



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: OAO Corporation  
File: B-228599.2  
Date: July 13, 1988

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### DIGEST

1. Even where agency should have pointed out an evaluated proposal deviation to the protester, and even though the agency made an upward adjustment in the offeror's probable costs in the cost analysis when the offeror did not correct its offer in its revised proposal, the protester is not prejudiced where the award selection of a higher technically rated offeror would not have been changed, even if the upward probable cost adjustment had not been made.

2. Agency failure to consider late submitted Defense Contract Audit Agency (DCAA) audits of offerors' cost proposals in its probable cost analysis is reasonable, where DCAA verbally advised that there were no significant differences between the cost proposals and the DCAA report recommendations. DCAA audits are only advisory; the degree to which they are used is a matter for the contracting officer to decide.

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### DECISION

OAO Corporation protests the award selection of McDonnell Douglas Astronautics Corporation by the National Aeronautics and Space Administration (NASA) under request for proposals (RFP) No. 5-11054/352. A cost reimbursement task order level of effort contract will be awarded to provide support services for the Flight Projects Directorate, Goddard Space Flight Center.

We deny the protest.

The RFP requested separate technical and cost proposals. The most important evaluation criterion was Mission Suitability, which encompassed the technical evaluation and was point-scored. Cost was said to be important, but of lesser importance than Mission Suitability. "Experience and past performance" and "Other factors" were the remaining evaluation criteria and were said to be of least importance and were not point-scored.

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The cost evaluation encompassed the cost realism and probable cost of each offeror's proposal. The RFP also said that if offerors proposed ceilings on any elements of cost, such as overhead, then the "maximum" probable cost, which would include consideration of these elements at the stated ceiling cost rather than the cost realistic amount, would also be evaluated.

Only OAO and McDonnell Douglas were found in the competitive range. Both offerors chose to have their subcontractors submit separate cost proposals that were not reviewed by the offerors. This arrangement was permitted by the RFP, since the subcontractors were also competitors of the offerors and were unwilling to divulge their indirect and labor costs to the offerors.

Under the RFP, NASA provided space and facilities for no more than 165 persons to be located on-site at Goddard. However, the cost proposals of OAO plus its subcontractors indicated that more than 165 persons would be located on-site; OAO's subcontractors stated that virtually all productive hours would be provided "on-site."<sup>1/</sup> However, OAO's proposal did not take exception to the 165-person limitation nor request additional space at NASA.

During discussions with OAO, NASA did not mention this evaluated deviation. Instead, at the same time as discussions, NASA issued to the two offerors an amendment to the RFP, which restated the 165-person on-site limitation. Also, the contracting officer told OAO during oral discussions that if the amendment or the discussions caused any changes whatsoever, OAO could revise its proposal. Neither OAO nor its subcontractors revised their proposals to indicate compliance with the 165-person on-site limitation.

NASA's Source Evaluation Board (SEB) rated McDonnell Douglas technically superior to OAO in the Mission Suitability area. The SEB found this technical superiority flowed from McDonnell Douglas' relatively superior key personnel and company resources. OAO proposed a lower cost (incorporating ceilings) of \$165.5 million to McDonnell Douglas' \$168.5 million.<sup>2/</sup> However, OAO's maximum probable cost was evaluated as \$167.2 million, while McDonnell Douglas'

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<sup>1/</sup> The RFP defined "on-site" as the government-furnished Goddard space.

<sup>2/</sup> OAO's proposed cost not considering ceilings was \$161.1 million while McDonnell Douglas' was \$165.2 million.

evaluated maximum probable cost was \$165.2 million. The major adjustment made to calculate OAO's probable cost was a \$5.4 million increase to account for OAO's evaluated failure to provide in its cost proposal space and facilities for those personnel that needed to be located off-site.<sup>3/</sup>

The Defense Contract Audit Agency (DCAA) performed audits on both offerors and their subcontractors. However, NASA only received limited verbal advice from DCAA prior to the SEB's presentation to the Source Selection Official (SSO). NASA was provided with written DCAA reports prior to selection.

The SSO selected McDonnell Douglas for award because it had a proposal superior from a Mission Suitability perspective, specifically in the key personnel and company resources areas. The SSO mentioned OAO's evaluated deviation from the 165-person limitation and concurred with the probable cost assessment, which indicated that McDonnell Douglas had the lower probable cost. However, the SSO concluded that the slight differences in cost and OAO's deviation were not discriminators for award.

OAO protests that NASA misevaluated its proposal, which complied with the 165-person on-site limitation. OAO claims that its cost proposal contained all necessary facility costs for off-site personnel, including subcontractor personnel. OAO further contends that if its proposal was not clear or if it did not comply with the 165-person on-site limitation, NASA was required to point this matter out during discussions. Finally, OAO claims that the probable cost evaluation was erroneous because (1) the upward adjustments made to OAO's costs because of this evaluated deviation were excessive and not reasonably based; (2) the "maximum" probable cost analysis was not a valid assessment of actual probable costs; and (3) the recommended downward adjustments in the DCAA report were not considered. OAO claims that if the cost evaluation had been properly performed, its lower evaluated probable cost would have offset McDonnell Douglas' "slight" technical advantage and it would have been selected for award.

NASA responds that OAO unequivocally took exception to the 165-person on-site limitation and that OAO had not included in its cost proposal sufficient costs for space, facilities, and overhead costs to account for the off-site personnel, particularly subcontractor personnel. NASA claims that

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<sup>3/</sup> A \$3.7 million decrease in OAO's probable costs was made as a result of normalizing the proposed labor escalation rate of the offerors. A similar adjustment was made to McDonnell Douglas' probable costs.

since it understood the proposal as taking exception to RFP requirements, it was not required to point this matter out during discussions. NASA also defends the probable cost analysis, including the adjustments it made as a result of OAO's deviation. Finally, NASA claims that the award selection would not be affected, even if OAO were correct that the probable cost evaluation was erroneous, since the award selection was based on McDonnell Douglas' technical superiority.

We think that NASA should have discussed the 165-person on-site limitation with OAO. While it is true that the on-site personnel proposed by OAO, plus its subcontractors, exceed the 165-person on-site limitation, we do not agree that it was clear that OAO intended to take explicit exception to the RFP requirements, since OAO was unaware of the contents of its subcontractors' cost proposals and NASA permitted this arrangement. OAO now claims that the subcontractor's proposal statement that its personnel would be "on-site" meant that the subcontractor personnel would be located on or about the Goddard area rather than in the subcontractor's own facility; OAO explains that its headquarters building, which has ample space to accommodate all subcontract space requirements, is located literally at Goddard's gate, and that it intended to provide all off-site space for its subcontractor personnel. Moreover, our review indicates that OAO's proposal expressly stated that it was not taking exception to any of the RFP terms or conditions; specifically recognized the limited on-site space; and indicated that subcontractor employees would be included in OAO's space. Also, OAO's cost proposal contained elements of cost that could cover space and facilities for the subcontractor personnel.

While we believe NASA should have discussed the deviation with OAO, we find that its failure to do so did not prejudice the firm. In this regard, although OAO claims the \$5.4 million upward adjustment in the probable cost analysis was not reasonably based, and while it appears NASA may have added an excessive amount to OAO's proposed cost for subcontractor overhead,<sup>4/</sup> OAO has not convincingly

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<sup>4/</sup> For example, NASA's \$1.7 million adjustment in OAO's overhead appears to be not merely a percentage of other upwardly adjusted OAO direct costs, as suggested by NASA; rather, this adjustment appears to be the sum of the various subcontractors' additional overhead that NASA calculates may be incurred by those subcontractors if their personnel are located off-site in their own facilities rather than on-site. OAO has persuasively explained that whether these subcontractors are located at Goddard or in OAO's

established that its proposal included all reasonable costs that would be necessary for the facilities for its subcontractor employees. For example, although OAO claims that many of the NASA assessed costs, for example, furniture, telephones, equipment and photocopying, are already included in its overhead schedule, it appears that this cost pool is not applicable to subcontractor employees, but is only applicable to OAO's employees.

Consequently, it appears that OAO's probable cost should be higher than what it proposed to provide space and facilities for subcontractor employees, although perhaps not as high as calculated by NASA. However, despite NASA's failure to discuss the matter with OAO, the record clearly supports NASA's contention that OAO would not have been successful, even if the \$5.4 million had not been assessed to OAO's probable costs.

It is true that OAO's evaluated costs would be evaluated as \$3.4 million lower than McDonnell Douglas' if the \$5.4 million assessment had not been made. However, this represents only 2 percent of McDonnell Douglas' evaluated cost. On the other hand, contrary to OAO's conjecture, McDonnell Douglas has a significant and clearly documented technical advantage, on which its selection was based. In the source selection statement, this significant technical advantage, with two definite discriminators in the areas of key personnel and company resources, were specifically mentioned as the basis for the selection. These relative strengths were carefully documented by the SEB, such that it can reasonably be concluded that McDonnell Douglas' technical advantage was significant. On the other hand, OAO did not have any significant advantage over McDonnell Douglas in any technical evaluation area. The source selection statement mentioned that the "small" \$1.7 million evaluated advantage in cost that McDonnell Douglas had over OAO was not a factor in the selection. It follows that a relatively small cost advantage for OAO would not affect the award decision in view of McDonnell Douglas' technical superiority. Therefore, we find no prejudice inuring to OAO as a result of NASA's failure to conduct meaningful discussions.

Two remaining complaints concerning the probable cost analysis remain. First, OAO contends that NASA failed to consider the DCAA reports, which found its costs were overstated by \$2.5 million. NASA states that the DCAA audit

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facilities, the on-site overhead rate would be applicable, and that no adjustment in the subcontractors' overhead costs was appropriate. NASA has not rebutted OAO's explanation.

reports had not been issued in time to consider in the evaluation, but that it had been verbally advised by DCAA prior to the SEB's presentation to the SSO that there were no significant differences between the proposals and the DCAA recommendations. Consequently, no adjustments to the probable costs were made as a result of DCAA's input.

Prior to award selection, the DCAA reports were issued. The reports contain a number of recommendations, including the assessment that OAO had overstated its labor costs by \$2.5 million, which is the source of OAO's complaint. Yet OAO itself does not admit that its labor rates were overstated. Moreover, as noted by NASA, the DCAA report also contained recommendations concerning perceived understated costs. Although NASA did not make a new probable cost analysis and report it to the SSO, it did perform a post-selection analysis of the DCAA reports and found that the DCAA recommendations of OAO's overstated labor costs were almost completely offset by the various other DCAA recommendations where OAO's costs were considered understated.<sup>5/</sup>

In any case, DCAA audits are only advisory; the degree to which they are used is a matter for the contracting officer to decide. Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 CPD ¶ 502; Booz, Allen & Hamilton, B-213665, Sept. 24, 1984, 84-2 CPD ¶ 329. Therefore, NASA did not act unreasonably in failing to adopt DCAA's recommendation concerning OAO's allegedly overstated labor rates.

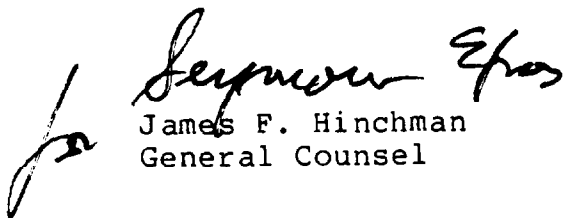
OAO's complaint against the validity of the "maximum" probable cost analysis also has no merit. As indicated above, this evaluation, that incorporates proposed ceilings on elements of cost, was specifically provided for in the RFP. In any case, the SSO was advised of the offerors' proposed costs, the "maximum" proposed costs (incorporating ceilings), and the maximum probable costs, as well as considerable details as to the elements of these costs and

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<sup>5/</sup> We will not discuss the specific offsetting understated costs in view of their proprietary nature and since OAO has been provided the DCAA report.

how they were computed. Consequently, we fail to see how this method of evaluating probable costs prejudiced OAO in any case.

The protest is denied.

A handwritten signature in cursive script, appearing to read 'James F. Hinchman', is written over the typed name. To the left of the signature is a large, stylized flourish or mark.

James F. Hinchman  
General Counsel