



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Applied Research Technology  
**File:** B-240230  
**Date:** November 2, 1990

William E. Franczek, Esq., Vandeventer, Black, Meredith & Martin, for the protester.  
Robert S. Holtz for Tate Facilities Service, Inc., an interested party.  
Jonathan H. Kosarin, Esq., and Brain Kau, Esq., Department of the Navy, for the agency.  
Robert C. Arsenoff, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest against an allegedly defective evaluation of a revised technical proposal is denied where protester merely expresses its disagreement with four of the deficiencies found by the evaluators and does not question the remaining 13 deficiencies.
2. Agency properly eliminated protester's proposal from the competitive range where discussions leading the protester into the areas of its proposal in need of correction were conducted and the resulting response was reasonably found to be technically unacceptable in three of four evaluation areas; under these circumstances, agency was not required to conduct further discussions.

### DECISION

Applied Research Technology (ART) protests the elimination of its offer from the competitive range under request for proposals (RFP) No. N60921-90-R-A223, issued by the United States Navy as the first step of a two-step sealed bid procurement for supply operations services at the Naval Surface Warfare Center in White Oak, Maryland, and Dahlgren, Virginia. The protester principally alleges that the evaluation of its offer was defective and that it was prematurely excluded from the competitive range without further discussions because the agency was biased against it as a small disadvantaged business (SDB).

We deny the protest.

The RFP provided that award would be made to the lowest priced technically acceptable offeror via the two-step process. In order for an offer to be evaluated as technically acceptable and eligible for consideration under step two, it had to meet the minimum requirements of each of four criteria:

(1) demonstration of a sound technical understanding of the requirements set forth in the RFP work statement; (2) minimum qualifications for key personnel; (3) demonstration of a realistic staffing plan (number and types of personnel); and (4) demonstration of an acceptable management plan. Under step two the acceptable offerors will be invited to submit firm, fixed-price bids.

The protester submitted an initial offer on April 5, 1990. The evaluation team concluded that, as submitted, ART's proposal was technically unacceptable but that it might be capable of being made acceptable. In general, they noted that the proposal contained "boilerplate" with little application to the particular supply system requirements of the Warfare Center and reflected an unfamiliarity with the agency's Automated Inventory Control System (AICS) and Centralized Acquisition and Requisition System (CARS). The proposal was deemed unacceptable in the categories of key personnel, staffing plan and management plan. The evaluators concluded that more information was needed before they could render a judgment concerning the technical understanding factor.

During written discussions, which began on May 14, ART was informed that its proposal was unacceptable and was advised that, in order to be made acceptable, the firm would have to adequately respond to 47 detailed questions which were denominated "deficiencies." The "deficiencies," which also included some requests for clarifications and more information, covered each of the four evaluation areas.

On May 29, ART submitted a revised proposal in response to the written discussion questions. As the result of another technical evaluation, the agency concluded that 17 of the matters raised in the May 14 letter remained uncorrected and 7 new problems were noted as the result of ART's revised proposal. While the evaluators concluded that ART had developed a marginally acceptable management plan, they continued to find the staffing plan unacceptable because it provided both an insufficient number of personnel and an inappropriate personnel mix to accomplish the work set forth in the RFP. In the area of key personnel, the resumes of four individuals were found to reflect less experience than was required by the RFP. The evaluators also concluded that the revised proposal showed that ART did not have a clear understanding of the requirements for several reasons,

including its failure to recognize timeframes set forth in the RFP work statement and a lack of recognition of the Center's SERVMART operations.<sup>1/</sup> The proposal was considered unacceptable under the key personnel and technical understanding factors.

By letter dated June 18, ART was informed that its proposal had been rejected and would no longer be considered for award because, in the opinion of the agency, additional chances to revise the proposal would result in "technical leveling" without any assurance that a further revised proposal would be acceptable.

The protester alleges that the technical evaluation of its proposal was defective, and invites our Office to objectively reevaluate its offer. ART also submits that it was unfairly and prematurely excluded from the competitive range without a further round of discussions which could have, in its view, served to correct the problems which remained after the Navy's second evaluation. Finally, the protester argues that the improper evaluation and premature rejection of ART's offer were the result of the Navy's bias against the firm as an SDB.

#### TECHNICAL EVALUATION

As indicated above, 17 technical problems or weaknesses remained after the evaluation of ART's revised proposal. In the materials submitted for our consideration in this matter, the protester only addresses four of these problems. It does not specifically challenge the others. Set forth below is our analysis of the protester's four objections.

First, ART takes issue with the agency's findings that its revised proposal did not reflect an understanding of required timeframes associated with delivering materials for inspection and data entry. Second, ART disputes the finding that its revised proposal did not adequately address the need to prepare bar code labels for all received materials whether they were to be sent to stock rooms or to the Warfare Center's self-service SERVMART stock facilities. Third, the protester challenges the finding that four of its key personnel failed to meet the RFP's minimum experience requirements. Finally, ART questions why its staffing plan was unacceptable when the staffing levels it proposed were allegedly based on a 1987 Warfare Center study of staffing requirements for its Dahlgren and White Oak facilities.

The evaluation of proposals is primarily the responsibility of the contracting agency which must bear the burden of any

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<sup>1/</sup> A SERVMART is a self-service store for low dollar value items.

difficulties resulting from a defective evaluation. Accordingly, in reviewing complaints about the evaluation of a technical proposal and the resulting determination of whether the proposal is within the competitive range, we will not reevaluate the proposal and independently judge its merits; we will consider whether the evaluation was reasonably based and otherwise consistent with the procurement laws and regulations. Interaction Research Inst., Inc., B-234141.7, June 30, 1989, 89-2 CPD ¶ 15. A protester's mere disagreement with the agency's judgment in this regard does not itself establish that the evaluation was unreasonable. Institute for Int'l Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273.

In our view, as will be shown in detail below, the protester has failed to establish anything more than its disagreement with the four findings it has chosen to challenge. In view of this and considering that the protester has not questioned the remaining matters raised by the evaluators, we have no basis to question their judgment in determining the proposal to be technically unacceptable. Interaction Research Inst., Inc., B-234141.7, supra.

The evaluators found that ART had not addressed a 1-day timeframe for delivery of materials to inspection and had not, as asked during discussions, specified timeframes for the entering of data related to received materials. ART does not dispute the time requirements; rather, it asserts that since it did not take exception to the requirements in the RFP, its proposal should have been regarded as acceptable. Our review of ART's proposal discloses that the Navy's reading was correct and its conclusion reasonable: in lieu of the 1-day timeframe, the protester stated it would deliver materials when pallets were full; no timeframe for data entry, as requested, is apparent in the proposal.

Similarly, even though the discussion letter specifically indicated that ART had only addressed the preparation of bar code labels for SERVMART operations and not for other stock items as required, our review of page II-54 of ART's revised proposal (upon which the protester relies for its objection) discloses that the protester failed to address the stock items. The preparation of labels is mentioned in the chart appearing on page II-54, the chart is only applicable to SERVMART operations. Thus, we find that the Navy acted reasonably in downgrading the proposal in this respect.

With regard to the four key personnel whose experience was found not to meet RFP minimum requirements, we have reviewed the resumes submitted by ART and the summary of those resumes included in its conference comments. The project manager proposed by ART lists 10 years specific experience and does not have a bachelor's degree while the RFP requires 15 years

experience without a degree. The proposed assistant project manager was required to have 5 years recent experience in managing supply operations of a scope similar to those solicited and, while it appears that he has some related experience, ART has provided us no basis to question the Navy's finding that the individual lacked sufficient related experience. Finally, with respect to a proposed supply technician and warehouse foreman who were each required to have 2 years experience, we note that the summary of resumes provided by the protester in its comments indicates less than 2 years (1989-present) for each. Again, we have no basis to disturb the agency's conclusion that the proposed individuals do not meet the RFP requirements.

Finally, with respect to the weaknesses found in ART's staffing plan, as noted above, the evaluators were concerned both about understaffing and an inappropriate mix of personnel to perform the contract adequately. The protester has only addressed the first of these concerns by reference to a 3-year old Warfare Center study of personnel requirements for its supply operations. Since the concern about an inappropriate mix of staffing is not addressed at all by ART, we have no basis to question the Navy's evaluation of its staffing plan as unacceptable.

#### ELIMINATION FROM THE COMPETITIVE RANGE WITHOUT FURTHER DISCUSSIONS

ART asserts that the Navy did not comply with Federal Acquisition Regulation (FAR) § 15.609 in removing its proposal from the competitive range since, in its view, there was "doubt" as to whether its revised proposal had a reasonable chance for award. While the regulations require the inclusion of proposals in the competitive range when doubt exists, FAR § 15.609(a), here the contracting officer reasonably concluded on the basis of the technical evaluation discussed above that ART's revised proposal did not have a reasonable chance for award. Accordingly, we find no violation of the cited regulation.

ART also asserts that it was not given a reasonable opportunity to revise its proposal following discussions and argues that it should be afforded another opportunity through a further round of discussions.

After responding to written discussion questions in which an offeror is led into areas of its proposal which require correction, that offeror is, in general, not entitled to a another opportunity to further revise its proposal; agencies are not required to conduct successive rounds of discussions until all deficiencies or weaknesses in an offeror's proposal are corrected. Digital Equip. Corp., 68 Comp. Gen. 708

(1989), 89-2 CPD ¶ 260. Further, contracting officers are precluded from conducting successive rounds of discussions to help an offeror bring its proposal up to the level of other proposals ("technical leveling"). FAR § 15.610(d)(1).

Here, the 47 discussion questions<sup>2/</sup> reasonably led ART into the areas of its proposal that need improvement and the protester was afforded an opportunity to address those areas in its revised proposal. Thus, we find that the Navy was not obligated to provide another round of discussions.

#### BIAS AGAINST ART

ART asserts that the evaluation of its proposal and its subsequent rejection were the result of the Navy's bias against it as an SDB. In support of this assertion, ART notes that one of the discussion questions required it to confirm its status as an SDB seeking evaluation preference and argues, in essence, that since the Navy perceived this as a "deficiency," it was somehow subject to unfair scrutiny because of its SDB status. ART also asserts that it was discriminated against in that it was provided only 4 hours to review AICS and CARS manuals without being able to copy them-- a circumstance which, in its view, was essential to writing a successful proposal.

Any contention that the government acted with bias in evaluating an offer and excluding the offeror from further consideration for award must be established by convincing evidence that agency procurement officers had a specific, malicious intent to harm the protester. Ask Mr. Porter Travel Div., B-238305, May 9, 1990, 90-1 CPD ¶ 460.

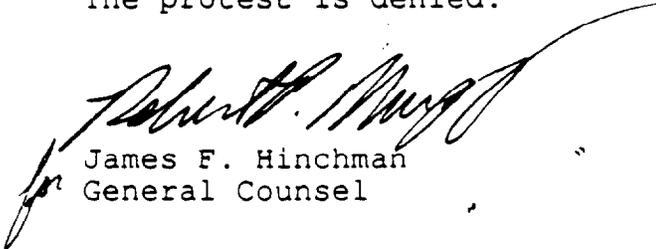
The specific request for ART to confirm its status as an SDB, although it was contained in the May 14 "deficiency" letter, does not indicate that the evaluators perceived this to be a deficiency since that letter contained several requests for information and, there is no evidence in the record that the contracting officials treated ART in a manner different from any other offeror or downgraded it because of its status. The uncontradicted record shows that ART was provided the same 4 hour opportunity as other offerors to examine materials,

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<sup>2/</sup> While the protester objects to the fact that the opening paragraph of the discussion letter referred to all 47 matters as "deficiencies" when in fact some of them were mere requests for additional information, we fail to see how ART was misled in preparing its revised proposal since the language of the 47 questions, in our view, reasonably conveys which items were considered necessary to an acceptable proposal and which were informational in nature.

including the manuals in question, and that the protester actually took less than that time to complete its examination. Accordingly, we do not agree with the protester that the Navy's procurement actions with respect to ART's proposal were in any way the result of bias against it.

The protest is denied.



James F. Hinchman  
General Counsel