



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Pacific Architects and Engineers, Inc.--  
Request for Reconsideration

**File:** B-232500.4

**Date:** March 3, 1989

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### **DIGEST**

Request for reconsideration of decision holding that agency failed to conduct meaningful discussions is denied where the requestor fails to show any error of fact or law that would warrant reversal of or modification of prior decision, and merely reiterates arguments considered in the initial decision.

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### **DECISION**

Pacific Architects and Engineers, Inc. (PA&E), requests reconsideration of our decision, URS International, Inc., and Fischer Engineering and Maintenance Co., Inc.; Global-Knight, Inc., B-232500; B-232500.2, Jan. 10, 1989, 89-1 CPD ¶ \_\_\_\_\_, in which we sustained a protest by URS International, Inc., and Fischer Engineering and Maintenance Co., Inc. (URSI/FEMCO), against the award of a cost reimbursement contract for maintenance services to PA&E under Department of the Army request for proposals (RFP) No. DAJB03-88-R-3505.

We deny the request for reconsideration.

The RFP required the submission of cost and technical proposals with each to be separately evaluated. The RFP set out the following major technical evaluation criteria: (1) general management, (2) comprehension of the requirement, (3) organization and staffing, (4) offeror's experience in contract support services, and (5) phase-in plan. Criteria (2) and (3) were deemed approximately equal in weight and considered more important than criteria (1), (4) and (5), which also were approximately equal in weight. Subcriteria, which were equal in weight, were listed following each factor. Offers were to be assigned an adjectival rating of excellent, good, average or poor under each criterion. Cost and technical factors were approximately equal

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in importance, but if two or more offerors were found equal technically, cost was to be the deciding factor in the award decision.

The Army received four offers, included all of them in the competitive range, held discussions with each offeror and requested best and final offers (BAFOs). Following the evaluation of BAFOs, PA&E and URSI/FEMCO were ranked first and third, respectively, on technical merit. With regard to cost, URSI/FEMCO was low and PA&E third low. The Army determined that PA&E's superior technical proposal was worth the additional cost and awarded the contract to PA&E.

During a debriefing with the Army, URSI/FEMCO first learned that its proposal was considered deficient under a subcriterion of criterion (1), general management, entitled "resource and work force (security, safety, accountability)." URSI/FEMCO then protested to our Office that the Army failed to hold meaningful discussions with the firm because it was never advised of this deficiency.

The Army argued that since it advised URSI/FEMCO of deficiencies in its proposal under other subcriteria of the general management criterion, it fulfilled its obligation to hold meaningful discussions with the firm. We disagreed and concluded that URSI/FEMCO had been deprived of meaningful discussions because our review of the Army's evaluation of the firm's BAFO showed that URSI/FEMCO received a rating of average for the overall general management criterion specifically because the firm did not adequately address the resources and work force subcriterion.

The Army also argued that URSI/FEMCO was not prejudiced by the Army's failure to point out the deficiency. In this regard, the Army asserted that if it had pointed out the deficiency and URSI/FEMCO had been able to raise its score for criterion (1), general management, from average to excellent, URSI/FEMCO and PA&E would have had the same score for all the criteria except criterion (2). For criterion (2), however, URSI/FEMCO would have had a rating of average as opposed to a rating of excellent for PA&E. The Army thus concluded that PA&E would still have been considered technically superior and would still have been the proper awardee.

We found this argument unpersuasive because, if URSI/FEMCO had been able to raise its technical score for general management to excellent, its technical rating would have been much closer to that of PA&E. Given that URSI/FEMCO's proposed costs were \$350,000 less than PA&E's proposed costs, and that cost and technical factors were equal in

weight, we concluded that URSI/FEMCO would have had a reasonable chance at receiving the award had it been given the opportunity to correct the undisclosed deficiency. Accordingly, we recommended that the Army hold a new round of discussions with URSI/FEMCO followed by the submission of a new BAFO. We pointed out that the discussions should be limited to the specific issue in dispute and no cost revisions should be permitted.

PA&E requests reconsideration of our decision on the basis that we erroneously determined that URSI/FEMCO had been denied meaningful discussions and had been prejudiced by the Army's actions in this regard. In support of its position, PA&E argues that meaningful discussions were held with URSI/FEMCO because the Army pointed out deficiencies in other subcriteria of the General Management criterion. PA&E further argues that even if URSI/FEMCO had been notified of the deficiencies in the General Management criterion and raised its score to excellent for this factor, PA&E still would be higher rated than URSI/FEMCO for criterion (2). PA&E thus concludes that, since the proposed prices of the two firms were close, it still would be the proper awardee.

These are the exact arguments that the Army raised in its report on the protest and which we considered and rejected in our initial decision. PA&E's reiteration of these arguments does not provide a basis for reconsideration. See 4 C.F.R. § 21.12(a) (1988); I.T.S. Corp.--Request for Reconsideration, B-228919.2, Feb. 2, 1988, 88-1 CPD ¶ 101.

PA&E next challenges our recommendation that the Army hold a round of discussions with URSI/FEMCO on the work force accountability subcriterion. PA&E states that after it was awarded the contract it hired some of URSI/FEMCO's employees. PA&E speculates that URSI/FEMCO will have access to these employees and will be able to learn from them PA&E's management techniques and then use PA&E's technical information to improve its proposal. PA&E thus concludes that our recommendation is improper because it will result in technical transfusion. We disagree.

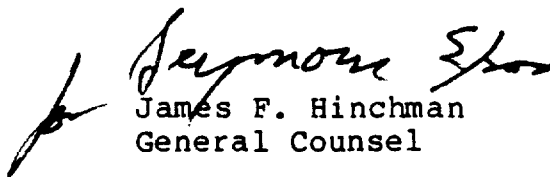
As a preliminary matter, we see no basis to accept PA&E's assumption that URSI/FEMCO will have access to its former employees who are employed by PA&E. Further, we have neither recommended, nor expect, that in holding discussions with URSI/FEMCO the Army will disclose PA&E's technical information to the firm. See Northwest Regional Educational Laboratory, B-222591.3, Jan. 21, 1987, 87-1 CPD ¶ 74. In any event, even if PA&E's speculation about technical transfusion had merit, we have recognized that concerns about

technical transfusion generally do not overcome the need in a given case to remedy a procurement that did not satisfy the need for full and open competition. See Kaufman Lasman Assocs., Inc; Larry Latham Auctioneers, Inc., B-229917; B-229917.2, Feb. 26, 1988, 88-1 CPD ¶ 202, aff'd on reconsideration, B-229917.3, Mar. 16, 1988, 88-1 CPD ¶ 271.

Finally, PA&E challenges our recommendation that URSI/FEMCO not be permitted to submit any cost revisions with its BAFO in response to the new round of discussions. PA&E argues that any revision in URSI/FEMCO's technical proposal could result in increased costs which could either make PA&E the low cost offeror, or make the two offerors' costs close enough that the Army still would find that PA&E is the proper awardee.

PA&E's argument here provides no basis for us to revise our recommendation for corrective action. First, as noted in our decision, we recommended discussions that were limited in scope to the noted deficiency in the resource and work force subcriterion of General Management without giving URSI/FEMCO the opportunity to submit any cost revisions because the deficiency in its proposal was an informational deficiency. Our review of the evaluation record showed that the Army was concerned, for example, because URSI/FEMCO did not provide accounting procedures for its resources; we do not expect that the addition of this information would or should result in a cost increase. However, our recommendation was not intended to prevent the Army from reviewing URSI/FEMCO's proposed costs for realism and adjusting them if necessary to reflect the firm's new BAFO.

The request for reconsideration is denied.

  
James F. Hinchman  
General Counsel