



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Analex Space Systems, Inc.; PAI Corporation

File: B-259024; B-259024.2

Date: February 21, 1995

Harry J. Clark and Kim M. Welch for Analex Space Systems, Inc., and Doan L. Phung for PAI Corporation, the protesters. Thomas S. Luedtke, National Aeronautics and Space Administration, for the agency. Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency improperly evaluated awardee's and protester's technical proposals is denied where the record shows that both evaluations were reasonable and were conducted in accordance with the terms of the solicitation.
2. Protest that contracting agency improperly conducted its cost realism analysis of protester's proposal is denied where the record shows that the allegation is without basis.
3. Protest that contracting agency improperly evaluated protester's technical proposal and that procurement was tainted by the involvement of incumbent personnel in a prior procurement action is denied where protester, in its comments, fails to rebut the agency's detailed responses to these allegations, and the allegations are not supported by the record.

DECISION

Analex Space Systems, Inc. and PAI Corporation protest the award of a contract to Hernandez Engineering, Inc. under request for proposals (RFP) No. 9-BG3-Y22-4-9P, issued by the National Aeronautics and Space Administration (NASA) for aerospace ground system safety and risk management support services. Analex primarily asserts that the contracting agency improperly evaluated both Analex's and the awardee's technical proposals, improperly conducted the cost realism analysis of its proposal, and exhibited bias in favor of the awardee. PAI argues that the contracting agency improperly evaluated its technical and cost proposals, and alleges that

the procurement was tainted by the involvement of incumbent personnel in a prior procurement action.

We deny the protests.

BACKGROUND

The support services sought here consist of risk management services at NASA's Johnson Space Center and other locations. These services include such things as the provision of engineering analyses, safety awareness training, and mishap investigations. The solicitation, issued on June 9, 1994, as a set-aside under the Small Business Administration's section 8(a) program for small disadvantaged businesses, contemplated award of a cost-plus-award-fee contract for a base period of 1 year, with up to four 1-year options.

The RFP informed prospective offerors that proposals would be evaluated under four evaluation factors: Mission Suitability, Cost, Relevant Experience and Past Performance, and Other Considerations.¹ The only factor to be scored, mission suitability, was worth a possible total of 1,000 points; one of its three subfactors, management, contained three criteria, two of which are at issue here: total compensation and staffing plan, and continuous improvement plan and conflict avoidance plan. The RFP stated that the source evaluation committee (SEC) would evaluate proposed costs and establish the probable cost of doing business with each offeror, but would not use weighting or scoring in this area. The relevant experience and past performance factor would be rated on an adjectival scale (excellent to poor). The Other Considerations factor would be evaluated and rated "satisfactory" or "unsatisfactory."

NASA received proposals from Hernandez, Analex, and PAI by the July 8 closing date. After the SEC completed its

¹The first three of these factors were of equal importance, and the last was of considerably less importance. The Relevant Experience and Past Performance factor is not at issue in these protests.

initial evaluation, written and oral discussions were conducted, and best and final offers (BAFO) were submitted. The final relevant evaluation results were as follows:²

	<u>Mission Suitability</u>	<u>Probable Cost</u>
Hernandez	886	\$14,981,000
Analex	809	14,020,000
PAI	751	16,057,000

The source selection official (SSO) excluded PAI's proposal from consideration for award, as it offered no advantage under the mission suitability factor, and its probable cost was significantly higher than those of the remaining offerors. The SSO noted that Hernandez's proposal was clearly superior in mission suitability, as it had numerous and substantive strengths and outscored Analex's proposal in all evaluation areas except the conflict of interest avoidance (COIA) plan criterion. The SSO stated that Hernandez's excellent ratings in the key personnel subfactor and understanding and implementation of the technical requirements subfactor, as well as its proposed responsive organizational structure, provided assurance that the weakness associated with Hernandez's COIA plan would be resolved during contract performance. The SSO also determined that Hernandez's marked advantages in mission suitability outweighed Analex's slight advantage in probable cost. Award was made to Hernandez on October 1. Following their respective debriefings, both Analex and PAI filed these protests in our Office.

PROTEST OF ANALEX

Analex's primary challenge is to the evaluation of its own and the awardee's proposals. Analex argues that NASA improperly downgraded its proposal under the total compensation and staffing plan criterion because it failed to propose severance pay, and improperly found that Hernandez's compensation plan was superior to its own. Analex also argues that NASA improperly awarded the contract to Hernandez despite the evaluated major weakness of the COIA plan under Hernandez's proposal.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since that agency is responsible for defining its needs and the best method of

²All three proposals were rated "excellent" under the relevant experience and past performance factor, and "satisfactory" under the other considerations factor.

accommodating them. Mesa, Inc., B-254730, Jan. 10, 1994, 94-1 CPD ¶ 62. In reviewing an agency's technical evaluation, we will not reevaluate the proposals; instead, we will examine the record to ensure that the evaluation was reasonable and consistent with the RFP evaluation criteria. Id. A protester's disagreement with the agency's judgment, standing alone, is not sufficient to establish that the agency acted unreasonably. Ionsep Corp., Inc., B-255122, Feb. 10, 1994, 94-1 CPD ¶ 97.

We first examine the evaluation of the proposals under the total compensation and staffing plan criterion. Analex's proposal initially was rated "fair"³ under this criterion, and the proposal was assessed a minor weakness for its failure to propose severance pay. The SEC was concerned that after recent years of high unemployment, particularly in the aerospace industry, the lack of a severance pay policy could be detrimental to attracting highly qualified new employees. During written discussions, the SEC raised this weakness with the protester and explained its concern. In response, Analex stated that prospective new employees were not concerned about severance pay, and, as the firm had not been in a "lay-off mode," it had never addressed the severance pay issue. Analex further asserted that its lack of a severance pay policy had not affected its capability to attract and retain highly qualified personnel. The SEC considered this response in its final evaluation of the firm's proposal, but it believed that the lack of a severance pay policy was still a valid issue for concern and, thus, this minor weakness remained. Overall, however, Analex's rating under this criterion was raised from fair to good.

Analex's sole dispute with its rating stems from a comment it asserts was made during its debriefing, that severance pay was an "industry standard." Analex contends that since the Department of Labor has informed it that severance pay is not an "industry standard," it should not have received a weakness for its failure to have a severance pay policy. In our view, this contention amounts to a mere disagreement with the agency's judgment, and is not sufficient to establish that the agency acted unreasonably. Id. Whether or not this statement was made at the debriefing, the record confirms that the agency's concern was not dictated by any "standards," but by its view that the economics of the

³The scores assigned under the evaluation criteria corresponded to adjectival ratings as follows: excellent/91-100 percent of available points; very good/71-90 percent; good/51-70 percent; fair/31-50 percent; and poor/0-30 percent.

aerospace industry warranted a severance pay policy. The record affords us no basis to find this concern, or the rating of Analex's proposal, unreasonable.

Analex's argument that its total compensation plan is "significantly better" than that proposed by Hernandez, which received an "excellent" under this criterion, is without basis. To reiterate, this criterion was comprised of two elements, the total compensation plan and the staffing plan. As to the former, the record shows that NASA performed a cost/benefit analysis of each offeror's proposed compensation plan and determined that they were all essentially equal with respect to the relative value of benefits to employees. As to the latter, Hernandez's proposal received two major strength assessments for successful incumbent recruiting and an excellent staffing plan, and Analex's proposal received none. The record supports the SEC's conclusion that Hernandez's major strengths in these areas raised its overall total compensation plan rating to "excellent."

We turn now to the COIA plan requirements, which were twofold. First, section L required offerors to submit a general COIA plan to describe how the firm would deal with task assignments that would require it to review or make recommendations concerning its work under this or any other NASA contract, as well as other pertinent government contracts. This plan would be evaluated under the mission suitability factor for soundness and responsiveness to the RFP's requirements. Second, proposed contract clause H.8 requires the successful contractor to provide specific notice of conflicts to the contracting officer as they arise during contract performance, submit a proposed plan of action for eliminating or adequately mitigating the conflict, and implement the approved plan. While an offeror's intended compliance with clause H.8 was assessed under the Other Considerations factor, an offeror's COIA plan which was proposed to meet section L's requirements was also necessarily related to compliance with clause H.8.

The SEC gave Hernandez's proposal a rating of "fair" under this mission suitability criterion because, among other things, its COIA plan was too general and did not discuss specific remedies, and it did not address the requirements

'Analex's argument that it, too, should have received a major strength for successful incumbent recruiting since it also intended to hire incumbent personnel misunderstands the evaluation process. Hernandez was given high marks not because it intended to hire incumbent personnel per se, but because of the excellence of its demonstrated recruiting and staffing plan.

of proposed contract clause H.8. All of these concerns were raised with Hernandez during discussions and Hernandez allayed some of them by, among other things, submitting a draft COIA plan that the SEC determined satisfied the requirements of clause H.8.⁵ However, the SEC concluded that the firm still did not have a full understanding of the issue, and the major weakness remained.

Contrary to Analex's view, nothing in this solicitation prohibits contract award to an offeror that receives a major weakness under one of the evaluation subfactors. The record shows that the SEC believed that Hernandez proposed an acceptable approach for avoiding or mitigating any potential conflict of interest during contract performance. The SSO was satisfied that this weakness--that the firm's COIA plan did not discuss remedies in the context of actual conflicts the firm might experience during contract performance⁶--could be overcome during contract performance in light of Hernandez's excellent ratings in other critical areas of the evaluation. The record provides us no basis to find the SSO's decision unreasonable.

Analex next argues that NASA's upward adjustment of its proposed costs to cover the incumbent's labor rates was "somewhat inflated."

When agencies evaluate proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) § 15.605(d); Antec Corp., B-240647, Dec. 12, 1990, 90-2 CPD ¶ 482. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.--Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was

⁵Thus, Analex's argument that Hernandez should not have been rated "satisfactory" under the other considerations factor because it did not meet the requirements of clause H.8 is not supported by the record.

⁶According to the agency, since the SEC knew of contract efforts that Hernandez currently performs on-site which might result in conflicts of interest, the SEC expected the firm to address such specific situations in detail.

reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Management Sys., Inc.; Department of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Here, since Analex proposed to maintain current wages for those personnel retained from the incumbent work force, but was not privy to the actual salaries paid by the incumbent, the agency adjusted Analex's costs upward to account for these wages. Analex's sole argument is that its proposed costs were in accordance with the wage determination applicable to this solicitation. However, Analex fails to consider that wage determinations are merely minimum wage requirements, FAR § 22.1001, and are not necessarily indicative of the incumbent's actual wages. Our review of the record shows that the agency's adjustments of Analex's costs in this regard were reasonably based.⁷

Finally, Analex suggests that certain NASA personnel were biased in favor of Hernandez as a result of their long-standing relationships with the firm. However, prejudicial motives will not be attributed to contracting officials on the basis of mere inference or supposition; we require evidence that the officials involved influenced the procurement on behalf of the awardee or against the protester. Meridian Management Corp., Inc.; NAA Servs. Corp., B-254797; B-254797.2, Jan. 21, 1994, 94-1 CPD ¶ 167. There is no such evidence here. While Analex complains that NASA improperly allowed Hernandez to receive the solicitation 6 days before the other offerors, by virtue of its on-site mailbox, the agency has explained that this was strictly a matter of circumstance, and there is no evidence that the agency had a specific intent to injure the protester. See Novel Pharmaceutical, Inc., B-255374, Feb. 24, 1994, 94-1 CPD ¶ 149. Moreover, we are not persuaded that Analex suffered any prejudice from its later receipt of the solicitation, and prejudice is an essential element of every viable protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379.

⁷Analex's contention that it should have received the award because its proposal was essentially equal to that of Hernandez, and its probable cost was substantially lower, has no basis, since the proposals were not essentially equal. Hernandez was superior to Analex in every element except one, and there was a substantial point difference between the two proposals.

PROTEST OF PAI

PAI argues that NASA improperly evaluated its technical proposal, and further alleges that the procurement was tainted by the involvement of incumbent personnel in a prior procurement action.⁶

PAI argues that NASA improperly downgraded its technical proposal under the key personnel subfactor because its proposed project manager did not have sufficient supervisory experience. The record shows that PAI's proposal was given a major weakness under this subfactor, consistent with this subfactor's provision for the evaluation of quality of experience, because the proposed project manager had supervised only two clerical personnel, and not the large group of professional and technical staff to be supervised here. After discussions, this major weakness was upgraded to a minor weakness as a result of, among other things, a presentation by the proposed project manager.

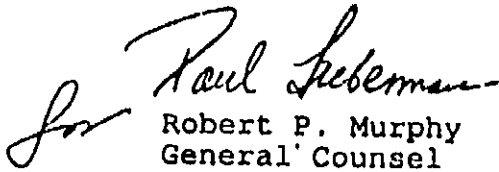
PAI's comments do not rebut the agency's argument that its evaluation was conducted in accordance with the solicitation.⁹ Where an agency specifically addresses an issue raised by the protester in its initial protest and the protester fails to rebut the agency response in its comments, we consider the issue to have been abandoned by the protester and will not consider it. Ross Aviation, Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83. In any event, even if PAI had received all of the points available for this subfactor, its total score would increase by only 22 points, to 773, well below the technical scores of either Analex or Hernandez. Thus, there is no basis to conclude that an increase in Analex's score in this area would have affected the award decision.

⁶In its protest, PAI raised two additional issues that were also raised by Analex: that NASA improperly adjusted its cost proposal upward to reflect the incumbent's direct labor rates, and that NASA improperly allowed Hernandez to receive the solicitation before the other offerors. For the same reasons set forth in our discussion of the Analex protest, we deny these two bases of protest.

⁹Analex's sole response to the agency's position was to suggest that the project manager's age and gender improperly influenced the evaluation of her leadership skills. At most, Analex's comment raises a new allegation of discrimination, which is untimely. See 4 C.F.R. § 21.2(a)(2) (1994); Watkins-Johnson Co., B-252790, July 7, 1993, 93-2 CPD ¶ 8. In any event, the record provides no support for this allegation.

In response to PAI's argument that this procurement was tainted by the involvement of incumbent personnel in a prior procurement action, the agency provided a complete and detailed explanation of the cancellation of a prior procurement for these services because the participation of certain employees of the then-incumbent in the preparation of that solicitation raised an appearance of impropriety. The agency specifically discussed its efforts to insure that this competition was independent of and untainted by that procurement. Again, in its comments PAI does not rebut the agency's explanation of these events.¹⁰ As a result, we consider this issue to have been abandoned and will not consider it further. Id.

The protests are denied.


Robert P. Murphy
General Counsel

¹⁰As with its responses to the other issues addressed in the agency report, PAI simply posed a question, in this instance asking if NASA had investigated whether the incumbent personnel may have contributed to other portions of the RFP. This "question" provides no basis for protest.