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**Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** HSG-Holzmann Technischer Services GmbH; HSG-GeBe

**File:** B-274992.2; B-274993.2

**Date:** February 26, 1997

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John S. Pachter, Esq., and Jonathan Shaffer, Esq., Smith, Pachter, McWhorter & D'Ambrosio P.L.C.; and Otto K. Weixler, for the protester.

Reed L. von Maur, Esq., and J. Casey Fos, Esq., von Maur & Partners, and Kevin P. Mullen, Esq., Piper & Marbury, for Pacific Architects and Engineers GmbH Planning and Construction, an intervenor.

Nancy van Noortwijk-Sommer, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Price realism analysis of awardee's proposal for fixed-price contract was reasonable where agency compared proposal to government estimate and other price proposals; although certain proposed labor rates were low, there was no reason to question awardee's understanding of the requirements or to assume increased performance risk, given agency's awareness of labor surplus due to current state of German construction industry.

2. Agency was not required to downgrade awardee's proposal for lack of extensive experience performing contracts in fully operational hospitals, where solicitation did not require such experience and awardee was found to have required experience based on performance of maintenance contract at a contingency hospital, as well as numerous base maintenance contracts that the agency determined involved work similar to the current requirement.

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### **DECISION**

HSG-Holzmann Technischer Services GmbH protests the award of a contract to Pacific Architects and Engineers GmbH Planning and Construction (PAE) for total maintenance and minor construction at the U.S. Army Hospital in Heidelberg, Germany, and its outlying clinics, under request for proposals (RFP) No. DACA90-96-R-0075, issued by the Army Corps of Engineers. HSG-GeBe, a joint venture of HSG-Holzmann Technischer Services GmbH and GeBe Gebaude-und Betriebstechnik GmbH, protests the award of a contract to PAE under RFP No. DACA90-96-R-0076,

for total maintenance and minor construction at the Landstuhl Hospital at Landstuhl, Germany, and its outlying clinics, also issued by the Corps.<sup>1</sup>

We deny the protests.

## BACKGROUND

Both solicitations were comprised of a number of line items for which offerors were to submit prices. Line items AA (management), AB (preventative maintenance-hospital), and AC (preventative maintenance-clinics and repair and new work) called for fixed prices. Line items AF through CM called for offerors to provide fixed hourly rates for different types of workers (e.g., plumbers and electricians) to perform demand maintenance, minor construction and emergency work; when the services are required, the Corps will negotiate a work order with the contractor based on the proposed labor rates. The solicitations set forth four equally weighted evaluation factors: management; technical; past performance/experience; and price, and provided that the contract would be awarded on the basis of the proposal representing the best value to the government.

The agency received and evaluated three proposals under each RFP. While in each case the protester's score out of 450 under the nonprice factors was higher than PAE's (393 versus 387 for Heidelberg, and 417 versus 365 for Landstuhl), PAE's proposed prices under both solicitations were low (DM 6,461,908.50 versus DM 7,230,194.42 for Heidelberg, and DM 11,149,323 versus DM 13,620,118.38 for Landstuhl). The agency determined in both cases that the protesters' higher technical scores were not worth the higher prices and awarded the contracts to PAE.

## PRICE EVALUATION

The protesters argue that the agency did not properly evaluate PAE's proposal for price realism and failed to downgrade the proposal based on unrealistically low labor rates under line items AF through CM. The protesters assert that these low rates should have resulted in a finding of increased performance risk and a lack of understanding of the requirements.

Where, as here, the award of a fixed-price contract is contemplated, a proposal's "cost realism" is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the

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<sup>1</sup>We have consolidated these protests in a single decision because the solicitations and protest issues are virtually identical.

contractor.<sup>2</sup> PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366. However, an agency may, as here, provide for the use of a price realism analysis in a solicitation for the award of a fixed-price contract for the limited purpose of measuring an offeror's understanding of the solicitation's requirements, or to assess the risk inherent in an offeror's approach. PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381.

There is no basis for objecting to the price realism analysis. While the protesters are correct that PAE's proposed rates for line items AF through CM appear low, the record establishes that the agency reasonably concluded that these rates evidenced neither a lack of understanding nor increased risk. In this regard, we note that the identical issue was raised in a protest by HSG-SKE, a joint venture of HSG-Holzmann Technischer Service GmbH and SKE Maintenance GmbH & Co. KG, with regard to an award to PAE under an RFP for similar services at the 67th Combat Support Hospital in Wurzburg, Germany. We denied the protest based on the Corps' having found there that PAE's low hourly rates were acceptable "given the present situation in the German construction industry." In other words, the Corps found no basis for assuming that PAE's rates were unrealistic given that the labor categories in question were in surplus. See HSG-SKE, B-274769; B-274769.3, Jan. 6, 1997, 97-1 CPD ¶ 20, recon. dismissed, B-274769.4, Jan. 31, 1997. While it is not apparent whether the Corps reexamined the German labor market and arrived at the same conclusion for purposes of the current procurement, we do not think it was required to do so; given the recency of its prior determination in connection with a similar procurement involving the same labor categories, the Corps' prior determination supports its conclusion that PAE's rates were realistic such that downgrading of PAE's proposal based on risk or lack of understanding was not warranted.

## TECHNICAL EVALUATION

### Non-Critical Equipment Plan

The protesters complain that PAE's technical score should have been reduced because PAE did not provide a draft of its preventative maintenance plan for noncritical equipment with its proposal, as required by the RFP's statement of work.

We will review a proposal evaluation only to determine whether it was consistent with the solicitation and reasonable. HSG-Intelcom, B-254750.2; B-254750.3, Feb. 7, 1994, 94-1 CPD ¶ 74.

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<sup>2</sup>Where, as here, future work orders will be negotiated based on fixed labor rates, the contract is fixed-price in nature. See ASI Personnel Serv., Inc., B-258537.7, June 14, 1995, 95-2 CPD ¶ 44.

We addressed this identical issue in our decision, HSG-SKE, *supra*. RFP section L delineated the information to be included in the offerors' proposals with respect to the evaluation under Preventative Maintenance Program (the first subfactor under the Technical evaluation factor, and the only subfactor concerning preventative maintenance). It stated that proposals should include an outline of a management plan to set up and administer a preventive program. PAE's proposal included the required plan outline, which included a draft annual work schedule of recurring inspections and work, including preventative maintenance for non-critical equipment and facility components. We held in our prior decision that this information was responsive to the noncritical equipment maintenance plan requirement. There is no basis for reaching a different conclusion here.

### Experience In Fully Operational Hospitals

The protesters maintain that the evaluation under the technical factor (subfactor B, ability to organize and perform hospital facilities) and past performance factor improperly failed to take into account PAE's lack of experience performing operation and maintenance contracts at fully operational hospitals.

There was no requirement that offerors demonstrate experience in fully operational hospitals. Rather, the focus was solely on specified capabilities. Under subfactor B, offerors were to provide evidence of their capabilities in each of the following areas: facilities maintenance; heat, ventilation, air conditioning, and refrigeration equipment; elevators, dumbwaiters, carlifts, docklifts, levelers, and conveyors; natural gas, medical gas and petroleum products storage and distribution systems; food service equipment; and communications systems and equipment. The agency found that PAE had submitted sufficient evidence of these capabilities, and the protesters have not shown otherwise.

The past performance factor also did not require offerors to demonstrate experience performing operation and maintenance contracts at a fully operational hospital. Rather, offerors were merely required to list two or more contracts for similar projects they had performed in the past 3 years. The evaluators recognized that the protesters had widely diversified hospital experience and assigned their proposals 15 points, the highest possible score, under both solicitations.<sup>3</sup> PAE's

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<sup>3</sup>We note that the protesters' past performance proposals do not demonstrate performance of numerous operation and maintenance contracts in fully operational hospitals. Rather, the record shows that the protesters have performed one operations and maintenance contract for an operational hospital and two contracts for part of a hospital. The protesters only list one of these contracts--Maintenance and Repair of U.S. Hospital Wurzburg Facilities and Equipment--as similar to the instant solicitations.

past performance, which received scores of 13 and 15 points under the two RFPs, included an operation and maintenance contract at a contingency hospital (i.e., one that would be used only in the event that the fully operational hospitals reached capacity), as well as several base maintenance contracts. The agency determined that these contracts involved skills and tasks similar to the current requirement, and concluded that PAE had experience performing all tasks that would be required under the solicitation, as well as working experience with the specific applicable medical standards. In this regard, the agency explains that PAE's experience at the contingency hospital was valuable because a contingency hospital must be maintained at the same level as an operational hospital, and the work to be performed, and standards applied to that work, thus are the same as in a fully operational hospital. The base maintenance contracts were deemed relevant because they generally involved the same types of work performed under a hospital maintenance contract, except for the specific medical standards to be applied. Because the record shows that PAE, like the protesters, has experience performing all the tasks that will be required under the RFP, and experience with the specific hospital standards required, there is no basis for objecting to the evaluation in this area.

### Proposed Staffing

With respect to the Landstuhl contract, HSG-GeBe argues that PAE's technical score should have been reduced to reflect inadequate staffing--PAE proposed a 5-person staff--to perform preventative maintenance under CLIN AB. The protester notes that the government estimate for this work was 6 persons, and that its own staffing called for 7.2 persons.

The government estimate to which the protester refers was developed for purposes of the cost estimate, and was not made available to the evaluators for purposes of the technical evaluation. The solicitation itself did not require a specific number of persons to perform preventative maintenance, and the evaluators specifically determined that PAE's staffing of five persons for this work was sufficient to perform properly. As the protester has not explained why PAE could not perform adequately with its proposed staffing, its argument amounts to no more than disagreement with the evaluators' conclusion; such disagreement is not sufficient to demonstrate that the evaluation was unreasonable. Atlantic Coast Contracting, Inc., B-259082.3, July 17, 1995, 95-2 CPD ¶ 21.

### GERMAN LAW

The protesters argue that PAE's proposed labor rates are too low to allow PAE to comply with a German labor law which requires a contractor on a follow-on contract to hire the incumbent personnel at the same rates those workers are currently being paid. The Army states that it is unclear whether these are follow-on

contracts and therefore unclear whether this law will apply. In any case, the record here shows that PAE is aware of the law and it has not indicated in its proposal or otherwise that it will not comply with it if required to do so. In this regard, we point out that the labor rates offered in PAE's proposal are fixed, so that even if PAE ultimately is required by German law to pay higher labor rates than those on which its proposal is based, the increased costs will be borne by PAE, not the government. Accordingly, this argument does not provide a basis to object to the award.

The protests are denied.

Comptroller General  
of the United States