



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Northrop Worldwide Aircraft Services, Inc.

File: B-262181

Date: October 27, 1995

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DIGEST

While contracting agency improperly failed to conduct meaningful discussions with the protester when it rated its acceptable technical proposal as having a high proposal risk for several weaknesses related to manning, but did not inform it of the agency's concerns regarding those weaknesses, there is no reasonable possibility that the protester was prejudiced by this impropriety because discussions could have improved only the technical rating of the protester's proposal to the level of the awardee's, but would not have affected its inferior current and past performance rating, which was pivotal in the award decision.

DECISION

Northrop Worldwide Aircraft Services, Inc. protests the award of a contract to Loral Training and Technical Services under request for proposals (RFP) No. F26600-94-R-0172, issued by the Department of the Air Force for the operation and maintenance of electronic threats and targets on the U.S. Air Force Weapons and Tactics Center Range Complex (WTCRC) at Nellis Air Force Base, Nevada. Northrop argues that the Air Force improperly failed to conduct meaningful discussions with the firm.

We deny the protest.

The solicitation, issued December 17, 1994, anticipated award of a cost-plus-award-fee contract under which the successful offeror would provide all of the management and labor to operate and maintain the range systems and equipment

located on the WTCRC and other locations. These services will ensure successful simulation of combat scenarios for aircrew training, evaluation of aircrews' responses to electronic threats, and transmission of electronic data for video debriefings. The contract will be performed over 1 base year and up to 4 option years.

Offerors were advised that proposals would be evaluated pursuant to Air Force streamlined source selection procedures, and that award would be made to the offeror whose proposal was most advantageous to the government. Proposals would be evaluated under three categories, in descending order of importance: technical merit, current and past performance, and cost.

The technical merit factor consisted of five subfactors, in descending order of importance: operations, maintenance, management, logistics, and technical innovation. The operations subfactor, at issue here, contained seven areas for review, among them: uprange operations, Red Forces, Blackjack, training and standardization-evaluation, and aircraft instrumentation subsystem (AIS) pod shop operation.¹ The technical merit factor and its components would be evaluated using both color/adjectival ratings and proposal risk ratings. The color/adjectival ratings--blue/exceptional, green/acceptable, yellow/marginal, or red/unacceptable--would represent the evaluators' views as to an offeror's understanding of and compliance with the requirements, as well as the soundness of its approach. The proposal risk ratings--high, moderate, or low--would represent the risks associated with each proposal. Offerors' current and past performance proposals would be evaluated using the color/adjectival ratings described above, as well as performance risk ratings of high, moderate, low, or not applicable. Cost proposals would be evaluated for realism and reasonableness.

The Air Force received five proposals by the February 17, 1995 closing date, including those from Northrop and Loral, the incumbent contractor. During the evaluation of these proposals, the technical evaluation team (TET) sent Northrop a clarification request for the zip codes of government personnel cited in its current and past performance proposal. Three days later, the TET realized that offerors

¹Uprange operations involve operating surface-to-air missile, anti-aircraft artillery, and other threat simulator systems; Red Forces involves meeting customer requirements for threat simulator command and control and live-flying missions requiring ground control intercept technician services; Blackjack involves managing dynamic inputs to the daily flying schedule without compromising the safety of aircraft and ground parties performing missions on the range complex; training and standardization-evaluation involves controlling the quality of required miscellaneous operations and maintenance services; and AIS pod shop operation involves scheduling and managing AIS pods and test sets.

were confused as to the range operating hours listed in the RFP, and decided to clarify these hours by issuing an amendment. The TET submitted its initial technical evaluation report on March 14, and issued amendment No. 0004 the following day to clarify the range operating hours.

On March 17, the agency notified all five offerors that their proposals had been included in the competitive range, and listed deficiency reports and clarification requests to which responses were required.² Northrop's letter of notification stated that the Air Force had no deficiency reports or clarification requests for the firm. The offerors submitted their revisions in response to amendment No. 0004, as well as their responses to the deficiency reports and clarification requests. Among other things, Northrop added two technicians in one area and deleted one technician in another, in specific response to the amendment. The Air Force reevaluated the proposals in light of these responses. Best and final offers (BAFO) were requested and submitted by all five offerors, with the following evaluation results from Loral and Northrop:

	Loral	Northrop
Technical Merit	Green/Low	Green/High
Operations	Blue/Low	Green/High
Maintenance	Green/Low	Green/Moderate
Management	Green/Low	Blue/Low
Logistics	Green/Low	Green/Low
Technical Innovation	Blue/Low	Blue/Low
Current/Past Performance	Blue/Low	Green/Moderate
Evaluated Cost	\$85.8 million	\$69.7 million

²One offeror, whose proposal is not at issue here, received a deficiency report concerning its staffing levels.

The source selection authority (SSA) determined that Loral's proposal offered the best value to the government through its combined balance of technical merit, exceptional performance history, and cost. While Northrop³ offered the lowest cost with an acceptable technical approach, its "aggressive manning posture" presented a risk to schedule, cost, and performance, especially in the two most important technical areas of operations and maintenance. Further, while Northrop had an acceptable performance history, it posed a moderate risk to schedule, cost and management. The SSA stated that, given its aggressive manning, Northrop might require significant, serious intervention in terms of money and management oversight and that, even with this undesirable intervention, there was still a likelihood that it would have problems meeting the requirement. The SSA concluded that Northrop's cost, \$16.1 million less than Loral's, was not worth the high proposal risk and moderate performance risk,⁴ as he was not confident that Northrop's proposal would support the mission without significant disruption to mission performance, schedule, and cost.

The contract was awarded to Loral on June 30, and Northrop filed this protest on July 27, after its debriefing. Because the protest was not filed within 10 calendar days of award, Loral has proceeded with performance of the contract. See 4 C.F.R. § 21.4(b) (1995).

The sole issue here is whether, as Northrop argues, the Air Force improperly failed to discuss with the firm the concerns over its "aggressive manning posture" which led to its high risk technical merit rating.

In negotiated procurements, contracting officers generally are required to conduct discussions with all offerors whose proposals are within the competitive range, Federal Acquisition Regulation (FAR) § 15.610, and the competitive range must include all proposals that have a reasonable chance of being selected for award. FAR § 15.609(a); National Sys. Management Corp., 70 Comp. Gen. 443 (1991), 91-1

³The SSA found that the highest-rated proposal did not offer sufficient technical advantage to justify its additional cost, significantly higher than Loral's, and that the two other offerors whose costs were lower than Loral's offered proposals with varying degrees of risk associated with performance and costs—one was rated green/low under both the technical merit and the current and past performance evaluation factors, and the other was rated green/high under both factors.

⁴High proposal risk is defined in the RFP as "[l]ikely to cause significant serious disruption of schedule, increase in price, or degradation of performance even with special contractor emphasis and close government monitoring." Moderate performance risk is defined as "some doubt exists, based on the offeror's performance record, that the offeror can perform the proposed effort."

CPD ¶ 408. In general, agencies must lead offerors into areas of their proposals which require amplification or correction, Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424, and discussions should be as specific as practicable considerations will permit. Data Preparation, Inc., B-233569, Mar. 24, 1989, 89-1 CPD ¶ 300. Although discussions need not be all-encompassing, they cannot be meaningful if an offeror is not advised, in some way, of the weaknesses, excesses, or deficiencies in its proposal that must be addressed in order for the offeror to be in line for award. See Mikalix & Co., 70 Comp. Gen. 545 (1991), 91-1 CPD ¶ 527; Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54, aff'd, B-220049.2, Apr. 7, 1986, 86-1 CPD ¶ 333; Management HealthCare Prods. and Servs., B-251503.2, Dec. 15, 1993, 93-2 CPD ¶ 320.

The Air Force noted several weaknesses in Northrop's initial proposal concerning the most important technical merit subfactor, operations: "lack of sufficient manning for most [operations] areas"; "Red Forces distribution of manning"; and "lack of independence between training and [standardization-evaluation]." The TET rated Northrop's proposal acceptable under this subfactor and stated that it had an adequate approach to accomplishing the required tasks and showed a good understanding of the requirements, but its "manpower may make it difficult to meet [the] minimum requirements." Under several areas for consideration within this subfactor, the TET stated that Northrop proposed inadequate manpower to perform the tasks. Finally, the TET stated that Northrop's proposal received a high risk assessment "based on manning in several areas." The Air Force also noted weaknesses concerning the maintenance subfactor. However, the TET rated Northrop's proposal acceptable under this subfactor and stated that the firm had an excellent understanding of the maintenance requirements and an excellent method of performing maintenance on range equipment; Northrop's proposal received a low proposal risk assessment. The proposal was rated green/moderate under the technical merit evaluation factor.

The TET reevaluated Northrop's proposal in light of the revisions the firm submitted in response to amendment No. 0004. The Air Force narrowed the first weakness, stating that Northrop's proposal had a "lack of sufficient manning for threat operations and Blackjack," and repeated the remaining weaknesses from the initial evaluation. The TET rated Northrop's proposal acceptable under the operations subfactor and stated that it had an adequate approach to accomplishing the required tasks "except for threats," and repeated its belief that the firm showed a good understanding of the requirements but its "manpower may make it difficult to meet [the] minimum requirements." Northrop's proposal received a high risk assessment "based on manning (Blackjack) and skill mix/manning for threats." After this reevaluation, the proposal was rated green/high under the technical merit evaluation factor.

In its BAFO, Northrop reduced its maintenance personnel, with the firm citing its desire to offer more efficiency without compromising its approach for the best value.

In its final proposal analysis report, the TET stated that while Northrop had an acceptable understanding of the operations requirements, low staffing and extensive cross-utilization jeopardized accomplishing all tasks and garnered its proposal a high proposal risk assessment. The proposal was rated green/high overall, with moderate or high proposal risk ratings under five of the seven areas for review.⁵ In contrast to its favorable pre-BAFO assessment of Northrop's proposal as to maintenance, the TET now stated that the firm understood the requirements but, as a result of extensive cross-utilization of people and minimum staffing for almost all tasks, its approach presented a moderate proposal risk. Northrop's proposal was downgraded from green/low to green/moderate, with moderate proposal risk for three of the seven evaluation areas. The Air Force concluded that Northrop did not correctly analyze the magnitude of the maintenance requirement.

Finally, the briefing provided to the SSA listed the following weaknesses in Northrop's technical proposal: minimum staffing in most areas; maintenance delayed during surges; and lack of separation of the training and standardization-evaluation function.

In our view, the Air Force failed to conduct meaningful discussions with Northrop because the only contact between the Air Force and Northrop regarding the proposal concerned zip codes, and did not point out or even hint at the perceived weaknesses in Northrop's proposal concerning its "aggressive manning posture." These weaknesses caused the proposal to receive a high technical risk rating and denied Northrop any meaningful opportunity to improve its proposal. Northrop contends that if it had been aware of the agency's concern, it would have refrained from reducing maintenance staff in its BAFO and would have added staff overall, with the reasonable possibility that its ratings under both operations and maintenance would have improved.

The Air Force's assertion that it was not required to conduct discussions with Northrop because the firm's proposal was technically acceptable is without merit. Agencies are required to discuss weaknesses in an offeror's proposal where the weaknesses have a significant adverse impact on the proposal's technical rating, although discussions need not address every area in which a proposal received less than a perfect score, and the need for meaningful discussions may be constrained to

⁵Northrop was rated acceptable with a low proposal risk rating under the other two areas.

avoid technical leveling,⁶ technical transfusion, and an auction. Management HealthCare Prods. and Servs., *supra*; American Dev. Corp., B-251876.4, July 12, 1993, 93-2 CPD ¶ 49; Department of the Navy-Recon., 72 Comp. Gen. 221 (1993), 93-1 CPD ¶ 422. Agencies must conduct meaningful discussions with all offerors whose proposals are in the competitive range, whether their proposals are acceptable, outstanding or only susceptible of being made acceptable. Eldyne, Inc., B-250158 *et al.*, Jan. 14, 1993, 93-1 CPD ¶ 430, *aff'd*, Department of the Navy-Recon., *supra*.

The record clearly shows that the weaknesses identified in Northrop's proposal associated with its "aggressive manning posture" caused its proposal to receive a high risk technical proposal rating, and that this rating was a significant factor in the SSA's decision not to award the contract to Northrop. However, both the Air Force and Loral contend that the agency was not obligated to raise these weaknesses during discussions because they were inherent in the firm's approach and would have required significant revision to resolve the agency's concerns; they were not so simple that more staffing could be added as a cure.

While an agency is not required to point out weaknesses derived from an inherent aspect of an offeror's approach which would require substantial revision to resolve the agency's concern, *see Tracor Flight Sys., Inc.*, B-245132, Dec. 17, 1991, 91-2 CPD ¶ 549, we see no basis to conclude that only a substantial change in approach would have alleviated the agency's concerns here. On the contrary, while Northrop proposed a staffing plan designed to be "responsive, flexible and cost-effective," and emphasized cross-utilization of staff, the record shows that a relatively limited proposal change--the addition of staff--could have alleviated the agency's concerns. The individual evaluator sheets show that Northrop's proposal to cross-utilize its staff was seen as a strength, with the weakness being its insufficient manpower. In our view, this indicates that a significant portion of the risk of Northrop's cross-utilization plan was that it proposed insufficient manpower. Further, the TET's final summary of Northrop's proposal specifically links these range operations and maintenance risks to "low staffing in those areas," and one of the weaknesses relayed to the SSA was "minimum staffing in most areas." Hence, we see no reason why Northrop could not have resolved the agency's concerns--at least to some degree--by proposing additional staff, just as it alleviated some of them when it

⁶Contrary to the Air Force's and Loral's assertions, we see no reason why technical leveling should have been an issue here. Technical leveling occurs when successive rounds of discussions are conducted and the need for further improvement is pointed out in each round. Technical leveling would not have occurred if the Air Force had simply pointed out, during the single round of discussions that it held with Northrop, the weaknesses at issue here. FAR § 15.610(d); Management HealthCare Prods. and Servs., *supra*.

proposed additional personnel in its revised proposal, and just as it raised new concerns when it reduced personnel in its BAFO.

Both the Air Force and Loral argue that the conduct of discussions would not have changed the outcome of the award decision here. The Air Force asserts that even if it had discussed these weaknesses with Northrop and the technical proposal risk assessment had improved, the discussions would not have altered the fact that its proposal was rated green/moderate under the current and past performance evaluation factor.⁷ According to the Air Force, since Loral's proposal was rated green/low under the technical merit evaluation factor, and blue/low under the current and past performance evaluation factor, it still would have been superior to Northrop's and would have been selected for award.

Where improper discussions were held, we will resolve any doubts concerning the prejudicial effect of the agency's actions in favor of the protester; a reasonable possibility of prejudice is a sufficient basis for sustaining the protest. National Medical Staffing, Inc., B-259402; B-259402.2, Mar. 24, 1995, 95-1 CPD ¶ 163. Here, however, there is no reasonable possibility that Northrop was prejudiced by the agency's impropriety.

First, there is no evidence that discussions might have enabled Northrop to improve its proposal's technical merit rating from green to blue. The TET's negative comments as to operations and maintenance are specifically linked to proposal risk, not to the considerations reflected in the color rating (the offeror's understanding of and compliance with requirements, as well as the soundness of its approach). Thus, even if Northrop had been apprised of the Air Force's concerns with its "aggressive manning posture," and improved its proposal's risk rating as a result, the maximum rating its proposal would have received had it alleviated these concerns is green/low, the same as Loral's.

Second, Northrop misreads the record when it asserts that the current and past performance ratings were not "pivotal." In selecting Loral for award, the SSA emphasized the firm's "long and successful experience" in operating and maintaining similar contracts, and stated that this demonstrated a "proven ability to manage the range with the highest probability of operating without a disruption of schedule, increase of cost, or degradation of services at an affordable cost." The SSA stated that the lower-cost proposals of two offerors, one of them Northrop, demonstrated varying degrees of risk associated with performance and costs which translated into

⁷Northrop's supplemental protest challenging the evaluation of its current and past performance was dismissed as untimely. Northrop Worldwide Aircraft Servs., Inc., B-262181.2, Sept. 26, 1995, unpublished. As a result, we will not consider any of the arguments raised in this regard.

unacceptable cost increases, schedule disruptions, and performance degradation. Moreover, the SSA stated that the third lower-cost offeror was unable, in similar type contracts, to achieve the highest ratings available. Thus, while the SSA could have awarded the contract to a firm whose cost was lower than Loral's; whose technical merit proposal rating was green/low, equal to Loral's; and whose current and past performance proposal rating was green/low, better than Northrop's, he opted for Loral's proposal based on its superior past performance rating. In the SSA's discussion of that offeror's proposal, he specifically stated that:

"because current and past performance are a critical element in determining future performance, and because price is the least important factor in determining award, I believe the exceptional past performance of Loral in range operations more than offsets the price difference. Loral consistently earned superior ratings for exceeding standards in the critical areas of range operations and support on current and past performance."

The SSA's repeated emphasis on the current and past performance ratings removes any reasonable possibility of prejudice to Northrop as a result of the Air Force's improper failure to conduct meaningful discussions with the firm. We are not persuaded otherwise by the protester's argument that the cost difference between its and Loral's proposals is evidence of prejudice. Without question, this cost difference would be narrowed by any addition of personnel to Northrop's proposal. Given the SSA's repeated emphasis on current and past performance, and his specific acknowledgment of cost as the least important evaluation factor, there is no basis in the record to conclude that the SSA would have selected Northrop's proposal for award over Loral's, notwithstanding the cost difference.

The protest is denied.

Comptroller General
of the United States