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## Decision

**Matter of:** Exelis Systems Corporation

**File:** B-407111.5; B-407111.6; B-407111.7

**Date:** May 20, 2013

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### DIGEST

1. Protest that agency misevaluated awardee's staffing plan is sustained where record shows that, although awardee proposed adequate staffing for the base year of the contract, its proposed staffing for the option years was significantly lower than that proposed in the base year, and the agency's evaluation failed to take this fact into consideration.
2. Protest challenging agency's evaluation of past performance is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.

### DECISION

Exelis Systems Corporation, of Colorado Springs, Colorado, protests the award of a contract to PAE Government Services, Inc., of Arlington, Virginia, under request for proposals (RFP) No. SAQMMA-12-R-0012, issued by the Department of State (DOS) for operations and maintenance support services (OMSS) for agency facilities in Iraq, including the Baghdad Embassy Compound (BEC). Exelis maintains that the agency misevaluated proposals and made an unreasonable source selection decision.

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

## BACKGROUND

The RFP, issued on March 23, 2012, sought proposals to provide OMSS at DOS locations throughout Iraq under an indefinite-delivery/indefinite-quantity (ID/IQ) contract. The RFP anticipates the award of a single ID/IQ contract with a 1-year base period and up to four 1-year option periods. PAE is the incumbent contractor.

The RFP advised offerors that the agency intended to make award on a “best value” basis, and that proposals would be evaluated considering price and the following non-price factors, listed in descending order of importance: (1) overall approach to ID/IQ and program management, (2) sample task order proposal for the BEC requirements, (3) technical proficiency, (4) task order proposal for the program management office (PMO) requirements, and (5) past performance and experience. RFP § M.4.<sup>1</sup> The BEC sample task proposal factor had five subfactors: (1) staffing plan, (2) key personnel, (3) operations and management (O&M) plan, (4) sample quality control plan, and (5) preliminary transition plan. Id. The PMO task order proposal factor had three subfactors: (1) PMO key personnel, (2) sample program management plan, and (3) sample cost control plan. Id. For purposes of award, the RFP stated that the first three non-price factors were significantly more important than the last two non-price factors and price, and that the non-price factors as a whole were significantly more important than price. Id.

This is the second time Exelis has protested this acquisition. We sustained Exelis’s first protest, which also challenged the evaluation of proposals and award to PAE, finding that the agency’s evaluation of technical proposals, as well as its previous source selection decision, were unreasonable. Exelis Systems Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340. We recommended that the agency either amend the solicitation, obtain and evaluate revised proposals, and make a new source selection decision; or reevaluate proposals and make a new source selection decision consistent with our decision. Id. at 24.

On November 27, 2013, the agency advised our Office and the parties that it intended to perform a reevaluation without amending the RFP and obtaining revised proposals.<sup>2</sup> Contracting Officer’s Statement at 2. The record shows that, upon

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<sup>1</sup> The RFP stated that proposals would be assigned a rating under the non-price factors (except past performance) of excellent, satisfactory, marginal, or unsatisfactory. RFP § M.10.2.1. The RFP stated that past performance would be assigned a rating of significant confidence, confidence, unknown confidence, or little confidence. RFP § M.10.2.2.

<sup>2</sup> The agency did not originally or subsequently engage in discussions; both selection decisions were made on the basis of initial proposals. As contemplated under section L.16.1.13 of the RFP, offerors were afforded an opportunity to make an oral presentation in connection with their technical proposals.

reevaluation, the agency assigned the following adjectival ratings to the proposals of Exelis and PAE:

	<b>EXELIS</b>	<b>PAE</b>
1. OVERALL APPROACH TO IDIQ AND PROGRAM MANAGEMENT	EXCELLENT	EXCELLENT
2. BEC SAMPLE TASK PROPOSAL	SATISFACTORY	EXCELLENT
2a. Staffing Plan	Marginal	Excellent
2b. Key Personnel	Satisfactory	Excellent
2c. O&M Plan	Satisfactory	Excellent
2d. Sample Quality Control Plan	Excellent	Excellent
2e. Preliminary Transition Plan	Satisfactory	Excellent
3. TECHNICAL PROFICIENCY	EXCELLENT	EXCELLENT
4. PMO TASK ORDER PROPOSAL	EXCELLENT	EXCELLENT
4a. PMO Key Personnel	Excellent	Excellent
4b. Sample Program Management Plan	Excellent	Excellent
4c. Sample cost control plan	Excellent	Satisfactory
5. PAST PERFORMANCE AND EXPERIENCE	CONFIDENCE	SIGNIFICANT CONFIDENCE
<b>PRICE</b>	<b>[\$deleted]</b>	<b>\$347,883,498</b>

Agency Report (AR), exh. 12, Contracting Officer's Best Value Recommendation, at 1-2. On February 1, 2013, the agency advised the protester that, on the basis of these evaluation results, it again had selected PAE for award of the contract, concluding that the PAE proposal represented the best value to the government, notwithstanding its higher price. Contracting Officer's Statement at 4. After being advised of the agency's source selection decision, and after requesting and receiving a debriefing, Exelis filed its current protest.

## PROTEST

In both its original and current protests, many of the protester's principal arguments relate to the agency's evaluation of the offerors' responses to the BEC sample task, and, more specifically, to the agency's evaluation of the firms' proposed staffing mix and level of effort in response to the sample task. Before we discuss Exelis's current protest allegations in detail, we provide some background relating to the structure of the RFP, the proposal submission requirements and our previous decision. We note at the outset, however, that we have considered all of Exelis's protest allegations. We discuss Exelis's principal contentions below; to the extent its arguments are not specifically discussed, we have considered them and deny those aspects of Exelis's protest.

The RFP contemplates that the agency will issue one or more task orders to fulfill its requirements. The agency will purchase these services using a “facilities cost” model that is based on unit prices that include all of the contractor’s direct labor costs, indirect costs, insurance costs and profit. RFP § B.7.<sup>3</sup> Offerors were required to provide fixed unit prices per square meter, per month (M<sup>2</sup>) for varying types of facilities (for example, an M<sup>2</sup> price for a 2-story apartment building, or a power plant, or an office building). RFP § B.7; Section J, Exh. F, Pricing Table 5.

The RFP also required offerors to provide, in the narrative portion of their price proposals, an explanation of the basis of estimate for their proposed fixed unit prices. The solicitation specifically made reference to a commercial estimating tool known as the Whitestone Research Facility Operations Cost Reference model. RFP § L.16.2.2 (45).<sup>4</sup> A facilities cost modeling tool--such as the Whitestone model--is a tool used in the facilities operations and maintenance industry that enables facility operators to calculate the maintenance schedule and labor required to support a facility based on parameters such as number of buildings, building types and building descriptions per square meter. Contracting Officer’s Statement at 7. The RFP included this information--types and size of facilities at the BEC--for purposes of allowing offerors to prepare their proposals. RFP, Section J, Exh. F, Pricing Table 5. The contracting officer explains that the reference in the solicitation to the Whitestone model was to ensure that, in preparing their fixed unit prices, the offerors used a commercial-type cost reference baseline. Contracting Officer’s Statement at 7.

In addition to providing M<sup>2</sup> fixed prices, the offerors also were instructed to prepare a response to a sample task that contemplated providing OMSS at the Embassy Compound in Baghdad. RFP § L.16.1.3. As part of responding to the sample task, firms were required to provide a notional staffing plan for meeting the requirements of the sample task that included the organizational structure and number of personnel proposed to provide direct services under the contract; the calculations showing how the offeror transposed the workload requirements into fulltime equivalent positions; and an estimated percentage of local Iraqi nationals that would be hired or subcontracted in support of the requirement. RFP § L.16.1.3.1.<sup>5</sup>

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<sup>3</sup> The RFP also specified estimates, or “plug” amounts, that were to be used by the offerors for purposes of establishing the cost of supplies associated with performing the services. RFP § L.16.2.1; Section J, Exh. F, Pricing Table 5.

<sup>4</sup> As we explained in our prior decision, the Whitestone model refers to a service provided by a commercial firm for estimating the resources--including personnel--necessary to provide support services for a particular building.

<sup>5</sup> The agency rated these sample task responses adjectivally. As noted above, PAE received an overall adjectival rating of excellent for its response to the sample task, as well as an excellent rating under the staffing plan subfactor. In comparison,  
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Finally, the RFP specified certain work week parameters for purposes of preparing proposals. In particular, the RFP contemplated three types of personnel: American nationals (ANs), third-country nationals (TCNs), and local Iraqi nationals (LNs). The RFP provided that ANs and TCNs were anticipated to work a normal 60 hour work week while LNs were limited to a 40 hour work week. RFP § L.16.2.2 (21).

In its original protest, Exelis challenged the agency's evaluation of the sample task responses, and more specifically, its evaluation of the offerors' staffing plans. According to Exelis, the agency's evaluation failed to consider that there were differences in the mix of labor proposed by the two offerors (the proportion of ANs, TCNs, and LNs offered by each firm) that resulted in a difference in the offerors' proposed levels of effort, with Exelis offering more personnel overall than PAE. Exelis also argued that the agency's evaluation failed to consider that, over the course of the contract's 5-year period, PAE proposed to increase the proportion of LNs as a percentage of its total workforce, and reduce its total number of staff, resulting in a significant decrease in PAE's proposed level of effort.

In response to the first protest, the agency maintained that nothing in the solicitation required it to consider how the composition of an offeror's proposed staff (that is, the mix of ANs, TCNs and LNs) affected its overall proposed level of effort.<sup>6</sup>

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Exelis received a satisfactory rating for its response to the sample task and a marginal rating for its staffing plan.

<sup>6</sup> Throughout the previous protest the phrase "productive hours" was used to refer to the difference in hours to be worked by the three different types of employees (ANs, TCNs and LNs). We refrain from using the phrase "productive hours" here. The phrase "productive hours" connotes the "net" number of hours that an employee would work, taking into consideration such variables as sick leave and vacation time. For example, an employee working a 40 hour work week can be described as offering a total level of effort of 2,080 hours per year, although the "productive hours" for such an employee might be less than 2,080 hours per year when taking into account leave time during which the employee would not actually work. The record before us does not include detailed, accurate information regarding the productive hours used by both offerors in preparing their proposals. The protester attempts--unsuccessfully--to argue that the awardee's proposal is deficient based on productive hours (versus total hours) comprising an offeror's proposed level of effort, but the record does not contain the information that would be necessary for the protester to have demonstrated its allegation. See Protester's Comments, Mar, 29, 2013, at 40-58.

In this decision, we use the phrase "level of effort" in our discussion to describe differences that exist because of the differences in the work weeks of the three

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We found that the RFP contemplated an evaluation of the level of effort proposed in response to the sample task, and that, although the agency apparently was aware of the difference among the offerors in terms of the proposed use of LNs versus ANs and TCNs, the agency ignored those differences in its evaluation of the offerors' sample staffing plans. We recommended that the agency reevaluate proposals taking into consideration the offerors' respective proposed levels of effort.

### Level of Effort

In its current protest Exelis again challenges the agency's evaluation of the offerors' proposed sample task responses, and in doing so, makes many of the same arguments that it made during the last protest. Exelis generally argues that the agency unreasonably assigned an excellent rating to the PAE staffing plan for the sample task while assigning only a marginal rating to the Exelis staffing plan. In support of its assertion, Exelis focuses on three aspects of the proposals. The first aspect is the difference between the labor mix (that is, the number of ANs, TCNs and LNs) that PAE used in performing the predecessor contract as compared to the labor mix included by PAE in its sample task response. The second aspect is the difference between the labor mix proposed by Exelis compared to that proposed by PAE. The third aspect is the difference between the labor mix offered by PAE in the initial year of the sample task as compared to the labor mix (as well as overall level of effort) proposed for the out years of the sample task. We discuss each aspect of Exelis's protest below.

We note at the outset that, in reviewing protests challenging an agency's evaluation, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. A protester's mere disagreement with the agency's evaluation conclusions does not provide a basis for our Office to object to the evaluation. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 6.

As an initial matter, we note that the agency challenges Exelis's contentions overall, maintaining that nothing in the solicitation or our prior decision requires it to perform a comparison of the total level of effort proposed by PAE in relation to either its predecessor contract or in relation to what was proposed by Exelis. The agency argues that the only pertinent question is whether it has adequately considered the extent to which PAE's proposed level of effort is sufficient to perform the sample task order requirements in light of PAE's proposed technical approach. The agency

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types of employees. Specifically, the work week provided by ANs and TCNs (60 hours) contains 50 percent more time than the work week of LNs (40 hours).

maintains in this connection that its evaluators carefully examined the adequacy of PAE's proposed staffing--including the mix of ANs, TCNs and LNs--by reviewing each labor category, as well as the underlying rationale offered by PAE to determine whether adequate staffing had been proposed.

We broadly agree with the agency's position that any comparison of PAE's proposed staffing to the staffing it used on the predecessor contract, or to the staffing proposed by Exelis, is not required by the RFP (or our prior decision), and does not provide an appropriate measure of the adequacy of PAE's proposed staffing. Because the RFP did not include a specified level of effort or staffing profile, offerors were free to develop their own staffing approach and profile, consistent with their technical approach to perform the requirements of the sample task. Correspondingly, the pertinent question is not whether PAE's proposed staffing resembled the staffing it used on the predecessor contract or that proposed by Exelis, but, rather, whether its proposed staffing was adequate to perform the sample task requirements in light of PAE's technical approach. Simply stated, merely because PAE proposed staffing that was different from that proposed by Exelis (or used by PAE on the predecessor contract), does not, without more, show that PAE's proposed staffing is inadequate. Rather, it shows only that PAE and Exelis proposed different staffing. Exelis Systems Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 6.

We also conclude that the agency's evaluation of PAE's proposed staffing plan for the initial year of the sample task order was reasonable. In this connection, the record shows that the agency's evaluators carefully reviewed PAE's proposed base year staffing plan for the sample task order and were satisfied that both its proposed level of effort, as well as the mix among the types of staff (ANs, TCNs and LNs) were appropriate, and responded to the RFP's requirement for a plan to hire significant numbers of LNs.<sup>7</sup> The evaluators found as follows:

The makeup of AN, TCN, and LN's is on track with the requirement to commit to both a short term and long term engagement of a significant

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<sup>7</sup> The RFP's staffing plan evaluation subfactor advised that the agency would evaluate the offerors' approach to recruiting and hiring LNs. The RFP provided:

The Government will specifically evaluate the Offeror's proposed approach to recruiting, hiring and training Local Iraqi Nationals, and the extent the Offeror commits to both a short term and long term engagement of a significant number of such employees for the purpose of performance on this contract.

RFP § M.10.1.2.1. As we noted in our prior decision, the agency could properly give an offeror credit for proposing a larger proportion of LNs.

number of LN employees. The proposed base period makeup is [deleted] AN, [deleted] TCN, and [deleted] LN's.

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PAE's approach to LNs is comprehensive and detailed (Staffing Plan pages 12-14). PAE outlines the tasks to be performed by LNs in the base year and describes their approach to training and future task assignments for LNs working in more skilled labor categories as LN training is completed.

AR, exh 8b, PAE Technical Evaluation Panel (TEP) Consensus Report, at 9.

The record also shows that the evaluators were satisfied, based on detailed information included in PAE's proposal, that the firm understood the requirements; had analyzed the workload associated with responding to the sample task using the Whitestone model and the firm's knowledge of embassy-specific requirements gained through its incumbency; and had proposed adequate staffing to accomplish the sample task order requirements during the base year. The evaluators found as follows:

PAE has used Whitestone modeling to establish its workload requirements and its approach is comprehensive and detailed (Section 1.1.5, fig. 1.1.5-2<sup>8</sup>). There is no concern about PAE's performance given its approach and based on its mix of LNs/TCNs and ANs.

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A review of Fig 1.1.2-1<sup>9</sup> (Organization Structure) list appropriate and realistic staffing level for each shop and function that demonstrate an understanding of BEC requirements. Their staffing levels ensure proper coverage for the anticipated workload and adequate time for vacation, time off, sick days and normal rotations. Examples as listed:

-- [deleted] personnel for power generation operations

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<sup>8</sup> Figure 1.1.5-2 is a chart that lists each statement of work element and provides a detailed narrative regarding PAE's rationale for its proposed staffing, broken down among ANs, TCNs and LNs. PAE Proposal, Attach. A, Staffing Plan, at 11-13.

<sup>9</sup> Figure 1.1.2-1 is a graphic chart showing PAE's proposed organization and staffing divided among the sample task order's various work areas and showing the breakdown of staff among ANs, TCNs and LNs. PAE Proposal, Attach. A, Staffing Plan, at 4.

- [deleted] personnel for vehicle maintenance operations
- [deleted] Controlled Access Area custodians
- [deleted] Waste Water Treatment Plant technicians

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1.1.5, Fig. 1.1.5-2, Workload to fulltime equivalent calculations are very detailed and comprehensive and show spot on staffing projections. PAE combined the Whitestone facility cost projection tool with their unique knowledge of BEC operations to develop the staffing plan for the BEC.

Id. at 9-10.

As discussed above, Exelis’s challenge to the agency’s evaluation of PAE’s proposed staffing focuses on the difference between what PAE and Exelis proposed, as well as the difference between PAE’s proposed staffing and its staffing under the predecessor contract. Exelis does not challenge any particular area of PAE’s base year staffing. The protester also has not demonstrated that the agency’s evaluation is inherently unreasonable, or that PAE’s use of the Whitestone model (along with its incumbency knowledge) to identify appropriate staffing was an unreasonable approach to establishing an appropriate level of effort to accomplish the sample task requirements. In sum, we conclude that the agency’s evaluation of PAE’s proposed staffing for the base year of the sample task was reasonable.

The record shows, however, that PAE significantly reduced the level of effort it proposed to perform the sample task in the later years of the contract. Specifically, the record shows that, although its original proposed level of effort called for [deleted] FTEs ([deleted] ANs, [deleted] TCNs and [deleted] LNs), it gradually reduced the number of FTEs throughout the life of the contract, and also replaced a large number of TCNs with LNs; by the final year of contract performance, it proposed only [deleted] FTEs ([deleted] ANs, [deleted] TCNs and [deleted] LNs). PAE Proposal, Attach. A, Staffing Plan, at 15. As a result of reducing the number of FTEs overall, as well as exchanging LNs for TCNs over the course of the sample task, the record shows that PAE effectively reduced its proposed level of effort by more than [deleted] percent,<sup>10</sup> even though the workload over the life of the sample

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<sup>10</sup> ANs and TCNs have a regular work week of 60 hours, which translates to a work year of 3,120 hours (60 x 52 = 3,120). LNs have a regular work week of 40 hours, which translates to a work year of 2,080 (40 x 52 = 2,080). PAE’s proposed staffing for the base year of performance contemplated a total of [deleted] hours ([deleted] ANs/TCNs x 3,120 + [deleted] LNs x 2,080 = [deleted]). By the final year of the contract, PAE’s proposed staffing contemplated a total of just [deleted] hours  
(continued...)

task remained constant.<sup>11</sup> PAE's proposal offers no explanation for how it will be able to perform what amounts to constant requirements with a progressively lower level of effort.

The evaluation record also is silent on the question of PAE's reduction in its proposed level of effort and makes no attempt to explain how PAE might be able to perform the requirement in the later years of the contract. As discussed above and in our prior decision, the RFP required the agency to give consideration to the level of effort proposed to perform the sample task. Exelis Systems Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 12-13. Here, while the agency reasonably evaluated the adequacy of PAE's proposed level of effort to perform the base year of the sample task, there is nothing in the record to show that the agency considered how PAE would perform the same requirements in the out years of the contract with substantially less staff. Accordingly, we agree with Exelis that the agency's evaluation in this area was unreasonable.<sup>12</sup> We therefore sustain this aspect of Exelis's protest.

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([deleted] ANs/TCNs x 3,120 + [deleted] LNs x 2,080 = [deleted]). [deleted] is [deleted] percent lower than [deleted].

<sup>11</sup> The record shows that agency's requirements during the entire 5-year period of performance for the sample task remained constant, with identical unit quantities for all line items during each of the sample task's 5 years. RFP, Pricing Table No. 5.

<sup>12</sup> To the extent that Exelis argues that the agency failed to evaluate the adequacy of PAE's proposed staffing for the base year of the sample task (by failing to compare PAE's staffing on the predecessor contract and Exelis's proposed staffing with PAE's proposed staffing), we deny its protest for the reasons discussed above. We also deny Exelis's challenges to the agency's evaluation of its proposal under the staffing plan subfactor. The record shows that the agency assigned the Exelis proposal a marginal rating for having inappropriate staffing in several areas that the agency characterized as critical, including power plant operations; vehicle maintenance; and heating, ventilation, and cooling systems maintenance. For example, the agency criticized the Exelis proposal for offering only [deleted] FTEs for power generation and only [deleted] FTEs for vehicle maintenance. In comparison, PAE offered [deleted] FTEs for power plant operations and [deleted] FTEs for vehicle maintenance during the base year of the sample task. Compare Exelis Proposal, Attach A, Staffing Plan, at 3, with PAE Proposal, Attach A, Staffing Plan, at 4. We find the agency's assignment of a marginal rating to the Exelis proposal for its staffing plan reasonable. That said, we do not understand how the agency could reasonably have assigned the PAE proposal an excellent rating for its staffing plan in light of the pervasive reduction in its proposed staffing for the later years of the contract.

## Past Performance

Exelis maintains that the agency's evaluation of past performance was unreasonable. Exelis argues that the agency did not adequately consider three DOS Office of the Inspector General (IG) reports relating to PAE's performance on several contracts, including the predecessor contract at the Baghdad embassy. According to Exelis, these IG reports reflect negatively on PAE's past performance, and the agency acted unreasonably in assigning PAE a significant confidence rating under the past performance factor in light of these reports.

We have no basis to object to the agency's evaluation of past performance based on the current record. Where an agency has considered reasonably available and relevant past performance information, its judgments regarding the relative merits of competing offerors' past performance are primarily matters within the contracting agency's discretion, and the protester's mere disagreement with such judgments does not establish a basis for our Office to sustain a protest. Palmetto GBA, LLC; CGS Administrators, LLC, B-407668 et al., Jan. 18, 2013, 2013 CPD ¶ 53 at 8.

With respect to the three IG reports, we noted in our prior decision that the agency was unaware during its previous evaluation of proposals of two of the reports (DOS IG Report No. MERO-1-11-05 (Dec. 2010) and DOS IG Report No. MERO-1-11-02 (Feb. 2011)) relating to contracts performed by PAE in Afghanistan. We concluded in our first decision that the information in those reports was not so close at hand that the agency acted unreasonably in not considering it. Exelis Systems Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 22.

The agency was aware of the third report (DOS IG Report No. AUD-MERO-12-43), which concerned PAE's performance of the predecessor Baghdad embassy contract (that report concerned invoices that included allegedly unallowable and unsupported costs in the amount of approximately \$4.4 million). The agency stated at that time that the report was preliminary but that, in any event, the magnitude of the allegedly unsupported and unallowable costs was within the range of unallowable costs for a contract of that size and complexity. As a result, the agency decided that this IG report should not have negatively affected PAE's rating under the past performance factor. We found in our first decision that this conclusion on the part of the agency was reasonable. Exelis Systems Corp., supra, at 23.

Subsequent to our earlier decision, the agency determined that the allegedly unsupported and unallowable payments under the predecessor Baghdad embassy contract were the result of an ambiguity in the terms of the contract. The agency issued a modification to that contract to clarify what would be considered allowable costs. Contracting Officer's Statement at 46. Additionally, the contracting officer continues to take the position that the references to overpayment were suspect because they were not verified by the IG auditors, who did not follow up with PAE to validate their position. Id.

With respect to all of the IG reports, the contracting officer explains that the agency's evaluators, contracting team, and source selection authority held a meeting during which all three of the reports were discussed in detail. Contracting Officer's Statement at 46. At the conclusion of that meeting, the agency determined that the three IG reports were--comparatively--insignificant and largely irrelevant to PAE's past performance. In addition, notwithstanding the IG reports, all references provided in the past performance questionnaires for these contracts were good to excellent.<sup>13</sup> Based on these considerations, the agency determined that the IG reports should not have a negative impact on PAE's past performance rating.

Exelis's protest contention relating to the agency's evaluation of PAE's past performance is, in the final analysis, a disagreement with the conclusions of the agency concerning the significance of the IG reports. We find that the agency, in fact, gave due consideration to the information in the IG reports and determined, within its discretion, that the information should not have a negative impact on PAE's past performance rating. Exelis has provided us no basis to object to this aspect of the agency's past performance evaluation.

Exelis also argues that the agency unreasonably assigned its past performance a rating of confidence. According to Exelis, it has ample experience providing operations and maintenance services in austere environments, and the agency unreasonably focused on a few minor--and only tangentially relevant--considerations in assigning its past performance a rating of confidence rather than significant confidence. Exelis maintains that, to the extent these minor considerations should have negatively affected its past performance rating, the IG reports should have similarly affected PAE's past performance rating.

The record shows that there were two principal reasons for the agency's assignment of a rating of confidence to Exelis's past performance. First, the record shows that, although Exelis has performed approximately [deleted] percent of the scope of work contemplated by the RFP, the firm lacks past experience performing residential management and grounds keeping services. AR, exh. 8a, at 29. Second, there were several negative past performance considerations that were factored into the agency's rating, including: (1) a cure notice issued during Exelis's commencement of performance on one contract, as well as unsatisfactory ratings in the past performance questionnaire for the first year of that contract in the areas of cost control, accounting, and finance reporting; (2) an unsatisfactory rating on schedule and a marginal rating for cost control on an interim report relating to another contract that resulted in a partial termination for default of that contract; and (3) the fact that Exelis (formerly ITT) pled guilty to exporting defense articles without

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<sup>13</sup> The contracting officer's explanation is borne out by both the evaluation record, AR, exh. 8b, at 30, and the source selection decision, AR, exh. 14, at 5.

a license in 2007 and agreed to pay a fine of \$100 million in connection with that plea. Id.

Exelis contends that the first of these concerns--that it lacked relevant residential management and grounds keeping experience--is belied by its proposal. However, a review of the portion of the firm's proposal cited by Exelis (Exelis Proposal, tab 2.6 at 4) does not show that it actually outlined its experience in these areas. Moreover, the agency relied on the explicit representations of Exelis during its oral presentation to reach its conclusion that the firm lacked direct experience in these areas. Contracting Officer's Statement at 43 (including the verbatim quote from Exelis during its oral presentation, Original AR, exh. 11, at 11:35-12:20); AR, exh. 8a, at 29. The agency therefore reasonably found that Exelis lacked relevant past performance and experience in the areas identified.

With respect to the cure notice, Exelis contends that it explained the circumstances surrounding the issuance of that cure notice in its proposal, but that the agency did not take that explanation into account. The simple fact remains, however, that a cure notice was issued, and required government involvement in order for Exelis to meet its contractual requirements. Moreover, Exelis offers no explanation for the unsatisfactory ratings it received for that contract during the first year of performance relating to cost control, accounting, and finance reporting. On balance, we conclude that these considerations formed a reasonable basis for the agency's rating.

Regarding the other unfavorable ratings that were assigned to Exelis's past performance that led, ultimately, to a partial termination for default, as well as the guilty plea that led to the fine, Exelis asserts that the agency's consideration of these matters was not within the relevancy scope of the RFP's past performance evaluation factor. According to the protester, these two considerations were not relevant to the type of work to be performed under the resulting contract. Additionally, the protester argues that it was unreasonable for the agency to consider this information in connection with its proposal while not also considering the IG reports when evaluating the PAE proposal.

We have no basis to object to the agency's evaluation in this area. The RFP provided that, in considering past performance, the agency would evaluate the proposals as follows:

The Government will use past performance information to include the responses to the questionnaires (Section J Exhibit C) primarily to assess the capability of the Offeror (to include proposed subcontractors, key personnel, and senior management) [to] meet the solicitation performance requirements, including the relevance and currency of the work experience of the Offeror. In determining relevance, consideration will be given to the similarity of the service

performed in hostile, austere, and remote locations; complexity; technology; magnitude of effort; contract scope and type; and schedule. The Government may also use this data to evaluate the credibility of the proposal submitted by the Offeror.

#### RFP § M.10.1.5.

The RFP also provided that DOS could consider past performance information other than that provided by the offeror, and could use that information to assess the credibility of the proposal and the responsibility of the offeror. RFP § L.16.1.11. Thus, even if, as Exelis maintains, the underlying contracts at issue did not strictly meet the RFP's definition for relevance, the information could properly be considered in connection with the agency's assessment of the proposal's credibility and Exelis's overall business integrity and responsibility.

We also have no other basis to object to the agency's consideration of this information. As discussed above, the agency did, in fact, give careful consideration to the IG reports in connection with its evaluation of PAE's past performance. The fact that the agency ultimately did not find that the IG reports should result in downgrading PAE's past performance does not mean that the information was not considered; rather, it means that the information was evaluated and determined not to negatively affect PAE's rating. The fact that the agency reached a different conclusion with respect to the negative information about Exelis merely reflects the agency's differing judgment regarding the importance and magnitude of the negative Exelis information. We therefore deny this aspect of Exelis's protest.

#### OVERRIDE CONSIDERATIONS

The agency overrode the stay of performance of the contract awarded to PAE during the pendency of this protest. In this connection, the Competition in Contracting Act (CICA) requires agencies to suspend performance of an awarded contract until resolution of a protest that is filed within stated time limits, unless the head of the procuring activity responsible for the award has overridden the stay of performance. 31 U.S.C. § 3553(d)(3)(A) (2006).

Where an agency elects to override the stay of performance, CICA requires the agency to identify in writing whether the override is based on one of two grounds: (1) the "best interests of the United States"; or (2) "urgent and compelling circumstances that significantly affect the interests of the United States." 31 U.S.C. § 3553(d)(3)(C)(i). Where an agency overrides the stay of performance based on the government's "best interests," we are required by statute to make a recommendation "without regard to any cost or disruption from terminating, recompeting or reawarding the contract." 31 U.S.C. § 3554(b)(2).

Here, the agency overrode the stay of performance, citing 31 U.S.C. § 3553 (d)(3)(C), and Federal Acquisition Regulation § 33.104 (c). Although the

override determination and finding (D&F) document begins with a representation that this is a “best interests” override, the document does not clearly identify whether the override is based on a “best interests” or “urgent and compelling” basis. The D&F’s legal citations are nonspecific, D&F at 1, and the document elsewhere uses both phrases in its narrative. D&F at 12. Similarly, the cover letter transmitting the D&F states that the override is based on the “best interests” exception, but cites to 31 U.S.C. § 3553 (d)(3)(C)(i)(II), the statutory authority for an override based on urgency.

Although the agency’s D&F is not clear, it nonetheless specifically represents that the agency has preserved the option to provide Exelis meaningful relief, notwithstanding the override:

[T]o the extent GAO sustains the protest, this determination to commence contract performance will not preclude the Department from terminating the PAE OMSS contract for convenience and will not preclude Exelis from a subsequent opportunity to compete if GAO’s recommendations require subsequent corrective action.

D&F at 11. Accordingly, we make our recommendation in light of the agency’s representation.

## RECOMMENDATION

We sustain the protest for the limited reason discussed above relating to the agency’s misvaluation of PAE’s proposed staffing plan. As noted, the record shows that the PAE proposal includes a substantial reduction in the proposed level of effort during the later years of the contract without any explanation of how PAE will perform what essentially amounts to constant requirements; correspondingly, the evaluation record is silent regarding how the agency’s evaluators viewed PAE’s progressive reduction in its proposed level of effort. In light of these considerations, we recommend that the agency either: (1) evaluate the PAE proposal as it currently is written and make assessments that address the fact that PAE has proposed a progressive, substantial reduction in the level of effort over the life of the contract; or (2) reopen the competition, obtain revised proposals, evaluate those revised proposals and make a new source selection decision. In either event, should the agency conclude that PAE is not the firm in line for award of the contract, we recommend that the agency terminate PAE’s contract for the convenience of the government, and make award to the firm selected, if otherwise proper. We also recommend that the agency reimburse Exelis the costs associated with filing and pursuing its protest, including reasonable attorneys’ fees, but only to the extent that those costs were incurred in connection with the single issue we have sustained. 4 C.F.R. § 21.8(d)(1) (2013). The protester’s certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

Susan A. Poling  
General Counsel