



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Boeing Sikorsky Aircraft Support

**File:** B-277263.2; B-277263.3

**Date:** September 29, 1997

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Gerard F. Doyle, Esq., Ron R. Hutchinson, Esq., and Michael F. Mason, Esq., Doyle & Bachman, for Raytheon E-Systems, an intervenor.

Christopher E. Kernan, Esq., Maj. Michael J. O'Farrell, Jr., and Col. Nicholas P. Retson, Department of the Army, for the agency.

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

## **DIGEST**

1. Past performance risk evaluation is unobjectionable where agency follows evaluation criteria stated in solicitation and conduct of evaluation is reasonable.
2. Cost evaluation of award fee is unobjectionable where agency reasonably concluded that offeror's proposed fee structure provided limited incentive for superior performance.
3. Agency failed to conduct meaningful discussions where, as the result of an attribution methodology in the protester's proposal which the agency found unacceptable, but failed to address during discussions, the agency treated as omitted and erroneously added into its cost evaluation a significant number of direct labor hours which were actually provided in the protester's proposal.
4. Agency's source selection analysis was defective where it addressed cost only in terms of risk without considering proposals' relative evaluated cost.
5. Agency's post-protest award determination reassessment does not establish that protester was not prejudiced by discussion and evaluation errors where the agency continues to take the position that relative evaluated cost need not be weighed and fails to take into consideration the relative cost differential in the areas over which the offerors exercised any control.

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## **DECISION**

Boeing Sikorsky Aircraft Support (BSAS) protests the award of a contract to Raytheon E-Systems under request for proposals (RFP) No. USZA22-97-R-0001, issued by the U.S. Special Operations Command (SOCOM). BSAS alleges that it was not afforded meaningful discussions and challenges the propriety of various aspects of the technical and cost evaluations and the award determination.

We sustain the protest.

## **BACKGROUND**

SOCOM is a unified and joint command responsible for missions such as unconventional warfare, special reconnaissance, and counter-terrorism. SOCOM operates an industrial-type support activity which provides dedicated, highly-responsive logistics support for special operations forces (SOF) worldwide. The special operations forces support activity (SOFSA) is a government-owned, contractor-operated facility located primarily in Lexington and Richmond, Kentucky. The SOFSA provides logistics support for the SOF, and this support is tailored to the changing and joint nature of the force's missions. This logistics support includes equipment repair and modification, prototype and low volume manufacturing, maintenance management, life-cycle support, and equipment sustainment.

This solicitation, which sought proposals for the operation and maintenance of the SOFSA, was written to allow offerors as much latitude as possible to propose innovative ways of doing business and to employ creative problem-solving. The RFP was designed to test the offerors' understanding of both the SOF requirements and the "statement of objectives [SOO] to statement of work [SOW]" process. This latter process asks the offerors to take an extremely general SOO provided with a minimum of detail and translate that into a contractor's SOW outlining performance requirements, performance periods, and estimated costs. An offeror's ability to make this translation in as detailed and accurate a manner as possible was deemed critical to the operation of the SOFSA. Since the agency anticipates issuance of approximately 500 to 700 SOOs annually, it is critical that the support contractor's SOW and cost estimate be usable as initially presented with little or no negotiation required. To this end, the evaluation was designed to measure the offerors' understanding of the process and ability to deliver a quality product. The RFP contemplated award of a cost-plus-award fee, task order contract for a base year with four 1-year options. The RFP required the proposal of a zero base fee and a ceiling of \$1.12 billion over the life of the contract. The RFP encouraged offerors to propose an award fee structure which would provide adequate incentive to perform at an outstanding or superior level. Award was to be made to the offeror whose proposal represented the best value to the agency.

As part of their proposals, offerors were required to respond to seven sample tasks, six of which were included in the RFP, and the seventh was provided 2 weeks before the closing date in order to simulate the quick reaction environment in which the SOFSA operates. These sample tasks were representative of potential new work to be performed, were not to be included as part of the contract award, and did not cover tasks already accomplished by the incumbent contractor, Raytheon. Offerors were to make oral presentations as part of their management proposals and provide past performance information from similar contracts over the past 5 years.

Proposals were evaluated under four areas, in descending order of importance: technical, management, performance risk, and cost. The technical area was evaluated on the basis of the seven sample tasks, six of which were of equal value, while the seventh (the 2-week deadline task) was slightly more important than the others. Under management, seven support functions critical to the SOFSA's success were evaluated: operations, security, management information systems, quality assurance, property management and control, key personnel, and transition. Operations was slightly more important, and transition slightly less important, than the other subfactors. The technical and management areas were evaluated at the subfactor level on a color-coded scale: blue (outstanding), green (acceptable), yellow (marginally acceptable), and red (unacceptable).

Performance risk was evaluated on the basis of five factors: cost estimating and control, quality control, security management, schedule planning and control, and management effectiveness. In order to perform this assessment, the evaluators used surveys of past performance on similar contracts performed by the offerors, rating them on a scale of high, medium, and low risk.

The cost evaluation was designed to assess each offeror's ability to accurately estimate the cost of completing logistics support tasks and the overall cost of the offeror's proposal. In its evaluation, the agency used a scale similar to that for performance risk (high, moderate, and low risk) and based the evaluation on four factors: award fee, cost realism, labor, and overhead. Award fee was evaluated on the basis of offerors' proposed performance standards and the structure/application of the proposed award fee. Cost realism was evaluated on the basis of proposed costs of sample tasks compared to the government's evaluated reasonable cost. The labor evaluation included a comparison of an offeror's overall labor rate (calculated using the RFP's cost model of total labor hours) with a base rate and midpoint (calculated from the proposed loaded rates of the offerors). The overhead evaluation included a risk analysis of each offeror's evaluated total cost (using the RFP cost model) as compared to a midpoint (calculated from the total evaluated costs of the offerors). Included within the RFP cost model was the sum of approximately \$525 million in material and other direct costs set by the agency as common costs for all offerors.

Five offerors, including Raytheon and BSAS, submitted proposals by the January 24, 1997, closing date for receipt of initial proposals. The source selection evaluation board (SSEB) evaluated the technical proposals and the oral presentations. Based upon various reviews, the SSEB determined that one offeror's proposal should be eliminated from the competitive range and that discussions should be conducted with the remaining offerors. The SSEB conducted written discussions, obtained written responses, and evaluated the offerors' best and final offers (BAFO).

Under the technical area, BSAS' BAFO received a green rating in six of the factors and a blue in the seventh, while Raytheon's BAFO received green ratings in five of the factors, a blue in one, and a yellow in one. Under the management area, BSAS' proposal received green ratings in all seven factors, while Raytheon's proposal received blue ratings in four factors (operations, quality assurance, property management and control, and personnel) and green ratings in the remaining factors. Under performance risk, BSAS' proposal was rated low in all factors except security in which it was rated medium, and Raytheon's proposal was rated low in all factors.

Under the cost area, BSAS' proposal was rated high risk under the fee, labor, and overhead factors and low risk under the cost realism factor. BSAS' high risk ratings in the labor and overhead factors were based primarily on the agency's adjustment of the BSAS direct labor proposal to make it consistent with the cost model. The net effect of various adjustments was to raise BSAS' proposed cost (before fee) from [deleted] to [deleted]. Raytheon's proposal was rated low risk in all areas but overhead, under which it was rated moderate. Raytheon's evaluated cost of [deleted] was the same as its proposed cost.

The final, rollup ratings for the two relevant offerors are as follows:

Offeror	Technical	Management	Performance Risk	Cost
BSAS	Green	Green	Low	High
Raytheon	Green	Blue	Low	Low

The source selection advisory council (SSAC) reviewed the SSEB's evaluation report and recommended that Raytheon be awarded the contract. In making this recommendation, the SSAC noted that BSAS' proposal was slightly better than Raytheon's in the technical area, but concluded that Raytheon's outstanding proposal rating in the management area clearly outweighed BSAS' slight technical advantage in the technical area. In this regard, they found that only Raytheon provided an outstanding proposal which offered significant advantages over the other proposals including operations, quality assurance, property management and control, and key personnel. With regard to cost, the SSAC observed that BSAS' proposal was rated as a high risk, Raytheon's as a low risk, and the others as

moderate risk. No direct consideration was given to the total evaluated cost of the respective proposals. The SSAC concluded that Raytheon's proposal represented the best value to the government. In determining that award should be made to Raytheon, the source selection authority (SSA) stated that he had independently validated and verified the findings and recommendations of the SSAC.

After receiving notice of the award and a debriefing, BSAS filed its protest, supplementing it based on information received in the agency report. BSAS protests the technical and cost evaluations as well as the source selection decision.<sup>1</sup>

#### PAST PERFORMANCE EVALUATION

BSAS argues that the agency's past performance risk evaluation was flawed. In this regard, it is not the function of our Office to evaluate proposals de novo. Rather, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284, 285 (1990), 90-1 CPD ¶ 203 at 3; Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. Medland Controls, Inc., B-255204, B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260 at 3.

BSAS contends that, while the RFP contemplated a qualitative past performance risk evaluation, the agency simply tabulated the results of the questionnaires without determining the relative importance of the different contracts and evaluation results. In this regard, BSAS observes that Raytheon received [deleted]. In BSAS' view, since the incumbent contract is more relevant than any other, Raytheon's [deleted] performance should have been more heavily weighted rather than merely averaged in with less relevant contract performance results. BSAS also notes that in the SSEB report, some of Raytheon's [deleted] risk ratings were simply deemed "nondiscriminators" without any explanation. Our review of the record discloses no basis for objecting to the agency's evaluation.

The RFP provided that the performance risk assessment would be based on the offeror's demonstrated past performance on programs and projects similar to the SOFSA effort. It advised that the evaluation would be "quite subjective" and would be based on consideration of all relevant facts and circumstances. Offerors were required to submit information on all pertinent contracts within the 3 years

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<sup>1</sup>The protester submitted numerous arguments in support of these and other protest grounds. This decision will discuss only the more significant arguments. We have reviewed the entire record and considered all of the protester's arguments. Those arguments not specifically addressed in the decision were found non-meritorious.

immediately preceding the closing date. Section M of the RFP provided that the agency would assess an offeror's performance history as it related to cost estimating and control, quality control, security management, schedule planning and control, and management effectiveness. To this end, the agency sent questionnaires to the various contracting personnel for each contract identified by the offerors. Each question had three responses (a, b, and c), which translated to ratings of 1 (low), 2 (medium), and 3 (high). Survey responses on the same contract were averaged together to reach a single rating for each criterion for each contract. The evaluators then averaged all responses to calculate a single risk rating for each criterion. The ratings were then assessed using the following scale: 1.00 to 1.67, low; 1.68 to 2.34, medium; and 2.35 to 3.00, high. BSAS was evaluated as low risk overall, with low ratings in all factors and subfactors with the exception of two medium risk ratings under the security management factor.<sup>2</sup> Raytheon was evaluated as low risk overall, with low ratings in all factors and subfactors.

Contrary to BSAS' arguments, the RFP did not require a qualitative past performance review which placed greater emphasis on SOF-related contracts. It did, as discussed above, limit the past performance assessment to "similar" efforts, and, in fact, the contracts considered met this requirement.

The evaluation that was conducted provided a reasonable "qualitative" evaluation of the offerors' past performance risk. In this regard, the questionnaire responses provided sufficiently specific information to form the basis for the evaluation. For example, under cost control, respondents could mark "a" representing "90% or more of all projects were completed within 10% of the estimated cost (10% below or 10% above estimate)"; "b" "75% to 89% of all projects completed within 10% [above or below] of the estimated cost"; or "c" "Less than 75% of all projects were completed within 10% [above or below] of the estimated cost." Respondents also were invited to contact the agency if their answers did not fit the furnished responses for each question. The completed survey sheets contain a number of margin notes explaining responses or the failure to mark any response. The SSEB report contains a number of explanations concerning the ratings. For example, under the security management factor, the narratives for both BSAS and Raytheon explain the circumstances and impact of security violations.

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<sup>2</sup>BSAS has protested that it should have been provided discussions in order to explain the circumstances behind the incidents which led to the medium risk ratings. The security violations involved were apparently the fault of subcontractors, and the SSEB report provides a detailed explanation which downplays the seriousness of the violations; thus, it is unlikely that BSAS could have provided any additional information which would have changed the rating. In any event, BSAS was rated as low overall under the past performance risk area.

We find nothing unreasonable in the evaluators' rating. While it is true that the SOFSA director rated Raytheon's incumbent SOFSA performance as a [deleted], he rated the firm as [deleted] factors. In addition, the SOFSA administrative contracting officer rated Raytheon's performance as [deleted] factors. When [deleted] averaged together, the combined rating was well within the [deleted]. Further, had the agency ascribed more weight to these scores, the result should have been detrimental to BSAS and other offerors with little or no SOFSA experience. In sum, we see no basis to object to the agency's past performance evaluation.<sup>3</sup>

#### AWARD FEE EVALUATION

The RFP required offerors to propose a maximum fee percentage to be applied to the total estimated cost, excluding transition costs. Due to the unique ordering requirements of the SOFSA, the base fee was required to be zero. Offerors were specifically advised that the proposed percentage should provide an adequate incentive for outstanding performance under the contract. Accordingly, offerors proposed their own adjectival rating scales for standards of performance with applicable fee percentages for determination of whether and to what extent the contractor would be entitled to a fee. Section M of the RFP advised offerors that the magnitude of the proposed award fee and the application of the proposed adjectival rating and applicable percentages would be evaluated.

The agency estimated a maximum fee of [deleted] percent and a satisfactory performance fee of [deleted] percent. In evaluating each offeror's fee structure, the agency looked at the maximum fee proposed and the fee proposed for performance of satisfactory work as proposed in the offeror's adjectival rating scheme. The agency also calculated an incentive fee range by subtracting the satisfactory fee percentage from the maximum fee percentage and compared it with the agency's estimate of a reasonable range, [deleted] percent ([deleted] percent minus [deleted] percent).

BSAS contends that the agency improperly evaluated its award fee structure as presenting a high risk. Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them, and

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<sup>3</sup>We find nothing unreasonable in the evaluators' denomination of some Raytheon [deleted] ratings as "nondiscriminators," and therefore no basis for changing an otherwise low rating. Raytheon received [deleted] ratings in [deleted] other contracts besides the SOFSA incumbent contract. The evaluators apparently used the term "nondiscriminator" to mean that, because of the circumstances of the [deleted] contracts, the risk ratings associated with them were not significant: [deleted].

it must bear the burden resulting from a defective evaluation. Advanced Tech. and Research Corp., supra, at 3. Consequently, in reviewing an evaluation we will not reevaluate proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation factors. Id. The fact that the protester disagrees with the agency's judgment does not render the evaluation unreasonable. As discussed below, we have examined the agency's evaluation here and conclude that it was both reasonable and consistent with the stated evaluation criteria.

BSAS' primary arguments are twofold. First, it maintains that its [deleted] maximum fee is a strength because it represents significant savings over Raytheon's [deleted] percent fee. Second, it argues that its fee structure is more advantageous because it provides for a greater relative incentive than does Raytheon's proposal. We have reviewed these and BSAS' other award fee arguments and find that they do not demonstrate that the agency's evaluation was unreasonable or inconsistent with the evaluation criteria.

The agency recognized that BSAS' [deleted] maximum fee represented a potential cost savings and identified this as a strength in the evaluation. However, the evaluators found that the incentive to achieve this maximum fee was of significant concern. BSAS would receive an effective fee of [deleted] percent for satisfactory work. Using the evaluation's sample \$100 million effort, this percentage translates to [deleted] million. Since BSAS could only earn an additional [deleted] million for excellent work [deleted], the evaluators concluded that the proposed fee structure provided BSAS only a very limited incentive to perform above the satisfactory level. In this regard, the evaluators also considered that BSAS had proposed to have its parent companies, Boeing and Sikorsky, perform subcontract work for it and their resources and expertise were necessary to meet the broad range of services required of the SOFSA. As finally proposed, BSAS was to pay the parent companies from the award fee pool without any additional profit or fee. The evaluators were concerned that the small potential maximum fee could result in a low priority being given to SOFSA work by the parent companies relative to work bearing a higher potential fee. Under the circumstances of this contract, the evaluators' conclusion is reasonable.

BSAS argues that this will not be a problem because the parent companies do not have cost accounting and computer systems sophisticated enough to track incoming orders and prioritize them on the basis of expected return. In our view, this is essentially an irrelevant response inasmuch as there are other ways that this information may be accessed and taken into account, and it is not unreasonable to evaluate the incentive level of the proposed fee in part on the basis of the potential impact of expected fee at both the prime and subcontract levels.

BSAS also argues that work will be performed on the basis of the Defense Priorities and Allocations Systems wherein rated orders are identified as DO and DX. All DO

orders have equal priority and take precedence over unrated orders. All DX orders have equal priority and take precedence over DO and unrated orders. Federal Acquisition Regulation (FAR) § 11.603(a). Thus, the parent companies will work on the basis of the ratings, not the amount of fee. The agency explains, and the incumbent Raytheon verifies, that the orders at the SOFSA are not usually rated orders. BSAS challenges these assertions based on a single purchase order, issued by Raytheon to Sikorsky for work under the incumbent contract, which contains a preprinted DO priority rating. We do not agree that a single purchase order, out of the hundreds involved in annual work on this contract, is sufficient to call into question the agency's statement or to render the evaluators' assessment unreasonable.

BSAS also contends that the agency erred by evaluating the award fee incentive on the basis of the respective differences between the proposed fees for satisfactory versus excellent performance, rather than by performing a detailed, level by level comparison of its award fee structure with Raytheon's. Had it done so, BSAS contends, its structure would have been found superior to Raytheon's. As the agency correctly observes, BSAS' argument is premised on a misleading comparison which uses an inaccurate alignment of categories within the two fee structures proposed. Moreover, in order to establish the unreasonableness of an evaluation, it is not enough that the protester can point to alternative methodologies available to the agency; rather, the agency's actual evaluation must be shown to lack a reasonable basis. Payco Am. Corp., B-253668, Oct. 8, 1993, 93-2 CPD ¶ 214 at 7. Here, in view of the fact that the offerors' unique fee structures made it impracticable to perform a direct comparison at any given point, the agency reasonably determined to evaluate the total incentive between satisfactory and excellent performance in order to assess this aspect of the cost evaluation.

## COST EVALUATION AND DISCUSSIONS

BSAS has raised two main challenges to the cost evaluation: first, that it failed to take into account the most probable cost of the proposals and, second, that it was based on the erroneously increased costs attributable to labor hours. We address each of these issues in turn.

The agency argues that it was not required to consider the most probable cost of the proposals because the RFP did not provide for such an assessment. In this regard, the agency maintains that, because the RFP evaluation scheme dealt only with cost risk assessments, there was no need to consider the cost difference between competing proposals. The agency's view that no consideration of total cost was required is legally incorrect.

As a general rule, agencies are required by the Competition in Contracting Act of 1984 (CICA) to include cost or price as a significant factor in the evaluation of proposals, 10 U.S.C. § 2305(a)(2)(A) (1994); see FAR § 15.605(b)(1)(i). An

evaluation and source selection which fails to give significant consideration to cost is inconsistent with CICA and cannot serve as the basis for a reasonable source selection. See generally Coastal Science and Eng'g. Inc., 69 Comp. Gen. 66, 67 (1989), 89-2 CPD ¶ 436 at 3 (source selection in which price only accounted for 10 percent of overall evaluation was inconsistent with CICA). While agencies have considerable discretion in determining the particular method to be used in evaluating cost or price, that method should, to the extent possible, accurately measure the cost to be incurred under competing proposals. Lockheed, IMS, B-248686, Sept. 15, 1992, 92-2 CPD ¶ 180 at 6; Electronic Warfare Integration Network, B-235814, Oct. 16, 1989, 89-2 CPD ¶ 356 at 5.

Here, the RFP specifically advised offerors that "the offeror's ability to accurately estimate the cost of completing logistics support tasks and the overall cost of the offeror's proposal will be evaluated." Further, the RFP specifically provided that under the labor rates evaluation, the "resulting total dollar figure will be used by the government as an indicator of total cost for the expected term of the contract." Thus, the RFP expressly contemplated the evaluation of the offeror's total costs, and we reject the agency's argument to the contrary. Accordingly, the cost evaluation was defective in not considering the most probable total cost of the competing proposals, under both the terms of the RFP and the statutory requirement that cost must be given significant consideration in award decisions.

We next turn to the protester's allegation that the cost analysis that was performed was based on the erroneously increased costs attributable to labor hours.<sup>4</sup> The RFP included a cost model providing for 11,504,850 direct labor hours in various categories over the potential 5-year life of the contract. The cost model identified each labor category (e.g., computer programmer II) and the number of hours per year to be worked/proposed. Section L advised that offerors were to calculate the total annual cost for each indicated category and aggregate the categories into a single annual cost of labor.

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<sup>4</sup>BSAS also protests the agency's addition of approximately [deleted] to its labor costs for escalation. The cost model provided for a 3-percent labor rate escalation for each year of the contract. Based on its own business experience, BSAS proposed in its BAFO to reduce that factor to [deleted] for professional labor categories. While Defense Contract Audit Agency reviewers apparently did not take exception to this proposal, the cost evaluators determined to add in the additional escalation cost. The evaluators based their assessment on historical wage rate increases at the SOFSA which indicated that a 3-percent escalation was "conservative at best." While the protester maintains that the agency should not have added the additional escalation cost, we believe the agency's determination to conform BSAS' escalation proposal to the cost model was reasonably based on its experience with contract performance at the SOFSA.

BSAS explains that its proposal fully accounted for the required 11.5 million cost-model hours, but that they were simply detailed in two separate and clearly identified places: [deleted]. In this regard, BSAS' initial cost proposal provides that "all employees are classified into [deleted]. The proposal included detailed breakdowns of the labor positions identified in the proposed groups. In addition, the proposal provided detailed pricing forms showing some of the required hours as [deleted]. This methodology was repeated and clarified in the protester's BAFO.<sup>5</sup>

In reviewing BSAS' initial proposal, the agency focused on apparent discrepancies between BSAS' "grand total program summary," which included the identification of 9,292,611.6 "total hours," and BSAS' "grand total program labor hour summary," which reflected 11,825,450 "total hours." In separate discussion questions, the agency requested verification of these figures. In response, BSAS explained that the 11.8 million hours figure was correct with the exception of some transition hours which had been excluded. It also explained that the 9.2 million hours figure did not include the [deleted]. It furnished a new grand total program summary of labor hours, which reflected both the [deleted]. BSAS explained that the "hours portrayed on [the new summary] represent all hours, [deleted], priced in our original cost proposal."

Because BSAS failed to account for all cost-model hours in a single figure, and denominated a significant number of labor hours as [deleted], the agency upwardly adjusted BSAS' costs by more than [deleted] to account for what it viewed as the missing approximately [deleted] hours. BSAS contends that the addition of hours represented an improper double counting of hours already included in its proposal. In our view, apart from the question of the accuracy of the agency's adjustment to BSAS' costs, having identified such a significant "error" in BSAS' initial proposal, the agency was required to conduct meaningful discussions with BSAS on this matter.

Procuring agencies are generally required to conduct meaningful discussions with all offerors in the competitive range. CBIS Fed. Inc., 71 Comp. Gen. 319, 325

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<sup>5</sup>For example, in its initial proposal BSAS identified [deleted] hours for the position of "Senior Engineer (All Disciplines)" which was consistent with the cost model, less transition hours. In a separate section of the cost proposal, BSAS identified [deleted] senior engineer positions [deleted]. The combined total of these positions is the same as that proposed for the Senior Engineer. Labor rates and the burdened cost of labor was detailed elsewhere in the proposal, denominated as [deleted]. The BAFO contained similar breakdowns which were also consistent with the cost-model totals. As part of our review of this issue, an accountant/evaluator from our Office reviewed the BSAS cost proposal and the arguments on the issues by the protester and agency. He concurred with BSAS' arguments that both its initial and BAFO proposals provided for a division of labor hours and costs into [deleted], the combination of which is consistent with the cost-model totals.

(1992), 92-1 CPD ¶ 308 at 7. Discussions cannot be meaningful unless they lead an offeror into those aspects of its proposal that must be addressed in order for it to have a reasonable chance of being selected for award, and afford an offeror an opportunity to revise its proposal to satisfy the government's requirements. Global Indus., Inc., B-270592.2 et al, Mar. 29, 1996, 96-2 CPD ¶ 85 at 4-5; Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306 at 10-11. An agency may not consciously coerce or mislead an offeror during discussions (see Eagle Tech., Inc., B-236255, Nov. 16, 1989, 89-2 CPD ¶ 468 at 3-4), nor may it inadvertently mislead an offeror through the framing of discussion questions into responding in a manner that does not address the agency's concerns. Peckham Vocational Indus., Inc., B-257100, Aug. 26, 1994, 94-2 CPD ¶ 81 at 6.

We recognize that the RFP called for a single labor cost in the proposal and the agency was entitled to require that BSAS follow this format. However, the agency did not identify this as a problem in its discussion questions; rather, in the face of BSAS' labor design, it simply asked for verification of the totals.<sup>6</sup> Since the original totals were consistent with the cost model and BSAS' proposal structure, BSAS was not placed on notice of any problem perceived with the structure, or of the agency's view that it was necessary to add some [deleted] hours to the direct labor proposal. Had the agency clearly identified the issue, BSAS could have either explained its methodology to the agency's satisfaction, or reconfigured its cost proposal to identify all labor costs in a single figure. Based on our review of the record, we conclude that the agency failed to conduct meaningful discussions on this issue. See Stone & Webster Eng'g Corp., supra.

The effect of the agency's failure to conduct meaningful discussions was significant. The cost adjustment that the agency made accounted for an addition of more than [deleted] to BSAS' cost proposal and resulted in BSAS' proposal being rated high risk in the overhead and labor cost evaluations. Had BSAS been able to meaningfully respond to the agency's concerns, eliminating the need to adjust its costs, BSAS' overall labor rate would have been lower than evaluated and lower than Raytheon's overall rate, resulting in a more favorable risk assessment for labor and overhead. More significantly, elimination of the [deleted] adjustment would have resulted in BSAS' evaluated cost being approximately [deleted] lower than Raytheon's evaluated cost.

The consequence of the inadequate discussions and the resulting apparent error in the agency's cost calculation must be viewed in the context of the agency's failure to consider the total probable cost of proposals. The evaluation of total cost does

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<sup>6</sup>In this regard, we note that cost evaluation spreadsheets used by the agency contain notations indicating that the evaluators were well aware that BSAS had proposed the total cost model hours under separate line items.

not appear to be crucial with respect to the initial award determination since Raytheon's proposal was viewed as having both an overall advantage in noncost factors and a significant cost advantage over BSAS'. However, since the agency appears to have erred in adding more than [deleted] to BSAS' proposed labor costs, the actual cost advantage may be with BSAS and not Raytheon, thus requiring a cost/technical tradeoff analysis. While agencies have broad discretion in performing cost/technical tradeoffs, SDA Inc., B-248528.2, Apr. 14, 1993, 93-1 CPD ¶ 320 at 9, here no cost/technical tradeoff analysis was undertaken due to the inadequate consideration of cost and the improper conclusion that Raytheon's higher-rated proposal offered the lower cost.

In sum, we find that the agency failed to conduct meaningful discussions and that this failure had a significant impact on the cost evaluation.<sup>7</sup>

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<sup>7</sup>BSAS also contends that it was misled by the agency during discussions with regard to its award fee amount and structure. Because BSAS' maximum fee and incentive fee range were less than the government's estimate, the agency issued a "significant concern" discussion question highlighting its concern that BSAS' "proposed incentive range . . . appears to provide very limited incentive to perform above the Satisfactory level." BSAS asserts that, in a subsequent telephone conversation, the contracting officer advised that BSAS had proposed the highest fee of all offerors and that its "incentive range for satisfactory performance should be 50 percent of the amount for an excellent rating." BSAS states that it followed this advice, significantly lowering its award fee from [deleted], resulting in a more limited incentive range, and contributing to BSAS' high risk rating for the award fee subfactor. The contracting officer denies making the statements attributed to him. In light of our recommendation that negotiations be reopened, we need not resolve this dispute.

## PREJUDICE

The agency has consistently argued that, because of Raytheon's superior management evaluation, BSAS still would not be in line for award, even if it were to prevail on all its protest grounds. During the pendency of the protest the agency submitted a revised review and SSA determination based on an evaluation result consistent with many of BSAS' protest allegations, including the cost advantage alleged by BSAS. The agency concluded that the award to Raytheon remains warranted and therefore argues that BSAS was not prejudiced by any errors made in the evaluation and source selection process.

In its revised review, the agency continued to maintain that its assessment of cost risk without consideration of probable cost was appropriate. In this regard, the agency took the position that "inclusion of this alleged [total] cost differential would be a gross misapplication of the terms and conditions of the RFP and Source Selection Plan and would be improper." Making what it viewed as the hypothetical assumption that many of the protester's allegations were correct, the SSEB, in its post-protest reevaluation concluded that, while BSAS' score improved in various subfactors, these improvements were insufficient to increase BSAS' final score in the technical, management, and past performance areas, which all remained "green." The reevaluation did result in a low risk overall rating in the cost area. As part of its hypothetical exercise, the SSEB prepared a comparison of the offerors' proposed cost including transition, resulting in the calculation of a [deleted] difference between Raytheon's cost [deleted] and BSAS' cost [deleted]. The SSEB also calculated total possible costs by adding to each offeror's proposed cost the maximum fee proposed, resulting in a comparison of [deleted] (Raytheon) to [deleted] (BSAS). The difference in these costs is [deleted].

This post-protest analysis was reviewed and adopted by the SSA, who concluded that Raytheon would have properly received his direction for award, even given the assumption that all BSAS' protest allegations were granted. He emphasized the equality of the ratings in all but the management area and the overall [deleted] cost differential between the two proposals. He explained why, in view of the importance of performance at the SOFSA and its potential effect on the agency's ability to accomplish SOF missions, he concluded that the additional cost associated with Raytheon's proposal was more than offset by the potential to enhance contractor performance and mission accomplishment. The SSA also expressed the view that the cost differential between Raytheon and BSAS was mitigated by Raytheon's significantly lower transition costs. In sum, the SSA concluded that Raytheon's superior management proposal, outstanding award fee plan, and performance incentives, when considered together with the relative importance of the management area over cost, would clearly outweigh the [deleted] cost savings associated with the BSAS proposal (assuming that the agency had made the errors alleged by the protester). It is on the basis of this post-protest

reevaluation that the agency argues that any errors in its process did not prejudice BSAS.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

Here we are unpersuaded by the agency's argument that there was no reasonable possibility of prejudice. While we consider the entire record, including statements and arguments made in response to a protest in determining whether an agency's selection decision is supportable, we accord greater weight to contemporaneous source selection materials rather than judgments, such as the selection officials' reevaluation here, made in response to protest contentions. Dyncorp, 71 Comp. Gen. 129, 134 n.12 (1991), 91-2 CPD ¶ 575 at 7 n.13; Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. As pointed out above, the agency does not acknowledge that it erred. Rather, we are faced with an agency's efforts to defend, in the face of a bid protest, its prior source selection through submission of new analyses, which the agency itself views as merely hypothetical and which are based on information that the agency continues to argue is not accurate. The lesser weight that we accord these post-protest documents reflects the concern that, because they constitute reevaluations and redeterminations prepared in the heat of an adversarial process, they may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process.

Moreover, even in its reassessment, while the agency went through an exercise which theoretically based the determination on the corrected relative probable costs, it has continued to maintain that it properly considered cost risk only and is not required to consider relative probable cost. In considering the magnitude of the respective probable costs, the agency considered and compared only the grand totals and not the relative difference between the costs over which the offerors exercised any control. That is, the contract included fixed costs of approximately \$525 million (material and other direct costs) which were constant for all offerors. If these costs are eliminated from the analysis, while the absolute difference in the competing proposals' respective costs remains the same (approximately [deleted] million), the magnitude of the relative maximum cost difference between the cost elements which differed for each offeror represents [deleted] percent, rather than the maximum cost difference of [deleted] percent used by the agency in its analysis. Particularly in light of the circumstances under which it was prepared, we cannot accord the agency's judgment the deference we normally would. We conclude that there remains a reasonable possibility that the protester was prejudiced by the agency's actions.

The protest is sustained.

#### RECOMMENDATION

We recommend that the agency reopen negotiations regarding costs and fees with the offerors in the competitive range, in accordance with the guidance set forth in this decision, and allow them to submit revised cost proposals (including fees). If, upon reevaluation, the agency determines that BSAS' or another proposal represents the best value, we recommend that the agency terminate Raytheon's contract for convenience and award a contract to BSAS. We also recommend that BSAS be reimbursed the costs of filing and pursuing its protest, including reasonable attorney's fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (1997). BSAS' certified claim for such costs, detailing the time and costs incurred, should be submitted within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General  
of the United States