



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** HSG-Intelcom  
**File:** B-254750.2; B-254750.3  
**Date:** February 7, 1994

John S. Pachter, Esq., Arthur I. Leaderman, Esq., Jonathan D. Shaffer, Esq., and Carl T. Hahn, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for the protester. Heinz D. Bertram for PAE GmbH, an interested party. Riggs L. Wilkes, Jr., Esq., Captain Gerald P. Kohns, and Jan S. McNutt, Esq., Department of the Army, for the agency. Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest of agency's evaluation of technical and cost proposals is denied where evaluation was reasonable and consistent with the solicitation evaluation criteria.

### DECISION

HSG-Intelcom protests the award of a contract to PAE GmbH under request for proposals (RFP) No. DAJA37-93-R-0089, issued by the U.S. Army Europe Contracting Center for the management and operation of government-owned laundry and dry cleaning facilities at Bad Kreuznach and Würzburg, Germany, and at 19 troop collection points (TCP). HSG contends that the agency's evaluation of technical and cost proposals was unreasonable and inconsistent with the RFP.

We deny the protests.

The RFP covers a base year with two 1-year options. HSG is the incumbent under the two current contracts for Bad Kreuznach and Würzburg.<sup>1</sup> The RFP anticipated a cost-plus-award-fee contract. Contract costs are primarily labor costs for laundry personnel, although there are also

<sup>1</sup>HSG-Intelcom is a joint venture of HSG-Holzmann Technischer Service GmbH and Intelcom Support Services, Inc. Technically, the joint venture is the incumbent only on the Würzburg contract, while HSG-Holzmann holds the Bad Kreuznach contract.

material and other direct costs, as well as indirect costs such as general and administrative (G&A) expenses. The RFP included estimated laundry workloads at each of the sites, but did not set minimum staffing requirements.

Section M of the RFP stated that the evaluation criteria were (1) management and past performance; (2) technical; and (3) cost. The first criterion, management and past performance, was described as approximately 1.5 times as important as the technical criterion, which, in turn, was "significantly more important" than cost.

Section M noted that, while cost was the least important evaluation criterion, "it may become the determinative factor in the source selection decision if competing proposals are judged to be essentially equivalent in terms of the management/past performance and technical areas." Section M also stated that the agency would perform a cost realism analysis "to adjust the proposed cost to arrive at probable cost," and that probable cost would be compared to the offered merits of the management/technical proposal.

Timely proposals were received from HSG and PAE. While the agency evaluators noted various weaknesses in each proposal, HSG's proposal received a significantly higher technical score than PAE's. With respect to PAE's proposal, the source selection evaluation board (SSEB) noted that final commitment of proposed personnel as to salary or wages was lacking, and that proposed staffing of the TCPs did not allow for employees to be absent for 25 percent of the time (for annual and sick leave or for training, labor meetings, and the like), which the SSEB apparently believed was the likely absentee rate. Several evaluators criticized PAE's proposed staffing as too low in various respects. HSG's proposed staffing was criticized as too high for the base period and first option year, and too low for the second option year.

The criticism of both offerors' proposed staffing was apparently based primarily on a comparison of the proposed staffing for each year with the agency's estimate of 88.5 staffyears as the anticipated need for each year of contract performance. That is, PAE's proposed staffing was criticized for falling short of the 88.5 staffyear figure, while HSG's was downgraded for being above that figure for the first 2 years of performance and below it for the final year.

HSG proposed a higher G&A rate and a higher award fee than did PAE. Some of PAE's proposed base labor rates were lower than HSG's, even though PAE indicated that it intended to retain at least some incumbent employees. The cost evaluators expressed uncertainty about whether PAE would be

able, consistent with the local equivalent of a collective bargaining agreement, to lower the base labor rate of incumbent employees.

Discussions were held with both offerors. During those discussions, the agency raised its concerns with each offeror. Among the points raised with PAE, the Army noted that commitment from proposed personnel was conditional, subject to agreement on salary or wages; some of the proposed staffing in particular tasks was inadequate; and that, in evaluating the proposed staffing level of 73, "[o]verall, it is the Government's opinion that PAE understaffed the requirement by approx[imately] 15 personnel."

Among other matters raised during the discussions with HSG, the agency stated that, "[o]verall, it is the Government's opinion that [HSG] overstaffed the basic year requirement by approx. 7 personnel; the 1st option year requirement by approx. 3 personnel; and understaffed the 2nd option year requirement by approx. 2 personnel." An arithmetical calculation--adjusting the proposed staffing by the corrections mentioned in the government's "opinion"--indicated to HSG that the government believed that 88 personnel were needed each year for the contract work.

Upon completion of written and oral discussions, best and final offers (BAFO) were requested from both offerors. HSG's BAFO proposed decreased staffing for the 2 years as to which the agency had indicated during discussions that HSG's staffing appeared high, and increased staffing for the year where the agency had indicated that HSG's proposed staffing was low. As a result, HSG's BAFO proposed 87 staffyears per year of performance. The BAFO stated that the cost proposal had been revised to reflect these staffing changes: "The overall cost for performing the laundry contract has been reduced because the total number of people was decreased based on the Government's comments about overstaffing."

In its BAFO, PAE raised its labor rates. It also confirmed that it had obtained final commitments from its proposed project manager and plant manager, no longer subject to agreement about salary. The BAFO stated that the plant manager's commitment had been given orally rather than in writing, due to her being on vacation and unavailable to provide a written commitment.

PAE's BAFO addressed the government's concern that the initial proposal was understaffed by 15 staffyears. The offeror explained its technical approach, which relied on the extensive use of half-day and other part-time personnel to fill in during absences of TCP operators. The BAFO explanations detailed the work methods to be applied at TCPs

as well as in the laundries and on delivery routes. PAE also explained that its staffing method has historically permitted the company to have significantly lower absentee rates (whether due to leave or excused absences) than the government had estimated, and that PAE had achieved an overall absentee rate of 15 percent, rather than the 25 percent rate suggested by the Army.

In addition to presenting a rationale for its proposed staffing, PAE added one full position to TCP operations in Würzburg and one half position at another TCP. Including other increases offered in response to the government's concern, PAE proposed 4.5 more positions in its BAFO than in its initial proposal. Nonetheless, its BAFO staffing level, 78 personnel, remained significantly below the agency's estimate of 88.5 staffyears.

The SSEB evaluation of BAFOs increased the technical score for PAE's proposal significantly, relative to the score assigned to that company's initial proposal; the score for HSG's proposal remained unchanged. While HSG's proposal's BAFO score was somewhat above the score assigned to PAE's BAFO, the SSEB found both proposals "excellent." The SSEB did identify a few outstanding issues regarding PAE's proposal. Among those issues was the fact that only a telephonic commitment had been obtained from PAE's proposed Würzburg plant manager, and remaining concern that PAE's proposed staffing was "a little low" based on the SSEB's continuing disagreement with the offeror's estimated absentee rate.

The BAFO cost evaluation noted that the primary reason for the significant cost difference between the two companies' BAFOs was PAE's proposed use of 78 staffyears per year, as opposed to HSG's proposal to perform using 87 staffyears. The memorandum from the chief of the Financial Services Branch to the contracting officer noted that the cost evaluators "understand that the technical evaluation has approved staffing levels for both bidders." The cost evaluators observed that PAE's lower G&A rate and lower award fee accounted for part of the cost difference between the two BAFOs; the evaluators also noted that PAE (unlike HSG) proposed to cap its G&A rate, which would be "especially beneficial" to the government in light of the cost-reimbursement nature of the contract.

The contracting officer, who served as the source selection official, reviewed the SSEB report and the cost evaluation, and concluded that the two BAFOs were essentially equivalent under the managerial/past performance and technical criteria. The contracting officer explicitly confirmed that the overall staffing proposed by PAE had been found acceptable. The contracting officer found that PAE's cost

proposal contained no questionable cost elements which would affect its validity or cost realism. Specifically, the contracting officer concluded that PAE's cost proposal was realistic in light of PAE's technical/management proposal. Accordingly, the contracting officer determined that PAE's BAFO was the more advantageous to the government, cost and other factors considered. Award was made to PAE on August 30, 1993.

HSG contends that PAE's technical proposal failed to satisfy certain RFP requirements, and that the agency lacked a reasonable basis for the determination that the two competing technical proposals were essentially equivalent. We disagree.

Our Office will not question an agency's evaluation of proposals unless the agency deviated from the solicitation evaluation criteria or the evaluation was otherwise unreasonable. Payco American Corp., B-253668, Oct. 8, 1993, 93-2 CPD ¶ 214. HSG's primary challenge to the technical evaluation is that, in HSG's view, PAE's proposed staffing was "objectively inadequate to perform the requirements of the RFP." Our review indicates that there is nothing in PAE's staffing proposal inconsistent with the RFP requirements, which, as noted above, do not set forth mandatory minimum staffing levels.<sup>2</sup>

HSG, however, does not believe that PAE's proposed staffing level is reasonable, because it will not permit the company to perform the laundry services at issue in this procurement. HSG has provided no basis for our Office to find unreasonable the agency's considered judgment, as set forth in the contemporaneous documents, that PAE's staffing was acceptable. The evaluation of the technical adequacy of an offeror's technical approach, such as PAE's proposed staffing here, is within the discretion of the contracting agency, see Payco American Corp., supra, and the agency has not abused that discretion. While it is true that PAE's proposal's BAFO score was much higher than the score assigned to the company's initial proposal, that improvement appears reasonable, in light of the explanations for the

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<sup>2</sup>Although one employee's commitment was provided by telephone, rather than through a written statement, as the RFP apparently anticipated, we find reasonable the agency's conclusion that the difference between a telephonic commitment and a written statement was inconsequential in the context of this procurement.

staffing offered by PAE during discussions and in the BAFO; the contemporaneous record indicates that the agency's concerns about PAE's staffing had been resolved.<sup>3</sup>

HSG attempts to establish that the agency, during discussions, set a staffing requirement of approximately 88 staffyears and that PAE's proposal fails to satisfy that requirement. The record does not support HSG's allegation in this regard. While the agency, during discussions, criticized both offerors wherever their initial proposals deviated from the agency's 88-staffyear estimate, nothing in the record indicates that offerors could not justify, in their BAFOs, deviation from that estimate.<sup>4</sup> HSG is essentially suggesting that the agency, without amending the RFP, precluded offerors from deviating from the government staffing estimate, regardless of the offerors' justification; such action by the agency, if it had happened, would have been improper. See Foundation Health Fed. Servs., Inc.; QualMed, Inc., B-254397.4 et al., Dec. 20, 1993, 93-2 CPD ¶ \_\_\_\_. The record here does not indicate that the agency established, or indicated to any offeror that it had established, a minimum mandatory staffing requirement.<sup>5</sup> Since the RFP was not amended to

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<sup>3</sup>Although HSG complains that the contemporaneous documentation fails to support the agency's decision to rate PAE's proposal's score substantially higher than the initial proposal, the record contradicts this contention. In contrast to the initial SSEB report indicating considerable concern about PAE's proposed staffing due to a question about PAE's absenteeism estimate, the SSEB's BAFO report suggested only that PAE's staffing was "a little low." The contracting officer reviewed PAE's rationale for its absenteeism estimate and found it reasonable; HSG has not shown that PAE's estimate of the absenteeism rate was unreasonable. In addition, the contracting officer's contemporaneous memorandum specifically stated that PAE's staffing had been found acceptable.

<sup>4</sup>We note that, if the agency had transformed its 88-staffyear estimate into a minimum requirement, HSG's proposed use of 87 staffyears in its BAFO would have been technically unacceptable.

<sup>5</sup>HSG contends that it was constrained from proposing lower staffing levels in its BAFO by the agency's imposition of a rigid minimum staffing requirement during discussions, and that the agency misled the protester in this regard. This argument is both implausible on its face and without support in the record. In addition to the lack of evidence that the agency imposed a rigid minimum staffing requirement, we note  
(continued...)

incorporate an 88-staffyear requirement, for the agency to find PAE's BAFO technically unacceptable for failure to conform to a 88-staffyear level (as HSG urges) would have been improper, because it would constitute evaluation based on criteria not stated in the solicitation. See Federal Acquisition Regulation (FAR) § 15.608(a).

Accordingly, we conclude that the Army's evaluation of PAE's technical proposal was both reasonable and consistent with the RFP evaluation criteria. Because the technical evaluation indicated that the competing BAFOs were both excellent and that no significant technical difference existed between them, it was reasonable for the contracting officer to determine that the technical proposals were essentially equal.

With respect to cost proposals, HSG contends that the agency failed to perform an adequate cost realism analysis of PAE's proposal and that, if such an analysis had been performed, the agency would have concluded that PAE's proposed costs were significantly understated. In this contention, HSG again relies largely on its belief that PAE's proposed staffing was inadequate and that actual staffing would be higher, and therefore more costly for the government. Because, as explained above, the agency reasonably determined that PAE's proposed staffing was adequate, HSG's challenge to the cost evaluation in this regard is without merit.<sup>6</sup>

Finally, HSG argues that the agency should have added to PAE's proposed costs the termination and severance costs which HSC asserts that the government would have to bear, under German law, as a result of PAE's failure to hire all of HSG's incumbent employees, or PAE's treatment of incumbent employees as new hires. The agency denies that it

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<sup>5</sup>(...continued)

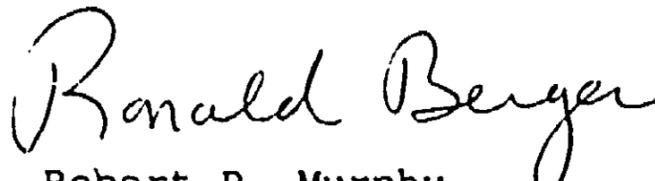
that HSG's BAFO makes no reference to such a requirement; instead, it sets forth the company's view that it proposed the lowest staffing level that it believed appropriate to the work. Thus, even if it is assumed, arguendo, that the agency had imposed a rigid minimum staffing requirement, that requirement had no impact on HSG, which chose to propose 87 staffyears in its BAFO based on the company's technical approach.

<sup>6</sup>HSG also contends that PAE's proposed costs were not realistic because PAE's labor rates were unrealistically low. The agency responds that the two companies proposed virtually the same labor rates in their BAFOs. HSG does not dispute this, hence the protester's challenge to the realism of PAE's labor rates lacks a factual basis.

will have to bear those costs, and argues that HSG, as the incumbent, was fully aware that the Army has denied the applicability of the German law provision at issue to these laundry contracts. See PAE GmbH Planning and Constr., B-250470, Jan. 29, 1993, 93-1 CPD ¶ 81, aff'd, B-250470.2, July 22, 1993, 93-2 CPD ¶ 45. In addition, the Army notes that, if such costs do need to be paid, they will be incurred under HSG's predecessor contracts, not under the contract at issue in these proceedings.<sup>7</sup> Accordingly, we conclude that the Army acted properly in not adjusting PAE's proposed costs on this basis under this solicitation.

In sum, the Army received two BAFOs in this procurement that were evaluated as excellent and essentially equal technically. While predicting actual costs always involves uncertainty, see FAR § 15.605(d), the Army reasonably chose the proposal that provided a rationale supporting a proposed reduction in the most significant cost component, staffing. Even if the Army had assumed, however, that not all of PAE's savings in staffing costs would be realized, the agency could nonetheless have reasonably selected PAE for award, since its proposal included a lower, and capped, G&A rate as well as a lower award fee.

The protests are denied.

*for*   
 Robert P. Murphy  
 Acting General Counsel

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<sup>7</sup>We note that HSG apparently made no reference to such costs in its proposals for those contracts; nor did it mention them in its initial proposal or BAFO under this solicitation, even though any reduction in staffing between HSG's current staffing and the level proposed in HSG's BAFO also would presumably have led, in HSG's view, to such costs being incurred.