sources outside the proposals so long as the use of such evidence is consistent with established procurement practice. In appropriate circumstances, a contracting officer must consider information beyond an offeror's proposal when evaluating previous performance on recent comparable contracts. See G. Marine Diesel; Phillyship, B-232619; B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90; J.M. Cashman, Inc., B-233773, Apr. 14, 1989, 89-1 CPD ¶ 380.

We agree with Holmes that UEC's performance on the Army's JACADS contract was unsatisfactory for a significant period, as demonstrated by the low or zero fees earned in three out of ten rating periods. We also agree that DOE was obligated to consider UEC's performance on that contract in assessing Raytheon's experience.

The record shows that DOE did consider the UEC contract. The agency considered information in Raytheon's initial proposal and BAFO which described a number of apparently comparable contracts, including the JACADS contract and the Air Force ETR contract, which DOE considered to be the remote location operation and management contract most similar to the DOE requirement. Further, as the agency explains, its management, including the SSO, is kept currently informed of the Army's activities on Johnston Atoll and when it reviewed Raytheon's proposal, it already was aware of the nature of the problems at that facility. Although Holmes disparages the agency's extrinsic knowledge of the Army's activities on Johnston Atoll and argues that DOE should have contacted Army officials during the evaluation process, Holmes also argues that as "cohosts" with the Army on Johnston Atoll DOE officials "must have known of the nature of Raytheon's performance" on that contract. It is clear from the record that, in fact, DOE officials were well aware of the JACADS contract. Under the circumstances of this case, we do not believe that DOE had an affirmative duty to go further and contact Army officials during the evaluation to explore UEC's performance on the JACADS contract.

We also believe that the evaluation itself was reasonable. Although Raytheon's subsidiary's performance on the JACADS contract was flawed, all of the schedule slippage and cost increases under that contract and under the Army's chemical weapons disposal program cannot be attributed to UEC. For example, the GAO report states that the largest period of schedule slippage--22.5 months--and much of the increase in cost to the Army resulted from the statutory changes that required the Army to destroy the entire chemical stockpile while the JACADS facility was originally intended to destroy only M55 rockets. Also, UEC's performance on the JACADS contract was considered excellent or very good for seven of ten performance periods.

Moreover, Raytheon is a large firm which held numerous contracts over the 5-year evaluation period and one of those contracts, the Air Force's ETR contract was, in DOE's judgment, more similar to DOE's requirement than the JACADS contract. We have no basis to disagree with that judgment. Neither have we any basis to disagree with DOE's conclusion that Raytheon's overall performance record was excellent and that UEC's JACADS performance was not symptomatic of a larger problem. While, considering the JACADS contract, we think DOE's use of the word "exceptional" to describe Raytheon's performance history is questionable, given the authority of the contracting agency in evaluating proposals and the overall evidence relied on by DOE in exercising its judgment, we conclude that DOE had a reasonable basis for its evaluation of Raytheon's experience as superior to the protester's both as it related to the technical factors and the business and management factors. See Pan Am World Servs., Inc.; Base Maintenance Support Group; Holmes and Narver Servs., Inc., B-231840; B-231840.2; B-231840.3, Nov. 7, 1988, 88-2 CPD ¶ 446.

#### HOLMES' RECONSIDERATION REQUEST

In its reconsideration request, Holmes argues that we erred in our initial decision by concluding that the selection of Raytheon was justified by that firm's corporate commitment and its overall higher scores and ratings. In this respect, we concluded that the SSO reasonably determined that Raytheon's proposal was superior to Holmes' and that there existed a meaningful distinction between the two proposals based on Raytheon's overall higher rating, its corporate commitment and its integrated unitary structure. Holmes first argues that, in our decision, we erroneously cited five factors relied on by the SSO to conclude that the SSO's decision on Raytheon's corporate commitment was justified. According to Holmes, the SSO referred to only two reasons--Raytheon's commitment to absorb phase-in costs and the acquisition of Fenix & Scisson--to distinguish Raytheon's corporate commitment.

Holmes also argues that we erred as a matter of law by concluding that DOE reasonably found that a meaningful distinction could be drawn between Holmes and Raytheon based on Raytheon's overall higher rating. In this respect, Holmes argues that Raytheon's higher point scores and narrative ratings, standing alone, provide no basis for distinguishing between them without consideration of the extent of meaningful difference reflected in the point differentials.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1990). Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. R.E. Scherrer, Inc.--Request for Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Holmes argued in its protest submissions, as it does here, that the SSO identified only two aspects of Raytheon's corporate commitment in justifying his selection decision and that, standing alone, Raytheon's higher point scores and adjectival ratings provide no basis for distinction between the Holmes and Raytheon proposals. While we did not separately respond to these and other arguments which Holmes raised to support its challenge of the award selection, as we stated in our initial decision, we reviewed the SSO's decision in the context of all of the protester's arguments and we decided that the SSO reasonably concluded that there existed a meaningful distinction between the Holmes and Raytheon proposals. Holmes' repetition of arguments made during our consideration of the original protests and mere disagreement with our decision does not meet our standard for review of reconsideration requests. R.E. Scherrer, Inc.--Request for Recon., B-231101.3, supra.

Finally, Holmes argues that DOE failed to properly analyze and compare the cost data provided in the proposals. Although Holmes notes that we did not address this issue because we concluded that it related to the terms of the solicitation and was untimely filed, Holmes nonetheless argues that we should consider the issue under the significant issue exception to our timeliness rules.

In its protest submissions, Raytheon argued that Holmes' contention regarding the cost evaluation was untimely raised since the cost evaluation to be performed was evident from the solicitation. Nonetheless, although Holmes responded to the argument that its protest on this issue was untimely, it did not argue in its submissions under the original protests that

this matter was a significant issue. Our Regulations do not permit a piecemeal presentation of evidence, information or analysis. Where, as here, a party submits in its request for reconsideration an argument that it could have presented at the time of the protest, but did not, that argument does not provide a basis for reconsideration. Inter-Continental Equip., Inc.--Recon., B-230266.3, Apr. 6, 1988, 88-1 CPD ¶ 343.

The protest and the request for reconsideration are denied.

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for  
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