



Comptroller General  
of the United States

Washington, D.C. 20548

1146572

## Decision

**Matter of:** Technical Evaluation Research, Inc.

**File:** B-247200

**Date:** May 1, 1992

Benjamin Tirabassi for the protester.

Vera Meza, Esq., and James M. Miller, Esq., Department of the Army, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest challenging the agency's evaluation of the protester's proposal is dismissed as untimely where, despite being advised orally and in writing at the debriefing and in the written debriefing follow-up of the many specific deficiencies in its proposal, the protester waited to raise any objections concerning these matters until it filed its comments to the agency report more than 10 working days after receiving the debriefing and debriefing follow-up.

2. Award to a technically superior, higher evaluated cost offeror was reasonable and represented the best overall value to the government in accordance with the solicitation's stated evaluation methodology where the agency reasonably determined that despite the awardee's higher evaluated cost, the awardee's proposal was significantly superior to the protester's marginally acceptable proposal and offset the protester's lower evaluated cost.

### DECISION

Technical Evaluation Research, Inc. (TERI) protests the award of a contract to Atlantic Research Corporation (ARC) under request for proposals (RFP) No. DAAB07-91-R-N301, issued by the Department of the Army for the acquisition of technological support services for the Program Manager Field Artillery Tactical Data Systems (FATDS). TERI challenges the evaluation of its proposal and the agency's award to a higher technically rated, higher evaluated cost offeror.

We deny the protest in part and dismiss it in part.

The RFP, issued on November 1, 1990, contemplated the award of a cost-plus-fixed-fee, level-of-effort contract for a 3-year base period plus two 1-year option periods. The RFP provided that the award would be made to the offeror with the best overall proposal. The RFP's stated evaluation criteria, listed in descending order of importance, were technical, management, and cost. The technical evaluation factor included 6 sample tasks which would be evaluated for an offeror's approach, implementation, personnel experience, and resources, and 12 statement of work (SOW) areas which would be evaluated for an offeror's understanding of the government's technical needs, technical approach, personnel experience, and adherence to the proposal instructions. The management evaluation factor would be evaluated for an offeror's organizational experience (past performance and related experience), hiring and staffing, management techniques and controls, and adherence to the proposal instructions. The cost evaluation factor would be evaluated for cost realism and cost. The RFP stated that the technical evaluation factor would carry a greater weight than the management and cost evaluation factors combined, and that the management evaluation factor would carry a greater weight than the cost evaluation factor.

Five firms, including TERI, Analytical Systems Engineering Corporation (ASEC), and ARC, the incumbent, submitted initial technical and cost proposals by the closing date of January 15, 1991. In accordance with the agency's source selection evaluation plan for this acquisition, the agency's source selection evaluation board (SSEB) evaluated the initial technical proposals using the adjectival ratings of superior, acceptable, marginally acceptable, susceptible of being made acceptable, and unacceptable. The SSEB's adjectival ratings were supported by detailed written narratives of specific strengths and weaknesses in each offeror's technical proposal. The agency's pricing branch evaluated the cost realism of each offeror's initial cost proposal. The initial proposals of TERI, the low proposed cost offeror, and ASEC, the highest proposed cost offeror, were rated susceptible of being made acceptable for the technical evaluation factor and acceptable for the management evaluation factor and were determined cost realistic. The initial proposal of ARC, the next low proposed cost offeror, was rated acceptable for both the technical and management evaluation factors and was determined cost realistic. The initial proposals of TERI, ASEC, and ARC were included within the competitive range.

On August 16, the agency submitted detailed written items for negotiation (IFNs) to each competitive range offeror for the technical evaluation factor. On October 4, the agency submitted additional technical IFNs to TERI. The agency did not submit IFNs to any offeror for the management or cost

evaluation factors since all were rated acceptable for management and were determined cost realistic. The SSEB evaluated the responses to the technical IFNs. TERI's rating for the technical evaluation factor was upgraded to marginally acceptable, ASEC's rating was upgraded to acceptable, and ARC's rating was upgraded to superior. The SSEB subsequently evaluated the BAFOs submitted by the December 9 closing date. The SSEB determined since no offeror had made any significant changes in their respective technical approaches that each offeror's rating for the technical evaluation factor would remain the same. While the offerors each proposed lower costs in their BAFOs, the agency's pricing branch determined each offeror's BAFO to be cost realistic and within the independent government estimate. TERI's proposed BAFO cost was the lowest, ASEC's was the next lowest, and ARC's was the highest.

On December 31, the agency awarded a contract to ARC whose technically superior, higher evaluated cost proposal was determined to represent the best overall value to the government. On January 6, 1992, TERI filed this protest with our Office.

In its protest, TERI challenged the agency's cost/technical tradeoff.<sup>1</sup> TERI argued that as the lowest evaluated cost offeror, it should have received the award because its

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TERI also argued that the agency could not have adequately evaluated the cost realism of the offerors' cost proposals since no audits were performed by the Defense Contract Audit Agency (DCAA). The record shows that the contracting officer sought and received a waiver from DCAA audit requirements because the contract to be awarded was the third contract for these types of services and the program's technical representatives were familiar with the hours and labor categories required for the effort. The record also shows that the agency requested and received informal input from the DCAA concerning the proposed labor costs of the competitive range offerors. We have no reason to question the adequacy of the cost information available to the agency for determining cost realism. See Hoboken Shipyards, Inc.; Perth Amboy Dry Dock Co., B-219428; B-219440, (Oct. 17, 1985, 85-2 CPD ¶ 416.

TERI further challenged the agency's decision not to conduct cost discussions. The record shows that cost discussions were not conducted because the agency found the proposed costs of the competitive range offerors to be realistic in light of the competition received and the independent government estimate. Since TERI offered the lowest evaluated cost, we fail to see how TERI was prejudiced by the agency's decision not to conduct cost discussions.

"acceptable" proposal represented the best overall value to the government. In its agency report filed with our Office on February 13, the agency defended its best value determination and award to ARC. The agency also stated that on January 10, TERI received a debriefing concerning the evaluation of its initial proposal and BAFO. The agency report included the six pages of written materials received by TERI at the debriefing which outlined TERI's specific strengths and weaknesses for each of the sample tasks and SOW areas. The written debriefing materials clearly showed that TERI was rated marginally acceptable for the technical evaluation factor and acceptable for the management evaluation factor, while ARC was rated superior for the technical evaluation factor and acceptable for the management evaluation factor. The debriefing materials also showed that ARC's evaluated costs were approximately \$3.5 million higher than TERI's evaluated costs. On January 16, the agency issued a three-page debriefing follow-up to TERI which made minor clarifications to the SSEB's findings concerning TERI's completion of three sample tasks and three SOW areas.

For the first time in its comments to the agency report filed with our Office on March 3, TERI specifically references the information it received at the debriefing and alleges that the agency's evaluation of its proposal for the technical and management evaluation factors was flawed and was not in accordance with the RFP's stated evaluation methodology. With respect to the technical evaluation factor, for each of the sample tasks and SOW areas, TERI disagrees with the SSEB's evaluation and argues that this section of its proposal should have been rated at least acceptable, if not superior. With respect to the management evaluation factor, TERI disagrees with the SSEB's evaluation and argues that this part of its proposal should have been rated superior.

Our Bid Protest Regulations require that protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(1) (1992). TERI was advised of the specific deficiencies in its proposal at the January 10 debriefing, at which time it received detailed written materials addressing these deficiencies. On January 16, TERI received a written debriefing follow-up. Thus, TERI knew of its specific bases for protest no later than January 16. Since TERI waited until it filed its comments to the agency report on March 3 to raise any objections to the agency's evaluation of its proposal, these issues will

not be considered and are dismissed as untimely. High-Point Schaer, 70 Comp. Gen. 524 (1991), 91-1 CPD ¶ 509; Sach Sinha and Assocs., Inc., B-241056.3, Jan. 7, 1991, 91-1 CPD ¶ 15, recon. denied, B-241056.4, May 21, 1991, 91-1 CPD ¶ 487.

With respect to TERI's challenge of the agency's cost/technical tradeoff decision, in a negotiated procurement, there is no requirement that award be made on the basis of the cost or price unless the RFP so specifies. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136. Here, the RFP did not require the award to be made to the offeror with the lowest cost, technically acceptable proposal. The RFP stated that the award would be made to the offeror with the best overall proposal. In making this determination, the RFP provided that the technical evaluation factor would carry greater weight than the management and cost evaluation factors combined, and that the management evaluation factor would carry greater weight than the cost evaluation factor. Thus, cost was the least important evaluation factor in determining which proposal offered the best overall value to the government.

Where the RFP does not provide for award on the basis of the lowest cost, technically acceptable proposal, an agency has the discretion to make the award to an offeror with a higher technical score and higher cost where it reasonably determines that the cost premium is justified considering the technical superiority of the awardee's proposal and the result is consistent with the evaluation criteria. Hercules Engines, Inc., B-246731, Mar. 19, 1992, 92-1 CPD ¶ \_\_\_\_; General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44.

Here, the agency found that although TERI's evaluated cost was 42 percent lower than ARC's evaluated cost, TERI's overall marginally acceptable rating for the technical evaluation factor, the most important evaluation factor, caused its technical approach to be considered of moderate to high risk. Based on TERI's marginally acceptable completion of the sample tasks and SOW areas, the agency concluded that TERI did not demonstrate its ability to perform the actual tasks which would be assigned under the contract or its ability to furnish a high quality product. The agency determined that TERI did not have a complete understanding of the substantive problems presented in many of the sample tasks and SOW areas. For example, instead of addressing the development of a marketing approach for foreign military sales (FMS) of the EATDS program, as required by one of the sample tasks, TERI improperly assumed the existence of a marketing approach and described the implementation and execution of the marketing approach. The agency believed the deficiencies in TERI's completion of the sample tasks and SOW areas were indicative of TERI's

inability to satisfactorily perform and complete similar types of tasks to be assigned under the contract. The agency also determined that while TERI's proposed personnel had good experience with computer hardware and software development, its proposed personnel generally did not have adequate fire support and fire artillery background and experience which were necessary to perform a significant portion of the technical support services required by the RFP.

In contrast, ARC received an overall superior rating for the technical evaluation factor and its technical approach was found to be of minimum risk. The agency determined that ARC demonstrated its ability to perform the actual tasks to be assigned under the contract and its ability to furnish a high quality product based on its superior completion of all of the sample tasks, particularly those involving briefing support, foreign military sales, and integrated logistics support plans, and its acceptable completion of the SOW areas. The agency concluded that ARC's high degree of overall task performance analysis was indicative of the high caliber of technical support it would provide under the contract. The agency also found that ARC's proposed personnel had the critical fire support and fire artillery background and experience necessary to satisfactorily perform and complete the technical support requirements of the RFP.

Based on our review of the record, we find the agency reasonably determined that ARC's proposal was significantly superior to the proposal offered by TERI and that ARC's technical superiority offset TERI's lower evaluated cost. While TERI believes its proposal should have been rated more favorably for its technical and management approaches, TERI fails to provide any substantive basis for its position beyond general conclusions. Essentially, TERI disagrees with the agency's marginally acceptable technical rating and its acceptable management rating. However, such disagreement does not establish the unreasonableness of the evaluation. Thus, we conclude the agency reasonably awarded the contract to ARC, the technically superior, higher evaluated cost offeror, as its proposal represented the best overall value to the government.

Accordingly, the protest is denied in part and dismissed in part.



James F. Hinchman  
General Counsel