



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Analytical & Research Technology, Inc.

File: B-276064

Date: May 7, 1997

Douglas L. Patin, Esq., Spriggs & Hollingsworth, for the protester.
Maj. Michael O'Farrell, Esq., Department of the Army, for the agency.
Katherine Riback, Esq. and Paul Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency did not conduct misleading discussions where the protester unreasonably interpreted agency's explanation regarding staffing requirements as permitting an approach that was inconsistent with the solicitation requirements.

DECISION

Analytical & Research Technology, Inc. (ART) protests the Department of the Army's proposed award of a contract to J.G. Van Dyke & Associates, Inc. to provide computer network integration and automated data processing (ADP) operations support for the National Ground Intelligence Center (NGIC) under request for proposals (RFP) No. DAHC90-95-R-0036. ART contends that the Army conducted misleading discussions with ART.

We deny the protest.

The RFP contemplates the award of a labor hours contract for a base year with four 1-year option periods to provide the NGIC with routine ADP technical assistance and hardware maintenance, installation and deinstallation of ADP support. The RFP provided that offerors were permitted to propose any mix of labor categories to perform the required tasks provided that the proposed individuals "have the requisite years of experience in each of the skill areas listed below for the labor category for which they are proposed." (Emphasis added.) The skill areas were as follows:

"Skill Area # 1- Experience in UNIX operating systems software design, development and configuration management and specific experience in Solaris 1.X and 2.X.

"Skill Area # 2- Experience in Client-Server Relational Databases and Software Applications and specific experience in Sybase, Progress, and Oracle.

"Skill Area # 3- Experience in Imagery Exploitation Software Applications and specific experience in DIEPS.

"Skill Area # 4- Experience in Asynchronous Transfer Mode (ATM), TCP/IP, Cisco and Newbridge Routers and Network Management Software Applications and specific experience in Wollongon Pathway.

"Skill Area # 5- Experience in DEC OSF/1, installation, utilities, configuration and specific experience in MIS, NFS, and C2.

"Skill Area # 6- Experience in Hardware/Software Configuration Management and Software Applications and specific experience in Autocad, Netcensus, Progress, Oracle, Applix-ware, and Wordperfect for UNIX, cc:mail for UNIX.

"Skill Area # 7- Experience in ADP systems operations and specific experience in UNIX/Novell Fileservers, IBM/VM Mainframe, Network Management Systems, Communications Security (COMSEC).

"Skill Area # 8- Experience in MAC OS and Electronic Publishing Software Applications and specific experience in MOSAIC, Web Servers, Framemaker, QUARK, UNIX CorelDraw.

"Skill Area # 9- Experience in Computer Security Support, Computer Trusted Systems and Accreditations."

The skill areas required by the RFP for each of the proposed labor categories were as follows:

Proposed Labor Category	Skill Area(s)
Systems Analyst	1, 2, and 3
Computer Specialist	1, 2, 3, 5, and 8
Communications Technician	4
Communications Engineer	1, 4, 7
Systems Administrator	1, 2, 4
Configuration Management Specialist	6
Computer Security Analyst	9
Computer Shift Operator	7

The RFP provided that award would be made to the responsible offeror whose proposal represented the best value to the government, taking into consideration price and technical quality, with the technical factors being more important than price. The RFP listed the following technical factors, in descending order of importance: (1) technical skills, qualifications, and experience-personnel, (2) technical skills, qualifications, and experience-corporate, (3) technical approach, and (4) cost.

On May 30, 1996, the agency received initial proposals from four offerors. Each proposal included a labor category matrix for key personnel and corresponding resumes for individuals proposed to comply with the RFP's experience requirements. ART's labor category matrix for its proposed key personnel indicated that ART interpreted the RFP as requiring that an individual proposed for a particular labor category had to be qualified in all of the skill areas and the applicable subskill areas listed for that particular labor category. For example, ART's initial proposal reflected ART's understanding that an individual proposed as a systems analyst must be qualified in all of the skill areas required for that labor category--that is, skill areas 1, 2, and 3, and each of the subskill areas contained thereunder. In instances where ART could not find individuals that met the RFP requirements, it proposed individuals that most nearly satisfied the requirements in order to receive a portion of the available points.

Van Dyke's proposal received the highest technical score of 150 points out of 350; FC Business's proposal received the second highest score of 120.9 points; ART's proposal received the third highest score of 117.5 points; and a fourth offeror received the lowest technical score of 108.4. The source selection evaluation panel (SSEP) determined that all of the proposals were unacceptable with high risk ratings, but felt that each could be made acceptable with additional information. In evaluating proposals, the SSEP did not award any points for proposed individuals who did not meet all of the required skill areas for a particular labor category. On February 29, the agency issued amendment No. 4, which changed the skill areas required for systems analyst from "1, 2 or 3" to "1, 2 and 3," and for computer specialist from "1, 2, 3, 5, or 8" to "1, 2, 3, 5, and 8." (Emphasis added.) Offerors were requested to submit revised proposals. The SSEP reconvened to evaluate the revised proposals responding to amendment No. 4. The SSEP found the proposal of Van Dyke to be the technically superior proposal and recommended that award be made to that firm. However, the contracting officer rejected the SSEP's recommendation on the basis that any one of the three remaining offerors could be made capable of being awarded the contract if discussions were held.¹ The agency conducted written discussions in which each offeror received a list of clarifications and deficiencies concerning its initial and revised proposal. The SSEP Chairman and the contract specialist then conducted telephone discussions with each offeror.

ART's written discussion letter reflected the fact that various key personnel it proposed were not qualified in all of the required skill areas. During oral discussions, the RFP requirements regarding key personnel requirements were addressed. The specific content of the discussions with ART is the issue in this protest. ART's main contention is that the SSEP Chairman expressly introduced a "team concept" during oral discussions, specifically informing ART that it was permitted to propose various individuals who each met some, but not all, of the skill area requirements for a particular labor category, and that together these individuals could constitute an acceptable "team" for that particular labor category.

Best and final offers were subsequently requested and submitted. ART fundamentally revised its BAFO based on its understanding of the oral discussions. The final evaluated scores and proposed prices were as follows:

¹One proposal was determined to be unacceptable and excluded from the competitive range after the evaluation of revised proposals, leaving a competitive range of three offers.

Offerors	Technical Score (350 points maximum)	Price
ART	143.5	\$17,551,097
FC Business Systems	129.2	\$9,976,940
Van Dyke	218	\$13,069,300

Concluding from these results that Van Dyke's proposal represented the best value to the government, the Army made award to Van Dyke. This protest followed.

As discussed above, ART contends that the agency affirmatively misled it during discussions, maintaining that it was informed during discussions that it was permissible to utilize a "team approach" to fulfill, in the aggregate, the experience requirements for each labor category. ART contends that it was told that more than one individual could be proposed for a particular labor category in order to meet all of the skill area requirements for that labor category.

ART also argues that neither the solicitation nor the discussion questions alerted it to the fact that the agency intended to give no evaluation credit for personnel who were qualified in some, but not all, of the required skill areas. In this regard, ART contends that the agency conducted unequal discussions in that the agency informed Van Dyke that individuals that did not meet all of the skill area requirements would not receive any scoring credit.

At a hearing held in connection with this protest, ART's President testified regarding the specific content of the oral discussions. He stated that, during discussions, he communicated to the agency representatives that ART had found it very difficult to find individuals with the requisite experience in all of the required skill and subskill areas required for many of the labor categories. Video Transcript (VT) 14:56:44. ART's President testified that he then asked the SSEP Chairman, "[i]s that what we are supposed to do?" VT 14:57:01. According to ART's President, the SSEP Chairman replied that it would be impossible to find one individual who met all of the skill area and subskill area requirements for a certain labor category, and went on to explain that offerors were permitted to meet the requirements of a particular labor category with a team. Specifically, ART's President testified that he was advised that ART could propose three individuals under the systems analyst labor category, one person that met all of the requirements for skill area 1 (such as experience in 3 out of the last 5 years with UNIX operating systems, and specific experience in Solaris 1.X and 2.X.), but had no experience in skill areas 2 and 3, and another individual that met all of the requirements for skill area 2 (such as experience in Sybase, Progress and Oracle), but had no experience in skill areas 1 and 3, and a third individual who had all of the experience required in skill area 3 (which called for imagery exploitation software applications and specific experience

in DIEPS), but had no experience in skill areas 1 and 2, and that these three individuals would form the "systems analyst team." ART's President further testified that ART's representatives ran through several scenarios to ensure that they understood the teaming approach just introduced. VT 15:02:45. Finally, ART's President testified that this team approach, as explained by the SSEP Chairman, clarified everything for them because this way the government would get all of the skill areas and subskill areas in a particular labor category, although not with a single person. Based on the discussions, ART restructured its BAFO to reflect the permissible "team approach." Due to its revisions, 17 of ART's proposed employees did not receive scoring credit.

The agency takes the position that the language in the solicitation, combined with the clarification/deficiency comments, clearly put the offerors on notice that the solicitation required that individuals proposed for a labor category must have at least 3 years of experience in the last 5 years in each of the skill areas listed for a particular labor category, and that individuals who were proposed for a labor category who did not have the requisite experience for each skill area listed would not receive credit. Regarding the language of the solicitation, the agency points to the language of amendment No. 1 which states: "[t]he individuals proposed must have the requisite years of experience in each of the skill areas listed below for the labor category for which they are proposed." (Emphasis added.) The agency also points to amendment No. 4 which changed the word "or" to "and" in the listing of skill areas for Systems Analyst and Computer Specialist, as further evidence of the agency's consistent position that individuals proposed for a given labor category must have at least 3 years of experience in the last 5 years in each of the skill areas listed for that labor category. The agency maintains that the written clarification/deficiency questions provided to ART prior to oral discussions, which were the basis for oral discussions, specifically informed ART of deficiencies in skill areas 3 and 8. For example, the agency notified ART of the following deficiency during written discussions:

"8. Skill Area 8:

Deficiency - No individuals proposed for this skill area. (Fowler cannot be counted for this skill area due to inadequate recency of experience for skill area 5.)"

The agency views the written discussion questions as adequately advising ART that each individual proposed must be qualified in all of the listed skill areas in order to receive scoring credit. Therefore, the agency contends the written clarifications/deficiency questions addressed to ART reinforced what was already stated in the RFP in amendment No. 1 requiring that "[t]he individuals proposed must have the requisite years of experience in each of the skill areas listed below for the labor category for which they are proposed."

Regarding oral discussions, the SSEP Chairman states: "[n]othing in the oral discussion negated or amended the written guidance in section L.21b(1) (amendment 0001) which stated that "[t]he individuals proposed must have the requisite years of experience in each of the skill areas listed below for the labor category for which they are proposed.'" At the hearing, the SSEP Chairman testified:

"I do not know how the question of individual employees versus team contributions arose, I do not recollect, but it became necessary to restate that first an employee, in accordance with L.21(b), had to first have the requisite years of experience in each of the skill areas identified in the solicitation for their labor category, that, when we proceeded to actually do the evaluation as set out in M.3 the evaluation would then look at the composite or the team of individuals who were contributing to skill area 1." VT 11:01:05.²

The SSEP Chairman acknowledged that he introduced the concept of a "team approach" during oral discussions and that this concept did not appear in the RFP or in the written discussion materials. VT 11:01:29.³

Discussions, when they are conducted, must be meaningful and must not prejudicially mislead offerors or be unequal. Federal Acquisition Regulation, § 15.610(c); Nova Research Co., B-270092; B-270092.2, Feb. 8, 1996, 96-1 CPD ¶ 52 at 5. In this case, the record establishes that the oral discussions were not misleading, and that the protester's interpretation of the agency's remarks stemmed from its own misunderstanding of the solicitation requirements. See Peckham Vocational Indus., Inc., B-257100, Aug. 26, 1994, 94-2 CPD ¶ 81 at 8.

²In other words, under the teaming concept, as explained by the SSEP Chairman at the hearing, the agency required that one individual satisfy the skill area requirements for a particular labor category, but that individual did not have to meet every subskill requirement for each skill area. The agency would then examine all of the individuals that were proposed for various labor categories that required a particular skill area, for example skill area 2, which required specific experience in Sybase, Progress, and Oracle. The systems analyst, computer specialist, and systems administrator labor administrator labor categories all require skill area 2. An offeror could proposed a systems analyst with Sybase experience, a proposed computer specialist with Oracle experience, and a systems administrator with Progress experience. Then the agency would look and see that, as a team, these individuals met all of the various requirements of skill area 2.

³The contracting specialist, who also participated in the discussions with ART, could not recollect any of the technical discussions between the SSEP Chairman and ART. VT 14:35:40.

Regarding discussions, ART appears to have misapplied the "team approach," as it was explained by the agency. The record indicates that the "team approach" described by the SSEP Chairman during discussions reflected the view that individuals from different labor categories could form a team to fulfill the requirements of a particular skill area, and that ART misunderstood this concept as outlined above.⁴

On the basis of the record before us, it is clear that the "team approach," as explained by the agency, is consistent with the terms of the solicitation, specifically the solicitation provision that personnel would only be evaluated by skill areas, not by labor categories. Nowhere in the solicitation are labor categories mentioned, except as a mechanism to "categorize" a proposed individual at a specific labor rate. The record before us demonstrates that the agency has been consistent throughout the evaluation process in its interpretation of the experience requirements for labor categories. For example, amendment No. 4 which changed the word "or" to "and" in the listing of skill areas for certain labor categories, demonstrates that the agency interpreted the solicitation to require that individuals proposed for a given labor category must have experience in each of the skill areas listed for a particular labor category. ART's stated interpretation of the "team approach" is directly contrary to the solicitation's requirements regarding experience for each of the listed skill areas for given labor categories.

Moreover, ART has failed to demonstrate that it was prejudiced by the alleged misleading discussions. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, No. 96-1148, slip op. __ (Fed. Cir. Dec. 19, 1996). At the hearing ART's President specifically testified that ART could not provide many of the personnel which met what it originally

⁴At the hearing, ART also introduced testimony from a representative of FC Business indicating that he, too, misunderstood the solicitation's requirements.

understood to be the RFP's stated requirements. In its protest ART states that when it submitted its BAFO it relied on the "team approach" concept that was introduced by the agency during oral discussions by replacing personnel originally proposed who were "very expensive" due to their extensive experience, with several "significantly less expensive" individuals whose combined experience met the requirements of the RFP. In these circumstances, it is only reasonable to conclude that, in order for ART to have provided the more highly skilled and experienced personnel necessary to meet the actual RFP requirements, ART's already high price, well above that offered by Van Dyke, would have further increased.⁵

The protest is denied.

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⁵ART also argues that the agency improperly failed to score a certain employee who was proposed for the systems analyst labor category. This allegation is factually incorrect. This individual was scored under the skill areas 1, 2, and 3 to support his designation as a systems analyst. However, the employee's score for skill area 3 was downgraded because the agency determined that he lacked the required three years of experience in DIEPS to satisfy the DIEPS portion of the requirements for skill area 3. Even if this individual had received the maximum score under skill area 3, there would have been no material effect in the outcome of this procurement.