



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Science Applications International Corporation; Department of the Navy--Request for Reconsideration

File: B-247036.2; B-247036.3

Date: August 4, 1992

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Eric Lile, Esq., and Bernard T. Decker, Esq., Department of the Navy, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior decision sustaining protest of an agency's cost realism evaluation is affirmed on reconsideration, where the agency admits that its cost realism evaluation was defective, as found in the prior decision. Nevertheless, the decision recommendation--to terminate the awardee's contract for the convenience of the government and make award to the protester--is modified to provide that the agency need not terminate the awardee's contract (and that consequently the protester is entitled to reimbursement of its proposal preparation costs), where, after consideration of all the circumstances surrounding the procurement, including the cost to the government, the impact of the recommendation on the user agency's mission, as well as the prejudice to the protester and competitive procurement system, it is found that contract termination would not be in the best interests of the government.

DECISION

Science Applications International Corporation (SAIC) and the Department of the Navy request reconsideration of our decision in PRC, Inc., B-247036, Apr. 27, 1992, 92-1 CPD ¶ 396, in which we sustained PRC's protest of the agency's award of a contract to SAIC under request for proposals

(RFP) No. N61339-91-R-0027 for a logistics training simulator and related supplies and services.

SAIC essentially argues that we erred (1) in sustaining PRC's protest on an issue, which we raised sua sponte and to which the agency and SAIC did not have an opportunity to respond; (2) in performing an improper and defective de novo cost realism evaluation that was substituted for the agency's evaluation; and (3) in recommending the termination of SAIC's contract and award to PRC without appropriate consideration of the costs and disruption of contract termination and re-award.

The Navy admits that its cost realism evaluation was defective, as we found in our decision, but argues that it is not in the government's best interests to terminate SAIC's contract and requests that we modify our recommendation. The Navy also contends that we sustained PRC's protest on an issue not raised by the protester and that therefore PRC is not entitled to be reimbursed for its costs of filing and pursuing the protest.

We affirm our prior decision sustaining PRC's protest and awarding it the costs of pursuing its protest, but modify our recommendation that SAIC's contract be terminated. We also award PRC its costs of responding to the reconsideration requests and its costs of proposal preparation.¹

The RFP contemplated the award of a cost-plus-incentive-fee contract for a fully operational, prototype Combat Services Support Training Simulator System (CSSTSS). The CSSTSS is a computer driven training device that will provide a simulated battlefield environment on which to teach combat support functions. It is, in essence, an integrated system of computer and input/output devices that will interface with software developed by the contractor to provide the necessary training for a range of specified combat support activities, including medical, transportation, personnel, grave registration, maintenance, petroleum, ammunition, and supply services. Besides the hardware requirements, the contractor was required to develop and provide all software, application programs, operating systems, and diagnostic software necessary to operate the CSSTSS.

¹As was the case in our prior decision, portions of the protest record are subject to a General Accounting Office protective order to which counsel for PRC and SAIC have been admitted. Our decision, which is based upon protected, confidential information, is necessarily general.

The RFP provided that award would be made to the responsible offeror whose proposal was evaluated as offering the best value to the government. Technical evaluation factors and subfactors were set forth in the solicitation, which stated that technical considerations, collectively, were more important than cost. The RFP also provided for evaluation of the realism of proposed costs.

The Navy received three proposals, including offers from PRC and SAIC. After discussions and best and final offers (BAFO), the source selection authority (SSA) determined that all three offerors were technically equal and that award should be based upon evaluated cost.²

The SSA found that all of the offerors' proposed costs were substantially below the government's baseline cost estimate and were unrealistically low. Hearing Transcript (Tr.) at 257, 340.³ The Navy performed a cost realism analysis, using two cost analysis methodologies. Under method I, the agency accepted the man-hours proposed by each offeror, but, with assistance from the Defense Contract Audit Agency (DCAA), analyzed, and adjusted where appropriate, the offerors' labor and indirect cost rates. Certain other adjustments were also made under this method to account for SAIC's and the other offeror's failure to propose all subcontractor costs. Under method II, the Navy adjusted all offerors' proposed manning levels and associated costs upwards based upon the agency's undisclosed manning estimated because the agency concluded that all of the offerors proposed too few man-hours. The offerors' proposed and evaluated costs were as follows:

	<u>Proposed</u>	<u>Method I</u>	<u>Method II</u>
	(in millions of dollars)		
SAIC	\$11.2	\$17.1	\$23.2
PRC	18.5	18.4	25.2
Offeror A	18.5	19.7	29.9

²PRC's technical proposal was rated slightly higher than that of SAIC and the other offeror.

³A hearing was conducted, pursuant to 4 C.F.R. § 21.5 (1992), to receive testimony concerning the agency's independent government man-loading estimate, the evaluation of offerors' proposed manning and labor skill mix, and the agency's normalization of offerors' proposed levels of effort to that of the undisclosed independent government man-loading estimate (IGME).

The SSA concluded, as follows, that SAIC's proposal was entitled to award on the basis of its lowest evaluated cost:

"With the technical rankings being so close, I have determined that my award decision will be based on cost. . . . In evaluating the cost proposals the immediate aberration is that of the SAIC costs. A large amount of the SAIC difference in cost can be attributed to their making reductions on their subcontractors' cost proposals. This technique was also used by [Offeror A]. SAIC also included uncompensated overtime. Pricing in uncompensated overtime along with subcontractors' costs as proposed, SAIC is still the low offeror by almost \$1.4 [million]. In an additional effort to ensure that the volume of the scope of work was adequately evaluated, the [g]overnment estimate for man-years of effort required was priced in at the rates offerors proposed. As a result of this analysis, SAIC was still the low offeror by almost \$2 [million].

"Based upon the foregoing, I have determined that SAIC offers significant cost savings no matter which evaluation method was used. Since there are no significant technical differences, I determine that the SAIC proposal represents the best value to the [g]overnment."

Award was made to SAIC on November 22, 1991. Performance of SAIC's contract was not required to be suspended because PRC's protest was filed more than 10 calendar days after award, and contract performance continued.

Our prior decision found that, in performing the second cost realism methodology (the purpose of which was to normalize all offerors to the agency's manning estimate), the agency erroneously used SAIC's proposed subcontractor costs that the agency had already determined in its first cost realism methodology to be significantly and unrealistically low.⁴

⁴Specifically, the Navy found in the method I analysis that SAIC in its BAFO had unilaterally and substantially reduced its subcontractors' estimated labor burden rates from those estimated by its subcontractors in their cost and pricing data. The SAIC subcontractors' estimated rates, as confirmed by DCAA, represented audited or forward pricing rates. While SAIC stated in its BAFO that it would "encourage" its subcontractors to achieve lower labor burden rates, the record showed that the cost reimbursement subcontracts did not provide for "capping" these rates at, or
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The Navy's failure to use realistic and probable subcontractor costs for SAIC (as determined under method I) in the agency's method II cost evaluation resulted in SAIC's overall evaluated costs being understated by \$9.6 million. Using the Navy's own cost realism methodologies (but employing SAIC's probable subcontractor costs as determined by the agency), PRC's evaluated costs were \$25.2 million while SAIC's costs were \$32.8 million. Thus, PRC offered the lowest evaluated cost by more than \$7.6 million.

Since the Navy concluded that the offerors' were essentially technically equal, we found that, under the Navy's stated "best value" methodology, the basis for award should be the firms' evaluated costs.⁵ See General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Mgmt. Sys., Inc.; Dep't of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492. Accordingly, we found that PRC was entitled to award because it offered the lowest evaluated cost, and we recommended that the Navy terminate SAIC's contract for the convenience of the government and make award to PRC. We also found that PRC was entitled to its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1). The Navy stopped performance of SAIC's contract after receipt of our decision sustaining PRC's protest, pending our decision on the reconsideration requests.

SAIC challenges our decision sustaining PRC's protest of the agency's cost realism evaluation, complaining that neither it nor the agency had any opportunity to address our finding that the Navy's use of unrealistic subcontractor costs for SAIC rendered the agency's cost realism evaluation unreasonable; SAIC contends that we raised this issue sua sponte. SAIC also argues we improperly conducted a defective de novo cost realism analysis, substituting our judgment for the agency's cost realism evaluation.⁶

⁴ (...) continued) otherwise not charging the government for rates beyond, those SAIC was proposing in its BAFO.

⁵ PRC also protested the agency's technical evaluation, contending that the offerors were not technically equal but that PRC's proposal should have been found technically superior to SAIC's. We did not address this issue since we found that PRC would be entitled to award, even if the proposals were technically equal.

⁶ SAIC also argues that we disclosed proprietary and confidential data of the parties in our decision. Specifically, SAIC complains that we disclosed its proposed costs to
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We disagree that PRC's protest was sustained on an issue that we raised sua sponte. While it is true that PRC primarily challenged the agency's normalization of all offerors' labor costs to the IGME in the second cost methodology, the reasonableness of the Navy's cost realism evaluation was at issue throughout the protest. For example, PRC complained that SAIC's average labor costs were unrealistically low, objecting, in its initial protest letter, that "SAIC's proposed subcontractor costs were lower than those actually bid by the vendor."

SAIC also expresses concern that we did not identify for it and the Navy the particular problem in the Navy's cost realism analysis or make it a subject of further inquiry and testimony at the hearing. The fact that hearing testimony was not taken on a particular issue is not dispositive of whether the issue will be significant in the ultimate decision on the protest. See Department of State--Recon., B-243974.4, May 18, 1992, 92-1 CPD ¶ 447. Hearings are conducted to resolve factual disputes and/or clarify legal issues in the protest. 4 C.F.R. § 21.5. Here, a hearing was conducted to resolve certain disputes concerning other aspects of the agency's cost realism analysis. See infra footnote 3. That we did not specifically consider in the hearing the agency's failure to insert the proper number in the method II analysis of SAIC's cost proposal--an error that the agency now admits that it made--does not make this procurement impropriety insignificant or deny SAIC any process that it may be due. Rather, the protest was decided on the entire record, including the hearing transcript and evidence.

Our conclusion that the agency improperly used unrealistic subcontractor costs for SAIC in the second cost methodology was based upon the agency's own determination that SAIC's

⁶ (...continued)

perform the contract. We do not agree that we have disclosed proprietary information that would cause SAIC any competitive harm. While it is true that we disclosed the offerors' overall, proposed and evaluated costs, these costs include numerous cost elements (including their subcontractors' total proposed costs). Consequently, it is apparent that the disclosed information is insufficient to provide competitors or others with any insights as to SAIC's confidential pricing or costs, nor does SAIC demonstrate this would be the case. Furthermore, given our recommendation that award be made to PRC and that no further negotiations with the parties would be necessary, there was little risk that providing this sort of "bottom-line" cost information would provide offerors with any competitive advantage.

proposed subcontractor costs were unrealistic and must be significantly adjusted upward. The Navy provided detailed explanations and support for its cost realism analysis, which, as noted above, was based upon the use of two cost methodologies. First, the Navy adjusted the offerors' proposed costs and rates based upon its cost realism analysis; then, the agency was supposed to adjust these realistic costs to account for the agency's normalization of the offerors' levels of effort to that of the IGME.

From our review of this two-step cost realism evaluation, which included validating the agency's calculations, we discovered that the agency had inexplicably used the wrong subcontractor costs for SAIC in normalizing SAIC's costs to the agency's manning estimate.⁷ This resulted, as we noted in our prior decision, in SAIC's normalized costs being substantially understated and unrealistic. Rather than performing our own cost realism evaluation as SAIC argues, we simply inserted the correct subcontractor costs figure for SAIC (as the agency had already determined in the first step of its cost realism evaluation) into the agency's cost realism equation to determine SAIC's normalized probable costs. Thus, rather than substituting our judgment for that of the agency, we merely performed a mechanical calculation, using the Navy's own numbers, that revealed that PRC's probable costs were lower than SAIC's. Indeed, in its reconsideration request, the Navy admits that it used the erroneous and unrealistic subcontract costs proposed by SAIC to calculate SAIC's normalized costs and concedes that SAIC's method II normalized probable costs of performance would be as we calculated them.

SAIC also contends that we should not have used the Navy's second cost realism methodology without first deciding PRC's challenge to the agency's normalization of the offerors' manning to the IGME. At the same time, SAIC contends that the agency properly normalized all offerors' proposed manning levels to the IGME. We did not decide PRC's protest of the agency's normalization of offerors' manning levels because, as discussed in our prior decision, there was no need to do so.⁸ Given SAIC's and the Navy's views that

⁷In contrast, the Navy utilized PRC's subcontract costs, as adjusted in the method I evaluation, in the method II evaluation.

⁸The Navy believed that by normalizing manning levels in the cost evaluation, it was not required to consider in the technical evaluation SAIC's more than 50 percent lower manning than PRC's. Had this been taken into account in the technical evaluation, it would appear that PRC would have
(continued...)

normalization was appropriate, we fail to see how SAIC was adversely affected by the fact that our decision did not address this issue.

SAIC also complains that our decision "does not, 'combine' the two methodologies. Rather the decision simply ignores [method 1 and places total reliance on the [General Accounting Office's] own undisclosed [method 2 cost realism calculation." (Emphasis in original.) SAIC is incorrect. As explained above, the two cost methodologies are part of a two-step process of evaluating and adjusting offerors' proposed costs for realism and normalizing these realistic costs based upon the government's manning estimates. There is no proper method of arriving at a realistic, normalized cost for each offeror, without combining both cost methods.⁹

Both SAIC and the Navy challenge our recommendation that the Navy terminate SAIC's contract for the convenience of the government and make award to PRC. The parties contend that in recommending termination we failed to consider the costs and disruption to the government, and that continuance of SAIC's contract is in the government's best interest. SAIC and the Navy also argue that by recommending termination of SAIC's contract and directing award to PRC we deprived the agency of the opportunity to consider the correct cost realism information and to take "appropriate measures to make a best value award."¹⁰

First, we fail to see how the Navy could make a different "best value" determination based upon the corrected cost

⁸ (...continued)

been considered technically superior to SAIC. In making our first decision, we did not need to resolve this issue.

⁹We also find meritless SAIC's argument that we did not accord enough weight to the first cost methodology, under which SAIC was found to be low offeror. As noted above, both cost methodologies were combined to arrive at a realistic, normalized cost, and this accorded appropriate weight to the first cost methodology. While SAIC was the low offeror under the first cost methodology, it was not the low offeror after its extremely low manning level was normalized to the IGME, the normalization of which SAIC agrees was appropriately done.

¹⁰SAIC also suggests that if the SSA had been aware that SAIC was not the low offeror after its costs were normalized that the agency may have reopened discussions. The record does not support this assertion, and the Navy does not now contend that it would have sought to reopen discussions.

information, as SAIC and the Navy suggest. The Navy found that SAIC's and PRC's proposals were technically equal, a conclusion we did not challenge in our decision. Thus, the only discriminator for the award selection was evaluated cost. See General Research Corp., supra. Since PRC offered the lowest evaluated cost under a proper cost realism analysis--a finding the Navy does not challenge--PRC is entitled to award under the Navy's evaluation methodology; no other award determination would be possible under the guise of a "best value" determination or otherwise.

The Navy's and SAIC's contention--that we did not consider the potential cost and disruption involved in recommending the termination of SAIC's contract and award to PRC--is also not correct. In fashioning our recommendation, we were fully cognizant of the agency's potentially substantial liability for termination costs, given SAIC's on-going contract performance. Nevertheless, in view of our finding that PRC's evaluated costs were more than \$7.6 million lower than SAIC's, we believed that the substantial savings presented by PRC's proposal more than adequately justified the possible termination costs. We were also of the view that any delay in contract performance--entailed by the termination of SAIC's contract and award to PRC--would be minimal, given the agency's testimony at the hearing that both PRC and SAIC intended to use similar hardware. See, e.g., Tr. at 205.

In requesting modification of our recommendation, the Navy and SAIC contend that the termination of SAIC's contract "will seriously impact the [agency's] mission as it will disrupt delivery and increase project costs because much of the awardee's effort will have to be duplicated by the new awardee." Specifically, the Navy identified substantial costs for which it would be liable, that is, \$4.3 million in hardware procurement and software development costs, and \$655,000 in termination settlement costs. In addition, since our decision, SAIC has offered to cap its subcontractor labor rates at those proposed in its BAFO (that is, the subcontractor labor rates that the Navy found unrealistically low), is performing more of the contract work with its own staff, and is performing with more uncompensated overtime hours. The Navy claims that these changes in SAIC's proposed performance significantly reduce SAIC's probable costs of performance, such that SAIC's probable costs of performance are now considered to be \$3.9 million less than PRC's.

PRC argues that, given the similarity between PRC's and SAIC's technical approaches, PRC will be able to utilize

most, if not all, of SAIC's hardware and software development documentation.¹¹ Thus, PRC would not have to duplicate the costs of SAIC's acquisition of hardware and development of software. PRC also objects that SAIC prematurely purchased hardware to increase its costs (as well as incurred fee) in the event of termination. Finally, PRC argues that the Navy has not adequately documented SAIC's "post hoc" offers to cap its subcontractor rates and to provide additional uncompensated overtime in its performance and so these cost reductions should not be considered.

In determining the appropriate recommendation in cases where we find a violation of procurement laws or regulations, we consider all the circumstances surrounding the procurement, including the seriousness of the procurement deficiency, the degree of prejudice to other offerors, interested parties or the competitive procurement system, the good faith of the parties, the extent of performance, cost to the government, the urgency of the procurement, and the impact of the recommendation on the user or contracting agency's mission. See 4 C.F.R. § 21.6(b); Honeywell Info. Sys., Inc., 56 Comp. Gen. 505 (1977), 77-1 CPD ¶ 256. This determination necessarily involves the balancing of competing interests. Here, balancing all the interests presented, we conclude that the termination of SAIC's contract for the convenience of the government may not be in the best interests of the government because of the additional costs to the government and the impact on the user agency's mission; these interests outweigh the prejudice to PRC and the competitive procurement system.

First, the record confirms that the government would incur substantial costs to terminate SAIC's contract and award to PRC since the agency was not required to suspend performance of this contract because it was not filed within 10 calendar days of award. It is true, as PRC argues, that PRC would be able to use most of the hardware that SAIC has purchased for the government. In this regard, the record shows that \$2.1 million of SAIC's hardware costs would not be duplicated by PRC.¹² The record does not establish, however, that PRC can use SAIC's software development information and data; rather, the parties' proposed software solutions and

¹¹The government generally acquires title to property purchased under cost reimbursement contracts and subcontracts. See Federal Acquisition Regulation § 52.245-5(c).

¹²Because we find that most of the hardware can be used by PRC, we do not find that SAIC's allegedly premature purchase of equipment has any bearing on the appropriateness of our recommendation.

approaches to software development do not appear so similar as to compel the conclusion that PRC would be able to generally use this data and information. Accordingly, we find that approximately \$1.5 million for the remaining hardware acquisition costs and software development labor costs would likely be lost if the government terminated SAIC's contract. In addition, it appears that the government could be liable to SAIC for approximately \$655,000 in termination settlement costs.

Also, the record indicates that if SAIC, as it now promises, caps its subcontractor labor rates at the levels proposed in its BAFO and continues to provide significant uncompensated overtime hours as a part of its contract performance, SAIC's probable costs of performance would be approximately \$2 million less than that offered by PRC.¹³ While PRC argues that it is unfair to consider SAIC's post-decision offers to reduce its contract costs, we think consideration of these cost reductions is necessary to determine the actual costs to the government entailed in terminating SAIC's contract. In considering SAIC's offered cap, we recognize the inherent prejudice to PRC that has not been provided with a similar opportunity to match SAIC's now offered cost reductions but do not think that the potential prejudice to PRC in this case outweighs the cost and mission impact if this contract were terminated.

We agree with PRC, however, that the record does not indicate that SAIC has yet bound itself to provide the capped subcontractor labor rates or to continue providing the level of uncompensated overtime hours represented. Accordingly, we think that if the Navy chooses not to terminate SAIC's contract, the agency should enter into a contractually binding agreement with SAIC to implement that firm's promises.

In determining whether termination of SAIC's contract is appropriate, we must also consider the impact on the mission of the user agency--here, the Army.¹⁴ The Navy states that termination of SAIC's contract and award to PRC would result

¹³The record does not confirm that SAIC's probable costs of performance would be \$3.9 million less than PRC's, as claimed by the Navy, although the record does establish that SAIC's probable costs would be, at a minimum, \$2 million less than PRC's, if SAIC's subcontractor labor rates are capped. We calculate this difference in probable costs by reference to the agency's original method II cost analysis.

¹⁴The training simulator system is being procured by the Navy for the U.S. Army Combined Arms Support Command at Fort Lee, Virginia.

in an approximately 6-month delay in performance that would adversely affect planned maneuvers of the Army. PRC does not contend that termination of SAIC's contract would not so delay needed performance, and we therefore conclude that the user agency's interests would be adversely affected by terminating SAIC's contract.

In summary, the record shows that termination of SAIC's contract would result in substantial additional costs to the government and delays in needed performance. Balanced against these substantial interests is the prejudice to PRC, which is not receiving an award to which it was entitled, and to the competitive procurement system. On balance, we find that it is not in the best interests of the government to terminate SAIC's contract, and modify our recommendation accordingly.

Finally, the Navy objects to our finding that PRC is entitled to be reimbursed for the costs of filing and pursuing the protest. The agency argues that we sustained the protest on an issue not raised by the protester and therefore PRC is not entitled to its protest costs. We disagree. As noted above, PRC specifically challenged the Navy's cost realism evaluation, and, thus, its protest was sustained on an issue the protester raised. Moreover, a protester is generally entitled to reimbursement of its protest costs incurred with respect to all issues pursued, where, as here, they are intertwined parts of a successful protest. See, e.g., Omni Analysis; Dep't of the Navy--Recon., 68 Comp. Gen. 559 (1989), 89-2 CPD ¶ 73.

The prior decision, sustaining PRC's protest, is affirmed except that the recommendation is modified to provide that the Navy need not terminate SAIC's contract for the convenience of the government and make an award to PRC. If SAIC's contract is not terminated, the agency should enter into a contractually binding agreement with SAIC that caps SAIC's subcontractor labor rates to those proposed in its BAFO and obligates SAIC to provide the level of uncompensated overtime hours that it represented it would provide. Also, if SAIC's contract is not terminated and PRC does not receive the award, then PRC is entitled to recover its costs of proposal preparation. See Diverco, Inc.; Metalcastello s.r.l., 70 Comp. Gen. 146 (1990), 90-2 CPD ¶ 512. In any event, PRC is entitled to recover its costs of responding to

the Navy's and SAIC's requests for reconsideration. PRC should submit its certified claim for these costs directly to the agency, within 60 working days of receipt of this decision. 4 C.F.R. §§ 21.6(d)1), (f)(1).

for Milton J. Auster
Comptroller General
of the United States