



Comptroller General  
of the United States

Washington, D.C. 20548

146511 Jordan

## Decision

**Matter of:** Instrument Control Service, Inc.

**File:** B-247286

**Date:** April 30, 1992

Robert A. Emmanuel, Esq., Emmanuel, Sheppard & Condon, for the protester.

Robert H. Claridge, Esq., for Raytheon Company, an interested party.

Lt. Col. William H. Spindle, Col. Jerald D. Stubbs, and Dennis A. Walker, Esq., Department of the Air Force, for the agency.

Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Where, during discussions, agency asked offeror to explain a termination for default under a prior contract, and offeror declined to provide specific information, agency properly obtained information from the activity which issued the termination without giving offeror an additional opportunity to explain the termination.

2. Where solicitation evaluation scheme provided that performance risk would be considered equally important as technical considerations, both of which were more important than price, agency properly made award to offeror with higher priced, higher technically rated proposal with low performance risk, because the agency reasonably concluded that the technical superiority of the awardee's proposal outweighed the protester's lower proposed price.

### DECISION

Instrument Control Service, Inc. (ICS) protests the award of a contract to Raytheon Company under request for proposals (RFP) No. F09650-91-R-0134, issued by the Air Force for operation of the Precision Measurement Equipment Laboratory (PMEL) at Robins Air Force Base, Georgia. ICS contends that the agency placed undue emphasis on one evaluation factor and failed to provide it a sufficient opportunity to explain a termination for default.

We deny the protest.

The contractor who operates the PMEL at Robins is responsible for supervision and completion of repair, troubleshooting, maintenance, alignment, testing, calibration, and certification of assigned electronic test measurement diagnostic equipment. Contract award was on a fixed-price basis for 1 base year with four 1-year options.

The RFP provided for award to the responsible offeror whose offer, conforming to the RFP, would be most advantageous to the government, price and other factors considered. In this regard, the RFP informed offerors that "specific" and "assessment" criteria were of equal importance and of more importance than "cost" (price). The specific criteria set forth four technical factors in descending order of importance: quality and production (equal in importance), management, and safety. Two assessment criteria--soundness of approach and understanding/compliance with requirements--were listed as being of equal importance. Price proposals were evaluated on the basis of completeness, realism, and reasonableness.

The RFP also informed offerors that the agency would conduct a performance risk assessment, which would be considered equal in importance to the specific and assessment criteria.<sup>1</sup> This risk assessment was to be based on present and past performance data furnished by the offerors and other sources. Among other information, the RFP required offerors to furnish a summary of quality deficiencies and corrective action taken, and the name and telephone number of government contracting personnel involved in the administration of prior and current contracts. In particular, the RFP advised offerors that the agency sought evidence that the contractor was able to isolate the root of past problems and descriptions of programs or actions taken to resolve them. Unaddressed past problems were to be assumed to still exist.

ICS, Raytheon, and a third offeror submitted proposals by the August 5, 1991, closing date. A source selection evaluation team evaluated each proposal on the technical factors using a color-coded rating system: blue (exceptional); green (acceptable); yellow (marginal); or red (unacceptable). All three offerors were included in the competitive range; written discussions were conducted with each offeror in September; and best and final offers (BAFOs) were solicited in November.

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<sup>1</sup>This risk assessment, based on the offeror's performance record, rated the degree of doubt as to whether the offeror could perform the proposed effort: "high" (significant doubt), "moderate" (some doubt), and "low" (little doubt).

Raytheon was evaluated "blue" for the quality and management factors and "green" for production and safety, for an overall "blue" rating. ICS and the third offeror were evaluated as "green" overall. The evaluators found all offerors' prices to be complete, realistic, and reasonable. As evaluated with all options included, Raytheon's BAFO of \$8,923,749 exceeded ICS's BAFO of \$8,393,142.50 by 6.32 percent. In reviewing the offerors' present and past contract performance, the performance risk assessment group (PRAG) rated Raytheon as a low performance risk and ICS as a moderate risk.

The source selection authority (SSA) considered all three proposals adequate to meet the agency's requirements, but found that the value of Raytheon's superior technical proposal outweighed the difference in price between the Raytheon proposal and the other proposals. The Air Force awarded Raytheon the contract on December 16. After receiving notice of the award and a debriefing, ICS filed this protest with our Office.

ICS contends that the Air Force did not provide ICS with a sufficient opportunity to explain a disclosed termination for default. It also argues that the agency placed undue emphasis on ICS' negative past performance without due consideration of its positive performance. We disagree.

Generally, the requirement for discussions with offerors is satisfied by advising them of weaknesses, excesses, or deficiencies in their proposal, and by affording them the opportunity to satisfy the government's requirements through the submission of revised proposals. Federal Acquisition Regulation (FAR) §§ 15.610(c)(2), (5); Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. Agencies are not, however, obligated to afford offerors all-encompassing discussions, id., or to discuss every element of a technically acceptable, competitive range proposal that has received less than the maximum possible score. See Associated Chem. and Envtl. Servs., et al., 67 Comp. Gen. 314 (1988), 88-1 CPD ¶ 248.

Here, in written discussions, the agency specifically requested ICS to explain the termination for default on a Navy contract which ICS had reported in section K of its proposal. In response, ICS explained that it disputed the propriety of the termination and had appealed it to the Armed Services Board of Contract Appeals. According to ICS, the situation was isolated and ICS had taken unspecified action to ensure that the alleged deficiencies would not occur on any current or future contracts. ICS also explained that it did not believe the contract was

relevant<sup>2</sup> to the instant procurement and that its legal counsel had advised it to refrain from further discussion of the matter with any government agency.

The Air Force then contacted the Navy and learned that ICS's contract performance was judged deficient during the first few months of performance.<sup>3</sup> During the first year and a half of the contract, the Navy first took deductions from ICS' contract payments, sent letters of caution, and finally, issued a cure notice. When ICS' request for a termination for convenience was not granted, ICS attempted to cure its problems. When these attempts proved unsuccessful, the agency terminated the contract for default.

The PRAG considered this information, in addition to ICS' successful performance on other contracts including a contract to operate a PMEL at another Air Force base. The PRAG concluded that ICS had demonstrated the ability to effectively manage a PMEL nearly the size of that at Robins. However, ICS' failure to provide an adequate explanation of the default termination raised "some" doubt as to the firm's ability to manage the contract, and, as a result, the PRAG evaluated ICS as posing a moderate performance risk.

We find that the agency engaged in meaningful discussions with ICS. The agency provided ICS an opportunity to explain the circumstances surrounding its termination, but the protester chose to provide, in essence, a general denial and a statement that the alleged deficiencies had been solved, without specifying its actions. Having received such a response, the agency reasonably sought further information from the other government contracting activity, the Navy. The RFP specifically provided that the agency would consider past performance information both from offerors and other sources. We find no impropriety in the agency decision not to seek further comment from the protester. ICS was on notice from the RFP that the agency could contact the Navy and was aware that the agency would consider unaddressed problems to still exist. In view of the circumstances of

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<sup>2</sup>The contract in question was for operating and maintaining Navy flight simulators including computer controllers, hydraulic systems, and visual systems, at two Naval installations in California and Florida.

<sup>3</sup>According to the Navy, the contract required that a certain number of simulators be available for training 95 percent of the time. During ICS' performance, the trainers "were often available less than 50 percent of the time." Approximately 1 month before issuance of the cure notice, the trainers were removed from availability for fleet training.

the termination and ICS' expressed reluctance to discuss the matter, there was no reason for the Air Force to expect that additional discussions would be productive.

We also find that the agency did not place undue emphasis on the termination, or fail to consider ICS' successful past performance in its evaluation. In reviewing an agency's evaluation, we will examine it to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of agency discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203.


The RFP plainly stated that past performance would be considered in the performance risk assessment and that it was as important as the entire technical evaluation (specific and assessment criteria). The record reflects that the PRAG favorably considered all the successful contract performance reported by ICS and the administrative contracting personnel involved on those prior efforts. Since both the Navy contract at issue and this procurement concern the maintenance of electronic devices, we believe there was sufficient "relevance" to consider ICS' past performance under the terminated contract in the risk assessment. In view of the circumstances of the termination and ICS' failure to provide an adequate explanation for the termination, we find the PRAG's decision to rate ICS as a "moderate" performance risk to be reasonable.

We also find the agency did not place undue emphasis on the risk assessment in making the award decision. In a negotiated procurement, award may be made to a higher rated, higher cost offeror where the decision is consistent with the RFP's evaluation factors and the agency reasonably determines that the technical superiority of the higher cost offer outweighs the price difference. See Oklahoma Aerotronics, Inc.--Recon., B-237705.2, Mar. 28, 1990, 90-1 CPD ¶ 337.

Here, in making the award decision, the SSA considered that all proposals were adequate, but found that Raytheon's proposal offered the "highest degree of credibility and performance" to best meet the government's requirements. In particular, the SSA highlighted Raytheon's "exceptional" quality control plan, proposal of the most skilled production work force, and most qualified and experienced management team. Although Raytheon's contract price was not the lowest, the SSA found its superior technical proposal outweighed the difference in price. The SSA also noted Raytheon's superior past performance, including the PMEL at Robins (in which it exceeded contract requirements for quality and turnaround time), and otherwise found nothing in

the PRAG report to alter his decision. We find the SSA's conclusions rational, reasonable, and in accordance with the evaluation scheme of the RFP. Thus, we have no basis to disturb the cost/technical tradeoff. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

The protest is denied.

  
for James F. Hinchman  
General Counsel