



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Acepex Management Corporation

File: B-279173.5

Date: July 22, 1998

James F. Nagle, Esq., Oles Morrison & Rinker, for the protester.

Brian J. Donovan, Esq., Jones & Donovan, for OMSERV Corporation, an intervenor.
Marian E. Sullivan, Esq., and John E. Lariccia, Esq., Department of the Air Force,
for the agency.

John L. Formica, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Agency conducted meaningful discussions where it brought its principal concerns about the protester's proposal to the protester's attention through discussion questions that were not misleading; the agency was not required to hold discussions regarding every weakness identified in the proposal.
2. Agency's determination, under an evaluation factor for "cost (price)," that the awardee's price for purposes of a fixed-price contract was realistic, complete, and reasonable based on a comparison with the other offerors' line item and total prices and the government estimate is unobjectionable.
3. Protest that the contracting agency unreasonably evaluated the protester's and awardee's competing proposals under certain technical evaluation criteria, including past performance, is denied where the record shows that the evaluation was reasonable; the protester's mere disagreement does not render the agency's judgment unreasonable.

DECISION

Acepex Management Corporation protests the award of a contract to OMSERV Corporation under request for proposals (RFP) No. F04626-97-R0004, issued by the Department of the Air Force for military family housing maintenance (MFHM) services for Travis Air Force Base (AFB), California.

We deny the protest.

The RFP, issued on June 16, 1997, provided for the award of a fixed-price contract for a base period with four 1-year options. The successful contractor under the RFP will be required to provide, with limited exception, all personnel, equipment, tools, materials, supervision, and other items necessary to perform the MFHM services. RFP § C.1.1.

The RFP stated that award would be made to the responsible offeror submitting the proposal determined to be most advantageous to the government, and listed the following evaluation criteria: (1) Past Performance, (2) Staffing, (3) Quality Controls, (4) Maintenance Management, and (5) Cost (Price). RFP § M-16C.b. The RFP specified that the first four criteria would be evaluated under a color/adjectival rating scheme to assess how well the offeror's proposed approach meets the evaluation standards and requirements set forth in the solicitation, and for proposal risk to assess "the risk associated with [the] offeror's proposed approach as it relates to accomplishing the requirements of the solicitation."¹ Id. The RFP added that "[e]ach offeror's cost (price) proposal . . . will be evaluated to determine realism, completeness, and reasonableness in relation to the solicitation requirements." Id. at § M-16C.b.(5).

The RFP included detailed instructions for the preparation of proposals and requested that the offerors' proposals consist of three volumes. Volume 1 was to include, among other things, a completed price schedule; volume 2 was to include the technical proposal, divided into three sections addressing staffing, quality control, and maintenance management; and volume 3 was to describe relevant past performance. RFP § L-903.

The agency received 15 proposals, and included 10 proposals in the competitive range. Discussions were held, and best and final offers (BAFO) were requested, received, and evaluated. The agency conditionally awarded a contract to Crimson Enterprises as the offeror submitting the proposal determined most advantageous to the government.²

Three offerors, including Acepex, filed protests with our Office challenging the propriety of the conditional award to Crimson, each arguing, among other things,

¹The color/adjectival ratings used by the agency in evaluating proposals were blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable. With regard to risk, the ratings used were high, moderate, and low. Source Selection Evaluation Guide (Tab 6) at 2, 6.

²The procurement was undertaken as part of a cost comparison study regarding whether to perform the services in-house or by contract. The award was conditioned on completion of a public review period, any requests for review made under the cost comparison appeals process, and the availability of funds.

that the agency failed to conduct meaningful discussions. On February 17, 1998, the agency informed our Office that it would reopen discussions, request and evaluate new BAFOs, and make a new source selection decision. Shortly thereafter, our Office dismissed the protests as academic. BMAR & Assoc., Inc.; Satellite Servs., Inc.; Acepex Management Corp., B-279173 et al., Feb. 18, 1998.

The agency then conducted written discussions with the 10 offerors, and requested and received new BAFOs. OMSERV's proposal was rated by the cognizant source selection evaluation team (SSET) as "blue" with "low" risk under the maintenance management and quality controls evaluation criteria, and "green" with "low" risk under the past performance and staffing evaluation criteria, at a price of \$17,350,352. Acepex's proposal was evaluated as "green" with "low" risk under each evaluation criterion, at a price of \$20,307,543. The source selection authority determined that OMSERV's proposal, which was the lowest-priced one received and was one of three proposals to have received two "blue" with "low" risk and two "green" with "low" risk ratings, represented the best value to the government.³

Acepex protests that the agency "failed to engage in meaningful discussions by misleading [Acepex]."

In evaluating Acepex's proposal before the first round of protest filings, the SSET noted that Acepex's proposed "staffing level of 37 full time equivalents is relatively low for our contract size. This could pose a problem in delivering quality customer service" The SSET also noted that the work to be performed by Acepex's subcontractors would be limited to work on carpet, asbestos and lead abatement, and roofing. The SSET accordingly rated Acepex's proposal under the staffing criterion as having "moderate" risk. Initial Proposal Analysis Report (Protest Report Tab 23) at 11.

The agency found in evaluating Acepex's proposal under the maintenance management evaluation criterion that Acepex's proposed "7-10 day inventory stock level is not enough to deal with day to day operations," and that it would "greatly affect operations specifically during contingency and emergency situations." The SSET further evaluated Acepex's proposed plan for answering emergency calls as "weak," noting that Acepex would "use an answering system to screen calls and dispatch workers" without any provision for notifying the cognizant supervisor to confirm if the work would be or was performed. The agency rated Acepex's proposal as having "moderate" risk under the maintenance management evaluation criterion. Id. at 12.

³No proposal received a "blue" rating under more than two evaluation criteria, and the two other proposals that received two "blue" with "low" risk and two "green" with "low" risk ratings were higher priced (\$20,667,655 and \$26,667,796).

When the agency reopened discussions in response to the protests filed at our Office, it issued three clarification requests to Acepex. Each clarification request noted an evaluation criterion by name and RFP section, and the volume and section of the offeror's proposal to which the request was addressed. Clarification request No. 1 asked for information regarding Acepex's past performance on government and commercial contracts. Clarification request No. 2 asked:

Explain how your company will provide and meet the requirements of the Performance Work Statement with your proposed labor force to ensure proper performance of service calls, change of occupancy . . . and recurring maintenance work.

The agency also requested, in clarification request No. 3, that Acepex "[c]larify how [its] inventory (7-10 days stocking) on a project this size will support peak periods or contingencies," and explain "how the on call supervisor will be notified to confirm the standby worker performed work on emergency calls."

Acepex revised its past performance submission in response to the first clarification request. The firm responded to the agency's expressed concerns regarding Acepex's proposed staffing level by raising its staffing level to 46 full-time equivalents (which included the addition of a quality control inspector), and noting that "there will be a significant amount of subcontracted work (e.g., roofing, carpet, etc.)." Acepex also provided an explanation as to how it arrived at this staffing level, stating that it was based in part on the "quantities of jobs required by the RFP" and number of hours needed to provide the services based on Acepex's "direct experience" in providing such services. Protest Report, Tab 33.

With regard to the agency's questions concerning the adequacy of Acepex's inventory levels, the protester stated that "[g]iven the Government's concern, Acepex has revised its inventory plan and will have sufficient parts and materials for 30 to 45 days in stock in house." The offeror also explained that it had amended its plan for responding to emergency calls by providing for the notification of both the on-call supervisor and the worker and for their coordination in providing and completing the necessary services. Id.

The agency determined that, because of Acepex's responses to the clarification requests, its BAFO merited ratings of "low" (rather than "moderate") risk under both the staffing and maintenance management evaluation criteria.

Acepex complains that it was misled during discussions by clarification requests Nos. 2 and 3, and thus made unnecessary modifications to its proposal. Acepex argues that the agency, in questioning Acepex's initial staffing level, "overlooked the clear fact that Acepex proposed to contract out 24 percent of the major work, and that involved major roofing, floor refinishing, floor replacement, and carpeting." Protest at 5. The protester contends that had the agency properly evaluated

Acepex's initial proposal, it would not have misled Acepex during discussions into raising its staffing level and, concomitantly, its price. Acepex makes similar claims regarding its proposed 7 to 10 day inventory levels and handling of emergency calls. For example, Acepex contends that the 7 to 10 day inventory level it initially proposed is the industry-accepted standard, and that it was thus misled into amending its proposal to provide a greater inventory level and increased price. Id. at 6.

Agencies are required to advise competitive range offerors of proposal deficiencies so that the offerors are given an opportunity to satisfy the government's requirements. Brown & Root, Inc. and Perini Corp., a joint venture, B-270505.2, B-270505.3, Sept. 12, 1996, 96-2 CPD ¶ 143 at 6. This obligation is not satisfied by discussions that improperly mislead an offeror into lowering the evaluated quality of its proposal. Pan Am World Servs., Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446 at 11.

The record shows that the agency's discussions with Acepex were not misleading. For example, contrary to the protester's arguments, the agency did not inform Acepex that its staffing or inventory levels were too low, nor did it request that Acepex increase its staffing or inventory levels. Rather, the clarification requests, quoted above, sought explanations from Acepex as to how it would accomplish the requirements of the contract with the staffing and inventory levels proposed. Acepex was free to provide explanations of how the agency's needs would be met by the staffing and inventory levels initially proposed, or to take some other action, such as raising its proposed staffing and/or inventory levels. In this regard, we note that the explanations set forth in Acepex's submissions to our Office during the course of the protest regarding the adequacy of the staffing and inventory levels it initially proposed were not set forth in Acepex's initial proposal, its responses to the clarification requests, its subsequent BAFO, or other documents it provided to the agency during its consideration of Acepex's proposal. That is, prior to this protest, the "clear fact" that Acepex proposed to subcontract 24 percent of the work required was not mentioned, nor did Acepex ever assert that its proposed 7 to 10 day inventory level or its method for answering emergency calls was, as Acepex now claims, in accordance with industry standards.

Acepex adds that the agency failed to conduct meaningful discussions because during discussions the agency did not point out certain weaknesses in Acepex's proposal that were identified by the agency evaluators. The protester lists a number of negative comments that appear on the evaluators' worksheets, and contends that had these perceived weaknesses been identified during discussions, Acepex could have addressed them and thus enhanced its prospects for award.

An agency is not required to afford an offeror all-encompassing discussions, or to discuss every aspect of an offeror's proposal that receives less than a maximum score. Brown & Root, Inc. and Perini Corp., a joint venture, supra. Neither is an

agency required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes the determinative factor between two closely ranked proposals. Volmar Constr., Inc., B-270364, B-270364.2, Mar. 4, 1996, 96-1 CPD ¶ 139 at 4-5. Contracting agencies have wide discretion in determining the nature and scope of discussions, and their judgments will not be questioned unless shown to be without a rational basis. Textron Marine Sys., B-255580.3, Aug. 2, 1994, 94-2 CPD ¶ 63 at 24.

The record shows that the agency apprised the protester of the principal areas of concern regarding the firm's proposal, e.g., the nature and extent of Acepex's past performance, and the adequacy of Acepex's proposed staffing and inventory levels and procedures for answering emergency calls. The agency did not point out a variety of relatively minor weaknesses, and there is nothing in the record to suggest that these weaknesses materially affected the rating of Acepex's proposal or kept Acepex from having a reasonable chance for award. In sum, the protester was not deprived of meaningful discussions.

Acepex argues that OMSERV's price is not realistic and that if the agency had performed a "cost realism analysis," as allegedly required, it would not have determined that OMSERV's price was "realistic, complete, and reasonable."

As stated above, the RFP provided that an offeror's "cost (price) proposal" would be evaluated for "realism, completeness, and reasonableness in relation to the solicitation requirements." The concept of cost realism generally applies to cost-reimbursement contracts where the RFP requires the submission of cost data and it is important for the government to measure the likely cost of performance before choosing from among competitors in the procurement. Federal Acquisition Regulation (FAR) §§ 15.605(c), 15.608, 15.805-3 (June 1997). Cost realism therefore ordinarily is not considered in the evaluation of proposals for a fixed-price contract such as the one involved here, since a fixed-price contract provides for a definite price and places the risk and responsibility for all contract costs and resulting profit or loss upon the contractor. Volmar Constr., Inc., B-272188.2, Sept. 18, 1996, 96-2 CPD ¶ 119 at 5; Sperry Corp., B-225492, B-225492.2, Mar. 25, 1987, 87-1 CPD ¶ 341 at 3. Accordingly, and although an agency may provide for a "cost realism" analysis in the solicitation of fixed-priced proposals to measure an offeror's understanding of the solicitation requirements, even a fixed-price offer that is below cost is legally unobjectionable and cannot be rated lower or downgraded in the price evaluation for source selection by virtue of its low price. Id. at 3-4. On the other hand, an agency will perform a price analysis in such a solicitation since the risk of poor performance when a contractor is forced to provide services at little or no profit is of legitimate concern. Volmar Constr., Inc., B-272188.2, supra; see FAR § 15.805-2.

We recognize that the RFP here used the term "cost" in the evaluation factor ("Cost (Price)"); we also recognize that in describing the factor the RFP provided that "proposals will be evaluated for cost realism." RFP § M-16C.b.(5)(a). Nevertheless,

the RFP contemplated the award of a fixed-price contract, the evaluation factor specified "Price" along with "Cost," and the solicitation did not require the submission of cost data (only a price schedule). Therefore, and consistent with the nature of a fixed-price contract, the evaluation factor cannot reasonably be viewed as being other than price, nor can the RFP reasonably be read as committing the agency, in evaluating proposals, to perform a cost analysis under FAR § 15.805-3, as opposed to a price analysis to ascertain whether the offered prices were reasonable and realistic. See The Cube Corp., B-277353, Oct. 2, 1997, 97-2 CPD ¶ 92 at 5.

Price analysis techniques that may be used to determine whether prices are reasonable and realistic include a comparison of the prices received with each other, FAR § 15.805-2(a); with prior contract prices for the same or similar services, FAR § 15.805-2(b); and with an independent government cost estimate. FAR § 15.805-2(e). The depth of an agency's price analysis is a matter within the agency's discretion. Ameriko-OMSERV, B-252879.5, Dec. 5, 1994, 94-2 CPD ¶ 219 at 4.

The Air Force's price analysis was based on a comparison of the offerors' proposed line item and total prices with each other and with the government estimate. In this regard, the price analysis matrix prepared by the agency shows that OMSERV's total price was only 1 percent lower than the next lowest-priced proposal, and 6 and 12 percent lower than the third and fourth lowest-priced proposals. Further, OMSERV's price was only 15 percent lower than Acepex's, and 16 percent lower than the agency estimate. The agency concluded based on its comparison of OMSERV's price with the agency estimate and the prices of the other nine proposals received that OMSERV's price was complete, reasonable, and realistic. Revised Proposal Analysis Report (Protest Report Tab 38) at 5-6. Based on our review, we have no basis to question the reasonableness of the agency's determination. See The Cube Corp., *supra*, at 5-6.

Acepex protests that the agency's evaluation of its and OMSERV's technical proposals was unreasonable. The evaluation of technical 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. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

Acepex specifically challenges the agency's evaluation of its and OMSERV's proposals as "green" with "low" risk under the past performance evaluation criterion.

In evaluating Acepex's proposal under the past performance criterion, the agency found that Acepex had 8 years of experience in performing government contracts, and noted that the contract surveys it had received "indicated satisfactory performance with no major problems requiring corrective actions." The agency found, however, that Acepex's experience in performing MFHM services was primarily as a "subcontractor or in a joint venture with another company" and that the subcontracts did not appear to have been similar in size and scope to the contract contemplated by the RFP. The agency concluded that, while Acepex's proposal merited a rating of "green," there was "moderate potential . . . to cause disruption of schedule, increase in cost or degradation of performance." The agency thus initially rated Acepex's proposal under the past performance criterion as having "moderate" risk. Initial Proposal Analysis Report, supra, at 11.

As previously mentioned, the agency issued a clarification request regarding Acepex's past performance when it reopened discussions. In responding to this request, Acepex represented that, among other things, its experience as a subcontractor in providing MFHM services includes "two current housing contracts [which] are of the same size and complexity as the current solicitation." The agency determined that, although Acepex lacked experience as an MFHM services prime contractor, its proposal represented "low" (rather than "moderate") risk because Acepex's subcontracts were similar in size and scope to that contemplated by the RFP. Revised Proposal Analysis Report, supra, at 10.

Acepex complains that the agency failed to contact five current contract references Acepex had listed in its proposal, including the contractor for which Acepex was performing the two MFHM subcontracts mentioned above. Acepex notes that the SSET appeared somewhat concerned because Acepex had performed as a subcontractor on the two MFHM contracts discussed above, rather than as the prime contractor, and argues that "the fact that the contractual device [was] a subcontract should not be used against Acepex" Protester's Comments at 17.

There is no legal requirement that all references in a proposal be checked. Logicon RDA, B-261714.2, Dec. 22, 1995, 95-2 CPD ¶ 286 at 7; Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 8; Questech, Inc., B-236028, Nov. 1, 1989, 89-2 CPD ¶ 407 at 3. In reviewing the manner and conduct of an agency in contacting or choosing not to contact references listed by offerors in their proposals, we look to see if the agency proceeded in a reasonable and prudent manner. See Int'l Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5.

The agency sent past performance questionnaires to six of the references listed by Acepex in its proposal. The references chosen by the agency included three of the references listed in Acepex's proposal under the heading "military family housing maintenance contracts and subcontracts" (Acepex was performing one of the contracts during the evaluation), the reference listed by Acepex under the heading "hospital housekeeping services" (for which Acepex had performed four contracts

and currently is performing a fifth), and at least one of the references listed under the heading "custodial services contracts" (Acepex is currently performing contracts for both of these references). Despite Acepex's view to the contrary, we simply cannot see how the agency--which contacted three of the references listed for which Acepex had performed MFHM services, and a number of the references for which Acepex currently was performing services--acted unreasonably. Also, given the inherent differences between acting as a prime contractor and as a subcontractor, it was not unreasonable for the agency, when evaluating Acepex's proposal under the past performance evaluation criterion, to have considered Acepex's performance of MFHM services similar in size and complexity as a subcontractor less favorably than if the same services had been performed by Acepex as a prime contractor. See Robbins-Gioia, Inc., B-274318 et al., Dec. 4, 1996, 96-2 CPD ¶ 222 at 20 (where we did not object to assigning a moderate risk rating to an offeror with no specific experience as a general contractor even though we recognized that the firm had performed similar tasks as a subcontractor).

We also see no basis to object to the Air Force's evaluation of OMSERV's proposal under the past performance criterion ("green" with "low" risk).

In evaluating OMSERV's proposal, the agency initially found that, while OMSERV had successfully completed three MFHM services contracts as the prime contractor, the contracts were smaller in size and complexity than that contemplated by the RFP. The agency thus evaluated OMSERV's proposal as "green" with "moderate" risk. Initial Proposal Analysis Report, supra, at 13.

When the agency reopened discussions, it requested further information from OMSERV regarding its past experience. OMSERV explained in its response that, although it had not performed a contract equal in size to that contemplated by the RFP, the three contracts it had performed (all for the Air Force) were similar in complexity and scope, and when considered together--as they had been performed concurrently for 2 years--in size. OMSERV submitted a chart in support of its explanation, which compared the work required under the "combined" contracts with the estimated work required under the Travis AFB contract, regarding, for example, the number of service calls (17,000 for the combined contracts in comparison to an estimated 12,747 for the Travis AFB contract), and change of occupancy maintenances (700 for the combined contracts in comparison to 715 estimated for the Travis AFB contract). Based on this explanation, the agency raised OMSERV's risk rating under the past performance evaluation criterion from "moderate" to "low."

Acepex points out, as did OMSERV in its response to the agency's clarification request, that 600 units required to be maintained by OMSERV were demolished by the agency during the performance of one of the three MFHM contracts, thus reducing the number of units maintained by OMSERV under the combined contracts to 1,751, in contrast to the 2,486 units to be maintained at Travis AFB under this

RFP. As noted by the agency, however, prior to the demolition of the 600 units there was a period that appears from the record to approximate 1 year during which OMSERV was responsible for the maintenance of 2,351 units under the three contracts. More importantly, the record demonstrates that, regardless of the number of units, OMSERV was required to perform, as mentioned above, a number of service calls and change of occupancy maintenances in its performance of the three contracts that is comparable to those estimated for performance under this RFP. In sum, we do not agree that the agency acted unreasonably in evaluating OMSERV's proposal under the past performance criterion as "green" with "low" risk.⁴

Acepex also complains that the evaluation record fails to evidence that the agency considered 8 of 12 "added value items" that Acepex included in its proposal. For example, the protester points out that the evaluation record does not specifically mention Acepex's offer to provide each occupied unit with a refrigerator magnet "in the shape of a house, with the phone numbers for the service call desk and emergency after hours displayed," and customer survey cards to be completed after a service technician responds to a service call or performs recurring maintenance in a dwelling. Acepex adds that the evaluation record also does not evidence that the agency considered Acepex's offer, in response to the clarification request for further information regarding its staffing, to provide an additional quality control inspector.

The agency responds that, while Acepex's 12 added value items and addition of a quality inspector were considered, "they were not significant enough to merit higher ratings for Acepex's proposal or special mention in the evaluation record." Supplemental Protest Report at 4.

We find the agency's explanation plausible, given the relatively minor import of the value added items not specifically mentioned in the evaluation record. With regard to the quality control inspector, as noted above, Acepex added the quality control inspector in its response to clarification request No. 2, and the record reflects that this response led to Acepex's proposal being evaluated as having "low," rather than

⁴The protester also complains that its past experience as an MFHM subcontractor should have been rated higher than OMSERV's "combined" past experience as an MFHM prime contractor. As mentioned previously, it was not unreasonable for the agency to consider Acepex's past experience as an MFHM subcontractor less favorably than if the firm had performed the same work as a prime contractor; this aspect of Acepex's protest thus constitutes its mere disagreement with the agency's evaluation, and does not provide a basis upon which to find the evaluation unreasonable.

"moderate" risk under the staffing evaluation criterion.⁵ Even if we were to conclude that the lack of specific mention of 8 of the 12 value added items and addition of one quality control inspector was the result of the agency's failure to consider these aspects of Acepex's proposal, we see no reasonable possibility that Acepex would have been prejudiced by such an oversight, given OMSERV's proposal's significantly superior technical rating and \$3 million, or 16 percent, price advantage.⁶

The protest is denied.

Comptroller General
of the United States

⁵Specifically, the first two lines of Acepex's response to clarification request No. 2 are as follows:

Given the Government's concern, Acepex has raised its staffing levels to 46 [full time equivalents] (48 individuals). We have added a quality control inspector, as well as increasing the staffing of general maintenance workers, painters, plumbers, and janitors.

⁶Acepex complains that the evaluation record, which consists of, among other things, the evaluators' worksheets, proposal analysis reports, and source selection statements, is poorly documented and "should be deprived of any deference." For example, the protester complains that one evaluator used an evaluation form apparently of his own making, rather than the standard evaluation form used by the other evaluators. While the evaluation record, including the evaluators' worksheets, is not a model of clarity, the agency's evaluation of proposals and its source selection are sufficiently detailed to allow for the review of Acepex's protest, so that the record is unobjectionable. See Matrix Int'l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 5; Southwest Marine, Inc.; Am. Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10.