



Comptroller General  
of the United States

Washington, D.C. 20548

147713

## Decision

**Matter of:** PRC, Inc.  
**File:** B-233561.8; B-233561.9  
**Date:** September 29, 1992

L. James D'Agostino, Esq., and Timothy B. Harris, Esq., Wickwire Gavin, P.C., for the protester.  
John R. Tolle, Esq., Barton, Mountain & Tolle, for Communications-Applied Technology Company, Inc., an interested party.  
William A. Richards, Esq., and Scott M. McCaleb, Esq. Department of the Army, for the agency.  
Roger H. Ayer, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

The General Accounting Office dismisses protest of agency's post-award decision to reevaluate proposals using technical specialists--corrective action undertaken to remedy initial evaluators' apparent lack of required technical understanding--to determine whether the award was made on a basis most advantageous to the government, where the protester produces no evidence that the agency decision to reevaluate proposals was made in bad faith or with the specific intent of avoiding an award to the protester.

### DECISION

PRC, Inc. protests the Department of the Army, Corps of Engineers' post-award decision to require reevaluation of the proposals submitted under request for proposals (RFP) No. 19987-010-D5-R, issued by Bechtel National, Inc., the Corps' equipment acquisition representative under contract No. DACA37-89-C-0007 for an in-door radio communication system to be used by chemical weapons disposal personnel, with options for eight additional systems. PRC had been awarded the contract under the RFP.

We dismiss the protests.

The RFP stated that award would be made to the responsible offeror "whose proposal is most advantageous to the Buyer," and that the evaluation factors, listed in descending order of relative importance, were technical,

management, and price. Bechtel awarded the subcontract to PRC, with the consent of the Corps' Huntsville Division, on November 8, 1990. Award was made on the basis of PRC's lower price after the evaluators found the proposals of PRC and Communications-Applied Technology Company, Inc. (CAT), the only other offeror, were technically equal. CAT protested the award on November 15, 1990. There then ensued a series of agency corrective actions, affirmations of the award to PRC, and CAT protests, culminating in a CAT protest on March 23, 1992.<sup>1</sup>

On May 25, 1992, the Corps advised our Office that Army technical experts reviewing materials for a hearing at our Office had questioned the accuracy and adequacy of Bechtel's proposal evaluations and Bechtel's understanding of the significant technical issues underlying the agency's stated requirements.<sup>2</sup> The agency responded to its independent experts' concerns by ordering a new evaluation team to perform a de novo evaluation of the PRC and CAT technical, management, and cost proposals. In performing the reevaluation, the new team is charged with considering whether specification revisions are required. The Corps stated its willingness to undertake additional corrective action should it prove necessary after the reevaluation is completed. This agency corrective action left the award to PRC undisturbed, although the existing stay of performance was continued. On May 27, we dismissed CAT's last submitted protests as academic, in light of the agency's corrective action. The propriety of this corrective action is the subject of PRC's protests filed on June 9 and August 7, respectively.

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<sup>1</sup>CAT withdrew its first protest on December 21, 1990, after the Corps took corrective action terminating the award to PRC for convenience with the intent of reevaluating the proposals. Following a second Bechtel award to PRC, CAT protested on May 16 and July 18, 1991, respectively. These protests were dismissed as academic on September 10, after the Corps took corrective action. After the Corps affirmed Bechtel's award to PRC, CAT filed protests on January 28 and March 23, 1992, respectively.

<sup>2</sup>Up to this time the agency had relied on Bechtel's technical expertise. The agency reports that Bechtel consulted with the Government's Chemical Stockpile Disposal Program design contractor Ralph M. Parsons Company (RMP) and agency personnel about technical specification questions.

PRC contends that the Corps has provided no concrete reason, nor identified any specific deficiencies, that would provide a reasonable basis for conducting a de novo evaluation. Alternatively, PRC claims that it was prejudiced and should not be penalized by the Corps' failure to earlier employ properly qualified evaluators.<sup>1</sup>

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Oshkosh Truck Corp., Idaho Norland Corp., B-237058.2; B-237058.3, Feb. 14, 1990, 90-1 CPD ¶ 274. An agency may convene a new selection board and conduct a new evaluation where the record shows that the agency made the decision in good faith, without the specific intent of changing a particular offeror's technical ranking or avoiding an award to a particular offeror. Burns & Roe Servs. Corp., B-248394, Aug. 25, 1992, 92-2 CPD ¶ \_\_\_\_; Loschky, Marquardt & Nesholm, B-222606, Sept. 23, 1986, 86-2 CPD ¶ 336. We will not object to proposed corrective action where the agency concludes that award was not necessarily made on a basis most advantageous to the government, so long as the corrective action taken is appropriate to remedy the impropriety. See Oshkosh Truck Corp., Idaho Norland Corp., supra; Power Dynatec Corp., B-236896, Dec. 6, 1989, 89-2 CPD ¶ 522.

We note that the Corps is not now proposing to terminate the award, but only to reevaluate proposals and to determine whether the initial evaluation was proper. There is no evidence of bad faith in the Corps' decision. To the contrary, the record contains adequate evidence that the Corps was reasonably concerned that the PRC award may not meet the Corps' actual requirements, in view of technical problems found by Army technical experts that were not earlier recognized because of the Bechtel evaluators' lack of understanding of the significant technical issues

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<sup>1</sup>In effect, PRC's alternate position is that the reevaluation is unfair to PRC because the Corps should not be allowed to (1) take the position that Bechtel's technical evaluation of the proposals was properly performed without complete verification; (2) defend that position for 2 years; and (3) abandon that position upon learning that its evaluation lacks merit.

in this extremely difficult and sophisticated technical area.<sup>4</sup>

PRC, recognizing that the Corps' action was prompted by information received from agency experts, contends that the decision to reevaluate is based on "something other than the stated evaluation criteria" and objects to the agency's use of information beyond that provided in the offerors' proposals.<sup>5</sup> This contention has no merit; an agency should consult with appropriate technical experts, where as here, it suspects that an award may be improper or not in the government's best interests. See generally NITCO, B-246185, Feb. 21, 1992, 92-1 CPD ¶ 212. Contrary to PRC's apparent argument, we are unaware of any time limit on agency's assuring itself that an award is in the government's best interests.

While PRC argues that Bechtel and RMP personnel will be tainted and unable to maintain objectivity in the reevaluation of proposals, there is no evidence of bias against PRC in the initial evaluation, nor is there any basis for us to find that Bechtel or RMP personnel will act improperly in the reevaluation. In sum, PRC has produced no evidence (and the record does not show) that the agency acted in bad faith in ordering the reevaluation of proposals, or that the decision to reevaluate was motivated by the specific intent of avoiding or terminating the award to PRC. See Burns & Roe Servs. Corp., supra. Thus, PRC has stated no valid basis for protesting the Corps' decision to reevaluate its proposals and its requirements.<sup>6</sup>

Since the reevaluation of proposals is still in progress, and there is no reason to assume that the personnel of Bechtel, RMP, or Corps will act improperly, or that the Corps will allow the use of unstated evaluation criteria

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<sup>4</sup>We will not disclose these problems because they concern proprietary information that may give the offerors an unfair competitive advantage.

<sup>5</sup>To the extent that PRC argues that the Corps should defer to Bechtel's evaluation, agency reviewing officials need not accord such deference. See Scheduled Airline Ticket Offices, Inc., B-229883, Mar. 29, 1988, 88-1 CPD ¶ 317.

<sup>6</sup>An agency may suspend a contract award while reevaluating proposals to ascertain whether the award is most advantageous to the government. See Unified Indus., Inc., B-241010; B-241010.2, Dec. 19, 1991, 91-1 CPD ¶ 11.

or overly restrictive specifications, PRC's protest is essentially anticipatory of improper action that has not taken place. Protests that merely anticipate improper action are speculative and premature. See General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512. If upon reevaluating the proposals, the agency finds that a prejudicial impropriety occurred in the award selection or that the RFP or award does not reflect its minimum needs, the agency would then have a reasonable basis to amend the solicitation and/or reopen discussions, as appropriate. See Burns & Roe Servs. Corp., supra; BDM Int'l Inc., 71 Comp. Gen. 363 (1992), 92-1 CPD ¶ 377, aff'd, B-246136.3, May 27, 1992, 92-1 CPD ¶ 472.

The protests are dismissed.'

  
James A. Spangenberg  
Assistant General Counsel

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'Similarly, since this protest is dismissed and PRC has not been, and may not be deprived of its award, there is no legal basis to reimburse its costs of pursuing this protest or its proposal costs. See 4 C.F.R. § 21.6(d) (1992).