



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

## DOCUMENT FOR PUBLIC RELEASE

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**Matter of:** Tomco Systems, Inc.

**File:** B-275551; B-275551.2; B-275551.3

**Date:** March 13, 1997

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Paralee White, Esq., Laurel A. Hockey, Esq., and Gordon Brent Connor, Esq., Cohen & White, for the protester.

Alex D. Tomaszczuk, Esq., and Matthew A. Anzaldi, Esq., Shaw, Pittman, Potts & Trowbridge, an intervenor.

Marleen J. Phillips, Esq., Department of the Navy, Fleet and Industrial Supply Center, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Where solicitation announced that the Department of the Navy intended to evaluate proposals and make award on the basis of initial proposals without conducting discussions, and agency's evaluation of the protester's proposal as "marginal" (defined in the solicitation as "less than acceptable") was reasonable and in accordance with the solicitation's evaluation criteria, agency's award to technically acceptable offeror at slightly higher price was reasonable.

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## DECISION

Tomco Systems, Inc. protests the award of a contract to Troy Systems, Inc. under request for proposals (RFP) No. N00600-95-R-3384, issued by the Department of the Navy for information processing support services for the Naval Computer and Telecommunications Station, Washington, D.C. Tomco contends that the agency improperly evaluated its proposal.

We deny the protest.

The RFP provided that the agency intended to evaluate proposals and award a contract without discussions with offerors; offerors were advised that their initial proposals should therefore contain the offerors' best terms from a cost or price and technical standpoint. Section M of the RFP provided the following technical evaluation factors for award listed in descending order of importance: technical approach; key personnel; management plan; and corporate experience. Key personnel was to be evaluated on the extent to which personnel resumes submitted

by the offeror "clearly as a minimum meet, or exceed" the education and experience required by the labor qualifications listed in sections C and L of the RFP. Section C, among other things, provided that the stated qualification requirements were minimum requirements, and that the senior technical specialist was required to have a minimum of 9 years of "recent experience in the use of advanced information technology to develop and/or integrate complex [automated information systems]." The RFP provided that:

"[t]he term 'recent experience' means that the most recent portion of the qualifying experience must have been acquired no less recently than two (2) years prior to the date the individual's resume is submitted to the government for review. For proposal evaluation the two (2) years recent experience is from closing date of solicitation."

Section L of the RFP further advised offerors of the agency's intent to make an award on the basis of initial proposals and that personnel resumes must demonstrate that the proposed personnel meet or exceed stated personnel qualifications.

Section M of the RFP provided that the agency's evaluators would rate technical proposals under each evaluation factor and "as a whole" using the following adjectival ratings: outstanding; better; acceptable; marginal; and unacceptable. Offerors were advised that a finding of unacceptable in one technical factor could result in the entire technical proposal being found to be unacceptable. The rating of "marginal" was defined in the RFP as:

"[l]ess than acceptable. There are some deficiencies in the [t]echnical proposal. However, given the opportunity for discussions, the technical proposal has a reasonable chance of becoming at least acceptable . . . . If award is made on initial offers, there will not be an opportunity for discussions or a chance to become at least acceptable."

Past performance also was to be evaluated; the RFP provided that past performance was less important than technical approach and more important than key personnel. The cost proposals were to be evaluated for reasonableness and realism, and the technical proposals were to be significantly more important than cost.

The closing date for receipt of proposals was December 8, 1995. Tomco's proposal (at an evaluated price of [deleted]) and Troy's proposal (at an evaluated price of [deleted]) were among the 10 proposals received by the closing date. In its proposal, which included personnel resumes certified to be current, accurate, and complete as of December 5, Tomco reported that its senior technical specialists exceeded the 9-year minimum general experience requirement of the RFP. The agency's evaluation of the proposals commenced shortly after submission of the proposals; the evaluation process was completed approximately 10 months later. One of Tomco's proposed senior technical specialists was evaluated by the agency as having less than the required 9 years of experience; the agency determined that the individual's resume showed only [deleted] of the required general experience as of the closing date for the receipt of proposals. Consequently, due to this deficiency, the proposal was rated as "marginal" (less than acceptable) under the key personnel evaluation factor. Due to this deficiency, and since award was to be made on the basis of initial proposals, without the opportunity for discussions or for Tomco to make its key personnel proposal "at least acceptable," the protester's proposal was rated as marginal overall (less than acceptable) and rejected. On November 12, 1996, an award was made to Troy, which firm was found to have submitted the only technically acceptable proposal. This protest followed.

Tomco does not dispute the accuracy of the agency's determination that, as of the closing date, one of the protester's proposed key personnel did not meet the RFP's required (9-year) minimum experience requirement. Rather, the protester states that the agency should have considered the additional experience gained by the individual prior to the conclusion of the proposal evaluation process. In this regard, Tomco states that the individual's resume advised the agency that he was a current employee of Tomco, and that the individual's letter of commitment stated that he would remain employed by Tomco if Tomco received the award. Tomco contends that the agency therefore was required to consider the individual's ongoing experience acquired after the closing date, but during the proposal evaluation process.

The agency responds that all offerors were on notice from the RFP's terms that all required minimum personnel qualifications had to be met by the closing date for the receipt of initial proposals, and that the agency intended to make an award on the basis of initial proposals which would not allow an opportunity for an offeror to meet the RFP's stated minimum requirements after the closing date.

We will review an agency's technical evaluation of proposals to determine whether it was fair, reasonable and consistent with the stated evaluation criteria. Sandaire, B-242301, Apr. 12, 1991, 91-1 CPD ¶ 370. Here, we find that the agency's evaluation of the protester's proposal was proper.

As stated above, the RFP explained that for evaluation purposes, recent experience was to be measured from the closing date of the solicitation. This RFP provision reasonably put all offerors on notice that the RFP's personnel experience requirements were to be met by the announced closing date.<sup>1</sup> In fact, the protester's proposal itself demonstrates Tomco's understanding that proposed personnel qualifications would be measured from the closing date since in its proposal the protester specifically calculated the individual's experience from the closing date in determining, unfortunately incorrectly, that the individual met the stated minimum experience requirement. The error in Tomco's calculation of the individual's total general experience appears to be the result of inaccurate arithmetic--the duration of a [deleted] work period was calculated and proposed by the protester on the individual's resume as a [deleted] period.<sup>2</sup>

Tomco next contends that, even if the marginal rating for its key personnel proposal is warranted, given the stated descending order of importance of the listed evaluation factors (with technical approach and past performance being more important than key personnel), the high proposal ratings received by Tomco under these factors should have been considered and given more weight by the agency in determining the protester's overall proposal rating. Tomco contends that the RFP only allowed the agency, in its discretion, to "carry forward" a rating of unacceptable in any technical evaluation area to render the entire proposal unacceptable. Tomco, however, fails to consider the balance of the RFP's definition of "marginal" in its protest submissions--the RFP clearly states that a rating of "marginal" in any technical evaluation area means that the proposal was "less than acceptable" in that technical area and that without discussions an offeror would not have an opportunity to make such a proposal acceptable.<sup>3</sup> Since the RFP provided

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<sup>1</sup>Although the RFP defines "recent experience" as experience acquired "no less recently" than 2 years prior to submission of the proposal, we believe the RFP qualification that recent experience was to be measured for evaluation purposes from the "closing date of solicitation" provided a common cutoff basis for all offerors to reasonably rely on in the preparation of their proposals to comply with the stated experience requirements.

<sup>2</sup>We note that the record shows that one technical evaluator [deleted].

<sup>3</sup>In deciding to award based on initial offers, the agency found that given the technical strengths of the Troy initial proposal, the reasonable and realistic cost of that proposal--which was only slightly higher than that proposed by Tomco and well within the range of the proposals received by the agency, the need for commencement of performance of the services under the contract, and the additional cost to the agency to hold discussions and evaluate another round of proposals, reasonable bases existed, and it was in the government's best interest, to make an award on the basis of initial proposals.

that a technically unacceptable rating in one evaluation area could render the entire proposal unacceptable, under the RFP's stated evaluation terms, the key personnel deficiency provided a sufficient basis for the agency to find the protester's overall proposal technically unacceptable.<sup>4</sup> Jacob Caspi Ltd., B-257740, Nov. 4, 1994, 94-2 CPD ¶ 174.

The protest is denied.

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<sup>4</sup>Although the protester amended its protest to include a contention that the agency failed to evaluate past performance (on the basis of certain evaluation documents given to the protester which omitted information detailing the agency's past performance evaluation), since the agency has reported that past performance was in fact evaluated [deleted] this protest basis is factually incorrect. To the extent the protester is challenging the agency's consideration of the past performance rating in the evaluation of its overall proposal rating, the matter is rendered academic by our decision above that Tomco could not receive the award because its proposal was otherwise unacceptable.