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## Decision

**Matter of:** PAE Government Services, Inc.

**File:** B-407886; B-407886.2; B-407886.3; B-407886.4

**Date:** March 22, 2013

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### DIGEST

1. Protest that an agency failed to afford the protester meaningful discussions is denied where record shows that agency led protester into areas of its proposal requiring correction or amplification in order for the protester to have a reasonable chance to receive award; agency was under no obligation to discuss significant weaknesses introduced by the protester for the first time in its final proposal revision.
  2. Protest that an agency failed to provide for a common cutoff date for the submission of final proposals is denied where record does not demonstrate that the protester was prejudiced by the agency's actions.
  3. Protest challenging an agency's evaluation of proposals is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.
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### DECISION

PAE Government Services, Inc., of Arlington, Virginia, protests the award of a contract to Kellogg Brown & Root Services, Inc. (KBR), of Arlington, Virginia, under request for proposals (RFP) No. N62470-12-R-2005, issued by the Department of the Navy for base operating services at Camp Lemonnier, Djibouti, and Manda Bay,

Kenya. PAE asserts that the agency conducted inadequate and improper discussions and misevaluated proposals.

We deny the protest.

## BACKGROUND

The RFP contemplated the award of a fixed price contract<sup>1</sup> for a base year and up to 3 option years to provide comprehensive base operating services at the above-referenced locations. Firms were advised that the agency would award a contract to the offeror submitting the proposal deemed to offer the best value to the government, considering price and several non-price factors. RFP at 50. The RFP identified four non-price factors: corporate experience, technical approach/management approach, safety, and past performance.<sup>2</sup> RFP at 53. The solicitation provided that the first three factors were equal in importance and, collectively, these three factors were equal in weight to past performance.<sup>3</sup> Id. The RFP further provided that the four non-price factors were, collectively, equal to price. Id.

In response to the RFP, the agency received a number of proposals. After performing an initial evaluation of proposals, the agency established a competitive range, engaged in discussions with the competitive range offerors, and solicited and obtained final proposal revisions (FPRs). The FPRs were evaluated as follows:

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<sup>1</sup> The RFP includes lump-sum fixed-price line items, as well as fixed-unit-price indefinite-delivery, indefinite-quantity line items.

<sup>2</sup> For the first three non-price factors, the agency's source selection plan provided for the assignment of adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. Agency Report (AR), Exh. 1, Source Selection Plan at 19. For the past performance factor, proposals were to be rated as substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 20-21.

<sup>3</sup> The RFP inconsistently stated both that the four non-price evaluation factors were equal in importance to each other, and that the first three non-price factors, when combined, were of equal weight to the past performance factor. RFP at 53. This inconsistency notwithstanding, the relative weights of the evaluation factors are not at issue in the protest.

	<b>KBR</b>	<b>PAE</b>	<b>Offeror A</b>
<b>Corporate Experience</b>	Outstanding	Outstanding	Good
<b>Tech. Approach/Mgmt. Approach</b>	Good	Marginal	Good
<b>Safety</b>	Outstanding	Acceptable	Good
<b>Overall Adjectival Rating</b>	Outstanding	Acceptable	Good
<b>Past Performance</b>	Substantial Confidence	Substantial Confidence	Satisfactory Confidence
<b>Price</b>	\$127,580,900	\$129,457,147	\$155,577,981

Supp. AR, Exh. 3, Final Technical Evaluation Report at 3; Exh. 4, Final Price Evaluation Report at 1. The source selection authority found that KBR's proposal offered the best value to the government, considering all of the evaluation factors. After being advised of the agency's award decision and requesting and receiving a debriefing, PAE filed the subject protest.

## PROTEST

PAE has raised a number of allegations in two areas, the propriety of the agency's discussions and the propriety of the agency's evaluation of proposals. We have considered all of PAE's arguments and find that none provide a basis to sustain the protest. We discuss PAE's principal contentions below.

### Discussions With PAE

The agency engaged in one round of discussions with each competitive range offeror. PAE maintains that the agency's discussions with it in the areas of technical approach/management approach and safety were not meaningful and were misleading.

The record shows that, after its initial evaluation, the agency rated PAE's proposal acceptable under the technical approach/management approach factor and made two observations in connection with its evaluation. First, the agency found that PAE's proposal was ambiguous regarding how many full-time equivalent (FTE) personnel it was proposing. The firm's technical proposal represented in one place that it was proposing to perform the requirement using approximately [deleted] FTEs. AR, Exh. 3, PAE Initial Technical Proposal, FTE Worksheet. However, elsewhere in its technical proposal, PAE represented that it would perform the requirement using approximately [deleted] FTEs. *Id.*, PAE Initial Technical Proposal at F2-53 to F2-56. Finally, in its price proposal, PAE represented that it would perform the requirement using approximately [deleted] FTEs. AR, Exh. 4, PAE Initial Price Proposal at V1-1 to V1-2. Second, the technical evaluators observed

that PAE's proposed staffing appeared low for the galley and electrical "annexes" of the requirement.<sup>4</sup> AR, Exh. 11, Initial Technical Evaluation Report at 143.

The agency asked PAE two questions in connection with the ambiguity in the number of FTEs it proposed. First, the agency advised PAE that its technical proposal included two different totals for the number of FTEs proposed and asked the firm to reconcile and confirm the correct number of FTEs being offered. AR, Exh. 15, PAE Discussions Letter at 3. Second, in discussing PAE's price proposal, the agency noted that the number of FTEs the firm used to prepare its price differed from the number of FTEs proposed in its technical proposal. The agency cautioned PAE that the number of FTEs in its price proposal should be consistent with the number of FTEs the firm intended to use to perform the work. *Id.* at 4. The agency's discussions did not mention the evaluators' observation relating to PAE's relatively low staffing in the galley and electrical annexes.

In the area of safety, the technical evaluators assigned PAE's proposal an acceptable rating and observed that, although PAE represented that it would use past safety performance information in connection with its selection of subcontractors, it did not specifically describe how the information would be used as a discriminator in making subcontractor selection decisions. AR, Exh. 11, Initial Technical Evaluation Report at 158. The agency did not provide PAE a discussion question in the area of safety.

In response to the agency's discussion questions, PAE represented that it would perform the requirement using approximately [deleted] FTEs. PAE elaborated on this change by stating:

Upon further review of scope and staffing requirements, PAE Government Services, Inc. has reevaluated and has revised our full time equivalent staffing levels which are now reflected in the revised referenced Price Worksheet and Technical Proposal Figures.

AR, Exh. 6, FPR Evaluation Notices Matrix, at 1, 2. PAE's FPR included revised staffing matrices showing the change in its proposed staffing. AR, Exh. 5, PAE Technical FPR.

Based on PAE's revised staffing, the agency lowered the firm's rating under the technical approach/management approach factor from acceptable to marginal. In making this change, the evaluators found that:

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<sup>4</sup> The RFP divided the requirement into various "annexes" which were discrete areas of contract performance, for example security operations, facility support services, etc. See e.g., RFP, Attach. J.C-1, at 1-2.

PAE's final proposal revision decreased staffing by [deleted] FTEs ([deleted] to [deleted] FTEs) without any explanation for the reduction or an adequate demonstration in its proposal of how it could successfully perform within this level of staffing. This poses a significant risk to the Government as this level of staffing without additional explanation does not demonstrate that PAE has a clear understanding of the overall staffing requirements. This is a significant weakness. Additionally, significant reductions were made in the Security Operations, MWR [morale welfare and recreation], Bachelor Quarters, Galley, Custodial Services, Electrical, BSVE [base support vehicles and equipment] and Environmental Annexes without in turn demonstrating how individual staffing challenges during performance would be met through reasonable staffing management.

AR, Exh. 12, Final Technical Evaluation Report at 6.

PAE argues that the agency's discussions relating to its proposed staffing level were not meaningful and were misleading. PAE maintains that the agency simply asked it to "reconcile" the different staffing figures included in its proposal, without ever elaborating on its request by advising PAE that the lower staffing figures it proposed would be considered to pose a risk to successful performance. PAE contends that it was not provided enough information to meaningfully respond to the agency's concern, and that it was misled into believing that the agency essentially had no concerns with any of its three proposed staffing figures.

We find no merit to this aspect of PAE's protest. In negotiated procurements, whenever discussions are conducted, they are required to be meaningful, equitable, and not misleading. Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 19. We conclude that the agency's discussions here met this standard.

The record shows that, during its initial evaluation, the agency was not concerned with the adequacy of PAE's proposed level of effort. The agency's technical evaluators considered the figure set forth in PAE's FTE worksheet--[deleted] FTEs --in evaluating its initial proposal and concluded that this proposed level of effort was adequate to perform the requirements. AR, Exh. 11, Initial Technical Evaluation Report at 143, 145. The technical evaluators did observe, however, that PAE's technical proposal was ambiguous because it included two different figures for its proposed level of effort, and recommended that the ambiguity be raised with PAE. Id. at 191. Similarly, the price evaluators observed that there were three different proposed levels of effort included in the initial PAE offer. Without making a judgment concerning which of the three figures PAE intended to propose, the price evaluators simply recommended that PAE be required to correct the ambiguity in its proposal. AR, Exh. 13, Initial Price Evaluation Report at 7-8.

It was only after the agency evaluated PAE's FPR that the adequacy of its proposed level of effort became a concern. AR, Exh. 12, Final Technical Evaluation Report at 6. However, since this weakness was first introduced in PAE's FPR, the agency was under no obligation to reopen discussions with the protester to afford it an opportunity to correct the problem. DB Consulting Group, Inc., B-401543.2, B-401543.3, Apr. 28, 2010, 2010 CPD ¶ 109 at 9. Once PAE decided to revise the FTE levels as reflected in its FTE worksheet from [deleted] to [deleted], it was PAE's responsibility to provide an explanation for reconciling its figures in this manner. Its failure to do so led to new evaluated weaknesses.

In the final analysis, PAE's arguments would require the agency to have guessed which staffing level included in its initial proposal was the one the firm intended. Only if the agency had concluded that PAE was proposing to perform with [deleted] FTEs would the agency have been concerned--as it was in its final evaluation--that PAE either had not offered adequate staffing to perform the requirement, or had not adequately explained how it would perform using only [deleted] FTEs. However, in evaluating proposals, an agency is under no obligation to decipher a poorly organized proposal, Shumaker Trucking and Excavating Contractors, B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 5, or to accept a proposal that the agency finds is unclear or ambiguous. See Ace Info Solutions, Inc., B-295450.2, Mar. 7, 2005, 2005 CPD ¶ 75 at 8; Innovative Comm's Techs., Inc., B-291728; B-291728.2, Mar. 5, 2003, 2003 CPD ¶ 58 at 5-7. In view of these considerations, we deny this aspect of PAE's protest.

PAE also maintains that the agency erred in not discussing the agency's observation about the low staffing in its initial proposal (the galley and electrical annexes), as well as its observation relating to how PAE would use past safety performance information in selecting subcontractors. PAE argues that the agency's failure to discuss these matters precluded it from improving its proposal under the technical approach/management approach and safety factors.

We find no merit to this aspect of PAE's protest. The observations made by the agency were not identified as weaknesses or deficiencies and did not result in PAE's proposal receiving less than an acceptable rating under the two factors at issue. Agencies are not required to discuss every element of a technically acceptable proposal that receives less than the maximum possible score, Dell Marketing, LP, B-400784, Jan. 27, 2009, 2009 CPD ¶ 35 at 7 n. 4, and the agency was under no legal obligation here to discuss these issues with PAE. In any case, the agency's decision not to discuss these issues with PAE was not prejudicial. The record shows that the firm's proposal still would have been rated marginal for the

inadequate level of effort the firm proposed for the first time in its FPR in a number of annexes. We therefore deny this aspect of PAE's protest.<sup>5</sup>

#### Discussions With Offeror A

PAE contends that the agency engaged in improper discussions with offeror A that required the reopening of discussions with the protester. In this regard, the record shows that the agency originally established a competitive range that included only PAE and KBR. The agency initiated discussions with the two firms by letters dated September 28, 2013, and both firms submitted FPRs on October 4. Offeror A had originally been excluded from the competitive range, but the agency subsequently decided to allow the firm into the competitive range for reasons not relevant here. Offeror A's discussions were commenced by letter dated October 15, and the firm was required to submit its FPR on October 22.

According to PAE, the agency's actions were improper for two reasons. First, the protester characterizes the agency's actions as "voluntary corrective action" taken after the submission of FPRs. As a result, PAE argues that the agency was required to reopen discussions with all of the competitive range offerors because it opened discussions with offeror A. Second, PAE argues that the agency's discussions with offeror A violated the requirement for a common cutoff date for the submission of all proposal revisions.

We find no merit to this aspect of PAE's protest. With respect to PAE's allegation that the agency was required to reopen discussions with all of the competitive range offerors because it opened discussions with offeror A, the cases relied on by PAE do not support its position. For example, PAE directs our attention to Rockwell Elec. Commerce Corp., B-286201.6, Aug. 30, 2001, 2001 CPD ¶ 162, where we sustained the protest because the agency, after conducting discussions with all competitive range offerors, engaged in an additional round of discussions with one,

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<sup>5</sup> PAE also contends that the agency engaged in disparate treatment by offering KBR more meaningful discussions because the agency discussed what PAE characterizes as a "concern" found in the KBR proposal with KBR but did not discuss with PAE the "concerns" identified in its proposal. The record shows that the two offerors were treated virtually identically during discussions. The "concern" alluded to by PAE was an ambiguity in the level of effort proposed by KBR (KBR also had two different FTE figures in its technical proposal). The discussion question posed to KBR is virtually identical to the one posed to PAE, requesting that it "reconcile and confirm" the number of FTEs being offered. AR, Exh. 15, KBR Discussions Letter at 3. The record also shows that, as in the case of PAE, the agency identified two minor staffing shortfalls in KBR's proposal--under two annexes--that were not discussed with KBR. AR, Exh. 11, Initial Technical Evaluation Report at 140.

but not all, of the competitive range offerors.<sup>6</sup> Here, the agency engaged in just one round of discussions with all of the competitive range offerors; offeror A was not afforded an additional round of discussions and did not, thereby, obtain a competitive advantage not afforded to all offerors.

Regarding the lack of a common cutoff date for the submission of FPRs, while we agree with the protester that there is a general legal requirement for a common cutoff date, see Raytheon Tech. Servs., Co., LLC, B-404655.4, et al., Oct. 11, 2011, 2011 CPD ¶ 236 at 7, the protester still must establish that the agency's actions in failing to establish a common cutoff date prejudiced it in order for our Office to sustain its protest on this basis. Metropolitan Interpreters and Translators, Inc., B-403912.4, et al., May 31, 2011, 2012 CPD ¶ 130 at 10-11.

Here, there is no showing that PAE was prejudiced by the lack of a common cutoff date. First, offeror A did not obtain a competitive advantage from its discussions having occurred subsequent to those conducted with PAE because offeror A was not awarded a contract. Cf., Raytheon Tech. Servs., Co., LLC, supra, at 7-8 (offeror that was afforded later discussions ultimately received award of a contract). Second, the record shows that all of the offerors were provided approximately the same amount of time to respond to the agency's discussions (6 days in the case of PAE and KBR; 7 days in the case of offeror A because the sixth day fell on a weekend), and the interval between the two sets of discussions was brief (less than 3 weeks). See Metropolitan Interpreters and Translators, Inc., supra. (despite the lack of a common cutoff date, no prejudice shown where all offerors were afforded the same amount of time in which to prepare proposal revisions).

Finally, PAE does not allege that any of the surrounding circumstances led it to be prejudiced. Instead, the firm alleges that it was prejudiced because the substance of its discussions differed from the substance of the discussions afforded offeror A. According to PAE, offeror A was given discussions relating to the adequacy of its proposed level of effort while PAE was not. However, as already discussed, the agency was under no obligation to have discussions with PAE regarding its deficient proposed level of effort because that weakness was first introduced in its FPR; the substance of offeror A's discussions is irrelevant to this conclusion. In light of these considerations, we deny this aspect of PAE's protest.

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<sup>6</sup> PAE also directs our attention to Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108, Int'l. Resources Group, B-286663, Jan. 21, 2001, 2001 CPD ¶ 35, and Patriot Contract Servs., LLC; Keystone Shipping Servs., Inc.; MTL Ship Mgmt.; V-Ships Marine, Ltd., B-278276.11, et al., Sept. 22, 1998, 98-2 CPD ¶ 77. In each of these cases, the agency, after conducting discussions with all of the competitive range offerors, subsequently afforded one, but not all, of the competitive range offerors additional discussions.



## Evaluation of Proposals

PAE alleges a host of technical proposal evaluation errors on the part of the agency. We note at the outset that, in considering protests relating to an agency's evaluation, we do 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. We have carefully reviewed all of PAE's contentions and find them to be without merit. We discuss two of PAE's allegations for illustrative purposes.

PAE alleges that the agency misevaluated its proposal under the technical approach/management approach factor. According to PAE, rather than evaluate its proposed staffing levels against the objective requirements of the solicitation, the agency erroneously confined its evaluation to a comparison between the proposed staffing levels in its initial proposal and the proposed staffing levels in its FPR. In effect, PAE maintains that its proposed FPR level of effort only appeared [deleted] to the agency because it was [deleted] than the level of effort in its initial proposal. PAE asserts that the agency never objectively considered whether the level of effort in its FPR was adequate to perform the requirement.

This aspect of PAE's protest is without merit. First, there is nothing inherently improper in the agency comparing the level of effort proposed by PAE in its initial proposal--which the agency found acceptable--with the level of effort proposed in its FPR--which the agency found marginal. The agency's point in observing this difference was that PAE had reduced its proposed staffing by almost [deleted] percent without an explanation as to how it could perform the requirement using this substantially [deleted] level of effort.

In any case, the record shows that the agency rated PAE's initial proposal acceptable under the technical approach/management approach factor because the agency viewed its proposed level of effort as high, but acceptable, for purposes of performing the requirement. AR, Exh. 11, Initial Technical Evaluation Report at 143. This original conclusion was based on a comparison of PAE's proposed level of effort (approximately [deleted] FTEs) to the level of effort estimated by the agency in an independent government estimate (approximately 921 FTEs). Id. at 145.

The record shows that the agency followed essentially the same process in evaluating PAE's FPR. PAE is correct that the evaluators observed that the firm had reduced--without explanation--its proposed level of effort by approximately [deleted] FTEs compared to what had been offered in its initial proposal. AR, Exh. 12, Final Technical Evaluation Report at 6. Nonetheless, the agency compared the

adequacy of PAE's proposed level of effort to that used in the government estimate, and concluded that its proposed level of effort was below the government estimate by approximately [deleted] FTEs. Id. at 6-7.<sup>7</sup> The record also shows that the agency's comparison was made on an annex-by-annex basis; the agency concluded that PAE's staffing was significantly low in 8 separate annexes. Id. The record therefore demonstrates that, in making these comparisons of PAE's proposed level of effort to the level of effort the agency thought necessary to meet the RFP requirements (i.e., the government estimate), the agency was evaluating PAE's proposal against the solicitation's requirements. We therefore deny this aspect of PAE's protest.<sup>8</sup>

PAE next argues that the agency unreasonably rated KBR's past performance as substantial confidence. According to the protester, the Department of Justice has filed a civil lawsuit against KBR for alleged overbilling in connection with its performance of its LOGCAP III contract, one of the contracts considered in connection with the agency's past performance evaluation.<sup>9</sup>

We find no merit to this aspect of PAE's protest. The record shows that the agency performed its initial past performance evaluation on July 11, 2012, and reviewed, among other contracts, KBR's performance of the LOGCAP III contract. AR, Exh. 11, Initial Technical Evaluation Report at 188. While the agency performed a subsequent review of FPRs on October 24, it did not revisit its past performance evaluation results because the offerors did not revise their proposals in this area. Hence, the record shows that, although award to KBR did not occur until December 6, the agency's past performance evaluation was effectively completed on July 11. The lawsuit referred to by PAE was not filed until November 19, well after the

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<sup>7</sup> As a point of comparison, KBR proposed approximately 942 FTEs in its FPR.

<sup>8</sup> PAE also suggests that the agency could not rationally assign its proposal a marginal rating under the technical approach/management approach factor for failing to explain how it could so [deleted] its proposed level of effort, when it assigned KBR's proposal a good rating even though the firm's FPR did not explain how it substantially reduced its proposed price. However, since the RFP did not contemplate an evaluation of proposals for price realism, any downgrading of KBR's proposal under the technical evaluation factors based on its proposed price would have been improper. New Orleans Support Servs., B-404914, June 22, 2011, 2011 CPD ¶ 146 at 3.

<sup>9</sup> In its initial protest, PAE cited to other KBR contracts that it asserted demonstrated past performance problems. The agency responded to these assertions by pointing out that the RFP stated that the agency would confine its past performance evaluation principally to those contracts referenced in the offerors' proposals under the corporate experience factor. RFP at 57.

agency completed its past performance evaluation.<sup>10</sup> Under the circumstances, we have no basis to object to the agency's evaluation of KBR's past performance for the reason advanced by the protester.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>10</sup> The lawsuit was announced by the Department of Justice in a November 19, 2012, press release. See <http://www.justice.gov/opa/pr/2012/November/12-civ-1386.html>.