



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Pan Am World Services, Inc.; Base Maintenance  
Support Group; Holmes & Narver Services, Inc.  
**File:** B-231840; B-231840.2; B-231840.3  
**Date:** November 7, 1988

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### **DIGEST**

1. Where a protester is ranked last technically of the five offerors in the competitive range, it is nevertheless an interested party under the Bid Protest Regulations to protest the evaluation of its proposal, since, if its protest were sustained, it could be in line for award.
2. Even though an awardee was apparently not entitled to the perfect score it received for past experience since the agency now says that the incumbent offeror's experience was higher rated, the awardee's past experience is excellent such that the reasonableness of the award selection, based primarily on heavier weighted technical factors, is not affected.
3. An agency evaluation of an awardee's staffing levels to provide base maintenance services to assess their acceptability and efficiency to achieve individual contract functions is reasonable.
4. An agency has not conducted misleading or improperly unequal discussions in providing specific guidance to the awardee during discussions on the desired staffing for the awardee's proposed approach, which guidance caused the awardee to lower its staffing by 500 persons, where the agency provided the same level of specific advice to other offerors in the competitive range and did not mislead the other offerors into lowering the quality of their proposals.
5. Agencies are not obligated to conduct all-encompassing discussions or discuss every element of a technically acceptable proposal that received less than the maximum score, even where the discussions are otherwise exhaustive.
6. A protester is not competitively prejudiced, even where it is not told of certain technical deficiencies during otherwise exhaustive discussions and even though it was

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allegedly pressured to raise its proposed costs, since the correction of the technical deficiencies would not significantly improve the protester's fourth ranked proposal and because its evaluated cost would only approximate the awardee's evaluated cost if its proposed cost had not been raised.

7. An incumbent contractor's protest that its alleged confidential and proprietary data concerning the demographics of its incumbent employees was disclosed during discussions to other offerors on a negotiated procurement is untimely under the Bid Protest Regulations, where this same data was included in an amendment to the solicitation, which also solicited best and final offers (BAFO), and the contractor failed to protest by the BAFO closing date.

8. Where an incumbent contractor has not shown that the awardee was advised of the incumbent's employee salary and benefit levels during discussions, but only that other offerors have been given some relative information on this subject, the contractor has not met its burden of showing it was prejudiced by the disclosure of the alleged proprietary information or by the alleged improper discussion techniques.

9. An agency probable cost analysis on proposals on a base maintenance services contract is reasonable, where the agency relied upon Defense Contract Audit Agency input, made various adjustments to the offerors' elements of cost, determined the offerors' salary levels were realistic and normalized the staffing levels.

10. An agency is not required to verify each and every item of all proposals to ascertain whether the offerors complied with a solicitation requirement that certain salary and benefit levels be retained. A "regression analysis," which showed the awardee's overall salary levels were compliant, and a spot check of the awardee's cost proposal, which found no indication of noncompliance, is a reasonable review in the circumstances.

11. An offeror which proposed significantly lower staffing levels on a base management services contract and which did not respond to suggestions made during discussions that it raise its manning levels, was reasonably downgraded under the solicitation's technical and management evaluation criteria.

12. Source selection official may reasonably rely upon the expert advice and evaluation recommendations of the source evaluation board and need not actually read the proposals to

make an integrated assessment of the proposals and make a reasonable and prompt award selection in accordance with Federal Acquisition Regulation § 15.612.

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## DECISION

Pan Am World Services, Inc.; Base Maintenance Support Group (BMSG) (a joint venture of Frank E. Basil, Inc.; and Phillipp Holzmann Aktiengesellschaft), and Holmes & Narver Services, Inc., each protest the award of a cost-plus-award-fee contract to the joint venture of Vinnell Corporation and Brown & Root Services Corporation (VBR) under request for proposals (RFP) No. F61546-87-R0103, issued by the Department of the Air Force for the total base maintenance services for military installations located in Turkey for a phase-in period and fiscal year 1989 with options for fiscal years 1990 through 1993.

We dismiss the protests in part and deny them in part.

### Background

The base maintenance services include civil engineering, food service, motor vehicle operation and maintenance, traffic management, base supply, housing services, laundry and dry cleaning, communications, hospital housekeeping, commissary, payroll, and recreation. The bulk of these services were being performed by the incumbent contractor, Holmes & Narver.

The "BASIS FOR AWARD" paragraph of the RFP states:

"Award will be made to the offeror whose proposal is judged to be most advantageous to the government based upon the evaluation criteria set forth below. Upon completion of the Government evaluation, the Source Selection Authority [SSA] will make an integrated assessment of the offerors' proposals to determine the one offeror which best satisfies the needs of the Government, price and other factors considered. Subjective judgment on the part of the Government evaluators is implicit in the entire process."

The three evaluation areas of the RFP, listed in descending order of importance, are: (1) technical operations; (2) program management; and (3) cost.

The technical operations area, which was point scored, evaluated each of the various functions to be performed under the contract for: (1) understanding of technical functions and (2) identification and use of resources. Civil engineering was the most important function followed by transportation, base services, base supply and all other functions. The program management area, which was also point scored, consisted of three criteria, listed in descending order of importance: (1) soundness of management approach; (2) past performance; and (3) phase-in planning. Cost was not point scored but was evaluated for cost realism; a most probable cost was calculated for each offeror.

Eight proposals were received by November 18, 1987, and after the initial evaluation, five were found in the competitive range, including VBR, Pan Am, BMSG, Holmes & Narver, and Morrison-Knudsen Services, Inc. Extensive written and oral discussions were conducted with the offerors in the competitive range and best and final offers (BAFO) were submitted by May 4, 1988.

The proposals were evaluated and discussions conducted by a Source Selection Evaluation Board (SSEB), which was composed of various experts in the RFP functional areas. The SSEB rated VBR significantly higher than any other offeror in the technical operations area. Next were Holmes & Narver and Morrison-Knudsen, which were rated approximately equal in technical operations, with a significant advantage over BMSG, which had a slight advantage over Pan Am. Holmes & Narver had the highest program management rating with VBR rated second. The other three offerors were rated significantly lower in this area.

The SSEB found that although four of the offerors proposed generally realistic staffing levels, Pan Am's proposed manning levels for both American National employees and Turkish National employees were unrealistic and significantly understated for the contract work. Although the government staffing estimate was used in the evaluation, the SSEB calculated the numerical average of Turkish National employees proposed by the four offerors, other than Pan Am (3,106 employees), and normalized the labor costs of all five offerors to this level in the cost evaluation. The results of audit reports performed by the Defense Contract Audit Agency (DCAA) and a cost analysis were also incorporated to determine the most probable cost of each offeror. Although Pan Am's proposed cost was significantly low, VBR had marginally the lowest probable cost followed by Pan Am, BMSG, Holmes & Narver and Morrison-Knudsen.

The Source Selection Advisory Council (SSAC) was briefed by the SSEB and issued a report effectively adopting the SSEB's findings, including the relative strengths and weaknesses in each area, and recommending award to VBR. The SSA was briefed on June 20, 1988, where the offerors were identified only by letter designations. The SSEB and SSAC recommended VBR (by letter designation) for award since it stood out from all other offerors with the strongest technical proposal and as the lowest evaluated cost offeror based on a reasonable level of manning. On June 21, the SSA selected VBR and award was made to that firm. The protests followed on June 30.

#### Protesters Contentions

All three protesters contest the evaluation of VBR's past experience since, they contend, the VBR partners have limited operations and maintenance experience and no experience with contracts directly comparable to the scope of effort of this RFP. Each protester claims its experience is superior to VBR's.

Holmes & Narver and BMSG claim that VBR's technical operations rating and program management rating were overstated, since VBR significantly understated the level of effort needed to perform this contract. In contrast, these protesters claim, they were misled in discussions with the Air Force into raising or maintaining their proposed levels of Turkish National employees, even though the Air Force apparently encouraged or acquiesced in VBR's significant lowering of its proposed level of effort for Turkish National employees in its BAFO.

BMSG also claims that meaningful discussions were not conducted with it, since the evaluation documents reveal that it was downgraded in a number of functions and these deficiencies were not mentioned during discussions. Holmes & Narver also protests the conduct of discussions claiming that the Air Force wrongfully disclosed to the other offerors Holmes & Narver's confidential and proprietary data. Holmes & Narver claims that not only did these disclosures violate its proprietary rights, but also constituted prohibited discussion practices--technical leveling or transfusion or unfair auction techniques.

BMSG and Holmes & Narver also claim that the Air Force did not perform a proper cost realism evaluation, particularly of VBR's proposal. The protesters claim that not only was

VBR's staffing unrealistically low, but VBR may be paying the Turkish employees less than the amounts required by the RFP, the collective labor agreement (CLA), and Turkish law.<sup>1/</sup>

Pan Am protests the evaluation of its proposal, claiming that the Air Force unreasonably found its proposed staffing was understated and that the resultant downgrading of its technical proposal and raising of its evaluated cost were not justified. Pan Am also has taken issue with numerous evaluated proposal deficiencies and claims that the SSEB did not seriously evaluate its BAFO.

Both Pan Am and BMSG protest that the SSA did not make an integrated assessment of its proposals or a reasonable source selection, since he was not apprised of the identity or point scores of the offerors, nor was he given sufficient information or time to make a reasoned selection decision. BMSG also contends that "price" may have been given more weight in the selection decision than warranted under the RFP evaluation criteria.

#### Pan Am Is An Interested Party

The Air Force initially argues that Pan Am is not an interested party under the Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (1988), because Pan Am had the lowest rated proposal in both the technical operations and program management areas, such that the other offerors would be next in line for award, even if Pan Am's protest were sustained. However, Pan Am protests that its proposal was misevaluated and contends that with its low cost it could be entitled to award. If we found Pan Am's arguments had merit, it is entirely possible that Pan Am would be in line for award. Consequently, we consider Pan Am an interested party under our Bid Protest Regulations. Fairfield Machine Co., Inc., B-228015, B-228015.2, Dec. 7, 1987, 87-2 CPD ¶ 562.

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<sup>1/</sup> In its initial protest, Holmes & Narver claimed that employee termination costs would result if another offeror were selected and this should have been accounted for in the cost evaluation. However, after receipt of the Air Force report stating that the RFP precluded the consideration of such costs, Holmes & Narver did not respond. Consequently, we consider this protest basis abandoned.

## VBR's Experience

The protesters contend that VBR's past experience was overrated in the evaluation, since the VBR partners have limited operations and maintenance experience. The RFP elaborated on the past performance criterion of the program management area as follows:

"Demonstrates the ability to achieve the technical and managerial requirements of this acquisition in a cost effective manner as evidenced by comparable experience in the last 5 years."

The protesters claim that VBR has no experience with contracts directly comparable to the scope of this RFP and that their experience is superior to VBR's.

The evaluation of technical proposals, including assessing the relative experience of offerors, is the function of the contracting agency, and our review of an allegedly improper evaluation is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Donald D. Jackson, B-230194 et al., Apr. 29, 1988, 88-1 CPD ¶ 419; NDI Engineering Co., B-228207, Jan. 26, 1988, 88-1 CPD ¶ 73.

The Air Force asserts that it properly evaluated VBR's past experience as "excellent," but recognized that Holmes & Narver's past experience was superior to VBR's. The record shows, however, that not only were both Holmes & Narver and VBR rated as excellent, but they also received identical perfect point scores for past experience, and that the SSA was apprised of these identical ratings.

In view of the Air Force's concession that Holmes & Narver, the incumbent contractor, had superior past experience, it is questionable whether VBR should have received a perfect score for past experience. However, our in camera review of the record shows that VBR's "excellent" rating for past experience was justified.

VBR's proposal identified numerous contracts, where some or many of the RFP functions were performed by Vinnell or Brown & Root. The record confirms that reports on the companies' performance was positive. The SSEB report specifically mentions Brown & Root's construction contracts in Turkey and Vinnell's contract to provide multi-site operations and maintenance services for the Air Force in Oman. While the protesters have vigorously attacked the comparability of the much smaller Oman contract, the SSA specifically noted Vinnell's contract (in joint venture with

another firm) to provide base maintenance support for the Saudi Arabian National Guard modernization program. The information in VBR's proposal shows that this contract is quite comparable to this RFP in size, complexity and functions. The foregoing reasonably justifies an excellent, if not perfect, rating for VBR.

If VBR's point score for past experience were lowered from perfect to merely "excellent," the resultant relatively slight drop in VBR's program management score would not adversely affect the reasonableness of the source selection decision in view of VBR's significant evaluated superiority over VBR in the most heavily weighted technical operations area. In this regard, although Holmes & Narver's superiority over VBR in program management would be slightly enhanced in this event. VBR's score in program management would still be significantly higher than the other three offerors.<sup>2/</sup> Therefore, the protesters' complaints of the evaluation of VBR's past experience do not form a basis to question the source selection.

#### VBR's Staffing Levels

BMSG and Holmes & Narver protest that VBR was overrated in the technical operations and program management areas, since its Turkish National staffing is unrealistically low because it could only be achieved by a substantial reduction in force. The protesters contend that not only is such a large reduction in force not feasible under the CLA with the Turkish union or Turkish law, it cannot satisfy RFP requirements. The protesters contend that this shows a lack of understanding of the technical operations, an inappropriate identification and use of resources and a poor management approach. Instead, as confirmed by the record, VBR received credit for innovative techniques in work management and an excellent rating for soundness of management approach.

Our Office will only question an agency's evaluation of whether an offeror has proposed an acceptable or realistic level of effort to ensure it is reasonable and in accordance with the evaluation criteria. Mark Dunning Industries, Inc., B-230058, Apr. 13, 1988, 88-1 CPD ¶ 364; reconsideration denied, B-230058.2, May 26, 1988, 88-1 CPD ¶ 503.

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<sup>2/</sup> From our review of the record, the Air Force had a reasonable basis for its evaluation of the protesters' past experience.



In this case, the record shows that all technical proposals, including VBR's, as revised in the BAFOs, were reviewed to judge whether the proposed manning level was too high or too low to accomplish each individual RFP function. The Air Force states that it did not require adherence to any overall manning for Turkish National employees in evaluating the proposals, but only considered manning levels in a limited sense to evaluate the efficiency of the use of resources in the operation of individual functions. In assessing the acceptability and efficiency of manning levels for the individual RFP functions, the undisclosed government estimate was referenced by the SSEB. See Mark Dunning Industries, Inc., B-230058, supra (a comparison of proposed staffing to government staffing estimates is an appropriate evaluation technique).

The SSEB specifically evaluated and compared the manning plans and levels for Turkish National employees, as proposed in VBR's BAFO, for each RFP function and, with certain inconsequential exceptions, found that they were acceptable. The SSEB and SSAC specifically advised the SSA that VBR's proposal "can be implemented with the proposed manning" because of "its high technical operations and program management ratings as well as the low risk associated with the proposal."<sup>3/</sup> Our review indicates that the Air Force evaluation of VBR's staffing was reasonable.

Contrary to the speculation of the protesters, VBR's overall staffing actually exceeds the government estimate of 2,974 Turkish National employees by less than 2 percent. Indeed, VBR's proposed total Turkish National staffing comes closer to the government estimate than any other offeror, and is within 3 percent of BMSG's and Holmes & Narver's total Turkish National staffing. While BMSG and Holmes & Narver state that VBR will have to implement substantial reductions in force to achieve its proposed Turkish National staffing level, the record shows that all offerors proposed in their BAFOs staffing below that of the incumbent contract (3,491 Turkish National employees).

Furthermore, as discussed in detail below, the high evaluation of VBR's staffing is not inconsistent with the well documented and supported low rating given Pam Am due in large part to Pan Am's low proposed level of effort.

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<sup>3/</sup> This advice was given the SSA to explain that, even though VBR's proposed level of effort was normalized at 3,106 Turkish National employees for cost evaluation purposes only, the evaluators believed VBR could perform the contract at its lesser proposed level.

Pan Am's level of effort of 2,667 Turkish National employees--more than 10 percent below the 2,974 employee government estimate--was found by the Air Force not sufficient to acceptably perform many of the contract functions.

BMSG claims that its proposal may have been wrongfully penalized for its higher overall staffing in recognition of the realities of the Turkey labor market. However, our review does not indicate that BMSG was so penalized, although there was some criticism of BMSG's overmanning some RFP functions in the context of a poor skill mix.

Holmes & Narver has produced a letter dated September 2, 1988, from the Air Force contracting officer to VBR directing VBR to assume the present Turkish National workforce when it took over the contract on October 1, 1988. The protesters contend that this shows the evaluation of VBR's manning levels was not based upon the government's actual requirements, since the Air Force should have been aware of the Turkish political and labor situation and advised all offerors such that they could submit proposals reflecting the government's actual requirements.

The September 2 letter states:

"1. You are directed to assume 1 October the present Turkish National workforce on the [contract.]

"2. Request you submit a proposal by 16 September 1988 for the cost impact of retaining the [Turkish National employees] not included in your best and final technical and cost proposals which have been incorporated into the subject contract by reference.

"3. Please also provide by 1 October 1988 a plan to attain your original proposed [Turkish National] workforce by attrition, training, reassignment, etc., and a milestone by site for doing so. This plan will be subject to the terms and conditions of the CLA with the [Turkish] union when negotiated."

The Air Force explains that this action "was not envisioned and was based on complex political factors." Although the protesters complain that the Air Force has not specified what new facts are involved that were not known when award was made in June 1988, we have no reason to question the Air Force's change in position. As indicated in a letter dated

August 23, 1988, supplied by Holmes & Narver in support of this protest contention, the Air Force direction was based on "new CLA parameters" (emphasis supplied). Moreover, we note that this letter indicates that the Air Force still considers VBR's staffing, as proposed in its BAFO, the proper and attainable goal.

#### Conduct of Discussions

BMSG and Holmes & Narver contend the discussions may have been unequal and misleading to the protesters; that they encountered and responded to strong pressures during oral discussions from March 25-April 1 from the Air Force to refrain from proposing a lower Turkish National staff level and to add employees in certain functions. The protesters speculate that VBR, on the other hand, probably was not pressured to raise or maintain its staffing level and that VBR's BAFO likely contained a substantial lowering of its level of effort.

We have consistently stated that in order for discussions in a negotiated procurement to be meaningful, contracting agencies must furnish information to all offerors in the competitive range as to the areas in which their proposals are believed to be deficient so that offerors may have an opportunity to revise their proposals to fully satisfy agency requirements. Proprietary Software Systems, B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143. The government does not satisfy its obligation to conduct meaningful discussions by misleading an offeror into lowering the evaluated quality of its proposal, see Unisys Corp., B-231704, Oct. 18, 1988, 88-2 CPD ¶ \_\_\_, or by conducting prejudicially unequal discussions. E.H. Pechan & Associates, Inc., B-221058, Mar. 20, 1986, 86-1 CPD ¶ 278 (agency listed with specificity the deficiencies in one proposal during discussions, but not other proposals in the competitive range).

The protesters have correctly stated that VBR's BAFO proposed substantially less (more than 500) Turkish National employees than its earlier proposals. The record indicates that this net reduction was made in response to specific guidance by the Air Force during the March 25 through April 1, 1988, oral discussions, just before the BAFOs were solicited. For example, in many instances, VBR was advised of the agency's assessment of what percentage level of effort, more or less, was needed to perform various RFP functions.

The Air Force states that these oral discussions were aimed at identifying specific areas where manning is significantly

different from the evaluators' understanding of the requirements. The Air Force states, and the record confirms, that the staffing questions were framed within the context of each offeror's proposal and not based upon any model or overall manning number. Our review indicates that the SSEB was just as specific in its discussions with BMSG and Holmes & Narver regarding perceived manning deficiencies; that specific percentages and other comments on manning levels for particular functions were made to all offerors. Moreover, neither the Air Force's nor BMSG's notes of these oral discussions indicate that the Air Force consistently pressured BMSG and Holmes & Narver into raising or not lowering their overall levels of effort; to the contrary, they show a number of suggestions by the Air Force that some functions were overstaffed.

The content and extent of discussions are within the discretion of the contracting officer, since the number and type of proposal deficiencies, if any, will vary among the proposals. Consequently, the agency should, as it did here, individualize the evaluated deficiencies of each offeror in its conduct of discussions. See Indian Community Health Services, Inc., B-217481, May 15, 1985, 85-1 CPD ¶ 547 (agency need not point out deficiencies where an offeror whose proposal is essentially free of deficiencies, even where deficiencies are pointed out to other offerors, so long as the offerors are given an opportunity to submit a BAFO).

Since VBR's proposal had a significantly higher level of effort for some functions than the SSEB believed necessary, the Air Force had the discretion to provide explicit guidance on the desired staffing levels during discussions. Video Visions, Inc., B-210010.2, June 26, 1984, 84-1 CPD ¶ 667 at 9; Decilog, Inc., B-206901, Apr. 5, 1983, 83-1 CPD ¶ 356. On the other hand, since BMSG's and Holmes & Narver's levels of effort more closely approximated the government's estimate, there was little reason for the Air Force to encourage substantial variations from the proposed levels of effort during discussions, although the record shows that it did, as in the case of VBR, point out variances in individual functions. Consequently, it appears that the discussions were equal and not misleading.

BMSG also complains that the Air Force discussions with it were not meaningful, since some of the deficiencies identified in the SSEB report were mentioned in discussions and addressed in BMSG's BAFO and others were not mentioned. BMSG has listed and discussed a number of examples where the Air Force allegedly failed to communicate evaluated

deficiencies with the same specificity it communicated other deficiencies.

Agencies are not obligated to conduct all-encompassing discussions or discuss every element of a technically acceptable proposal that has received less than the maximum possible score. JTC Environmental Consultants, Inc., B-229882, B-229882.2, May 2, 1988, 88-1 CPD ¶ 420; Presentations South, Inc., B-229842, Apr. 18, 1988, 88-1 CPD ¶ 374. This is the case even where, as here, otherwise exhaustive discussions have been conducted.

Our review of BMSG's examples of deficiencies that should have been pointed out in discussions does not indicate that the Air Force's exhaustive discussions were not meaningful. In any case, even if we found the Air Force should have pointed out these additional deficiencies, the correction of these deficiencies would not significantly improve BMSG's fourth ranked technical proposal. Consequently, BMSG was not competitively prejudiced by the Air Force's failure to conduct even more exhaustive discussions. See Data Resources, B-228494, Feb. 1, 1988, 88-1 CPD ¶ 94.

BMSG also claims that one SSEB representative pressured it during the March 25-April 1 oral discussions to raise its proposed vacancy rate "manning factor" for the American National workforce in its BAFO, which BMSG says raised its cost \$4.5 million. Although BMSG's notes on the discussions support this contention, BMSG was again not competitively prejudiced, since if BMSG had not raised the vacancy rate its evaluated costs would only have approximated VBR's evaluated cost and would not negate VBR's significant technical advantage.

#### Alleged Disclosure of Proprietary Data

Holmes & Narver protests that the Air Force wrongfully disclosed its confidential and proprietary data to the other offerors during discussions. The first group of data that was disclosed to the other offerors during the oral discussions between March 25-April 1 was gathered by Holmes & Narver as the incumbent contractor and furnished to the Air Force, and concerned the incumbent's American National employees. This data consisted of the number of American National employees of Holmes & Narver's incumbent staff who (1) had unaccompanied employment contracts; (2) had accompanied contracts; (3) were local hires; (4) were single; and (5) were married. Also disclosed was the number of American National employee dependents whose tuition was paid. Holmes & Narver claims this information is confidential and proprietary since it is based on its unique experience as

the incumbent contractor, and that it has been unfairly deprived of the benefit that should have been gained from possessing this information.

After the information had been disclosed during discussions, it was included in amendment No. 0011 to the RFP issued on April 4, 1988, to all offerors in the competitive range, which also stated that BAFOs were required to be submitted by May 4, 1988. Holmes & Narver did not protest the release of this information in the amendment before May 4, but only in its June 30 protest to our Office. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated in the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. Since Holmes & Narver's protest of this release was filed after May 4, it is untimely and is dismissed. Fishermen's Boat Shop, Inc., B-223366, Oct. 3, 1986, 86-2 CPD ¶ 389.

Holmes & Narver says the reason it did not file the protest before May 4 was that the data had already been disclosed and it was unaware of the disclosures of other alleged proprietary data (discussed below). However, we think that the amendment's specific incorporation of this material put it sufficiently on notice that it should protest.

In any case, our review of the record indicates that the information in question may not have been disclosed in confidence. A protester must prove by clear and convincing evidence that the material in question was marked proprietary or confidential or was disclosed in confidence. C&W Equipment Co., B-220459, Mar. 17, 1986, 86-1 CPD ¶ 258; John Baker Janitorial Services, Inc., B-201287, Apr. 1, 1981, 81-1 CPD ¶ 249. The Holmes & Narver letter forwarding this information to the Air Force did not indicate it was confidential data, although the record contains a number of other letters from Holmes & Narver to the Air Force forwarding information on the incumbent contract that clearly indicate the proprietary or confidential nature of the information.

Holmes & Narver also contends that its confidential and proprietary incumbent American National employee salary and benefit levels were also disclosed to BMSG and Pan Am during discussions and may have been disclosed to the other offerors. Holmes & Narver claims that not only did this violate its proprietary rights in this data, but it may constitute leveling, technical transfusion, or improper auction techniques.

In support of this contention, Holmes & Narver has submitted an affidavit of a BMSG representative, who states that BMSG was advised in the March 25-April 1 oral discussions that it was important for offerors to provide adequate salary and benefits to retain incumbent employees; that BMSG's proposed American National employee salaries "involved a slight raise" from current salary levels; and that BMSG's American National employee salaries were "considerably higher" than those paid by the incumbent for program management personnel. Holmes & Narver has also submitted an affidavit from Pan Am representative, who states that Pan Am was advised during these oral discussions that its proposed salary and benefit package was reasonably comparable to the incumbent's.

The Air Force does not persuasively deny BMSG's or Pan Am's statements of what was told to them during discussions. However, the Air Force states that it felt it should advise BMSG that its program management personnel salaries were higher than necessary to attract qualified personnel and argues that no disclosure of proprietary information, nor improper discussion techniques were involved. The Air Force also states it queried all offerors during discussions about their ability to attract incumbent American National employees with their proposed salaries--a matter which the Air Force felt was important.

Holmes & Narver also contends that Pan Am was given, during the course of this procurement, specific information on the type, make, and model of the leased computer system Holmes & Narver used for its payroll and accounting system. It states that this information was proprietary and, since the system was relatively old, an offeror could deduce that Holmes & Narver would propose a new computer system as part of its proposal.<sup>4/</sup>

There is no evidence that Holmes & Narver's exact American National salaries and benefits were disclosed to the offerors. Moreover, VBR denies having received any information from the Air Force during discussions concerning the level of incumbent American National employee salaries or benefits, nor is there any evidence that such disclosure occurred. VBR states that it did obtain salary and benefit information about the incumbent American National employees from a variety of appropriate and legitimate sources,

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<sup>4/</sup> Holmes & Narver only first raised this contention in its comments after the bid protest conference and has not explained the circumstances or furnished evidence of this disclosure.

including interviews with former and current employees and recent company experience in Turkey. Also, our review indicates that VBR's salary and benefit package is significantly different from that proposed by Holmes & Narver. Since the only evidence of any disclosure was that of relative salary benefits made to offerors other than the awardee, Holmes & Narver has not met its burden of showing that its proprietary data was disclosed or that it was prejudiced by any disclosure. See Management Services, Inc., 55 Comp. Gen. 715, 731 (1976), 76-1 CPD ¶ 74; Vinnell Corp., B-230919, June 30, 1988, 88-2 CPD ¶ 4; C&W Equipment Co., B-220459, supra.

Similarly, the alleged disclosure of the equipment data to Pan Am does not prejudice Holmes & Narver, since VBR, not Pan Am, received the award and the only alleged harm to Holmes & Narver is that offerors could deduce that Holmes & Narver might propose a new computer system.

For much the same reasons, we do not find that Holmes & Narver was prejudiced, even assuming the disclosures of relative salary information constituted improper discussion techniques. That is, there is no showing that VBR was apprised of the incumbent's relative or specific salary and benefit levels. In the absence of competitive prejudice, we will not sustain a protest on this point. T.M. Systems, Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

#### Probable Cost Analysis

BMSG and Holmes & Narver protest that no proper cost analysis was made of VBR's low cost proposal. Where, as here, a cost reimbursement contract is to be awarded, the offerors' proposed estimated costs of contract performance should not be considered as controlling, since they may not provide valid indications of the actual costs which the government is, within certain limits, required to pay. Federal Acquisition Regulation (FAR) § 15.605(d) (FAC 84-5); Bendix Field Engineering Corp., B-230076, May 4, 1988, 88-1 CPD ¶ 437. Thus, the government's evaluation of estimated costs should determine the extent to which the offerors' proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Arthur D. Little, Inc., B-229698, Mar. 3, 1988, 88-1 CPD ¶ 225. The evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency, since it is in the best position to assess "realism" of costs and technical approaches and must bear the major criticism for the difficulty or expense resulting from defective cost analyses. Consequently, our review is limited to a determination of whether an agency's cost evaluation was



reasonably based and was not arbitrary. PTI Environmental Services, B-230070, May 27, 1988, 88-1 CPD ¶ 504; Fairchild Weston Systems, B-229568.2, Apr. 22, 1988, 88-1 CPD ¶ 394.

Here, the record shows that a detailed cost analysis was made of the five offerors in the competitive range. DCAA audited each of the proposals and the offerors made adjustments to their BAFO cost proposals as a result of discussions on cost matters. In the cost analyses, various adjustments were made to the offerors' elements of cost which had been overlooked or overstated by the offerors in their BAFOs. Moreover, certain other costs, e.g. escalation of the Turkish lira, were normalized. Although BMSG speculated that the ceilings on general and administrative rates may not have been accounted for in the cost analyses, the record confirms these ceilings were factored into the determination of probable cost.

Holmes & Narver contends that VBR had significantly reduced American National salaries and benefits, as compared to the incumbent salaries, such that they may be unrealistically low, which will lead to excessive turnover with significant additional costs to the government. The record confirms that VBR's average proposed American National employee salaries are less than the other offerors. However, the Air Force found that VBR's American National employee compensation package was unique and innovative offering the possibility of long-term stability and management flexibility by providing various monetary incentives in addition to generally lower, although not uniformly so, starting salaries. The Air Force claims that the substantial response from incumbent employees indicates an ability to retain virtually all of them at VBR's proposed salaries. Although Holmes & Narver asserts that this will lead to more turnover of these employees, the Air Force analysis indicates otherwise. Our in camera review confirms that the Air Force had a reasonable basis for determining VBR's proposed American National employee compensation package was realistic.

BMSG and Holmes & Narver contend the cost analysis may not have accounted for VBR's allegedly low level of effort of Turkish National employees. As indicated above, the Air Force reasonably found that VBR's proposed Turkish National staffing level was realistic but, in the cost evaluation, the Turkish National work force was normalized at 3,106 employees. Since VBR's already realistic Turkish National manning level was adjusted upwards, which increased VBR's evaluated probable cost, we see no prejudice to BMSG or Holmes & Narver from this evaluation.

BMSG and Holmes & Narver contend that VBR's BAFO was not analyzed to verify that its Turkish National employees' salary and benefit levels were consistent with attachment 5 to the RFP. Attachment 5 listed the 1987 incumbent contract manning levels of Turkish National employees for all classifications and locations with the average salaries and seniority for each classification and location. The RFP stated that a proposal which demonstrated a deviation from attachment 5 salary and benefit levels would not be acceptable. Such deviations included any of the following personnel concepts and/or strategies: (1) severance and rehire at lower salary levels; (2) replacing older, more experienced employees with younger employees at lower salary levels; (3) transferring current Turkish National employees to other positions with lower salaries; and (4) proposing Turkish National employees' salaries or benefits below that stated in attachment 5.

BMSG and Holmes & Narver claim that VBR may have used all or some of these strategies, and that the Air Force has not reviewed VBR's cost proposal to assure VBR was acceptable. However, the protesters have offered no evidence, other than speculation that this was done by VBR; VBR claims full compliance with attachment 5.

The Air Force states that it "thoroughly examined" the cost proposals for evidence of improper personnel actions and to assure each offeror understood Turkish law and the CLA. The record shows that the Air Force made a "regression analysis" which it claims shows VBR's compliance with attachment 5. This analysis took the total Turkish National workforce cost for each offeror and divided it by that offeror's proposed Turkish National head count. The Air Force plotted this ratio for all of the offerors, each one of which had a different level of effort, and found it showed an almost perfect correlation, that is, a uniform rate of increase of average overall salary costs, among all offerors, except Morrison-Knudsen (which had some noted problems in this area), and that this correlation reinforced the SSEB's finding that none of the remaining offerors, including VBR, violated attachment 5.

BMSG has hypothesized some examples that indicate the regression analysis does not conclusively demonstrate compliance with attachment 5. BMSG asserts that only a line by line verification of VBR's cost proposal--which BMSG says would take 2 man weeks to perform--would assure that VBR completely complied with attachment 5 on all job classifications.

An agency is not required, however, to verify each and every item in conducting a cost realism analysis; it need only do what is reasonable in the circumstances. PTI Environmental Services, B-230070, supra at 6. Here, besides the regression analysis which indicates that VBR's overall Turkish National salaries comply with attachment 5, the record indicates that the Air Force apparently spot checked VBR's job classifications to ascertain general consistency. We, too, have spot checked VBR's cost proposal vis a vis attachment 5 and have found no evidence that VBR's proposed salaries and benefits are improper. In the absence of any indication that VBR has failed to comply with attachment 5, we find the Air Force's affirmative determination in this regard is reasonable.

#### Pan Am Protest

Pan Am protests that the Air Force unreasonably found its proposed level of effort was too low. Pan Am proposed 319 American National employees and 2,667 Turkish National employees, which was substantially less than any other offeror in the competitive range. In large part, this low staffing led to Pan Am's fifth high rating for both the technical operations and program management areas, as well as the substantial upward adjustment in its evaluated probable cost. Pan Am claims this evaluation was based upon cultural prejudice and an undisclosed political agenda, since Pan Am documented the basis for its innovative staffing plan, and the government estimate and incumbent work force levels are grossly excessive.

The record shows that the Air Force evaluated Pan Am's cost proposal and found severe undermanning in both Turkish National and American National positions for a vast majority of the functions, including the most heavily weighted functions under the RFP evaluation criteria, civil engineering and transportation. The Air Force found that this severely low manning was not only unrealistic under the Turkish labor market, considering the cooperation of the Turkish union is critical to the effective accomplishment of the contract work, but that Pan Am's staffing was so undermanned for most functions that there was a high or marginal risk that they could not be adequately performed. This led to major downgrading of Pan Am in the "identification and use of resources" and "soundness of management approach" and some negative impact on Pan Am's "understanding of technical functions." The undetailed offer in the executive summary of Pan Am's BAFO to retain the existing work force if political considerations required does not respond to the Air Force's legitimate concerns that Pan Am proposed too few workers to satisfy RFP requirements.

Moreover, although the Turkish National incumbent staff is apparently considered excessive, Pan Am has not shown that the 2,974 Turkish National employee government estimate is excessive. Indeed, all other offerors exceeded this figure.

The RFP expressly warned against unrealistically low proposed costs and, as admitted by Pan Am, this matter was expressly brought to its attention during discussions. Indeed, Pan Am states that the "central theme" of the discussions was an Air Force desire to retain the current incumbent manning level. However, Pan Am generally resisted suggestions that it raise its manning level and made only minor adjustments to its level of effort in its BAFO.

Based on our review of the record, we find that the Air Force has a reasonable basis for downgrading Pan Am's proposal for its unrealistically low manning levels. Mark Dunning, Inc., B-230058, supra; Varian Associates, Inc., B-228545, Feb. 16, 1988, 88-1 CPD ¶ 153. Moreover, we have held that downgrading an offeror's BAFO for inadequate staffing, where that concern was the earlier subject of discussions is reasonable. Mark Dunning Industries, Inc., B-230058, supra; Becon Construction Co., Inc., B-222649, Aug. 18, 1986, 86-2 CPD ¶ 195. We find the Air Force has reasonably explained its evaluation of Pan Am's proposal in this regard; the fact that Pan Am disagrees with the agency evaluation does not in itself render the evaluation unreasonable. Mark Dunning Industries, Inc., B-230058, supra.

Pan Am has also listed numerous specific items<sup>5/</sup> for which it was downgraded, which it claims were adequately addressed in its BAFO. Pan Am claims that this demonstrated that its BAFO was not considered in the final evaluation.

However, from our review of the listed items, it appears that the Air Force did evaluate Pan Am's BAFO, but found its proposal was still deficient. In any case, even assuming Pan Am should have received a higher score for all these items, Pan Am was not prejudiced, since it was reasonably

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<sup>5/</sup> For example, the SSEB found Pan Am's proposal "neglected areas of military housing, material control, shift work and leasing" in the Civil Engineering function. Pan Am has referenced the pages in its BAFO which it says address these items. The Air Force stated that it did evaluate these specific changes in the BAFO, but they were generally a regurgitation of the statement of work, without demonstrating a clear understanding. Our review indicates that the Air Force position is reasonable.

substantially downgraded for its failure to adequately staff the contract work.

Pan Am claims that the Air Force cost evaluation was unreasonable because Pan Am's Turkish National staffing was evaluated at 3,106 employees, rather than as proposed or at the government estimate of 2,967 employees. In appropriate circumstances, normalized staff levels can be used in the evaluation of probable costs. Dynalectron Corp., 54 Comp. Gen. 562 (1975), 75-1 CPD ¶ 17, aff'd 54 Comp. Gen. 1009 (1975), 75-1 CPD ¶ 341. Although it is not clear why the government's estimate was not used to normalize the Turkish National staffing, the record indicates that the SSEB thought it was somewhat too low for some RFP functions. However, even if Pan Am had the lowest evaluated cost, it would not have been in line for award in view of its significantly inferior technical operations and program management ratings, since cost was the least important evaluation area.

#### Source Selection Decision

BMSG claims that the SSA may have given too much weight to cost in the selection decision. However, our review provides no evidence that cost was accorded more weight than the technical operations and program management areas; VBR not only has marginally the lowest cost but the significantly highest rating in the most heavily weighted evaluation area.

BMSG and Pan Am contend that the SSA failed to make an integrated assessment of the offerors' proposals before making award. The protesters argue that the SSA was not advised of the identities or numerical scores of the offerors or the method of the evaluation, nor did he personally read and evaluate the proposals. Moreover, since he made his decision only 1 day after being briefed on the procurement, he could not have made an integrated assessment.

Our review indicates that although the SSA was not told the identity of the offerors during the SSEB/SSAC presentation, he was advised of the offerors' identities at the close of the briefing. Moreover, a slide presentation summarized the evaluation process as well as the relative ratings of all offerors in all evaluation areas. Since the function of the SSEB and SSAC is to provide expert advice to the source selection official, see Scheduled Airlines Ticket Office, B-229883, Mar. 29, 1988, 88-1 CPD ¶ 317, we find the SSA's prompt selection and justification of the procurement was in accordance with the source selection procedure requirements

in FAR § 15.612 (FAC 84-5). For the same reasons, the SSA was not required to read the proposals; he can rely upon his expert advice to make an integrated assessment of the proposals and promptly make his source selection decision. We conclude the source selection decision was reasonable.

The protests are dismissed in part and denied in part.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".A large, stylized handwritten flourish or checkmark-like mark to the left of the typed name.

James F. Hinchman  
General Counsel