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## Decision

**Matter of:** Shaw Infrastructure, Inc.

**File:** B-291121

**Date:** November 19, 2002

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Richard L. Moorhouse, Esq., Patricia H. Wittie, Esq., and Stephen M. Sorett, Esq., Reed Smith, for the protester.

Capt. Ronald D. Sullivan, Raymond M. Saunders, Esq., Gerald Krimbill, Esq., and Kim Judd, Esq., Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency reasonably concluded that protester's proposal was unacceptable and that it would not engage in further negotiations with the protester, where protester's final proposal submission, following repeated, extensive discussions and submission of multiple proposal revisions, contained multiple errors and inconsistencies and failed to comply with the solicitation requirements.

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### DECISION

Shaw Infrastructure, Inc. protests the Department of the Army's determination that Shaw's proposal to perform base operation support services at Fort Sam Houston, Texas, was unacceptable. Shaw's proposal responded to request for proposals (RFP) No. DADA10-00-R-0013, which the Army issued in connection with an Office of Management and Budget (OMB) Circular A-76 commercial activities study. Shaw protests that the agency unreasonably found Shaw's proposal to be unacceptable and improperly declined to engage in further negotiations with Shaw.

We deny the protest.

### BACKGROUND

On July 31, 1998, the Department of the Army publicly notified Congress that the Army intended to perform an A-76 commercial activities study with regard to base operations support activities at Fort Sam Houston. Between July 1998 and January 2001, the agency engaged in various activities necessary for performing an A-76 study, including identification of the specific tasks to be covered by the study and

creation of a work statement under which private-sector offerors could prepare proposals and the government could prepare an in-house management plan, or “most efficient organization” (MEO).<sup>1</sup> Hearing Transcript (Tr.) at 5-29 (testimony of former Fort Sam Houston deputy garrison commander).<sup>2</sup>

On January 31, 2001, the agency issued solicitation No. DADA10-00-R-0013, seeking private-sector proposals to compete with the MEO management plan. As amended, the solicitation contemplated award of a cost-reimbursement award fee contract, identified sixteen performance functions to be evaluated,<sup>3</sup> provided that the lowest priced technically acceptable proposal would be selected for comparison with the MEO management plan, and established the following primary evaluation factors: technical approach/methodology, management, past/present performance, and cost.<sup>4</sup> Agency Report, RFP § M, at 3803-05.

With regard to evaluation of proposed costs, section M of the RFP provided that proposals would be evaluated on the basis of four subfactors – “reasonableness,” “realism,” “accuracy,” and “completeness,” – and further advised as follows:

An unacceptable rating will be assessed if the costs and/or support is presented with major omissions or misunderstanding or has been

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<sup>1</sup> The procedures for performing commercial activity studies are established in OMB Circular A-76 and that Circular’s Revised Supplemental Handbook (RSH), which are applicable to the Department of Defense (DOD) and its military departments. See 32 C.F.R. § 169a.15(d) (2002).

<sup>2</sup> In resolving this protest, GAO conducted a hearing on the record, during which testimony was taken from the former deputy garrison commander at Fort Sam Houston, the contracting officer, contracting specialist, and cost evaluators, as well as the protester’s accounting manager and proposal manager.

<sup>3</sup> The functions were: information management, administrative services, human resources, operations and maintenance, engineering services, housing, environmental, supply services, transportation services, plans programs operations and mobilization, logistics, active component/reserve component training, training land management, public affairs office, resource management, and provost marshal support services. Agency Report, RFP, at 3803-04.

<sup>4</sup> The solicitation required submission of separate proposals for each evaluation factor, that is, offerors were required to separately submit a technical proposal, a management proposal, past/present performance information, and a cost proposal. Agency Report, RFP § L, at 3795. With regard to technical proposals, offerors were required to provide staffing charts identifying proposed labor by category, along with a narrative explanation regarding the proposed approach for performing each functional requirement. Id. at 3796.

completely omitted and has inadequate detail to assure the evaluator of an understanding of the proposed approach. . . .

Any significant inconsistency, left unexplained[,] will raise a fundamental question of the offeror's understanding of the nature and scope of work required and the offeror's ability to perform the contract within fiscal constraints and may render the proposal unacceptable.

Agency Report, RFP § M, at 3805, 3808.

As amended, the solicitation required submission of initial proposals by October 5, 2001. On that date, the agency received a single proposal, submitted by IT Corporation.<sup>5</sup> Upon receipt of IT's proposal, the agency established an evaluation team for each of the four evaluation factors and began its initial proposal evaluation. As the evaluation progressed, the evaluation teams expressed concerns regarding various aspects of the technical, management and cost proposals. Agency Report, Contracting Officer's Statement at 6. For example, IT's technical proposal expressed an intent to use [deleted] as a staffing tool; however, the cost proposal did not reflect any premium for [deleted] costs. *Id.* Similarly, there were inconsistencies between IT's organizational flowcharts, process flow charts, and staffing tables. *Id.* In late October 2001, at the agency's request, IT personnel met with the agency evaluators to provide an oral "walk-through" of IT's proposal. Following this walk-through, the agency evaluators expressed increased concerns regarding proposal inconsistencies, noting that various verbal statements made by IT personnel conflicted with the written proposal. *Id.* at 7.

The agency completed its initial proposal evaluation in December 2001, and the contracting officer summarized the results of that evaluation in a prenegotiation objective memorandum (POM) dated December 28. Agency Report, Tab F, at 6020-33. The POM noted that, "[a]fter the first round of evaluations[,] the offeror was acceptable in only 66 of the 667 factors." *Id.* at 6032. The contracting officer elaborated on the deficiencies, referring to "lack of sufficient detail in the [proposal's] narrative to properly explain their processes and procedures," and summarizing the cost evaluation team's "major concerns in the under-estimation in [deleted] labor, [deleted] labor, [and] [deleted] labor," as well as concerns regarding "specific tasks that the technical team deemed to be significantly under-estimated." Agency Report, Tab F, at 6032.

In early February 2002, the contracting officer initiated face-to-face discussions with the offeror. At the outset of these discussions, IT personnel informed the

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<sup>5</sup> As discussed below, IT Corporation was a predecessor corporate entity to Shaw.

contracting officer that IT had previously filed for bankruptcy protection.<sup>6</sup> IT personnel also advised the contracting officer that Shaw was interested in purchasing IT's assets.<sup>7</sup> Based on this representation, the contracting officer opted to go forward with discussions.

As part of the February 2002 discussions, the contracting officer provided IT's representatives with a list of questions reflecting approximately 2,000 agency concerns and/or proposal deficiencies. Contracting Officer's Statement at 9; Agency Report, Tab G. Following extensive discussions regarding the agency's multiple concerns, the contracting officer requested submission of revised technical and management proposals by April 8.<sup>8</sup> Upon receipt of the revised technical and management proposals, the agency undertook another round of evaluations. In performing this evaluation, the evaluators noted that the offeror had responded to agency concerns regarding staffing levels in particular areas by adding staffing in the area identified – but simultaneously decreasing staffing in other areas that the agency had previously determined to be adequately staffed.<sup>9</sup> This approach by Shaw required the agency to completely reevaluate the entire proposal – including all areas previously found acceptable – following proposal revisions.

In an effort to expedite the evaluation process, the agency engaged in e-mail exchanges with the IT personnel during the month of April. As a result of these ongoing communications, many of the agency's concerns were resolved. Accordingly, the agency requested that IT/Shaw submit revised technical,

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<sup>6</sup> The record indicates that IT's bankruptcy filing occurred in November 2001. Contracting Officer's Statement at 9.

<sup>7</sup> Shaw's counsel has advised our Office that Shaw did, in fact, acquire IT's assets on May 3, 2002.

<sup>8</sup> The contracting officer explains that he did not request submission of a revised cost proposal at this time due to the large number of technical and management issues to be resolved. Contracting Officer's Statement at 9.

<sup>9</sup> The protester does not dispute its practice in this regard, summarizing the situation as follows:

[T]he Army would insist that Shaw increase its proposed manning level in a particular area. Shaw generally would make the adjustment even though it believed the Army's position as to the necessity for increased manning was not supportable. At the same time, in order not to price itself out of the cost study, Shaw would seek to achieve efficiencies [described elsewhere by Shaw as reduced staffing] in other areas of its proposal.

Protester Comments on Agency Report, Sept. 25, 2002, at 6; Tr. at 56.

management and cost proposals by May 17. Agency Report, Tab I, at 6363. The revised proposals were submitted as requested and, thereafter, evaluated.

Upon evaluation, the agency, again, had various concerns regarding inconsistencies between the costs reflected in the cost proposal and the proposed technical/management approach. Accordingly, the agency conducted yet another round of discussions via telephone on May 29. During these discussions, the agency advised Shaw of specific staffing inconsistencies between its management and cost proposals, stating:

[It] appears there are discrepancies between your latest cost proposal and your management proposal on the net available hours on some efficiency codes. It looks like you may have changed some of the codes themselves. It appears you changed the net available hours in the code itself. . . . [W]hat's in the cost model does not agree with the table in the cost proposal.

Agency Report, Tab J, at 6366.

In addition, the agency advised Shaw, among other things, that it had failed to comply with the solicitation's requirements regarding other direct costs (ODCs).<sup>10</sup> Specifically, the agency stated: "We put [the ODCs] in [the] solicitation to keep a level playing field between the government and contractor proposals. . . . You need to apply your burden to those costs."<sup>11</sup> Id.

By letter dated June 28, the agency requested that Shaw submit final revised proposals by July 12.<sup>12</sup> Agency Report, Tab K. In the letter, the contracting officer again identified various specific aspects of Shaw's technical and cost proposals that needed to be addressed, including particular areas in which Shaw had reduced or revised its staffing levels in areas the agency had previously evaluated as being acceptable. Specifically, the contracting officer warned: "Any changes to position descriptions, standards or labor hours not specifically addressed above could render

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<sup>10</sup> The solicitation listed specific amounts for various ODCs (parts/materials and supplies, travel, transportation and printing) and, above the table which listed specific amounts for each, stated: "offerors shall include in their proposals the other direct cost elements as shown below." Agency Report, RFP, at 3742, 3917.

<sup>11</sup> More specifically, the agency noted that Shaw had decreased the specified ODC costs by amounts equal to its applicable general & administrative (G&A) burden. The agency noted that, for example, "[I]f we said [an ODC] was [deleted], you backed out G&A and said it was [deleted] cost and [deleted] G&A." Id.

<sup>12</sup> The agency subsequently extended the deadline to July 13.

your proposal unacceptable. Those areas have already been evaluated and accepted.” Agency Report, Tab K, at 6370.

On July 10, Shaw submitted a hard-copy version of its final revised cost proposal.<sup>13</sup> On July 13, Shaw submitted revisions to its July 10 hard-copy submission.<sup>14</sup> On July 13, Shaw submitted a CD-ROM containing a complete electronic version of its final revised cost proposal. Upon examination, the agency found that the electronic version and the hard-copy versions did not match.<sup>15</sup>

On July 16, the contracting officer telephoned Shaw’s representatives, advising them of the inconsistencies between the hard-copy and electronic versions. During this conversation, it became clear that all of Shaw’s final submissions contained various, differing errors. Thereafter, the agency declined to accept any further proposal revisions, and evaluated the complete electronic version submitted on July 13 on the basis that this version was the final complete version submitted by Shaw.<sup>16</sup>

The cost evaluation team documented its final evaluation of Shaw’s cost proposal, identifying nine specific errors or inconsistencies. Agency Report, Tab E-18, at 5962-6019. These errors/inconsistencies included: failure to apply G&A to the ODC amounts specified in the solicitation; inconsistencies between Shaw’s summary spreadsheet for subcontractor costs and the individual subcontractors’ own cost spreadsheets; failure to escalate labor and fringe benefit costs in the option years; inconsistencies between Shaw’s cost spreadsheet and its staffing chart for the transition period; and failure to apply applicable formulas to calculation of travel and training hours.<sup>17</sup> Id. at 5986-87. Based on these nine errors/inconsistencies, the cost

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<sup>13</sup> The solicitation required offerors to submit both hard-copy versions and electronic versions of proposals. Agency Report, RFP, at 3795-96.

<sup>14</sup> Shaw explains that the hard-copy version submitted on July 10 “contained errors in the Attachment 10 spreadsheets.” Protest at 4.

<sup>15</sup> This was true with regard to the electronic version and both the hard-copy version submitted on July 10 and the hard-copy revisions submitted on July 13. That is, neither hard-copy version matched the final complete electronic version.

<sup>16</sup> Shaw acknowledges that each of its final submissions contained errors. Tr. at 295 (testimony of Shaw’s proposal manager). Nonetheless, it complains that the agency should have relied on the hard-copy version, as revised on July 13, as Shaw maintains that it advised the agency that the errors contained in that version were the least significant. Shaw Comments on Agency Report, Sept. 25, 2002, at 10.

<sup>17</sup> With regard to this matter, the evaluators explained “there was a series of numbers (to reflect labor hours), that had been inserted in [spreadsheet] cells, overriding the formulas.” Id. at 5987.

evaluation team concluded: "It was impossible to determine price realism due to the inconsistencies and errors in the proposal." Agency Report, Tab E-18, at 5984.

The agency's source selection authority (SSA) reviewed the evaluation record and, on July 25, concluded that Shaw's cost proposal was unacceptable on the basis that it contained "major omissions or misunderstandings," and "would clearly require major revisions in order to meet the solicitation's requirements that the proposal be reasonable, realistic, accurate, and complete." Agency Report, Tab X, Source Selection Decision Memorandum, July 25, 2002. Accordingly, the A-76 study was terminated. By letter dated July 26, the agency advised the protester that its proposal had been evaluated as unacceptable and that no further negotiations would be conducted. This protest followed.

## DISCUSSION

Shaw protests that the Army's determination of unacceptability, along with its decision not to engage in further negotiations, was arbitrary and unreasonable. More specifically, Shaw maintains that the agency was required to permit Shaw to submit further revisions to its proposal. We disagree.

When an agency engages in discussions with an offeror, such discussions must be meaningful. Training and Mgmt. Res., Inc., B- 234710, June 29, 1989, 89-2 CPD ¶ 12. However, this requirement for meaningful discussions does not create an obligation for agencies to continue to conduct successive rounds of discussions and proposal revisions until all proposal defects have been corrected. OMV Med., Inc., B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 7. Similarly, an offeror's creation of a proposal defect which first appears in a proposal revision following discussions does not trigger an obligation to engage in another round of discussions and proposal revisions to advise the offeror of the newly-created defect and permit attempted correction. Mark Dunning Indus., Inc., B-230058, Apr. 13, 1988, 88-1 CPD ¶ 364 at 5-6.

Here, as discussed above, the agency engaged in multiple rounds of discussions over the 10-month period following submission of the initial proposal. During this period, the agency repeatedly advised IT/Shaw of multiple inconsistencies between its technical, management, and cost proposals, including multiple concerns regarding the staffing levels that had been proposed. The record establishes that these multiple rounds of discussions clearly communicated agency concerns and were meaningful. Further, the record shows that, following submission and evaluation of initial proposals, the agency twice requested and evaluated revisions to Shaw's cost proposal, and three times requested and evaluated revisions to Shaw's technical and management proposals.

Additionally, the record establishes that Shaw did not facilitate efficient resolution of the agency's concerns. Specifically, in situations where Shaw disagreed with the agency's perception of required staffing, rather than pursuing the merits of the issue

to resolution, Shaw attempted to create the appearance of acquiescence, increasing staffing in the particular area identified – but it then made offsetting staff reductions in other areas that had not been the subject of discussions and that the agency had previously evaluated as acceptably staffed. This practice effectively lengthened the agency’s evaluation process, requiring that it completely reevaluate Shaw’s proposals following each proposal revision. As noted above, Shaw does not dispute its practice in this regard but, rather, suggests that its approach was appropriate based on what it asserts was the agency’s “white glove” evaluation. Shaw Comments on Agency Report, Sept. 25, 2002, at 5. Significantly, throughout its pursuit of this protest, Shaw has not identified a single example within its proposal where Shaw was required to propose staffing over and above that necessary to meet the solicitation’s performance requirements.

Finally, the record establishes that, notwithstanding the extensive discussions, multiple proposal revisions, and the agency’s complete reevaluation of those revisions, Shaw’s final proposal contained multiple errors and inconsistencies and, with regard to ODCs, clearly failed to comply with the solicitation requirements that it apply its G&A burden to the RFP-specified ODC amounts. We have reviewed the errors, inconsistencies and failure to comply with the solicitation requirements identified as the basis for the cost evaluation team’s determination that it could not accurately perform the necessary cost analyses on Shaw’s final cost proposal. Based on our review, we find no basis to question this determination, nor the agency’s determination that Shaw’s proposal was unacceptable. Further, in light of the multiple meaningful opportunities Shaw had previously been afforded to revise its proposal, and Shaw’s failure to adequately address the agency’s concerns and follow agency directions, we find reasonable the agency’s decision not to engage in further negotiations.

In pursuing this protest Shaw has argued that the agency was improperly affected by its perception that it was statutorily required to complete this multi-function cost study by July 31, 2002, that is, 48 months after the Army reported to Congress that it intended to perform the study.<sup>18</sup> In light of our conclusion above, that the agency afforded Shaw ample opportunity to submit an acceptable proposal, that Shaw failed to do so, and that the agency had no continuing obligation to engage in additional

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<sup>18</sup> With regard to multi-function cost studies, section 8024 of the Department of Defense Appropriations Act for Fiscal Year 2001 provides: “None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A-76 if the study being performed exceeds a period of . . . 48 months after initiation of such study.” Pub. L. No. 106-259, 114 Stat. 656 (2000).



negotiations with Shaw, we need not reach any conclusion regarding the impact of the statutory limitation.

The protest is denied.

Anthony H. Gamboa  
General Counsel