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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Advanced Communication Systems, Inc.

**File:** B-271040; B-271040.2

**Date:** June 10, 1996

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William L. Walsh, Jr., Esq., J. Scott Hommer III, Esq., Wm. Craig Dubishar, Esq., and Paul N. Wengert, Esq., Venable, Baetjer and Howard, for the protester. J. Andrew Jackson, Esq., and Robert J. Moss, Esq., Dickstein, Shapiro & Morin, for Technical and Management Services Company, an intervenor. Anthony E. Marrone, Esq., Department of the Navy, for the agency. Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

1. An awardee did not materially misrepresent the availability of its proposed 12 personnel, of whom 11 were current awardee employees, where the awardee confirmed their availability prior to award.
  2. The contracting agency reasonably found the awardee's proposed personnel to be acceptable, where the awardee's and protester's personnel were similarly found to be in substantial compliance with the solicitation requirements, such that the agency's needs were met and no offeror was prejudiced.
  3. The contracting agency's consideration of offerors' prices, resumes, and responsibility in determining to make award to the lowest priced, technically acceptable offeror was reasonable and consistent with the solicitation's evaluation scheme.
  4. The allegation that the awardee obtained an unfair competitive advantage by employing a former employee of the protester, who had access to the protester's proprietary pricing and performance strategies, concerns a dispute between private parties which the General Accounting Office will not entertain in the absence of evidence of government involvement.
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## **DECISION**

Advanced Communication Systems, Inc. (ACS) protests the award of a contract to Technical and Management Services Company (TAMSCO) under request for proposals (RFP) No. N00383-95-R-0389, issued by the Department of the Navy for services in support of the agency's Streamlined Automated Logistics Transmission

System (SALTS) in Philadelphia, Pennsylvania. ACS contends that TAMSCO made material misrepresentations concerning the personnel it would provide under the contract, that TAMSCO's proposed personnel do not satisfy the RFP requirements, that the Navy evaluated proposals using unstated evaluation factors, and that TAMSCO's hiring of an ACS employee provided TAMSCO with an unfair competitive advantage that the agency improperly failed to mitigate.

We deny the protest.

SALTS is a communications system employed by the Navy to transmit logistics and other administrative data worldwide among more than 2,100 ship and shore sites. The RFP provided for the award of a fixed-price, level-of-effort contract to provide support services for SALTS for a base year with 1 option year. Among other things, the contractor will assist agency personnel in enhancing and streamlining current SALTS information processing systems and will provide an analysis of existing automated data processing (ADP) and telecommunication processes, and their use.

The RFP provided for award to the lowest-priced, technically acceptable, responsible offeror. No evaluation factors, other than price, were identified for the evaluation of proposals. Offerors were required to provide fixed prices for 12 full-time personnel (1 program manager, 3 systems operators, 5 programmers, and 3 customer service field representatives) to fill 12 discrete labor categories. For each labor category, the RFP identified specific minimum technical requirements and offerors were required to submit a resume for each person proposed. The RFP provided in clause H07, "Personnel/Substitution of Key Personnel," that "no personnel substitutions will be permitted unless such substitutions are necessitated by an individual's sudden illness, death, or termination of employment. . . . All proposed substitutes must have qualifications equal to, or higher than, the qualifications of the person to be replaced."

The Navy received proposals from three offerors, including TAMSCO and ACS (the incumbent SALTS contractor) as follows:

	BASE YEAR	OPTION YEAR
TAMSCO	\$976,356	\$1,013,664
ACS	\$1,102,716	\$1,135,829
Offeror A	\$1,204,187	\$1,230,473

The Navy evaluated the resumes submitted by TAMSCO and ACS and determined that each firm's proposed personnel satisfied the RFP requirements. Discussions were determined not to be necessary, and award was made to TAMSCO, as the

responsible offeror submitting the lowest-priced, technically acceptable offer. This protest followed.

ACS first argues that TAMSCO engaged in "bait and switch" practices by misrepresenting the availability of its proposed personnel and its intent to use the personnel proposed for this contract, as evidenced by the fact that only 3 of the 12 personnel proposed by TAMSCO are actually performing under the contract. TAMSCO responds that it did not misrepresent the availability of the proposed personnel in its proposal, which consisted of 11 current employees and 1 anticipated hire, and that, following its standard business practices, it verified the availability of its proposed personnel prior to the submission of resumes. TAMSCO and the Navy also state that each of the substituted personnel was approved by the Navy under RFP clause H07 and are actually better qualified than the acceptable personnel originally proposed.<sup>1</sup>

Generally, an offeror's misrepresentation concerning personnel that materially influences an agency's consideration of its proposal provides a basis for proposal rejection or termination of a contract issued based upon the proposal. ManTech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326; Anjon Corp., B-249115; B-249115.3, Oct. 20, 1992, 92-2 CPD ¶ 261. A misrepresentation is material where an agency has relied upon the misrepresentation and that misrepresentation likely had a significant impact upon the evaluation. ManTech Advanced Sys. Int'l, Inc., *supra*. We conclude from the record here that TAMSCO did not make material misrepresentations concerning its proposed personnel.

The RFP did not require separate letters of commitment for proposed personnel; rather, it asked for no more than resumes for proposed personnel. In such circumstances, an offeror's responsibility is to propose personnel that the offeror reasonably may expect will be available to perform the contract. See CBIS Fed., Inc., 71 Comp. Gen. 319 (1992), 92-1 CPD ¶ 308.

For the 11 current employees it proposed, TAMSCO, in accordance with its usual business practices, confirmed with the employee or the employee's immediate supervisor the employee's availability to perform under the contract. We have held that, as a general rule, an offeror proposing a current employee has a reasonable basis to expect that the employee will be available for contract performance. See ManTech Advanced Sys. Int'l, Inc., *supra*; Laser Power Technologies, Inc., B-233369;

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<sup>1</sup>ACS argues that the substituted personnel are not equal or better than those proposed and that the substitutions were not made in accordance with contract requirements; these are matters of contract administration, which are not for consideration by our Office. 4 C.F.R. § 21.5(a) (1996); RGI, Inc., B-243387.2; B-243387.3, Dec. 23, 1991, 91-2 CPD ¶ 572.

B-233369.2, Mar. 13, 1989, 89-1 CPD ¶ 267. While ACS argues that TAMSCO's verification of availability was insufficient because a number of the proposed personnel were employed on a contract at Fort Monmouth, New Jersey--2 hours from where this contract will be performed--ACS has not shown why this distance is so great in these circumstances as to preclude TAMSCO's reasonable expectation that its employees whose availability it has confirmed would be willing and able to perform under the contract. Moreover, there is no indication that any of the TAMSCO employees, employed at Fort Monmouth and proposed under this RFP, were unwilling or unable to perform the contract because of the 2-hour distance between their current duty stations and where this contract will be performed. Given TAMSCO's verification of its employees' availability, the record evidences that TAMSCO had a reasonable expectation that the employees proposed would be available for contract performance.

Regarding the one individual proposed by TAMSCO that was not a current employee, TAMSCO verified that individual's interest and availability to perform under the contract and received that individual's permission to include his resume in TAMSCO's proposal;<sup>2</sup> this provided TAMSCO with a reasonable expectation that this individual would be available to perform under the contract.

In sum, we find no basis to conclude that TAMSCO materially misrepresented the availability of its proposed personnel.

ACS next argues that TAMSCO's resumes for one of its proposed system operators and for its customer service field representatives do not satisfy the solicitation's requirements and that TAMSCO's proposal was therefore unacceptable. As noted above, the RFP stated specific requirements for each of the 12 identified labor categories. For the systems operator, the RFP required, among other things, that the proposed operator have:

"[e]xtensive knowledge of various application programming languages including Clipper 5X, CA Visual Objects, and Borland C++ to support data management and end user applications for the SALTS project."

ACS argues that TAMSCO's proposed systems operator's resume does not show experience with or knowledge of the identified application programming languages. The Navy responds that it evaluated offerors' resumes for the systems operator position to ensure that proposed personnel would satisfy the RFP requirements, but did not require that each resume specifically state knowledge of, or experience

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<sup>2</sup>The record shows that TAMSCO first learned after the award of the contract that the proposed non-employee had accepted a full-time position with another company and was no longer interested in employment with TAMSCO.

with, each application programming language. Thus, regarding TAMSCO's proposed systems operator, the agency determined that the systems operator's stated experience with Dbase 3+ and UNIX languages was comparable to experience with the identified application programming languages and satisfied the RFP requirements. The Navy and TAMSCO also note that a number of ACS' resumes do not demonstrate specific compliance with all the stated personnel qualifications; for example, the resume for ACS' proposed systems operator also does not show specific knowledge of the Clipper 5X, CA Visual Objects, and Borland C++ programming languages.

In reviewing an agency's technical evaluation, our Office will not evaluate proposals anew, but will examine the record to ensure that the evaluation was reasonable and consistent with the stated evaluation criteria. Allenhurst Indus., Inc., B-256836; B-256836.2, July 8, 1994, 94-2 CPD ¶ 14. Generally, to be determined technically acceptable, a proposal must satisfy all the material solicitation requirements. Peckham Vocational Indus., Inc., B-257100, Aug. 26, 1994, 94-2 CPD ¶ 81. However, a contracting agency may properly find acceptable a proposal that is in substantial, although not total, compliance with a solicitation requirement where such a determination does not prejudice any other offeror and the proposal meets the agency's needs. GPS Technologies, Inc., B-256174 et al., May 16, 1994, 94-1 CPD ¶ 309.

We agree that the resume of TAMSCO's proposed systems operator does not demonstrate experience with the identified programming languages, as required by the RFP. Nevertheless, we conclude from this record<sup>3</sup> that the Navy reasonably determined that the resumes of TAMSCO's proposed systems operator substantially complied with the RFP requirements and satisfied the agency's needs, and that ACS was not thereby prejudiced. As noted above, the Navy determined that TAMSCO's proposed systems operator's experience with other application programming languages was comparable to experience with the languages identified in the solicitation. ACS does not contend that the application programming languages identified in TAMSCO's proposed systems operator's resume are not comparable to those identified in the RFP; therefore, we have no basis on this record to find unreasonable the agency's conclusion that the experience reflected on the resume

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<sup>3</sup>ACS complains that the Navy did not sufficiently document its technical evaluation as required by Federal Acquisition Regulation (FAR) §§ 15.608(a)(3), 15.612(d)(2). In determining the rationality of an agency's evaluation and award decision, we do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments, explanations, and/or hearing testimony. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3; B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56. Here, the record is sufficient to allow our review to determine the reasonableness of the agency's evaluation.

was comparable to experience with the identified languages and that TAMSCO's proposal substantially complied with the RFP requirements.

We also see no basis for concluding that ACS was prejudiced by the agency's determination. Like TAMSCO, ACS submitted a number of resumes that did not specifically demonstrate compliance with every personnel qualification mentioned in the RFP. (For example, the resume for ACS' proposed systems operator does not mention the application programming languages identified by the RFP.) ACS' proposal also was found to satisfy the RFP requirements. Accordingly, given the offerors' equal treatment by the Navy, we conclude that ACS was not prejudiced by the agency's evaluation and acceptance of TAMSCO's proposal.

ACS further argues that the resumes provided for TAMSCO's three proposed field service representatives also do not satisfy the RFP requirements. The RFP required, among other things, that the field representatives have:

"[a]n in-depth knowledge of MS-DOS, Windows, and Novell network operating systems, hands-on experience with both on-line and batch systems, and an in-depth familiarity with all SALTS applications and databases."

ACS contends that the resumes provided for TAMSCO's proposed field representatives do not show "any familiarity with all SALTS applications and databases." The Navy responds that the applications, programs, and databases used by SALTS are common Department of Defense (DOD) applications, programs, and databases, and that the resumes submitted for TAMSCO's proposed field representatives demonstrated that these personnel were familiar with DOD databases and systems, as well as with data transmission processes and personal and mainframe computers. The Navy determined that the computer experience and knowledge of DOD databases and systems, shown in TAMSCO's proposed field representatives' resumes, satisfied the RFP requirement for familiarity with SALTS applications and databases, which are the same as the DOD databases and systems. ACS does not contend that SALTS applications and databases are not the same as the DOD databases and systems, represented in TAMSCO's resumes, but argues that the RFP required specific SALTS experience and knowledge. We disagree. The plain language of the RFP, as quoted above, establishes that the Navy required knowledge of, or experience with, databases and systems that are used by SALTS but may also be common to other computer systems.

ACS also argues that the Navy, in assessing the offerors' proposed prices, resumes, and responsibility, used unstated evaluation factors in selecting TAMSCO's proposal for award. The RFP incorporated by reference the standard "Contract Award" clause, set forth in FAR § 52.215-16, which informed offerors that:

"(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered."

No other evaluation factors were specified in the RFP. Thus, offerors were on notice that in selecting an offer for award the agency would assess the acceptability of the offer (that is, the offer's conformance with the solicitation requirements), the offeror's proposed price, and the offeror's responsibility. The record demonstrates that this is exactly what the Navy did; it reviewed the offerors' proposals, including the required resumes, to determine the conformance of the offers with the RFP requirements, evaluated the firms' responsibility, and selected for award the responsible firm offering the lowest-priced, technically acceptable offer.

ACS finally complains that TAMSCO obtained an unfair competitive advantage by employing, after the issuance of the RFP but prior to the submission of proposals, an employee of ACS, who ACS alleges had access to ACS' pricing and performance strategies. There is no allegation that the agency was involved in any way with TAMSCO's hiring of the former ACS employee or was even aware of this matter prior to award. To the extent that ACS alleges that its former employee improperly provided ACS' confidential business information to TAMSCO (an allegation that TAMSCO denies), this concerns a dispute between private parties, which we will not entertain in the absence of government involvement.<sup>4</sup> Republic Maintenance of Ky., Inc., B-226991, June 2, 1987, 87-1 CPD ¶ 564; Radio TV Reports, Inc., B-224173, Sept. 24, 1986, 86-2 CPD ¶ 344.

The protest is denied.

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of the United States

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<sup>4</sup>We disagree with ACS that in Eldyne, Inc., B-250158 et al., Jan. 14, 1993, 93-1 CPD ¶ 430, we directed an agency to ensure that an awardee did not have an unfair competitive advantage where the awardee's proposal appeared to contain the protester's confidential business information. In Eldyne, we found that the agency had not conducted meaningful discussions with the protester and recommended that the agency reopen negotiations. Because it was not clear that the awardee could provide the services it offered in its proposal—given the awardee's parroting of the protester's proposal for the prior procurement—we also recommended that the agency confirm during discussions that the awardee's technical approach was its own, such that the awardee could successfully perform the contract.