



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: International Data Products, Corp.; I-NET, Inc.;
and Dunn Computer Corp.

File: B-274654; B-274654.2; B-274654.3; B-274654.4; B-274654.5

Date: December 26, 1996

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Marcia G. Madsen, Esq., Scott E. Pickens, Esq., David F. Dowd, Esq., and Jessica C. Abrahams, Esq., Miller & Chevalier, for Hughes Data Systems, the intervenor.

Lisa J. Obayashi, Esq., and Alden F. Abbott, Esq., Department of Commerce, for the agency., for the agency.

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DIGEST

1. Protesters rated eighth and ninth in overall technical merit are interested parties for the purpose of pursuing a protest where both claim their proposals were improperly evaluated, both offered lower prices than the awardee, and the solicitation called for award to the offeror whose proposal was found most advantageous to the government. Under these circumstances, if their protests were sustained, either protester could be in line for award.

2. Contention that agency improperly evaluated proposals is denied where the record shows that the evaluation was reasonable and in accordance with the stated evaluation criteria.

3. Where solicitation requires offerors to provide technical literature to demonstrate commerciality and compliance with specifications, a proposal's affirmative response to a solicitation requirement that is contradicted by the required technical data generally cannot be reasonably accepted by agency evaluators.

4. Contention that agency improperly made award on the basis of initial proposals is denied where the record shows that the solicitation clearly indicated the agency's intent to make award without discussions if possible, and that the evaluation reasonably determined that discussions were not needed to determine the proposal offering the best value to the government.

5. Claim that Federal Acquisition Regulation § 15.610(c) required the agency to give the protester an opportunity to comment on adverse reports of past performance is denied because the cited regulation has no application where the agency does not otherwise hold discussions.

6. Argument that the agency selection official failed to make an independent and properly documented selection decision is denied where the record shows that the selection official reasonably relied upon and adopted the findings set forth in a detailed best value analysis prepared by the evaluation panel.

DECISION

International Data Products, Corp.; I-NET, Inc.; and Dunn Computer Corp. protest the award of a contract to Hughes Data Systems pursuant to request for proposals (RFP) No. 52-PAPT-5-00005, issued by the Patent and Trademark Office, Department of Commerce, for computer workstations. All three protesters challenge the agency's evaluation of their proposed workstations, and all argue that the agency's selection of Hughes' proposal over theirs was unreasonable.

The protests are denied.

BACKGROUND

The RFP here anticipated award of a fixed-price, indefinite-delivery, indefinite-quantity contract for two levels of workstations (level 1 and level 2) comprised of commercially-available, off-the-shelf (and in current production), desktop microcomputers and peripherals for the Patent and Trademark Office (PTO). RFP § C.2. In addition, the solicitation sought technical support services and a warranty. The contract period was for a base year and two 1-year option periods, and the agency reserved the right to make award based on initial proposals.

Potential offerors were advised that the agency would evaluate proposals using four evaluation factors--technical, past performance, management and price--the first three of which would be scored using adjectival and numerical ratings. The price factor was not to be scored, but was to be evaluated by totaling the price for the base year and both options. Section M of the RFP explained that the technical factor was slightly more important than the past performance factor, which in turn was slightly more important than the management factor. In addition, section M explained that the technical, past performance and management factors combined

were slightly more important than price. Section M further advised that award would be made to the offeror whose proposal presented the best value to the government.

The RFP identified several subfactors under each of the three scored evaluation factors. These were:

Technical

- Product quality and technical sufficiency
- Lifecycle service quality
- Commerciality

Past Performance

- Degree and relevance of current and past experience and performance
- Customer satisfaction with performance

Management

- Production and delivery capability
- Order processing capability
- Management approach

As with the evaluation factors, the RFP assigned relative weights to the evaluation subfactors.¹

By the January 18, 1996, closing date, the agency received 20 proposals. After eliminating three substantially noncompliant proposals, the agency evaluated the remaining 17 proposals using four separate teams, one for each of the four evaluation factors. The teams evaluating the technical, past performance, and management factors assigned ratings of outstanding (scores from 90-100), excellent (scores from 80-89), good (scores from 70-79), marginally acceptable (scores from 60-69), or unacceptable (scores from 0-59), for each appropriate factor and subfactors.

After completion of the initial review, each team reported the results of its evaluation to the source selection evaluation board (SSEB). The following table

¹Specifically, within the technical factor, product quality and technical sufficiency would be slightly more important than lifecycle service quality and commerciality. Lifecycle service quality and commerciality were equally important. Within the past performance factor, the two subfactors were equally important. Within the management factor, the first two subfactors were equally important, and the third subfactor was less important.

shows the total score for all three scored factors and the total price for each acceptable offeror.

<u>Offeror</u>	<u>Total Score</u>	<u>Price (in millions)</u>
Hughes	89.48	\$152.0
I-Net	84.57	[deleted]
Company A -- Alternate	78.85	\$151.4
Company A -- Primary	77.99	\$150.5
Company B	76.80	\$161.2
Company C -- Primary	76.25	\$146.7
Company C -- Alternate	75.89	\$143.5
IDP	73.82	[deleted]
Dunn	71.41	[deleted]
Company D	71.28	\$132.9
Company E	68.18	\$155.3
Company F	67.37	\$171.5
Company G	64.37	\$159.9
Company H	60.90	\$158.2
Company I	54.54	\$154.4
Company J	52.72	\$162.7
Company K	47.40	\$142.3

To streamline its comparison of the relative merits of the 17 evaluated proposals, the SSEB elected to create six clusters of three proposals each beginning with the lowest price offer to the highest priced offer. The price range between proposals within each cluster ranged from 0.8 percent to 5.6 percent. For each cluster, the agency compared the favorable, unfavorable and neutral impacts of the strengths and weaknesses of the proposals in that cluster. The agency then selected the offer within each cluster that represented the best value to the government. Upon completion of this analysis, the agency compared the following six offers:

<u>Offeror</u>	<u>Price (in millions)</u>	<u>Score Ranking</u>
IDP	[deleted]	5
Company C -- Primary	\$146.7	4
Hughes	\$152.0	1
Company E	\$155.3	6
Company B	\$161.2	3
I-Net	[deleted]	2

After again comparing the relative strengths and weaknesses of the offers emerging from each cluster, the SSEB decided that the agency could award without discussions, and advised the source selection official (SSO) that the proposal submitted by Hughes Data Systems--which received the highest merit rating with a price in the middle of the price range--represented the best value to the government. On August 23, the SSO awarded the contract to Hughes and these protests followed.

INTERESTED PARTY STATUS OF IDP AND DUNN

During the course of these proceedings, Hughes and the agency repeatedly sought dismissal of the protests filed by IDP and Dunn on the grounds that neither is an interested party for purposes of filing a bid protest under our regulations. See Bid Protest Regulations, section 21.0(a), 61 Fed. Reg. 39,039, 39,042 (1996) (to be codified at 4 C.F.R. § 21.0(a)). According to the requests for dismissal, since IDP and Dunn are ranked eighth and ninth, respectively, in total merit, they are presumably not in line for award if their protests are sustained and therefore lack the direct economic interest necessary to contest the procurement.

The requests here overlook the substance of the issues raised by both of these protesters. Both claim that their proposals were improperly evaluated, and that if they were evaluated correctly, their proposals would have been found to be the most advantageous to the government. Since neither the agency nor Hughes can state with certainty that, upon reevaluation, the relative standing of these proposals would not change, and since both proposals included prices significantly lower than the price offered by Hughes, IDP and Dunn clearly are interested parties under our Bid Protest Regulations. Id.; Bendix Field Eng'g Corp., B-246236, Feb. 25, 1992, 92-1 CPD ¶ 227 at 5; Textron Marine Sys., B-243693, Aug. 19, 1991, 91-2 CPD ¶ 162 at 4.

IDP'S PROTEST

The agency's review of IDP's proposal led it to conclude that IDP's equipment was noncompliant with several material requirements in the specification. As a result, IDP received a relatively low technical score of 71.20, which contributed significantly to its overall ranking as 8th of 17 in the area of total merit. Nonetheless, when IDP was compared with other similarly-priced offerors in its cluster, its offer emerged as the best value of those three offers. In comparison with the other cluster finalists, IDP offered the lowest price, but ranked 5th of 6 in total merit. Ultimately, the agency concluded that the relative strengths of the Hughes proposal--indicated by its significantly higher total merit rating of 89.48 versus IDP's 73.82--justified its higher price--i.e., \$152.0 million versus IDP's [deleted] million.

IDP argues that the agency's evaluation of its technical proposal was unreasonable, and that the resulting score used to compare IDP's proposal with those of Hughes

and other offerors did not accurately reflect the merits of its approach. Specifically, IDP challenges the agency's finding that its proposal was inconsistent in at least 10 separate areas, leading the agency to conclude that it could not be sure that the equipment offered complied with the solicitation's requirements.² In addition, IDP challenges the agency's assessment of its benchmark test data, and argues that PTO should have held discussions rather than making award on initial proposals because many of the agency's concerns could have been easily answered.

In considering a protest against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable states and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. Here, we have compared the narrative portion of IDP's proposal with the technical literature and the completed contract line item (CLIN) matrices provided therein, the evaluation materials, IDP's pleadings, and PTO's responses. As a result of our review, we find no basis for concluding that the evaluation was unreasonable or not in accordance with the stated evaluation criteria. To illustrate our conclusion, we will discuss in detail three of the areas where IDP's proposal was downgraded by the PTO.

As a first example, IDP argues that the agency unreasonably concluded that one of its proposed bar code scanners did not meet a required specification. The RFP here contained two separate CLINs for bar code scanners--a laser scanner (CLIN 018), and a network scanner (CLIN 019). The RFP required both scanners to include an audible indicator to permit a user to differentiate between an acceptable read, an unacceptable read, and a transmission. RFP §§ C.2.6.5, C.2.6.6.

The dispute here--and in many of IDP's contentions--involves an inconsistency between portions of IDP's proposal. Section L.25 of the RFP set forth discrete requirements for the technical proposals to be submitted in response to this solicitation. Specifically, section L.25.2.2 required offerors to "concisely describe the physical and environmental characteristics of offered products" Within the same section, offerors were also required to provide additional documentation for certain of the products here. This documentation was especially important given

²PTO concluded that IDP's proposal did not meet the following solicitation requirements: (1) minimum base random access memory (RAM) of 32 megabytes (MB); (2) MS-DOS operating system software version 6.22; (3) a 3-button mouse; (4) bar code reader with audible indicators; (5) 133 MHz microprocessor for level 2 workstation; (6) data transfer rate of 10 MB or faster for internal hard drive; (7)-(9) specified non-interlaced resolutions at specified refresh rates for 17-inch, 21-inch, and 24-inch monitors; and (10) potential upgrade to 96 MB on motherboard without removing initially installed 32 MB memory.

the RFP's requirement that the offered equipment be off-the-shelf commercially available products. The provision explained this requirement as follows:

"For the Level 1 and Level 2 workstations (CLINS 001AA and 001AB), the 17" monitor (CLIN 002AA), and the network laser printer (CLIN 016AA), Offeror shall provide one of the following: an annotated photograph, appropriate available marketing material, or an annotated engineering drawing. Photos/drawings/other material shall show the interior and exterior of the workstations and printer, and the exterior of the monitor. Annotation shall include, at a minimum, showing dimensions and labeling of major components and controls."

Id. Finally, the RFP also required proposals to include completed matrices showing detailed specification compliance information and reliability statistics. Id.; RFP § L.24.3. PTO's evaluators paid close attention to the symmetry between an offeror's narrative claims of compliance; the details of the required photographs, drawings, or other material which helped establish the commerciality of the offered products; and the detailed CLIN matrix, which provided a complete checklist of specification compliance.

In the narrative portion of its proposal, IDP includes the following statement about its laser scanner (CLIN 018): "[s]upports visible and audible indicators for system status and error conditions." IDP Technical Proposal at I-2-22. The technical literature following this section is silent on the subject of audible indicators. Id. at first unnumbered page after I-2-22. In its completed CLIN matrix, IDP inserted the term "visible" in response to the matrix request to indicate the type (visible, audible, visible/audible, other) of indicator proposed for the laser scanner (CLIN 018). Id. at I-CLIN1-13. In contrast, IDP inserted the terms "visible (LED) & audible" in response for the network scanner (CLIN 019). Id. The agency downgraded IDP in this area, because it could not conclude for certain that IDP was proposing a compliant laser scanner for CLIN 018.

In its comments, IDP responds to this criticism as follows:

"In this instance, the [g]overnment is correct that IDP's description of the CLIN-018 scanner in the CLIN Matrix does not indicate it had audible indicator capability. However, IDP does state that the scanner '[s]upports visible and audible indicators for system status and error correction.' [Citation omitted.] IDP's affirmative response to this requirement should be accepted."

IDP Comments, Nov. 1, 1996, at 8-9.

In our view, the protester's argument on this issue is unpersuasive. A proposal's affirmative response to a requirement that is contradicted by required technical data generally cannot be reasonably accepted by agency evaluators. Koehring Cranes & Excavators; Komatsu Dresser Co., B-245731.2; B-245731.3, Nov. 23, 1992, 92-2 CPD ¶ 362 at 7. Accord University Systems, Inc., General Services Board of Contract Appeals Nos. 10818-P; 10924-P, Dec. 20, 1990, 91-1 BCA ¶ 23,617, 1990 BPD ¶ 434 at 6-7. The record here shows that when answering the CLIN matrix for the network scanner, IDP indicated that its scanner included indicators both "visible (LED) & audible." This specificity on the network scanner reasonably caused the agency evaluators to be concerned when the response on the laser scanner portion of the matrix--located in close proximity to the complete response quoted above--stated only "visible." In addition, IDP's bald statement that the agency was wrong not to accept its affirmative but general response in the narrative--i.e., that the scanner "supports" both audible and visible indicators--without rationale or justification, offers no basis to conclude otherwise.

A second example is IDP's offered mouse. The brief narrative description of IDP's proposed workstation makes no mention of the mouse, but states that the offered equipment meets the government's requirements. Id. at I-2-1. The narrative's reference to the technical literature immediately following this portion of the narrative states, "[t]he attached brochure further illustrates the characteristics of the Level 1/Level 2 Workstation being proposed to the [g]overnment by IDP. . . ." Id. The attached brochure states, "[t]he Ergonomic Microsoft compatible two button mouse is provided standard." Id. at first unnumbered page immediately following I-2-1. The reference to a two-button mouse in the technical brochure conflicts with the solicitation's requirement for a three-button mouse, RFP § C.2.1.7, and is contradicted by the completed CLIN matrix, which indicates that IDP is offering a three-button mouse. Id. at I-CLIN1-2. Faced with a conflict between the required technical literature and the required CLIN matrix, the agency evaluators concluded that it was unclear if IDP was offering to comply with the solicitation. Again, IDP was downgraded in this area, and again, for the reasons stated above we conclude that the agency's evaluation was reasonable given the conflicting information in the proposal. Koehring Cranes & Excavators; Komatsu Dresser Co., supra.

A third example is the operating speed for IDP's proposed hard drive. For this item, the RFP required an internal hard drive with a 10 MB or faster data transfer rate. RFP § C.2.3.1. IDP's narrative expressly addressed this requirement stating, "[d]ata transfer rate of 5.26 MB/s." IDP Technical Proposal at I-2-7. The technical data following this section stated:

IDP also argues that the agency unreasonably rejected its benchmark test data and erred in not asking IDP to clarify its proposal or alternatively, in not holding discussions.

The RFP, at section L.25.3, required offerors to perform and provide the results of benchmark tests on their proposed hardware. The provision required that the tests be performed using the same make and model of equipment as offered, configured as required by PTO. Upon reviewing the results of IDP's benchmark tests, the agency concluded that the benchmark tests were invalid because IDP failed in several instances to perform the testing as required. Specifically, PTO noted that IDP ran its benchmark tests without installing the required CD-ROM, and using a video card that was not in compliance with the required settings for resolution, color and refresh rates. IDP does not contradict the agency's specific findings, but argues that any discrepancies were minor, should not invalidate the testing, and should not be used as a pass-fail requirement.

Our review shows that the requirement for benchmark testing in the RFP was clear, and was closely evaluated by the agency panel. In IDP's case, evaluators expressed concern that there was a risk that IDP's equipment might not work as the benchmark tests indicated because the tests were not properly performed. Other than its claim that any discrepancies were minor, IDP does not address the agency's concerns in this area, or otherwise show that they were unreasonable. In addition, although certain summaries in the evaluation material describe the benchmark tests as invalid, there is no evidence that this was a pass-fail item as IDP argues. Despite its failure to perform the benchmark tests properly--which IDP concedes--its proposal was nonetheless evaluated as offering the best value in its cluster, and IDP remained in the running for award. Given the record here, we think the agency reasonably identified a risk in IDP's proposal based on its failure to perform these tests properly.

With respect to IDP's contention that the agency should have asked IDP to clarify its proposal, or held discussions with IDP, the RFP clearly indicated that, if possible, the agency would make award based on initial proposals. In this regard, amendment A005 added the clause found at Federal Acquisition Regulation (FAR) § 52.215-16, Alt. II, to advise potential offerors that their initial proposals should contain their best cost/price and technical terms. In such cases, the burden is on the offeror to submit an initial proposal that adequately demonstrates its merits. Norden Sys., Inc., B-255343.3, Apr. 14, 1994, 94-1 CPD ¶ 257 at 7-8. The record shows that IDP's proposal contained numerous inconsistencies leaving the evaluators unsure about whether the proposed equipment would meet the agency's needs. In addition, even within the few examples set forth herein, it appears that IDP did not meet the requirements for the internal hard drive speed, and may not have offered the required audible indicators for its laser scanner. Given that the agency received several other proposals that demonstrated significantly greater

merit, and given that the agency was able to accept one of those offers without discussion, we have no basis to disagree with the PTO's actions.³ Id.

DUNN'S PROTEST

The agency's evaluation of Dunn's proposal identified 16 technical weaknesses and 7 risks, resulting in an overall merit rating of 71.41, and a merit ranking of 9th of 17. Dunn's price was [deleted] million, the third lowest. When the agency performed its best value analysis, described above, Dunn's proposal was compared to the proposal submitted by IDP (the lowest-priced offeror) and another offeror (whose proposal presented the second lowest price). For the record, we note that IDP's lower-priced proposal also received a higher score than Dunn's proposal. After a comparison of the three proposals in this cluster, Dunn's proposal did not emerge as the one offering the best value, and Dunn ultimately was not selected for award.

Dunn argues that the agency's evaluation of its technical proposal was unreasonable and failed to follow the stated evaluation scheme. In addition, Dunn argues that the agency unreasonably failed to hold discussions about the perceived technical deficiencies in its proposal, and about adverse reports of Dunn's past performance. Dunn also contends that the agency's documentation of its cost/technical tradeoff was deficient, and failed to include an assessment by the SSO.

Technical Evaluation Issues

In its challenge to the agency's technical evaluation, Dunn argues that PTO improperly downgraded its proposal for failing to provide sufficient narrative information; considered the wrong documentation in its review; and reached unreasonable conclusions about several facets of the proposal. These include: the validity of its benchmark testing; inconsistencies in the proposal; the evaluation of its network interface card; whether its mouse and communications ports were integral to its motherboard; and the evaluation of its data bus speed and its proposed SIMMS (single in-line memory module) chips. After reviewing the record here, we find no basis for concluding that the agency's technical evaluation was unreasonable in any area but one--i.e., PTO's identification of the claimed Federal Communications Commission (FCC) certification of Dunn's network interface card as a weakness. While we agree with Dunn in this one area, we do not agree that this issue adversely affected its standing in this procurement in any material way. To illustrate, we will set forth in detail three of Dunn's challenges, including the challenge to the evaluation of its network interface card.

³IDP also challenges the cost/technical tradeoff performed by the PTO, arguing that the tradeoff was unreasonable and that the SSO did not make an independent decision. We address these issues in our response to Dunn's protest.

As a first example, Dunn's initial and supplemental protests take issue with PTO's evaluation of documentation included in the proposal. First, Dunn complains that the agency looked, almost by rote, in each of three areas of the proposal to assure that the solicitation's requirements were repeated in each place. Dunn complains that this type of evaluation is unreasonable, and does not ultimately assess the relative merits of each proposal. In our view, Dunn's complaint oversimplifies the agency's approach, misses the point of the discrete categories of information requested by the RFP, and mischaracterizes the agency's review of proposals.

As explained in response to the IDP protest, section L.25 of the RFP set forth several discrete requirements for the technical proposals here--a narrative discussion of the characteristics of offered products, additional technical documentation (photographs, brochures, engineering drawings), and completed matrices showing detailed specification compliance information and reliability statistics. *Id.*; RFP § L.24.3. As also explained in response to IDP's protest, PTO's evaluators reviewed the symmetry between the different portions of the proposal.

Despite Dunn's complaint that the agency unreasonably sought repetition of specification compliance in triplicate for each proposal and downgraded those which failed to provide it, the record shows that this is not how the materials were used. While PTO correctly identified any inconsistency among narrative claims, supporting documentation, and the CLIN matrix--for example, spotting inconsistencies between the claimed configuration of Dunn's drive bays and the resolution and refresh rates claimed for its 17 inch monitor--there was no requirement that each of these discrete proposal sections address every element of the specification. Thus, Dunn's complaint about the agency's approach to reviewing proposals is not supported by the record.

Dunn's supplemental protest also claims that the agency's evaluation of "documentation" violates section C.4.5 of the RFP, wherein PTO describes documentation to be provided with the equipment. The provision begins, "[a]t workstation delivery, the Contractor shall furnish, at no additional cost, one copy per workstation of the most current version of user manuals" Pointing to this section, Dunn argues that "[i]t is obvious from the [a]gency's [r]eport that PTO analyzed the wrong 'documentation' in its evaluation." Dunn Supplemental Protest, October 31, 1996, at 5.

Dunn's apparent assertion--that the agency erred because it considered documentation furnished with the proposal rather than the user manuals to be furnished at delivery--provides no basis for concluding that the agency evaluation was improper. Dunn makes no attempt to explain how user manuals to be provided at the time workstations are delivered could be reviewed by evaluators and used to discriminate among offerors, and we will not consider this assertion further.

A second example of Dunn's challenge to the agency's evaluation of its technical proposal is its complaint that PTO unreasonably assessed a weakness against Dunn for its benchmark testing on its 17" monitor. In this regard, section L.25.3 of the RFP required offerors to submit the results of benchmark tests on their equipment using the same make and model offered, and configured as specified by the RFP. As initially issued, the RFP sought a minimum non-interlaced resolution of 1280 x 1024 pixels for the monitor, and a refresh rate of 72 Hz. RFP § C.2.2.1. The requirement for the refresh rate was later revised upwards--to 75 Hz. RFP, Amend. A005, page 46 of 54. In addition, amendment A005 included a question from an offeror about the appropriate setting for this element of the benchmark test, as follows:

"Question/Comment 211: What screen resolution should be used for the benchmark tests for the Level 1 Workstation and the Level 2 Workstation?"

"Response: The PTO intends that offerors use the section C.2.2 specified minimum screen resolution and color support for the benchmarks. The PTO will use that specified resolution in its benchmark validations."

Id. at page 43 of 54.

Despite these directions, Dunn's benchmark data showed that its testing was performed using a resolution setting of 1024 x 768. Dunn's narrative description of its 17" monitor states "[t]he non-interlaced maximum resolution is 1024 x 768 at 72 Hz." (For the record, Dunn's protest states that the resolution was set at 800 x 600, and Dunn's CLIN matrix states the correct resolution--1280 x 1024-- with a compliant refresh rate of 85 Hz.) Faced with this information--with the exception of the protest claim, of course--PTO's evaluators concluded that Dunn's benchmark testing had not been performed in compliance with the testing requirements and could not be used to establish the conformity of the equipment.

In its initial protest filing, Dunn argues that the statement in its narrative that the maximum resolution of its 17" monitor is "1024 x 768 at 72 Hz." is a typographical error.⁴ Dunn Initial Protest, Sept. 20, 1996, at 6. In its comments, Dunn concedes that "[a]pparently, Dunn did not notice one of hundreds of questions and answers in which PTO announced an 'intent,' but not a requirement, with respect to a display setting." Dunn Comments on the Agency Report, Oct. 31, 1996, at 2.

⁴For the record, if Dunn is correct there are numerous typographical errors here. The RFP required a resolution of 1280 x 1024 at 75 Hz.; Dunn offered 1024 x 768 at 72 Hz.

In our view, these arguments do not amount to a showing that the agency evaluation was unreasonable. The RFP stated the requirement in uncertain terms, and the offeror's question included in amendment A005 further amplified PTO's view of how the tests should be performed. Given Dunn's divergent responses outlined above, we do not see how the agency could have concluded that Dunn's equipment could comply with the resolution/refresh requirement, or could have been tested as compliant. Finally, while we share Dunn's view of the difficulty of poring through the "hundreds of questions and answers" set forth in amendment A005, ultimately Dunn is responsible for errors of typography and oversight, not the agency. See Infotec Dev., Inc., B-258198; B-258198.2; B-258198.3, Dec. 27, 1994, 95-1 CPD ¶ 52 at 6 (an offeror bears the burden to submit an adequately written proposal, especially where the offeror is on notice that the agency intends to make award based on initial proposals without discussions).

Our third example of the technical issues raised here--and an area where we agree with Dunn--is the PTO's assessment of a weakness in Dunn's proposal for its failure to provide an FCC Class B certified network interface card (NIC) for the network printer. RFP § C.2, entitled "Mandatory Specifications," stated

"[t]he Level 1 and Level 2 workstations and all peripherals shall be FCC Class B certified. All electronic components with external connections that may be added to the workstations or peripherals shall also be FCC Class B certified in order to maintain the integrity of certification."

Within the CLIN matrix required to be completed by each offeror, under CLIN 016AC, entitled "Network Interface for Network Laser Printer," was a checklist of 14 discrete specification requirements applicable to this device. The last of the 14 required the offeror to indicate--with a yes or no answer--whether the offered product was FCC class B certified. Instead of answering yes or no, Dunn entered "FCC class A." The evaluation panel cited this issue as one of Dunn's 16 technical weaknesses.

The unavailability of FCC class B certification for the printer NIC had been brought to PTO's attention prior to the submission of proposals. Specifically, an offeror asked a question, which was set forth in amendment A008, which asked:

"Question/Comment 234: The [g]overnment requires that the network interface adapter for the network laser printer be FCC Class B certified. There are many network laser printers that are FCC Class B certified; however, their accompanying network interface adapters are only FCC Class A compliant. We have been able to confirm with several manufacturers that their network interface adapters for their printers are only FCC Class A compliant. Our finding leads us to

believe that vendors may not be able to submit fully compliant proposals. In light of the discussion above, we request that the [g]overnment require FCC Class A compliance for the network interface in lieu of FCC Class B; or release the identities of the manufacturers that the [g]overnment may know of that offer printers and network interface adapters that are in compliance with all the requirements of this solicitation.

"Response: The [g]overnment's FCC requirement states '...Level 1 and Level 2 workstations and all peripherals shall be FCC Class B certified...' The [g]overnment does not believe that CLIN 016AC would necessarily or typically fall into either category [workstation, peripheral]. Further the [g]overnment's market research supports, in general, the assertion of only FCC Class A compliance for this device category. FCC Class A certification is sufficient for CLIN 016AC."

RFP, Amend. A008 at 2.

While we agree with Dunn that it was unreasonable to cite FCC Class A certification as a weakness in its printer NIC--given PTO's acknowledgment of the unavailability of equipment meeting the requirement, and given the PTO's statement that the requirement probably does not apply to this item--we do not find that this issue resulted in any material change in Dunn's relative standing among the offerors. When the agency performed its best value analysis of the three lowest-priced offerors, it did not examine the differences between scores. Instead, the analysis compared the specific strengths and weaknesses of the offerors in this cluster. For reasons not apparent in the record--but perhaps after noticing the relative unimportance of the certification issue given amendment A008--the PTO omitted the identified weakness related to Dunn's FCC Class A certification. Thus, when the agency examined these three proposals to ascertain which offered the best value to the government, this issue in no way contributed to the conclusion that IDP, and not Dunn, offered the best value to the government within this cluster. As a result, we conclude that the prejudice here was either non-existent or so minor as to have no meaningful effect on Dunn's standing in this competition. See Textron Marine Sys., *supra* at 12-13 (prejudice not found where evaluation error is so minor as to preclude any meaningful change in the overall evaluation results).

Other Issues

Dunn also argues that the PTO unreasonably failed to hold discussions, failed to provide Dunn an opportunity to respond to adverse past performance information, and conducted an improper cost technical/tradeoff.

With respect to the general decision to award without discussions, we addressed this issue in response to IDP's protest and need not revisit it here. However, we will address two of Dunn's contentions that unique factors here required the agency to open discussions. First, Dunn argues that our prior decision in The Jonathan Corp.; Metro Machine Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174, recon. den., Moon Eng'g Co., Inc., B-251698.6, Oct. 19, 1993, 93-2 CPD ¶ 233, mandates overturning the agency's decision not to hold discussions in this case. Dunn claims that the agency and intervenor failed to distinguish this case because it cannot be distinguished. We disagree.

As an initial matter, Dunn correctly notes that a contracting officer's decision to make award on initial proposals is not unfettered. The Jonathan Corp.; Metro Machine Corp., *supra* at 14. We will review the exercise of such discretion to ensure that it was reasonably based on the particular circumstances of the procurement, including consideration of the proposals received and the basis for the selection decision. Lloyd-Lamont Design, Inc., B-270090.3, Feb. 13, 1996, 96-1 CPD ¶ 71 at 6; Facilities Management Co., Inc., B-259731.2, May 23, 1995, 95-1 CPD ¶ 274 at 8. On the other hand, this discretion is quite broad, and in recent years has been expanded. For example, Congress has deleted the requirement originally set forth in the Competition in Contracting Act that an agency could only make award without discussions to the offeror with the lowest price or evaluated cost. Compare 10 U.S.C. § 2305(b)(4)(A)(ii) (1988) with 10 U.S.C. § 2305(b)(4)(A)(ii) (1994) (showing deletion of requirement applicable to defense agencies) and 41 U.S.C. § 253b(d)(1)(B) (1988) with 41 U.S.C. § 253(d)(1)(B) (1994) (showing deletion of requirement applicable to civilian agencies). In addition, the FAR now provides that once the government has stated its intent to award without discussions, "the rationale for reversal of this decision shall be documented in the contract file." FAR § 15.610(a)(3) (FAC 90-31, Oct. 1, 1995).

The record shows that the specifics of the case here bear little resemblance to the issues raised in Jonathan. There, our Office first concluded that the cost realism review was flawed, The Jonathan Corp.; Metro Machine Corp., *supra* at 13, then noted the uniquely close relationship between the issues presented in that case, and questions already drafted by the agency. *Id.* at 14-15. Under those circumstances, we recommended that when the agency revisited its cost evaluation, it also open discussions to address the very issues--i.e., a large discrepancy between the government's cost estimate and the offerors' proposed costs--that had led to the unusual cost realism adjustments. *Id.* at 15.

Here, nearly half of the acceptable proposals were evaluated within the upper half of the good range, or excellent. In addition, while many of the discrepancies and issues noted in the evaluations might have been easily addressed, there were no overwhelming themes or recurrent issues suggesting that the offerors misunderstood the agency's requirements in any major way. This is in sharp

contrast to the situation in Jonathan where there was a recurring pattern of large discrepancies between the government's cost estimate and the offerors' proposals. Id. Under these circumstances, regardless of how much Dunn would have preferred the opportunity to address the government's concerns about its proposal, the record overall does not support a conclusion that the agency unreasonably awarded based on initial proposals.⁵

Second, Dunn argues that FAR § 15.610(c)(6) required the agency to open discussions with Dunn to permit it to address adverse reports about its past performance. For the reasons set forth below, we conclude this provision has no application in a situation where the agency makes award based on initial proposals.

FAR § 15.610(a) explains the situations where a contracting officer is not required to hold discussions. One of the situations set forth therein, paragraph (a)(3), is that offerors were notified of the government's intent to make award without discussions, and the contracting officer does not later conclude that such discussions have become necessary--the situation here. The next paragraph, 15.610(b), explains that if the situations in 15.610(a) do not apply, then discussions shall be held. Paragraph (b) also relegates the content of such discussions to the contracting officer's judgment except for the requirements set forth in paragraphs (c) and (d). These provisions, when read in the context of the whole section, clearly delineate matters that must be considered when discussions are held. They do not, on their own, operate to mandate discussions when none are held otherwise. Accordingly, the requirement in 15.610(c)(6) is not triggered in the situation here.

Finally, Dunn argues that the agency conducted an improper cost/technical tradeoff, because the decision of the SSO is tersely encapsulated in a one-page decision adopting the recommendation of the SSEB. Dunn's argument overlooks the detailed Best Value Analysis prepared by the SSEB, which is separate from the evaluation of proposals and which sets out the relative strengths and weaknesses of all offerors in support of the selection decision. We have reviewed this document and find that it reasonably summarizes the relative standing of all the offerors--even to the extent of excluding the weakness unreasonably assessed against Dunn's printer NIC for offering FCC Class A certification--and presents a sound basis for selecting the

⁵For the record, we find particularly unpersuasive Dunn's assertion that "certainly 10 minutes of discussions could have rectified any misunderstandings." Dunn's Initial Protest, Sept. 20, 1996, at 4. Discussions with 14 to 17 offerors for \$150 million worth of computer equipment involving--in Dunn's words--"hundreds of questions and answers" and complex specifications could not have been completed in 10 minutes. Such discussions would likely have involved a significant commitment of agency resources.

proposal that offers PTO the best value. The SSO's decision to adopt the findings in the Best Value Analysis as his own in no way indicates that he failed to exercise his own judgment in this matter. Allied Technology Group, Inc., B-271302; B-271302.2, July 3, 1996, 96-2 CPD ¶ 4 at 10.

I-NET'S PROTEST

PTO's evaluation of I-Net's proposal was dramatically different from its evaluation of the two proposals discussed above. The evaluation of technical merit rated the proposal as outstanding, and identified several strengths and one weakness that can only be described as de minimis. However, because of a relatively lower rating in the area of past performance, I-Net's overall merit rating was 84.57, placing it second in merit behind Hughes. I-Net's price, on the other hand, was [deleted] million, the [deleted] proposal received, and more than [deleted] million higher than Hughes' price. When the agency compared I-Net's proposal within the cluster of similarly-priced proposals, I-Net easily proceeded to the second level for comparison. In the second level of review within the Best Value Analysis, the agency concluded that I-Net's proposal compared favorably with Hughes in two areas but overall offered no compelling reason to pay an additional [deleted] million for I-Net's proposal over Hughes' proposal--with its merit rating of 89.48 versus I-Net's rating of 84.57.

In its initial and supplemental protests, I-Net argues that the agency's technical evaluation was unreasonable based on the assessment of three minor weaknesses in its proposal. I-Net also argues that the technical evaluation was significantly flawed because--in I-Net's view--the evaluators did not evaluate technical proposals in 4 of 9 elements under one of the technical evaluation subfactors. I-Net challenges the agency's assessment of its past performance in two areas, and argues that the evaluation of its management proposal was unreasonable in three areas. In addition, like Dunn, I-Net argues that the agency improperly made award without holding discussions and alleges that the SSO failed to make the cost/technical tradeoff decision.⁶ According to I-Net, if the evaluation had been properly performed, it would have been the offeror with the highest merit rating, and PTO would have been required to perform a cost/technical tradeoff to decide if I-Net's greater merit justified its higher price.

We have reviewed I-Net's protest contentions in detail and conclude that I-Net has failed to show that the evaluation of its proposal was unreasonable or inconsistent with the stated evaluation criteria. To illustrate, we will set forth here in detail I-Net's claim that the evaluators failed to rate its proposal under 4 of 9 evaluation

⁶Because I-Net's contentions in these two areas are not significantly different from those raised by Dunn, we will not consider them again.

criteria--a significant portion of I-Net's supplemental protest--and two representative claims that its technical proposal and past performance were misevaluated.

With respect to I-Net's challenge to whether the agency properly completed its technical evaluation, I-Net argues that the evaluation was incomplete and flawed because the evaluators generally did not complete their scoresheets in certain areas. The details of this claim are set forth below.

The RFP here identified three subfactors under the technical evaluation factor. These were: product quality and technical sufficiency; lifecycle service quality; and commerciality. The evaluation guidelines for the review of product quality and technical sufficiency were set forth in the RFP at section M.6.1.1.1. For ease of reference, they are included here in their entirety:

"The PTO will assess the performance, specification compliance, reliability claims, and environmental and physical characteristics of proposed products. Evaluation will include a review of the results of [o]fferor-conducted benchmark testing. Emphasis will be on the completeness of the product solution and documentation, individual product characteristics and the degree to which offered products meet or exceed requirements, and ergonomic considerations. The PTO will consider all these elements equally important and additional technical merit will be accorded offered products or components which have achieved high rankings in the marketplace.

"In the Operational Capabilities Demonstration to be conducted following determination of competitive range, the PTO will validate [o]fferor-conducted benchmark testing and will test for the Pentium floating point unit flaw. At that time the PTO will also test software compatibility, performance in and impact on the operational characteristics, accessibility of device adjustments and controls, and documentation usability."

In evaluating each offeror's response under the product quality and technical sufficiency subfactor, the evaluators prepared a list of nine elements drawn from the paragraphs quoted above.⁷ The scoresheets consisted of a matrix with a separate cell for each of these nine elements. I-Net's contention, in essence, is that

⁷These elements were: (1) completeness of product solution; (2) performance; (3) specification compliance (meets or exceeds); (4) reliability; (5) environment and physical characteristics; ergonomics (control, etc.); (6) ease of installation, integration and performance in impact on PTO environment, ergonomics; (7) compatibility with PTO statement of work; (8) operational characteristics; and (9) documentation completeness, presentation, usability.

the evaluation was improper because the evaluators did not complete four of the nine cells related to this subfactor on their scoresheets.

The agency responds that the four elements identified by I-Net were generally not scored because these elements were related to assessments that would be made after the operational capabilities demonstration (OCD) described in the second paragraph of section M.6.1.1.1, quoted above.⁸ Since the OCD was to take place after creation of the competitive range, and since award was based on initial proposals without the establishment of a competitive range, no demonstration took place. For this reason, the evaluators generally did not complete these cells on their evaluation matrix or merely indicated that they were waiting for the OCD.

As a preliminary matter, we fail to see how I-Net has been harmed by any of these claimed omissions. First, there is no showing that the agency failed to evaluate proposals under this subfactor as described in the initial paragraph of section M.6.1.1.1. Second, the decision to rate these elements appears consistent with the second paragraph of section M.6.1.1.1, which clearly indicated that there would be no OCD until the agency established a competitive range. Third, the record does not support a conclusion that some offerors were evaluated under some of these identified elements and others were not.

Nonetheless, I-Net's claim instead seems to be that there was an overriding failure of agreement amongst even the agency evaluators about which of these elements were to be reviewed and which were to wait for the OCD. Thus, I-Net argues that the overall review of the product quality and technical sufficiency subfactor was irrational.

Our review of the evaluators scoresheets and the comments entered into each of the matrix cells leads us to conclude that there was no misunderstanding by the evaluators, and no irrationality. Although there is not complete uniformity in how the evaluators completed their scoresheet matrix, the materials show that three of the four evaluators indicated that three of the nine elements could only be evaluated in a comprehensive manner after completion of the OCD. This did not stop some of the evaluators from indicating strengths that were apparent from the written materials, but in several instances, there is a clear recognition of the dichotomy--i.e., that certain conclusions could be reached on the basis of the written materials, while the overall assessment of these elements should wait until completion of the OCD.

⁸The RFP provides additional guidance on this issue at section M.5.3., entitled "Final Evaluation and Operational Capabilities Demonstration." As its title suggests, this provision is consistent with the agency's response that the OCD would not take place until after determination of a competitive range.

A fourth evaluator entered findings in three of the cells at issue here, but left one blank. Although I-Net argues that this is further evidence of an irrational evaluation, we do not reach the same conclusion. This evaluator appears to be making preliminary findings based on the written materials--in fact, that is all he can do given the fact that no OCD has occurred--but failing to expressly indicate that these findings will be supplemented by OCD test results. In short, our review does not show that the evaluation in this area is irrational or unreasonable.

With respect to I-Net's challenges to specific evaluation results, I-Net claims that the agency unreasonably concluded that the technology enhancement (or hardware upgrade) process in its technical proposal was unclear. In this regard, although I-Net was rated as outstanding, one of the evaluators noted that the technology enhancement (hardware upgrade) process was not very clear. Specifically, the evaluator commented that I-Net did not describe in any great detail how it transmitted news of technical enhancements or upgrades to its customers.

In response to I-Net's claim, we reviewed pages 8 through 11 of section 3 of its technical proposal, wherein I-Net describes its approach in this area. After explaining in detail for nearly three full pages how I-Net helps its own employees keep up with technical developments, it concludes with one general paragraph claiming a practice of ad hoc presentations of new technologies to "clients who have shown a particular interest in new products or technical areas." I-Net Technical Proposal, section 3.0 at 10. In our view, there was nothing unreasonable in the evaluator's modest conclusion that the proposal was unclear in explaining how these new developments would be communicated to customers, and in fact, our review lends credence to her conclusion.

I-Net also complains that the PTO unreasonably stated that the proposal contained a minor weakness under the production and delivery capability subfactor under the management factor because the agency misunderstood a delivery schedule matrix provided with its management proposal. Specifically, the evaluators concluded that the delivery period for three CLINs exceeded the 30 day requirement for deliveries established by the RFP.

In the introduction to its management proposal, I-Net states that "PTO's 30 day delivery requirements demand in some cases that I-NET hold key, long lead time components in inventory until needed for order fulfillment and delivery." I-Net Management Proposal, Introduction at 12. In contrast, in a delivery schedule matrix provided at the end of section 1.0, I-Net shows time periods in excess of 30 days in response to the following question: "[w]hat is the typical delivery time between order acceptance and delivery to customer?" *Id.*, section 1.0, matrix following page 7. According to I-Net, it was unreasonable to interpret this matrix as suggesting that I-Net would not meet the delivery requirement because the matrix shows suppliers' delivery times, not I-Net's delivery times.

Our review of the record reveals nothing unreasonable in PTO's decision to question whether I-NET will meet the needed delivery times for these three items. First, the statement in the narrative cannot be termed a clear promise to meet the delivery time requirement. Rather, the statement is a recognition of steps that need to be taken to meet the requirement. Second, as stated earlier, discrepancies between the narrative and the CLIN matrix are valid areas for agency concern. Finally, despite I-Net's claim regarding the meaning of the matrix in its proposal, this is not clear from the face of the matrix. As a result, we see no basis to conclude that the agency acted unreasonably in assessing this minor weakness in I-Net's proposal. Koehring Cranes & Excavators; Komatsu Dresser Co., supra.

CONCLUSION

Our review here leads us to conclude that the government benefited from an extraordinarily broad competition in response to this procurement. It received 20 proposals--each representing significant effort--with 17 evaluated as acceptable, or susceptible to being made acceptable. Its highest-rated proposal, the one submitted by Hughes, fell at the median of all offered prices. If anything, the challenges here show that the offerors generally understood the requirements of the solicitation and that there were no major issues indicating a misunderstanding between the government and those who sought to sell it this equipment.

The protests are denied.

Comptroller General
of the United States