



## Decision

**Matter of:** Pacific Architects & Engineers, Inc.

**File:** B-257431.7

**Date:** December 8, 1994

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Capt. Gerald P. Kohns, Department of the Army, for the  
agency.  
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GAO, participated in the preparation of the decision.

### DIGEST

1. Contracting agency properly may consider offeror's efficiency in performing the required work when evaluating the relative merits of proposals, even where the request for proposals does not specifically list efficiency as an evaluation factor.
2. Contracting agency reasonably rated protester's proposal as acceptable, rather than the higher rating the protester asserts it warranted in four areas, where the record shows that agency evaluators considered information presented in the proposal and the evaluation was consistent with the evaluation scheme set forth in request for proposals.
3. Agency conducted meaningful discussions regarding the protester's phase-in plan where the agency advised the protester of deficiencies/weaknesses in its initial plan, the protester made relevant revisions, and the protester received higher ratings on this aspect of its best and final offer.

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\*The decision issued December 14, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

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4. Protest that the agency should have increased the protester's management/technical evaluation score to compensate for the upward cost adjustments the agency made in performing a most probable cost analysis is denied, because the request for proposals clearly stated that cost realism and most probable cost assessments would be based on the technical and management approaches proposed by offerors, and it's the offeror's obligation, not the agency's, to prepare a full and complete proposal.

5. Agency properly did not consider cost savings protester alleges could be realized from its proposal to [DELETED], where the agency reasonably determined that the alleged savings were highly speculative.

6. Contracting agency properly decided to award cost-type contract to the offeror of the higher-rated, higher-cost proposal, where the request for proposals stated that technical and management factors were considered more important than cost and the agency reasonably determined that the awardee's technical and management superiority was worth the associated additional cost.

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#### DECISION

Pacific Architects & Engineers, Inc. (PAE) protests the Department of the Army's award of a contract for logistics support services (LSS) to Range Systems Engineering (RSE) under request for proposals (RFP) No. DASG60-93-R-0017. The protester contends that the Army: (1) improperly used an evaluation factor that was not set forth in the RFP in evaluating RSE's proposal; (2) unreasonably downgraded PAE's proposal in evaluating the technical and management evaluation areas; (3) did not hold meaningful discussions with PAE concerning perceived deficiencies in the protester's phase-in plans; (4) incorrectly evaluated PAE's most probable cost; and (5) added costs to PAE's proposal during the most probable cost analysis but did not correspondingly upgrade the PAE technical evaluation to reflect the additional spending levels.

We deny the protest in part and dismiss it in part.

Issued on July 12, 1993, the RFP requested offers for providing logistics and base support services to the United States Army Kwajalein Atoll (USAKA) in the Republic of the Marshall Islands. The RFP envisioned award of a cost-plus-award-fee, level-of-effort contract that would include a 2-month phase-in period, a 2-year base performance period, and three 2-year option periods. The RFP stated that the Army would award the contract to the offeror whose proposal represented the best value to the government based upon an evaluation of technical, management, and cost areas of each

proposal. The RFP stated that cost was a substantial evaluation factor but was less important than the technical and management areas which were equal in importance.

Kwajalein Atoll is the location of a government-owned, contractor-operated major range and test facility base, an antiballistic missile test range, and a defense site. The primary missions of the USAKA are to support the developmental and operational testing of strategic defensive and offensive ballistic missile systems, ballistic missile defense discrimination research, and to conduct space surveillance functions for the Department of Defense. Other government agencies supported by USAKA include the National Aeronautics and Space Administration, the Department of Energy, and the Defense Nuclear Agency.

To allow Atoll major range and test facility base users and tenants to attract and retain the highly skilled personnel required for conducting their technical operations, the contractor is to provide a wide variety of support services comparable to that which would be available to a scientific and technically oriented civilian community in the United States. The contractor will provide a range of services in 11 functional areas including: (1) program support (personnel administration and financial, property, and data management); (2) operation and maintenance of facilities assets; (3) supply and transportation requirements; (4) aviation; (5) automotive and related equipment; (6) marine vessels and operations; (7) retail merchandising activities; (8) food services; (9) community activities (including religious services, hobby shops, and recreational programs); (10) medical and dental programs; and (11) education (preschool through high school, including special education and adult education).

Six offers, including PAE's were received by the July 20 closing date for receipt of initial proposals. All six proposals were included in the competitive range. Discussions were conducted with each competitive range offeror, and best and final offers (BAFO) were received by March 14, 1994, BAFOs were evaluated for technical merits and to establish the total evaluated probable cost of each offer. After consideration of the source selection evaluation board's (SSEB) final report and a briefing by the source selection advisory council, on May 13, the source selection authority selected RSE for award, and on May 20, the contract was awarded to that firm. PAE filed its initial protest in our Office on May 27, and filed a supplemental protest on August 1 in its comments on the Army's report on the initial protest.

The protester contends that the Army improperly considered RSE's unique capability and proposal to consolidate the present LSS contract with an existing Army contract for integrated range engineering (IRE) services<sup>1</sup> in evaluating the technical and management areas of proposals. The protester also speculates that, in performing a most probable cost analysis, the Army credited RSE's proposal with theoretical cost savings for the government [DELETED] "thereby justifying the nearly [DELETED] cost difference between the two offers." PAE asserts that by adding "consolidation" as a factor the Army improperly introduced an evaluation factor that was not identified in the RFP into the evaluation process.

Our Office has already considered and resolved the identical issue of whether the Army improperly evaluated RSE's proposed "consolidation" in this procurement. See Johnson Controls World Servs. Inc., B-257431; B-257431.5, Oct. 5, 1994, 94-2 CPD ¶ 222. We concluded that the RFP sufficiently informed all offerors that any approach to performing the required work that offered economy, efficiency, or better quality services was welcomed by the Army and would be considered in the evaluation of proposals. The fact that the RFP did not specifically identify sharing of resources between contracts as a major evaluation factor did not preclude its consideration in connection with efficiency and effectiveness under evaluation criteria to which it is reasonably related, and the Army properly considered RSE's unique capability and proposal [DELETED]. See Human Resources Research Org., B-203302, July 8, 1982, 82-2 CPD ¶ 31. This protest involves the same documentation and arguments, and PAE has not provided any basis to warrant a change in our prior decision.

Regarding PAE's assertion that the Army's most probable cost analysis credited RSE with theoretical cost savings the Army might realize as a result of RSE's consolidation of the IRE and LSS contracts, the Army denies that it gave RSE (or any other offeror) credit for potential, in-house cost savings and denies that it made any downward adjustments to RSE's proposed labor costs [DELETED]. Since the RFP specified the level of effort (i.e., number of man-hours) upon which offers were to be based, the Army points out that the only cost evaluation benefit which RSE received [DELETED]. The cost evaluation documents contain no evidence that the Army reduced RSE's proposed costs [DELETED] the Army might garner

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<sup>1</sup>RSE is the incumbent contractor performing IRE services for the Army. Under the IRE contract, RSE provides highly sophisticated engineering support services for complex radar and electronic equipment on the Atoll.

in the future as a result; therefore, the allegation provides no basis to overturn the award. See Abt Assocs., Inc., B-253220.2, Oct. 6, 1993, 93-2 CPD ¶ 269.

The protester argues that the Army's technical and management evaluation "was flawed in that entire areas of PAE's proposal were overlooked in the evaluation process, thereby resulting in an improperly low overall technical rating." PAE asserts that the evaluation panel gave its proposal a rating that was too low in four specific areas: (1) corporate capability, (2) key personnel, (3) site manager, and (4) phase-in plan.

Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206. In reviewing an agency's evaluation, we will not reevaluate proposals but instead, will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Id. While PAE disagrees with the Army's evaluation, the protester's mere disagreement provides no basis to find the evaluation unreasonable. Id. For the reasons that follow, we believe that the Army's evaluation of PAE's proposal was reasonable.

Corporate capability and experience was one of two factors upon which proposals were evaluated within the technical area evaluation. PAE alleges that the evaluation team improperly downgraded its proposal on this factor and did not consider PAE's use of [DELETED]. The Army strenuously denies that the SSEB overlooked any areas of PAE's proposal and states that PAE did not demonstrate in its proposal that it [DELETED] had sufficient relevant experience to warrant a rating better than the "acceptable" which it received.

Contrary to PAE's assertion, the evaluation documents show that the evaluation team was aware of and considered PAE's [DELETED]. In fact, the summary report on PAE's management evaluation begins by noting that PAE proposed [DELETED]. Moreover, the record shows that the evaluators were favorably impressed by PAE's [DELETED] in some instances. For example, the evaluation team rated PAE's proposal as "good" on the [DELETED] of the technical approach,

understanding the SOW, [DELETED] and commented, [DELETED]. The evaluators also rated PAE's proposal as "good" on the [DELETED] subfactor and commented that PAE's [DELETED].<sup>2</sup>"

Furthermore, the evaluation record shows that rather than being downgraded on [DELETED] PAE's proposal was rated as "acceptable." Consistent with the RFP's evaluation scheme, the evaluation team noted that PAE's proposal showed that PAE had ample experience in some functional areas [DELETED], while PAE lacked extensive experience in other functional areas [DELETED]. In sum, the evaluators reasonably determined that PAE's "[DELETED] keeps their rating in this area at the acceptable level." [Emphasis in original.]

The protester contends that its proposal was improperly downgraded because [DELETED]. PAE believes that this was improper because there was no specific RFP requirement that proposed key personnel be employed by an offeror prior to contract award. PAE further contends that the evaluators ignored the relevant experience of the personnel it proposed for key positions.

Even though the RFP did not require that all proposed key personnel be employed by an offeror, we think the Army reasonably could consider the fact that [DELETED].<sup>3</sup> While agencies are required to identify in the RFP all major evaluation factors, they are not required to explicitly identify the various aspects of each which might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria. Human Resources Research Org., supra. Here, the RFP included at least three subfactors within the management area evaluation that reasonably relate to and encompass evaluation of PAE's [DELETED].

The RFP stated that in evaluating the management approach subfactor:

"The offeror's proposal will be evaluated to determine the extent to which it demonstrates a comprehensive, cohesive and well-defined

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<sup>2</sup>Of the 11 subfactors in the technical approach, understanding the SOW, and staffing factor, PAE received only four "good" ratings (six were rated as "acceptable" and one as "marginal"). As our examples show, two of the good ratings in functional areas of the SOW were, at least in part, attributable to [DELETED].

<sup>3</sup>The record shows that PAE proposed [DELETED].

management approach suited to the successful accomplishment of the requirement of the SOW, including staffing . . . ." [Emphasis added.]

In describing the personnel policies and benefits as a subfactor, the RFP stated:

"The offeror's proposal will be evaluated to assess the extent to which: the proposed personnel policies and benefits, including compensation, overtime pay, recruitment plans and planned sources of personnel demonstrate that a qualified and stable work force can be obtained and retained . . . ." [Emphasis added.]

The RFP also described the contract management approach subfactor and stated:

"The offeror's proposal will be evaluated to assess the extent to which . . . the proposed organizational structure, experience and qualifications of key management personnel, . . . and position of the contract project in the overall corporate structure demonstrate a corporate commitment to ensure successful contract performance . . . ." [Emphasis added.]

The evaluation team rated PAE's proposal as acceptable in the management area but expressed two major concerns. First, the evaluation team was concerned that [DELETED], in the evaluation team's words, "[DELETED]." The team also noted that few of the proposed key personnel had [DELETED]. One of the evaluators summarized the perceived problem as follows:

"[DELETED]."

In this connection, the contracting officer reported that:

"[DELETED]."

Second, the evaluators were troubled because PAE [DELETED]. The contracting officer states that this created the impression among the evaluators that PAE's [DELETED] and "[DELETED]." For example, during negotiations, PAE [DELETED] when the evaluation team asked for [DELETED]. A second example involved the proposed [DELETED]. One of the evaluators summarized this disturbing aspect of PAE's proposal by stating:

"[DELETED.]"

The Army's evaluation of and concerns related to PAE's key personnel were both reasonable and encompassed by the above-stated evaluation subfactors. [DELETED] suited to the successful accomplishment of the requirement and a corporate commitment to successful contract performance.

The protester next takes issue with the Army's evaluation of PAE's proposed site manager. PAE contends that the Army improperly downgraded its proposal on the basis that PAE's proposed site manager's [DELETED].

The RFP specifically stated that the decision-making authority of the proposed site manager would be evaluated as part of the evaluation of an offeror's contract management approach. PAE proposed as its site manager a person who was [DELETED]. Recognizing this, PAE proposed as a solution the use of [DELETED]. Specifically, PAE proposed that [DELETED]. Because the site manager is such a critical position in a contract of this magnitude and diversity, the evaluators were reasonably concerned that [DELETED]. One of the evaluators considered PAE's solution regarding [DELETED]. The contracting officer points out that the Commander, USAKA, would be seriously hampered by [DELETED]. The SSEB and the source selection authority considered PAE's solutions to the problem and reasonably concluded that it was a disadvantage. Notwithstanding, the evaluators rated PAE's proposal as acceptable on this subfactor, and PAE has no credible basis to object to this evaluation.

The protester also complains that the Army did not conduct meaningful discussions with it concerning perceived deficiencies in its proposed phase-in plan. PAE contends that it proposed extensive phase-in plans that were designed to overcome the fact that [DELETED]. PAE believes its proposal should have received a higher rating based upon these outstanding features of its phase-in plan.

Agencies are required to conduct meaningful discussions with all competitive range offerors. Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306. In order for discussions to be meaningful, contracting officials must advise offerors of deficiencies in their proposals and afford offerors an opportunity to revise their proposals to satisfy the government's requirements. Id. However, the agency is not obligated to discuss every aspect of an acceptable proposal that receives less than the maximum score. Id.; Veco/W. Alaska Constr., B-243978, Sept. 9, 1991, 91-2 CPD ¶ 228.



The phase-in plan was evaluated as part of the personnel administration subfactor of the management approach evaluation factor.<sup>4</sup> In its initial proposal, PAE proposed [DELETED]. However, this plan was noncompliant with the RFP which specified that [DELETED], and the contracting officer refused to approve the plan because she thought it would [DELETED]. Generally, the evaluators thought the plan was well structured, but they were concerned that the plan lacked detail [DELETED]. One evaluator criticized PAE's plan as [DELETED]. The individual evaluators gave PAE's initial proposal ratings for its phase-in plan ranging from "marginal" to "acceptable" and indicated that it was not compliant with the RFP's [DELETED].

The perceived deficiencies were raised with PAE during discussions and PAE made relevant revisions in its BAFO. The BAFO evaluation documents show that the ratings for PAE's phase-in plan improved with individual evaluators rating it in the "acceptable" to "good" range. The evaluators noted that it was compliant with the RFP start-up date and contained no deficiencies. The consensus of the evaluators was:

"[DELETED]."

That the discussions with PAE were, in fact, meaningful is confirmed by the fact that the firm's phase-in plan rating improved, the initial unacceptable phase-in plan was made technically acceptable, and no deficiencies were cited. See Medical Serv. Corp. Int'l, B-255205.2, Apr. 4, 1994, 94-1 CPD ¶ 305. While PAE believes it should have received a higher rating on this aspect of its proposal, PAE's mere disagreement with the agency evaluators does not render the agency's evaluation unreasonable. Id.

PAE next asserts that the Army's evaluation was improper because the Army added costs to PAE's proposed costs in calculating PAE's most probable cost to perform the work, but the Army did not make corresponding increases in PAE's technical and management evaluations to reflect the additional spending levels. This argument is without merit.

Generally, the contracting agency's evaluation of proposed costs includes an examination of whether the proposed costs are supported and realistic in terms of the offeror's proposed technical approach. See, e.g., Consolidated Safety Servs., Inc., B-252305.2, Oct. 14, 1993, 93-2 CPD ¶ 225. In the present case, it was clear from the RFP itself that the Army's cost realism assessment and computation of the most

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<sup>4</sup>PAE's initial proposal and its BAFO were considered acceptable on this subfactor.

probable cost of completing the contract was to be based upon the management and technical approaches as they were conceived and presented by the offerors in their proposals. Regarding cost realism, the RFP stated in part:

"The proposal will be evaluated to assess the likelihood that the technical and management approaches proposed can be accomplished at the cost proposed . . . . The cost realism evaluation will also be used in developing total evaluated probable cost." [Emphasis added.]

Regarding total evaluated probable cost, the RFP stated in part:

"The proposal will be evaluated to develop the government's estimate of the most probable cost to the government of successfully completing the contract using the technical and management approaches proposed." [Emphasis added.]

Furthermore, it is always the offeror's obligation, not the agency's, to design an approach and assemble a management team to do the required work and to prepare a full and complete proposal for consideration by the agency. For example, to the extent a proposal contains deficiencies or weaknesses that are due to an offeror's lack of diligence or competence in preparing its proposal, the agency need not even discuss the deficiencies or weaknesses with the offeror. Here, in our view, PAE's contention that an agency must credit PAE's proposal with an improved technical score to compensate for the agency's cost adjustment arising from a most probable cost analysis has no basis in either law or logic.

The protester next contends that the Army improperly evaluated the total evaluated probable cost represented by its proposal. PAE states that it proposed to [DELETED], resulting in a corresponding reduction in the Army's costs for [DELETED]. PAE argues that it should have received credit in the most probable cost analysis for these ancillary savings to the government.

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<sup>5</sup>The evaluation team initially recommended adding a total of [DELETED] to PAE's proposed costs. Of this total, [DELETED] in upward adjustments was associated with the evaluation team's determination that PAE proposed [DELETED]. The source selection authority rejected the [DELETED] in upward adjustments associated with [DELETED], but he did accept the other recommended increases of approximately [DELETED].

We agree with the agency that the cost savings for which PAE believes it should have received credit did not warrant any downward adjustment to PAE's total evaluated probable cost. See Mirada Assocs., B-245974, Jan. 30, 1992, 92-1 CPD ¶ 142, and cases cited. The Army reports that these support services must be provided at fully operational levels to support the entire USAKA population and could not be eliminated or significantly reduced because the number of American workers might be reduced in the future. For example, the Army reports that there is a waiting list for USAKA housing and that reducing the number of Americans at USAKA would not reduce the number of houses or the need to maintain such housing in the Atoll's highly corrosive, tropical environment. In these circumstances, the agency reasonably determined that the ancillary cost savings that PAE claims award to it would save the government are too speculative to be considered. See EER Sys. Corp., 69 Comp. Gen. 207 (1990), 90-1 CPD ¶ 123.

As to the separate question of whether the Army improperly added approximately [DELETED] in other costs to PAE's proposed costs as alleged, the record shows PAE suffered no competitive prejudice by the addition of this amount to its total evaluated probable cost. See Medical Serv. Corp., Int'l, supra. The source selection authority selected RSE for award on the basis of RSE's better technical and management evaluation even though RSE's total proposed costs were significantly higher than PAE's.<sup>6</sup> In response to this protest, the source selection authority submitted an affidavit in which he stated, in relevant part:

"[DELETED]."

In a negotiated procurement, a procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and is consistent with the evaluation scheme set forth in the RFP. Medical Serv. Corp. Int'l, supra; Systems Eng'g Assocs. Corp., B-231597, Oct. 4, 1988, 88-2 CPD ¶ 315. We have upheld awards to higher rated offerors with significantly higher proposed costs where it was determined that the cost premium was justified considering the significant technical superiority of the selected offeror's proposal. Id.

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<sup>6</sup>RSE's total proposed cost was approximately [DELETED] and its total evaluated probable cost was [DELETED], while PAE's total proposed cost was approximately [DELETED] and its total evaluated probable cost was [DELETED] (after the source selection authority reduced it by [DELETED]).

The RFP stated that evaluation of the technical and management areas were equal in importance and were more important than cost. In the technical area evaluation, RSE's proposal received an exceptional rating while PAE's received an acceptable rating. Within the technical area, there were two factors: technical approach, understanding the SOW and staffing; and corporate capability and experience. On the more important factor, technical approach, understanding the SOW and staffing, RSE's proposal was rated as exceptional while PAE's was only rated acceptable. On the corporate capability and experience factor, RSE's proposal was rated as good while PAE was only rated acceptable. Moreover, there were 11 subfactors listed under the technical approach, understanding the SOW and staffing factor. On these 11 subfactors, RSE's proposal received 6 exceptional ratings, 4 good ratings, 1 acceptable rating, and no marginal ratings; on the other hand, PAE's received no exceptional ratings, 4 good ratings, 6 acceptable ratings, and 1 marginal rating.

In the management area evaluation, RSE's proposal again was evaluated as exceptional, and PAE's was only evaluated as acceptable. Within the management area, the following four factors were considered: management approach, personnel policies and benefits, contract management plan, and subcontracting plan. On these factors, RSE's proposal received three exceptional ratings and one acceptable rating, while PAE's received three acceptable ratings and one marginal rating. Moreover, there were five subfactors listed under the management approach factor. On these subfactors, RSE's proposal received three exceptional and two good ratings, while PAE's received one exceptional rating, one good rating, and three acceptable ratings.

The source selection authority stated that, after considering the technical, management, and cost evaluations, it was his opinion that RSE's proposal represented the "best overall value" to the government. The source selection authority also stated that he was particularly impressed with RSE's proposal exceptional ratings in both the technical and management areas. The source selection authority also noted that RSE's proposal included a large number of significant advantages, which he enumerated, and no significant disadvantages or deficiencies.

Regarding PAE's proposal, the source selection authority noted that it was rated as only acceptable in both the technical and management evaluations. While the source selection authority noted that there were several advantages to PAE's proposal, he also listed 13 disadvantages including, among others: [DELETED]. In addition, the

source selection authority cited as a deficiency in PAE's proposal the fact that [DELETED]. The source selection authority summarized his opinion on the cost/technical tradeoff as:

"Viewed as a whole, the additional cost of RSE's proposal is well worth the premium in comparison to the numerous disadvantages and the deficiency discussed in relation to PAE's proposal."

The source selection authority's decision to select RSE instead of PAE for award was reasonable and consistent with the RFP's evaluation scheme. In view of the discretion entrusted to the source selection authority, and because he stated that he would make the same decision for the same reasons even if no additional costs were added to PAE's proposed cost, PAE cannot have suffered any competitive prejudice regarding the computation of PAE's most probable cost. See, e.g., Environmental Sys. and Servs., Inc., B-244213, Oct. 2, 1991, 91-2 CPD ¶ 283. There is ample support for the selection of RSE's proposal with or without the addition of costs in calculating the most probable cost of PAE's proposal.

Finally, in its August 1, 1994, letter commenting on the agency's report on its initial protest, PAE raised a host of new protest issues concerning the technical/management and cost evaluations of both its own and RSE's proposals. We will not consider these allegations because they are untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1994), protests of this nature must be filed within 10 working days after the protester first knew, or should have known, its bases of protest. The record shows that the Army provided PAE with all of the evaluation materials--including the source selection document, RSE's proposal, and documents concerning both PAE's and RSE's evaluations--on July 15. Because PAE waited until August 1--the 11th working day after it received the materials--to file these issues in our Office, they are untimely.

The protest is denied in part and dismissed in part.

Robert P. Murphy  
Acting General Counsel