



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DECISION FOR PUBLIC RELEASE

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Matter of: Proteus Corporation; United International Engineering, Inc.

File: B-270094; B-270094.2

Date: February 8, 1996

Eric J. Marcotte, Esq., and Carl J. Peckinpaugh, Esq., Winston & Strawn, for Proteus Corporation; and Don A. Howard, Esq., Howard & Aldridge, for United International Engineering, Inc., the protesters.

Richard B. Oliver, Esq., and Dana L. Fitzgibbons, Esq., McKenna & Cuneo, for Arcata Associates, Inc., an intervenor.

Gregory H. Petkoff, Esq., and Douglas M. Whitehead, Esq., Department of the Air Force, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably assigned moderate risk and green/acceptable ratings in evaluating the protester's proposal where the firm's proposed manning—which was significantly lower than other offerors'—represented a higher risk to successful contract performance; difference in offerors' staffing was a proper basis for distinguishing between protester's low cost and awardee's high cost proposal, which was evaluated as low risk and exceptional for technical merit.

2. Protest that agency improperly assigned an exceptional rating to the awardee's proposal for a technical subelement and only an acceptable rating to the protester's proposal, notwithstanding the protester's allegedly superior experience and approach to one of several systems being evaluated under the subelement, is denied where the agency's evaluation considered the offerors' overall approach to supporting all of the systems and found, in contrast to the protester's proposal, that the awardee's proposal contained a number of features exceeding the solicitation requirements.

DECISION

Proteus Corporation and United International Engineering, Inc. (UIE) protest the award of a contract to Arcata Associates, Inc. under request for proposals (RFP) No. F26600-94-R0176, issued by the Department of the Air Force for comprehensive technical support services for the agency's weapons and tactics center range

complex (WTCRC). Both protesters contend that the agency misevaluated proposals and made an irrational award decision.

We deny the protests.

The RFP contemplated the award of a cost reimbursement contract for a base year with 4 option years to perform a wide array of services in support of the WTCRC, the Air Force's largest combat training range. The WTCRC is comprised of a number of facilities that contain various advanced systems for training pilots in all aspects of combat flight activities. The RFP provided that the agency would perform an integrated assessment to determine the proposal offering the best overall value to the government based on the following factors listed in descending order of importance: technical merit, current and past performance, and cost.

The subelements of the technical merit factor listed in descending order of importance were: engineering and integration, operations and maintenance, and management and control functions. These subelements were to be evaluated using three "assessment criteria": understanding the requirement, soundness of approach and compliance with requirements, all equal in importance. Based on this assessment, an overall technical merit rating was to be assigned using a color/adjectival rating system (blue/exceptional, green/acceptable, yellow/marginal or red/unacceptable). In addition to this rating, the RFP provided with regard to technical merit that proposals would receive a proposal risk rating of either high, moderate, or low based upon an assessment of the risks associated with each proposal.

In the current and past performance area, the RFP provided that the agency would assign color/adjectival ratings based on information submitted by the offerors with their proposals, as well as information obtained from outside sources. In addition to the color/adjectival rating, the RFP provided that the agency would also assign a performance risk rating of high, medium, or low based on the offerors' performance record. Finally, cost was to be evaluated for realism, reasonableness, and completeness.

The Air Force received five proposals, four of which it found to be within the competitive range. The Air Force engaged in discussions with these four offerors and solicited best and final offers (BAFO). After evaluating BAFOs, the agency engaged in another round of discussions to provide offerors receiving moderate or high proposal or performance risk ratings an opportunity to further explain their proposed approaches, or their current or past performance. After concluding these discussions, the agency solicited and received a second round of BAFOs. The evaluators rated the second BAFOs as follows:

Offeror	Technical Merit/ Proposal Risk	Past & Present Performance/ Performance Risk	Evaluated Cost ¹
Proteus	Green/Moderate	Blue/Low	\$15,807,774
UIE	Green/Low	Green/Low	\$23,631,916
Arcata	Blue/Low	Blue/Low	\$23,937,873
JB Industries	Green/Moderate	Green/Low	\$18,841,272

On the basis of these evaluation results, the agency made award to Arcata. The Air Force source selection authority (SSA) specifically found that, although Arcata had the highest overall evaluated cost, its proposal offered a combination of outstanding technical features and low risk that was worth the extra cost.

PROTEUS'S PROTEST

Risk Rating

The evaluators assigned Proteus's proposal a moderate proposal risk rating primarily because they were concerned with the low number of personnel Proteus had proposed, and because Proteus's technical approach involved extensive cross utilization of its personnel to accomplish all of the RFP tasks. Proteus contends that the moderate rating was improper because it was based on the erroneous finding that its proposed staffing was inadequate. Proteus maintains it was irrational to assign its proposal a moderate risk rating, since it was not rated technically unacceptable and its proposed costs were not increased in the realism analysis.² Proteus also argues that Arcata's larger proposed staff in fact was

¹The agency made no significant cost adjustments to any of the proposals under its cost realism evaluation.

²Proteus argues in the alternative that the Air Force's failure to increase its evaluated costs during the cost realism evaluation in light of its proposal risk rating shows that the agency failed to conduct an adequate cost realism evaluation. It is not apparent to us, however, how such an alleged failure could have prejudiced Proteus, since any increase in the firm's evaluated cost necessarily would have adversely affected its competitive standing. In any case, as discussed below, the record shows that the agency considered Proteus's manning acceptable and its proposed costs realistic, and found only that there was an enhanced potential risk associated with award to Proteus in light of its approach.

excessive, and that the agency failed to have an objective standard against which to measure the offerors' proposed staffing.

In reviewing allegations concerning the propriety of a technical evaluation, our Office does not independently evaluate proposals or substitute its judgment for that of the agency; we review the evaluation only to ensure that it was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. JB Indus., B-251118.2, Apr. 6, 1993, 93-1 CPD ¶ 297.

The record shows that Arcata offered to perform using [deleted] employees whereas Proteus proposed only [deleted] employees. This comparatively low staffing level reflected Proteus's proposed extensive cross utilization of personnel, and the use of part-time employees. Essentially, Proteus proposed to have its engineers work on more than one of the systems, and to use part-time employees to fulfill additional responsibilities that could not be met by the full-time employees when peak demand circumstances arose. Proteus's approach was predicated on the assumption that not all of the systems will need to be maintained or operated simultaneously.

The evaluators found Proteus's approach technically acceptable and its proposed costs realistic, concluding that the firm could in fact perform with its proposed staffing under its technical approach. The evaluators were concerned, however, that Proteus's staffing approach had the potential to cause schedule delays and degradation of operations, and that it could lead to an overall loss of training missions or increased costs. The evaluators thus concluded that, while Proteus's proposed approach was acceptable, the risk was higher than if the proposal had been based on more staffing. Arcata's proposal was assigned a low proposal risk rating for this very reason—its approach placed less reliance on cross utilization, included more dedicated personnel overall and did not rely on part-time employees to meet peak demand situations.

There is nothing unreasonable in these conclusions. Using fewer employees to perform a contract is a legitimate strategy that will reduce the cost of performance. However, such an approach also reasonably can be expected to result in more situations where an employee may not be available immediately when a task arises. While Proteus would argue that careful, skilled management can minimize (and maybe even eliminate altogether) these situations, the agency was not compelled to assume this best case scenario, and to ignore the worst case scenario. We think the moderate risk rating reasonably reflects the evaluators' legitimate concerns regarding the worst case scenario.³ JB Indus., supra.

³Proteus argues in the alternative that the Air Force did not conduct meaningful discussions with it because the agency did not directly discuss Proteus's proposed
(continued...)

There is no support for Proteus's assertion that Arcata's proposed staffing was excessive. Proteus's staffing level was below the government estimate, and was specifically determined to be sufficient for Arcata's proposed approach. Proteus has not attempted to show--by means, for example, of specific references to Arcata's proposal--that the agency's determination was flawed. Further, the Air Force was not required to use an objective standard--a specific staffing level--for determining proper staffing. Indeed, the mechanical application of a government staffing estimate to determine the acceptability of proposed manning is improper, since such an approach fails to take into consideration such things as unique or innovative technical approaches. KCA Corp., B-255115, Feb. 9, 1994, 94-1 CPD ¶ 94. Here, the Air Force did precisely what it should have done--it assessed the adequacy of each offeror's proposed staffing in light of its technical approach, finding as to both Proteus and Arcata that their staffing was acceptable for their approaches.

Technical Merit Rating

Proteus contends that the evaluation of its proposal under the technical merit factor was erroneous; it believes its proposal should have received the same blue/exceptional rating as Arcata's. In support of its position, Proteus points to the fact that the agency initially identified numerous strengths in its offer that were the same as the strengths found in the Arcata offer; it complains that these strengths improperly were not conveyed to the SSA.

³(...continued)

staffing. This allegation is without merit. The agency reopened discussions after the first BAFOs in order to provide firms receiving moderate or high proposal or performance risk ratings an additional opportunity to address the agency's concerns. Proteus was provided an additional five discussion questions, all of which dealt specifically with the adequacy of its proposed staffing. For example, in connection with the firm's proposed staffing plan for hardware engineering support, the agency asked :

"Request further explanation of hardware engineering support methods for all Nellis Range Complex systems. Considering Range operations and your proposed staffing plan, please provide more detail on how your approach will avoid significant serious disruption of schedule or degradation of performance." (Emphasis in original.)

The agency's other discussion questions were similarly detailed. The Air Force clearly provided Proteus meaningful discussions in the area of its staffing approach. Fidelity Technologies Corp., B-258944, Feb. 22, 1995, 95-1 CPD ¶ 112.

Proteus is correct that the evaluators initially identified strengths in its proposal that they were not conveyed to the SSA. However, this was because it was determined that the strengths initially identified for Proteus's proposal reflected only individual evaluator comments, and not the evaluators' consensus view. The evaluators thus subsequently prepared a revised evaluation report which did not state the strengths that did not represent the consensus view of Proteus's proposal. There is nothing improper in revising evaluation conclusions in this manner. While Proteus complains that Arcata's strengths were not eliminated in this revised report, there is no basis for finding that these strengths did not reflect the consensus. In fact, the agency's technical evaluation team chief specifically states that the revised report "correctly reflects the consensus of the [technical evaluation team]."

Further, there is no reason to conclude that the Proteus and Arcata proposals should have been treated the same in the revised report. As discussed above, the evaluators' (and the SSA's) overriding concern with Proteus' proposal was with the inadequacy of its proposed staffing; there was no similar concern with Arcata's staffing. While there was no separate evaluation category for staffing, the problem inherent in Proteus's staffing approach pervaded its entire technical approach. In the "Overall Proposal Risk Assessment and Evaluation Summary," the evaluators detailed the reasons for assigning both the color/adjectival ratings and the risk ratings. Not only were the risks inherent in Proteus's staffing approach repeatedly noted in the risk assessment portion of this document, but it was the basis of notable weaknesses under two assessment criteria (soundness of approach and understanding/compliance with requirement) under the operations and maintenance subelement. Given the legitimate concerns with Proteus's staffing, and its effect on the technical merits of Proteus's proposal, there simply is no basis to conclude that Proteus's technical merit rating should have been higher than green/acceptable.

Improper Weighting Of Proposal Risk

Proteus contends that the Air Force assigned disproportionate weight to proposal risk, which was only supposed to be a general consideration, improperly elevating it above Proteus's significant cost advantage in the cost/technical tradeoff decision.

This argument is without merit. Risk was an evaluation criterion and the record shows that the SSA specifically considered the differences between Proteus's and Arcata's proposals, and found that Proteus's low staffing, extensive cross utilization, and use of management personnel to perform work level tasks posed a risk to contract scheduling and could potentially have a negative effect on performance in terms of lost missions, degraded pilot training and budget adjustments. This problem with Proteus's proposal was properly considered and reasonably affected both Proteus's proposal risk rating and its color/adjectival technical merit rating. See JB Industries, supra (protester's proposal properly assigned both a

yellow/marginal adjectival rating and a high risk rating based on inadequate staffing); see also Greenbrier Indus., Inc., B-252943, Aug. 11, 1993, 93-2 CPD ¶ 91 (agencies may properly consider a deficiency in more than one area of technical evaluation where the deficiency affects the acceptability of a firm's proposal in more than one way). The SSA weighed this risk, together with the overall negative impact of the inadequate staffing on the technical proposal, against Proteus's lower cost and determined that lower risk and increased staffing were in the government's best interest. See JWK Int'l, B-256609.4, Sept. 1, 1994, 95-1 CPD ¶ 166. While cross utilization and other staffing reduction strategies are approaches to reducing the cost of performance, the agency was not required to sacrifice what it deemed was the staffing necessary for satisfactory, low risk performance; the agency's conclusion was consistent with the evaluation scheme, under which technical considerations were most important.

UIE'S PROTEST

UIE contends that the Air Force misevaluated proposals under the engineering and integration technical subelement. UIE's argument centers around one of the numerous operating systems, the route integration instrumentation system (RIIS). This is an electronic combat training system used to monitor electronic combat ranges and provide bomber crews with detailed post-training mission debriefings. The system is comprised of both on the ground hardware and extensive software, and the focus of UIE's protest allegation relates to maintenance of the software.

Essentially, UIE contends that the agency improperly assigned a blue/exceptional rating to Arcata's proposal under the engineering and integration subelement while assigning UIE only a green/acceptable rating. UIE contends that it was irrational to assign these ratings because Arcata does not have any direct RIIS experience (although it represented to the Air Force that it did), and engaged in "bait and switch" tactics by misrepresenting that it had incumbent RIIS employee commitments. UIE points out that, in comparison, its proposed subcontractor, GTE Government Systems Corporation, was the incumbent contractor performing software development and modification for the RIIS system.

The RIIS system was not the sole consideration under the engineering and integration subelement; the contract's software and firmware support requirements included three other electronic systems. The record shows that the evaluators were predominately concerned with each firm's proposed approach, as opposed to the particular employees offered to perform, under this subelement. Arcata's proposal was assigned a blue/exceptional rating because the evaluators concluded that it included a number of innovations that exceeded the requirements of the RFP in a way that was beneficial to the Air Force. For example, the evaluators noted that Arcata offered [deleted].

In comparison, while the evaluators found UIE's proposal acceptable under this subelement, they noted no particular strengths that exceeded the requirements of the RFP to the agency's benefit. Other than suggesting that its proposal merited a blue/exceptional rating largely because of its RIIS experience, UIE does not challenge the agency's evaluation conclusions in this area. UIE does not allege, for example, that the agency improperly failed to give its proposal evaluation credit for specified proposal features that exceeded the RFP's requirements; in fact, UIE does not even address the propriety of its rating in connection with the other systems besides the RIIS system that were reviewed under this subelement. In our view, UIE's position amounts to no more than disagreement with the evaluators' conclusions regarding the relative merit of its proposal in this area, which is insufficient to show that the evaluation was unreasonable or otherwise improper. See Cleveland Telecommunications Corp., B-257294, Sept. 19, 1994, 94-2 CPD ¶ 105.

We also find no merit to UIE's bait and switch allegation. Where a protester alleges that a bait and switch has occurred, it must show that the firm in question made a misrepresentation regarding particular individuals it does not expect to employ during contract performance, that the misrepresentation was material (that is, was relied upon by the agency), and that it had a significant impact on the evaluation results. Intermetrics, Inc., B-259254.2, Apr. 3, 1995, 95-1 CPD ¶ 215.

The RFP did not require the submission of resumes for all proposed employees, but only key management employees. For the remainder of a firm's staffing, the RFP required only that the firm describe its methods and procedures used in identifying and retaining personnel qualified to perform the effort. Arcata's proposal included only one resume in connection with the RIIS function—the resume of its proposed RIIS site manager, who was currently employed by the Navy in a civilian capacity and executed a letter of commitment to work for the firm if it were awarded the contract. As for the remainder of its staff requirements for the RIIS function, Arcata represented only that it would retain the core personnel currently working on the system, that it had letters of commitment from some of the incumbent RIIS personnel, and that it had spoken with all RIIS personnel who in turn had expressed a desire to be considered for employment if Arcata were the successful offeror. Arcata also represented that it had "direct" RIIS experience because of the commitments of incumbent employees. The record shows that Arcata in fact did have letters of commitment from a number of the incumbent RIIS personnel.⁴ Arcata's proposal thus contained no misrepresentation concerning either the extent to which it had obtained commitments from incumbent personnel and how it would

⁴Arcata advised our Office during the pendency of the protest that it had received employment applications from a significant number of the remaining incumbent RIIS personnel after being awarded the contract.

staff the RIIS function, or as to its direct experience based on the commitments, so it cannot be said there was an improper bait and switch. Id.

UIE raised numerous other allegations in its initial protest which the Air Force responded to in detail in its agency report. In its comments, UIE did not rebut the agency's position on these issues, stating instead that it preferred to have our Office decide these matters based on the existing record. We have reviewed all of UIE's allegations and find that they are either based on a misunderstanding of the facts surrounding the acquisition, or simply without merit. For example, UIE alleged that the agency had engaged in technical leveling during discussions with Arcata. UIE's contention centered around the fact that the Air Force conducted an additional round of discussions after receiving the first BAFOs. UIE alleged that this second round of discussions was conducted for the sole purpose of providing Arcata an additional opportunity to improve its technical rating. As discussed above, the agency's second round of discussions was conducted for the limited purpose of providing offerors which had received a moderate or high proposal or performance risk rating an opportunity to further explain their proposed approaches. Because Arcata had received low proposal and performance risk ratings, it was not given any additional discussion questions after the first round of BAFOs. (UIE on the other hand was given a discussion question because its proposal had received a moderate performance risk rating.) The record thus does not support the allegation.

The protests are denied.

Comptroller General
of the United States