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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

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## **Decision**

**Matter of:** Rolf Jensen & Associates, Inc.

**File:** B-289475.2; B-289475.3

**Date:** July 1, 2002

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George W. Stiffler, Esq., and Donald A. Tobin, Esq., Bastianelli, Brown & Kelley, for the protester.

Joel S. Rubinstein, Esq., and Andrew N. Cook, Esq., Bell, Boyd & Lloyd, for Hughes Associates, Inc., the intervenor.

Lee Wolanin, Esq., Department of Transportation, for the agency.

Katherine I. Riback, Esq., Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protest that the agency misevaluated the awardee's technical proposal under staffing and past performance subfactors is denied where the record shows that the evaluation was reasonable; protester's mere disagreement does not render the agency's judgment unreasonable.

2. Protest that the agency did not accept the protester's proposed indirect rates in the agency's cost realism evaluation is denied where the record shows that the protester was not prejudiced, even assuming the protester's objections are correct.

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### **DECISION**

Rolf Jensen & Associates, Inc. protests the award of a contract by the Volpe National Transportation Systems Center, Department of Transportation (DOT), to Hughes Associates, Inc. under request for proposals (RFP) No. DTRS57-01-R-20023, for fire life safety program engineering services, including the support of fire safety improvements at airport facilities.

We deny the protest.

The RFP provided for the award of a indefinite-delivery/indefinite-quantity task-order contract. Depending upon the services required, task orders would be issued on either a fixed-price or cost-reimbursement basis.

Offerors were informed that DOT intended to make award, considering cost and technical factors, based on initial proposals without conducting discussions. The identified two equally important technical factors: technical capabilities and technical understanding. The technical capabilities factor had two equally weighted subfactors: staffing and past performance. The technical understanding factor had four various weighted subfactors: technical and management approach, quality control and health and safety approach, resources, and responses to the hypothetical tasks. The solicitation provided that the technical factors were significantly more important than the cost factor in the award selection, but in the event that the evaluation under technical factors were essentially equal, cost might become the determining factor in the award decision.

The RFP contained detailed proposal preparation instructions. Regarding the staffing subfactor, offerors were instructed to identify personnel for this contract, and to provide resumes that were “verifiable in that relevant dates and names and addresses of educational institutions and employers must be provided for all experience, education, and specialized training claimed.”<sup>1</sup> RFP § L.6.3, part 1.d. With respect to the past performance subfactor, the RFP requested past performance information for both the offeror and the major proposed subcontractors. Specifically, the offeror was to provide a list of contracts that it was “currently performing or had completed within the past [3] years,” and from this list the offeror was to select no more than five contracts that it considered “the most relevant in demonstrating its ability to perform the proposed effort.” RFP § L.6.3, part 2.

The cost evaluation was to be based on the offeror’s proposed costs for estimated labor hours for 1 year for various stated labor categories. The RFP provided for a cost realism evaluation to assess the probable cost, which would be used to determine the best value to the government, and provided cost schedules (numbered 2 through 8) that offerors were to use to provide cost information, such as indirect rates and subcontract information. The solicitation cautioned that “[a]ll costs, rates, factors, and calculations must be shown and supporting rationale and documentation included.” RFP § L.7.4.

Four proposals, including those of Jensen and Hughes, were submitted and evaluated by the agency’s technical evaluation team (TET). Written requests for clarification were sent to all of the offerors. With respect to Hughes’s offer, DOT asked Hughes to explain inconsistencies in the costs identified in various cost schedules for the firm’s subcontract costs. DOT similarly asked Jensen to clarify explain inconsistencies in the costs identified in various cost schedules for the firm’s subcontract costs.

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<sup>1</sup> Resumes were not required for all individual technical staff members, but only for specified positions, such as, for example, the project manager, senior project engineers, and staff engineers.

The proposals were evaluated as follows:

<b>Offeror</b>	<b>Technical Rating</b>	<b>Technical Score (out of 100 points)</b>	<b>Proposed Cost</b>	<b>Evaluated Cost</b>
Jensen	Exceptional	91.120	\$1,131,955	\$1,187,044
Hughes	Exceptional	89.627	\$ 996,951	\$1,007,409
Offeror X	Acceptable	81.634	\$1,328,198	\$1,328,198
Offeror Y	Acceptable	74.670	\$1,158,325	\$1,158,325

Agency Report, Tab 25, Source Selection Decision at 2.

The TET advised the contracting officer that the technical proposals of Jensen and Hughes were “essentially equal” based on the results of the technical evaluation of their respective proposals. Agency Report, Tab 22, Memorandum from TET Chairman to Contracting Officer (Nov. 30, 2001).

In the cost evaluation, DOT upwardly adjusted Hughes’s proposed cost by \$10,458 to reflect an inconsistency in what Hughes proposed as a subcontractor cost and what the subcontractor’s sealed proposal showed for that cost. The DOT also upwardly adjusted Jensen’s proposed costs by \$55,089, which reflected the agency judgment that the firm had not supported the creation of proposed new indirect burden rates for subcontract costs and other direct costs (ODC), as explained below.

Specifically, Jensen had proposed the following indirect rates in its costs proposal:

Overhead	[DELETED]
General & Administrative (G&A)	[DELETED]
Fringe Benefits	[DELETED]
Subcontract Burden	[DELETED]
ODC Burden	[DELETED]

Jensen Cost Proposal, sch. No. 8. DOT requested that the Defense Contract Audit Agency (DCAA) audit Jensen’s proposed direct labor and indirect rates. DCAA found that the firm’s proposed overhead, G&A, and fringe benefits rates were based upon calendar year 2000 actual rates, and had been previously accepted by DCAA in 2001. DCAA took exception, however, to the firm’s proposed subcontract and ODC burden rates because “[t]hese proposed rates are not normally used by the contractor and represent an estimate created only for this proposal.” Agency Report, Tab 24, DCAA Audit Report of Jensen (Oct. 24, 2001), at 3. Although DCAA requested that Jensen provide support for its proposed separate subcontract and ODC burden rates, the firm did not provide the requested supporting information. DCAA noted that Jensen developed its G&A rate using a total cost input base, and that on a cost-type contract, indirect costs incurred for support and administrative efforts related to subcontracts and ODCs would normally be recovered in the

application of the G&A rate to total cost input, which includes subcontract and ODC costs in the base.<sup>2</sup> Id. at 4-5. DCAA also stated that it discussed its audit findings with the protester's chief financial officer and treasurer, "who understood our concerns and agreed that any indirect effort incurred on this contract related to subcontracts and/or ODC's would be charged indirectly in accordance with [Jensen's] normal practice." Id. at 4.

DOT's contract price analyst agreed with the DCAA recommendation that DOT not accept Jensen's proposed subcontract and ODC burden rates. Specifically, the analyst found that, although the contractor could formally change its indirect cost structure to provide for segregating subcontract and ODC costs, there was no evidence that Jensen had developed a methodology to segregate its existing G&A expenses into newly created subcontract and ODC cost pools. Additionally, there was no evidence that the firm had prepared an estimate for its new subcontract and ODC rates; instead, it appeared that it had selected an unsupported [DELETED] percent rate for each. Thus, in the cost realism evaluation, the agency, consistent with DCAA's advice, applied Jensen's [DELETED] percent G&A rate to the proposed subcontract and ODC costs, instead of the [DELETED] percent rate proposed, which resulted in the upward cost adjustment.

The contracting officer adopted the evaluators' determination that the technical proposals of Jensen and Hughes were "essentially equal" and selected Hughes's lower evaluated cost offer as reflecting the best value to the government. Agency Report, Tab 25, Proposal Evaluation Results/Source Selection Decision, at 17. Award was made to Hughes on January 4, 2002, and Jensen filed an agency-level protest. After denial of the agency-level protest, this protest followed.

Jensen first complains that the agency improperly evaluated the technical proposal of Hughes under the staffing and past performance subfactors of the technical capabilities factor.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

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<sup>2</sup> In its cost proposal, Jensen states that its G&A, fringe, and overhead rates were developed for the firm by DCAA and were based upon historical data. Jensen also states that its G&A rate was determined by a total cost input base. Jensen Cost Proposal, sch. No. 8.

The protester contends that a number of the awardee's resumes for proposed staff were not "verifiable," as required by the solicitation. Specifically, DOT found, in its technical evaluation, that 4 of the 25 resumes submitted by Hughes for its management, engineering, and subject matter expert staff were not verifiable with respect to dates for education and employment experience. DOT identified this lapse as a weakness in the awardee's proposal under the staffing subfactor. Agency Report, Tab 21, Technical Evaluation Report, at 15. The protester argues, however, that Hughes's proposal should have been rejected or more significantly technically downgraded for this failure.<sup>3</sup> Protester's Comments at 13.

We find reasonable the agency's evaluation of Hughes's resumes and proposed staffing, despite the agency's conclusion that four of the resumes were not "verifiable." The RFP required that resumes be submitted for proposed staff to allow the agency to evaluate the qualifications of the offerors' personnel "in terms of technical expertise, experience, education, and qualifications relevant to the functional area requirements of this contract." RFP § L.6.3. Here, based on our review, the agency reasonably concluded that sufficient information was provided on the four resumes to allow for this evaluation.<sup>4</sup> The resumes identify the individual's academic credentials and overall years of experience (which range from 14 to 35 years of experience), and describe with some specificity each individual's past job responsibilities. Although it is true that these four resumes do not identify an address for employers or dates of employment for each past job responsibility, we do not think that this required the rejection of Hughes's proposal or a finding that this substantially affected the agency's evaluation of qualifications of Hughes's proposed staff. In this regard, we note that the solicitation specifically provided that the experience and education requirements, which correspond to years of experience and degrees, "shall not be considered minimum requirements" for positions, including senior project engineers and staff engineers; rather, the RFP states that these personnel requirements were for "guidance purposes only." RFP, attach. J.1. Under the circumstances, we think that the agency appropriately treated as a proposal weakness the fact that four of Hughes's resumes were not "verifiable," and did not overrate Hughes's proposal under the staffing subfactor,

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<sup>3</sup> Jensen also complains that the agency's evaluation record indicates that Hughes identified a subcontract employee as a "lead senior program engineer" during Hughes's oral presentation but that individual's resume was not included in Hughes's proposal. The agency and Hughes explain that no resume was submitted for this person, because he was not offered as a senior program engineer or intended to be a key person on this contract. In any event, we note that Hughes submitted resumes for 10 individuals identified as senior program engineers.

<sup>4</sup> Jensen does not otherwise challenge the experience and qualifications of these four individuals.

particularly given the other strengths evaluated in Hughes staffing under this subfactor.<sup>5</sup>

With respect to the past performance evaluation, the protester objects that the agency credited Hughes for the past performance experience of one of its subcontractors. We find no basis to object to the agency's evaluation in this regard. The Federal Acquisition Regulation (FAR) directs agencies to take into account past performance information regarding predecessor companies, key personnel, and major subcontractors when such information is relevant to an acquisition. FAR § 15.305(a)(2)(iii). Thus, we have found that the experience of a proposed subcontractor properly may be considered in determining whether an offeror meets an experience requirement in the solicitation where it is not expressly prohibited by the RFP. Premier Clearing Sys., Inc., B-249179.2, Nov. 2, 1992, 99-2 CPD ¶ 298 at 4; AeroVironment, Inc., B-233712, Apr. 3, 1989, 89-1 CPD ¶ 343 at 4. Here, the RFP not only did not restrict the consideration of proposed subcontractors' experience in the evaluation of proposals, but requested that offerors submit past performance information for themselves and proposed major subcontractors. RFP § L.6.3.

The protester also objects that the agency considered Hughes's own past performance history as a subcontractor. This, too, was permitted by the solicitation, however. In fact, the RFP expressly provided that "[i]nformation regarding the Offeror's performance as a subcontractor with the Federal Government will be obtained from the prime contractor." RFP § L.6.3.

The protester also complains that two of the five contracts identified by Hughes as relevant contracts were not completed within the past 3 years, as required by the RFP. DOT recognized this fact in its technical evaluation; this was the only weakness identified in Hughes's past performance. See Agency Report, Tab 21, Technical Evaluation Report, at 16. Moreover, as noted by the agency, one of these contracts missed the 3-year period by only 1 month. See Agency Report, Tab 35, Hughes's Proposal, at 76. We find no basis to object to the agency's evaluation simply because two of the five contracts identified as relevant by Hughes were not within 3 years of this acquisition. In this regard, the RFP did not require offerors to submit a minimum of five relevant contracts but only instructed offerors to "select no more than five (5) contracts that it considers the most relevant." RFP § L.6.3 (emphasis added). Here, Hughes provided three (and arguably four) relevant contracts that provided DOT with a basis to evaluate Hughes's past performance.

Jensen also protests that the agency miscalculated its proposal and failed to recognize its "clear technical superiority" in the areas of work transition and

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<sup>5</sup> As noted by the agency, Hughes's proposal received more strengths and fewer weaknesses (including the one discussed above) than did Jensen's proposal. Jensen does not otherwise specifically challenge the staffing subfactor evaluation.

workforce distribution. The protester contends that “[w]hile [Jensen] was not technically an incumbent,” the contract support it had provided to the Federal Aviation Administration (FAA) “set the standard upon which other contractors will be evaluated.” See Agency Report, Tab 28, Agency-Level Protest, at 2.

With respect to the protester’s arguments concerning work transition, as noted by the agency, this is the agency’s first acquisition of the fire life safety program engineering services sought by the RFP. Thus, there is no incumbent contractor, from which another contract would need to transition the work and thus no basis to find Jensen’s proposal technically superior in this respect.<sup>6</sup> Supplemental Agency Report at 1.

With respect to workforce distribution, the agency states that although there was no specific evaluation factor to assess workforce distribution, it was considered as a part of the resources subfactor to the technical understanding factor. Under this subfactor, the agency assessed “the resources available for supporting the execution of the [statement of work] such as office locations, equipment, and technical support capabilities.”<sup>7</sup> RFP § M.2.2. Both Jensen and Hughes received exceptional scores under this subfactor, reflecting the fact that both firms offered nationwide office locations to perform the contract. See Agency Report, Tab 21, Technical Evaluation Report at 19, 34. Although Jensen claims that it has more widespread and better supported offices than Hughes, it does not show the agency assessment in this respect was unreasonable.

In sum, we find no basis in the record to object to the agency’s technical evaluation and judgment that the proposals of Jensen and Hughes were essentially technically equal. Although the protester clearly disagrees with the agency’s judgment, its disagreement does not show the evaluation to be unreasonable. UNICCO Gov’t Servs., Inc., supra, at 7.

The protester also challenges the agency’s decision not to accept its proposed subcontract and ODC burden rates and to upwardly adjust its cost proposal to reflect the application of the firm’s higher G&A rate to these costs. In this regard, Jensen complains that it should have been given an opportunity to explain these

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<sup>6</sup> Similarly, Jensen asserts that Hughes would have higher “transitional” costs for “training and staffing,” which were not accounted for in the cost realism evaluation. However, neither Jensen nor the record shows a basis to question the finding that Hughes included all appropriate training and staffing costs in its cost proposal, as was found by the agency in the cost realism evaluation.

<sup>7</sup> The RFP did not provide that offerors would receive additional credit for having office locations within close proximity to particular Volpe National Transportation Systems Center sponsors, such as the FAA.

proposed indirect rates. Additionally, the protester complains that Hughes was given an opportunity to explain an inconsistency in its cost proposal and that this constituted discussions that required DOT to engage in discussions with the protester regarding its subcontractor and ODC burden rates.

We need not address these objections, because the record establishes that Jensen was not prejudiced, even assuming that there is any merit to the protester's arguments. Competitive prejudice is an essential element of every viable protest. Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5. Where the record does not demonstrate that, but for the agency's actions, the protester would have had a reasonable chance of receiving the award, our Office will not sustain a protest, even if a deficiency in the procurement is found. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

As noted above, the technical proposals of Jensen and Hughes were reasonably found to be essentially equal, and, thus, Hughes's lower evaluated cost properly became the basis for award. See General Research Corp., B-241569, Feb. 19, 1991, 91-1 CPD ¶ 183 at 10, aff'd, American Mgmt. Sys., Inc.; Dep't of the Army--Recon., B-241569.2, B-241569.3, May 21, 1991, 91-1 CPD ¶ 492. Thus, even accepting Jensen's arguments that DOT should have accepted the firm's proposed costs and that Jensen should have been given an opportunity to explain its proposed indirect rates (given that Hughes received the opportunity to explain inconsistencies in its cost proposal),<sup>8</sup> Hughes's evaluated cost would remain lower than Jensen's.<sup>9</sup> Because Jensen would not be in line for award, even were we to accept its cost evaluation arguments, we find that there is no reasonable possibility that Jensen was

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<sup>8</sup> Jensen does not claim that it would have made any other changes in its proposal if discussions had been conducted. In any case, as indicated, both Jensen and Hughes were given similar opportunities to clarify apparent inconsistencies in their subcontract costs, which do not appear to have constituted discussions.

<sup>9</sup> Jensen also argues that DCAA recommended in its audit report that no indirect rate be applied to the firm's proposed subcontract costs and ODCs and therefore Rolf Jensen's evaluated costs would be even lower. We believe that Jensen misunderstands DCAA's audit advice, which recommended disallowing the separate burden rates for subcontract costs and ODCs because these costs were included in the firm's G&A pool. In this regard, as noted above, DCAA and DOT recognized that the protester's proposed G&A rate was based upon a historical rate using a total cost input base that included subcontract costs and ODCs, and Jensen's cost proposal indicated that its G&A rate was determined by a total cost input base. In any event, Jensen does not show that its evaluated cost would be lower than Hughes's evaluated cost, even if the protester's proposed subcontract costs and ODCs were not burdened.

prejudiced.<sup>10</sup> See NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 18-21; Delta Research Assocs., Inc., B-254006.2, Nov. 22, 1993, 94-1 CPD ¶ 47 at 9.

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>10</sup> The protester also raises a number of other concerns with the evaluation of Hughes's proposed costs, none of which would result in any possible change to the relative cost standing of the two firms. Specifically, Jensen complains that DOT did not request a formal DCAA audit of Hughes's indirect rates, as the agency had done with respect to Jensen's proposed rates. DOT explains that a formal audit of Hughes's rates was not required because Hughes's proposed indirect rates were based upon actual, historical rates for the period between December 31, 2000 and July 31, 2001. Rather than obtain a formal DCAA audit report, DOT obtained informal audit advice from DCAA, which informed DOT that Hughes's accounting system had been found by DCAA to be acceptable for performance of government contracts and that Hughes proposed indirect rates consistent with Hughes's historical rates that had been accepted for forward pricing purposes. Agency Report, Tab 23, Facsimile Transmissions from DCAA to DOT (Sept. 6, 2001) at 2, and (Nov. 29, 2001) at 23-24. Jensen also complains that there is an inconsistency in Hughes's cost proposal with respect to whether labor escalation was applied. The RFP, however, only required that labor be priced for 1 year "because escalation is difficult to project accurately for a five-year period" and provided that escalation would not be "considered a discriminator for selection purposes." RFP § L.7.1. Jensen also objects that when the agency adjusted Hughes's proposed costs, DOT failed to adjust Hughes's proposed fee. DOT admits that it erred in this regard, but the cost impact would be to increase Hughes's evaluated cost by only \$641.