



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

Decision

Matter of: Trijicon, Inc.
File: B-244546.3
Date: June 22, 1992

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Stan Hinton, Esq., Doke & Riley, for Varo, Inc., Michael A. Hordell, Esq., and Laurel A. Heneghan, Esq., Petrillo & Hordell, for S-Tron, Inc., and Barbara A. Pollack, Esq., for Hughes Leitz Optical Technologies, Ltd., interested parties. Denise C. Scott, Esq., and Craig E. Hodge, Esq., Department of the Army, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that reevaluation of proposals for telescopes for rifles and automatic weapons lacks a reasonable basis is sustained where, under the most important technical subfactor, the evaluators concluded that the protester's proposed telescope resolution will exceed the requirements of the specification but the agency's scoring does not reflect the technical merit in that area.

DECISION

Trijicon, Inc. protests the decision by the Department of the Army to reaffirm the award of contracts to Hughes Leitz Optical Technologies, Inc. (Hughes), Optic-Electronic Corporation (OEC), and S-Tron, pursuant to request for proposals (RFP) No. DAAA21-91-R-0024, for modified non-developmental telescopes to be used with M-16 rifles and squad automatic weapons. Trijicon contends that the Army's reevaluation of proposals--undertaken in response to our prior decision sustaining Trijicon's challenge to the initial selection decision, see Trijicon, Inc., 71 Comp. Gen. 41 (1991), 91-2 CPD ¶ 375--lacked a reasonable basis.

We sustain the protest.

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BACKGROUND

As explained in our prior decision, the RFP sought fixed-price offers for telescopes for the M-16 rifle and squad automatic weapons. These telescopes are to include laser eye protection, tritium illuminated reticles, and lens covers.

The Structure of the RFP

The procurement was structured as a two-step competition. First, proposals were to be scored and rated, and up to three offerors were to be selected for parallel contracts for the delivery of 75 telescopes and 15 mounting units for testing. (This initial selection is the subject of the current and prior protests.) Next, the RFP anticipated the selection--based on test results for the delivered hardware and on price--of one of the three initial awardees for award of a production contract by the exercise of an option.

The evaluation scheme for selecting initial awardees weighed proposals in three areas: technical, management, and price. The RFP advised offerors that technical scores would be more important than price, and that the government reserved the right to award to other than the lowest-priced offeror.

The technical and management factors were comprised of four subfactors each. Three of the four subfactors within the technical factor were to be scored while one was to be rated either acceptable or unacceptable; all of the subfactors under the management factor were to be rated either acceptable or unacceptable.

The three scored subfactors in the RFP--all of which were within the technical factor--were optical, mechanical/physical, and environmental/durability.¹ The optical subfactor was more important than the mechanical/physical and environmental/durability subfactors combined. In addition, the mechanical/physical subfactor was more important than the environmental/durability subfactor.

Within these subfactors, the RFP also included a number of evaluation elements. The optical subfactor consisted of 10 weighted and scored elements; the mechanical/physical subfactor consisted of 18 weighted and scored elements;

¹The fourth subfactor, "safety and length," was rated either acceptable or unacceptable, and compliance was mandatory.

and the environmental/durability subfactor consisted of 9 weighted and scored elements. The 10 elements under the optical subfactor were weighted equally. Under the mechanical/physical subfactor, the first 8 of 18 elements were equal but significantly more important than the other 10 elements, which were also equal. In the environmental/durability subfactor, the first 4 of the 9 elements were equal but significantly more important than the other 5 elements, which were also equal. It was the Army's method of scoring these 37 evaluation elements that led our Office to sustain Trijicon's initial protest.

The Previous Evaluation of Proposals and Award Decision

After receiving proposals from six offerors, the Army evaluated the offers according to its Source Selection Plan (SSP) for this procurement. The SSP directed evaluators to rate initial proposals using a 3-color coding system. For each of the 37 scored evaluation elements under the 3 technical subfactors, the SSP instructed evaluators to assign a color rating of green, amber, or red. A green rating indicated that the proposal met or exceeded the RFP requirements; an amber rating indicated that the proposal might meet the requirements; a red rating indicated that the proposal did not meet the requirements. After the award of color ratings, the SSP directed that the ratings were to be converted to a numerical score. Green ratings received all available points; amber ratings received 30 percent of available points; red ratings received no points.

After concluding that the proposals met all mandatory requirements and scoring initial proposals, the Army held discussions, requested best and final offers (BAFO), and rescored proposals. Upon rescoring, the Army awarded perfect technical scores to four of the six offerors, and determined that five of the six were technically equal. The offerors, their scores and total evaluated prices are shown below:

	<u>Score</u>	<u>Total Evaluated Price</u>
Trijicon	100	\$ 20,856,000
Hughes	100	14,641,766
S-Tron	100	14,013,054
Company A	100	24,413,000
OEC	98	17,062,075
Company B	94	41,638,000

Since the 5 proposals that scored 98 and above were found technically equal, the Army awarded contracts to the 3 lowest-priced offerors: Hughes, S-Tron, and OEC.

Our Prior Decision

In our prior decision, we sustained Trijicon's claim that the Army's method of evaluating proposals improperly abandoned the evaluation scheme stated in the RFP--i.e., an evaluation scheme that clearly favored technically superior proposals was converted to one that resulted in selection of the low-priced, technically acceptable proposal.² The Army overlooked the relative merits of different proposals because of the evaluation methods specified in the SSP. Our review showed that at least half of the 37 separately scored evaluation elements under the 3 technical subfactors were stated as technical minimums that could be exceeded by an offeror. Since the SSP awarded the same number of points to a proposal that met a requirement as it awarded to a proposal that exceeded a requirement, the RFP failed to recognize relative technical merit among proposals that met the evaluation requirements.

As a result, we recommended that the Army either: (1) revise the RFP to state that award will be made to the three low, technically acceptable offerors, permit offerors to revise their proposals, and evaluate the revised proposals accordingly; or (2) reevaluate the proposals to assess the relative technical merit and make appropriate price/technical tradeoff decisions.

The Army's Second Evaluation

Upon reviewing our recommendations, the Army concluded that the original evaluation scheme--rather than the methodology set forth in its SSP--most closely reflected the agency's needs. Therefore, it elected to reevaluate proposals to assess relative technical merit.

The Army began its reevaluation by reviewing the solicitation to determine which evaluation criteria were capable of being exceeded, as opposed to those which simply stated a range of acceptable performance. For example, the optical characteristics subfactor under the technical factor consisted of 10 elements of equal weight. Upon review, the Army decided that five of these elements could be exceeded because the elements were stated in terms of a minimum performance value--e.g., paragraph M.3.1.4b of the RFP sought telescopes with resolution of "[b]etter than

²For a more detailed analysis of how the evaluation scheme worked, see Trijicon, Inc., supra at pps. 5-7.

20 seconds of arc." The Army decided that the other five elements under the optical characteristics subfactor simply sought a range of acceptable performance--e.g., paragraph M.3.1.4a of the RFP required that offerors provide telescopes with between 3.0 and 4.0 power magnification.

After identifying the solicitation provisions that could be exceeded, the Army reevaluated each of the BAFOs in these areas. In each reviewed area, an offeror's BAFO was awarded one of five adjectival scores: not met, met, exceed minus, exceed, and exceed plus. The Army then constructed a matrix of the evaluation scores awarded for each element under each technical subfactor, and ranked the proposals by technical merit.³

As explained above, the most heavily-weighted area of the solicitation is the optical characteristics subfactor of the technical factor. The scores for the five reevaluated elements are as follows:

<u>Offeror</u>	<u>Item 1</u>	<u>Item 2</u>	<u>Item 3</u>	<u>Item 4</u>	<u>Item 5</u>
Hughes	exceed	exceed	met	met	met
S-Tron	exceed	exceed	met	met	met
Company A	met	exceed	exceed	met	met
Trijicon	met	exceed	met	met	met
OEC	met	exceed	met	met	met
Company B	met	exceed	exceed	not met	met

As shown above, Hughes, S-Tron and Company A, are tied in the optical characteristics subfactor (each received two "exceeds" and three "mets"). Trijicon and OEC are tied for fourth place (each received one "exceed" and four "mets") and Company B is ranked last (with two "exceeds," two "mets," and one "not met").

³For the other five criteria under this subfactor which were not reevaluated, the agency assumed that all offerors were equal. Since we sustain the protest on other grounds, we need not consider whether this was a reasonable approach to reevaluating the proposals here.

Because of the great weight accorded the optical characteristics subfactor, the ranking of offerors mirrors (for the most part) the evaluation of these five elements. The Army did, however, use the ratings under the mechanical/physical subfactor to differentiate between offerors that are tied under the optical characteristics. As a result, after considering the results of the entire reevaluation Hughes, S-Tron and Company A were ranked first, second and third, respectively. OEC was ranked fourth, Trijicon fifth, and Company B sixth.

As in the prior evaluation, the Army selected the first and second-ranked offerors for award (Hughes and S-Tron), and skipped over the higher-priced third-ranked offeror (Company A). Although OEC tied with Trijicon for fourth place under the optical characteristics subfactor, it achieved a slight tie-breaking advantage under one of the lowest-weighted elements of the mechanical/physical subfactor.⁴ As a result of this slight technical advantage, OEC, not Trijicon, was ranked fourth and was selected for the third award.

After concluding that it would again make award to the same three offerors as before, the Army notified Trijicon of its decision by letter dated January 21, 1992. The Army also provided a debriefing to Trijicon during which it explained in detail the results of the reevaluation. During this debriefing, representatives of the Army acknowledged that the agency would not have reevaluated proposals if it did not believe the reevaluation would reaffirm the previous award decisions. In addition, the Army representatives stated that performance testing of the three offerors previously selected was substantially complete, and that the Army did not have funds (estimated at approximately \$1.4 million) to perform retesting of the three awardees. This protest followed.

⁴Under the mechanical/physical subfactor, the Army identified eight elements which could be exceeded. Five of these elements were among the 8 of 18 that were described by the solicitation as significantly more important than the other 10; the remaining 3 were among the 10 least important elements. Trijicon and OEC were tied under both the optical characteristics subfactor, and under the five most important elements of the mechanical/physical subfactor. The tie between OEC and Trijicon was broken by a 1-level scoring difference between the 2 offerors on 1 of the 3 elements within the 10 least important elements of the mechanical/physical subfactor.

DISCUSSION

Trijicon challenges the evaluation results in several areas. First, it argues that it was unreasonably reevaluated under the resolution, parallax and anti-reflection elements of the optical characteristics subfactor. Under the significantly less important mechanical/physical subfactor, Trijicon argues that it was improperly evaluated on four of the nine reevaluated elements.

The evaluation of proposals is primarily within the discretion of the procuring agency, not our Office; however, evaluations in negotiated procurements must be in accordance with the terms of the RFP. Environmental Techs. Group, Inc., B-235623, Aug. 31, 1989, 89-2 CPD ¶ 202. In reviewing protests against allegedly improper evaluations, we examine the record to determine whether the agency's judgement was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

As explained in detail below, we conclude that the Army's evaluation of Trijicon's proposal under the most heavily-weighted technical subfactor--optical characteristics--lacked a reasonable basis.

Resolution

The optical characteristics subfactor contained 10 equally weighted elements, one of which is the ability of a proposed telescope to provide clear resolution of distant objects. The solicitation's requirement for resolution, set forth in the RFP at paragraph M.3.1.4b, is simply stated: telescopes are required to resolve objects with "[b]etter than 20 seconds of arc." Arc is the trigonometric term for a fractional part of circle.⁵

Trijicon's proposal stated that its telescope would have a resolution value of 10 seconds of arc. Although the level of resolution proposed by Trijicon was higher than that proposed by any other offeror--the lower the arc value, the "higher" the resolution--Trijicon received a score of "met" for this element. Two other offerors who proposed resolutions of 15 seconds of arc were awarded scores of "exceed." Since OEC also received a score of "met" for this element, Trijicon argues that if it had received the "exceed" score

⁵A circle is divided into 360 degrees. Each degree can be divided into 60 minutes, and each minute can be divided into 60 seconds. Therefore, in layman's terms, a resolution value of less than 20 seconds represents a very small fraction of a circle.

it deserved, it would have displaced OEC as the third awardee. The effect of this change is shown in the matrix below:

<u>Offeror</u>	<u>Item 1</u>	<u>Item 2</u>	<u>Item 3</u>	<u>Item 4</u>	<u>Item 5</u>
Hughes	exceed	exceed	met	met	met
S-Tron	exceed	exceed	met	met	met
Company A	met	exceed	exceed	met	met
Trijicon	met	exceed	exceed	met	met
OEC	met	exceed	met	met	met
Company B	met	exceed	exceed	not met	met

As Trijicon argues, with an "exceed" score for resolution, rather than a "met" score, Hughes, S-Tron, Company A, and Trijicon would be tied for first place under the optical characteristics subfactor: all have two "exceeds" and three "mets." OEC, with one "exceed" and four "mets," would then be ranked behind Trijicon under the most heavily-weighted subfactor.

The Army's decision to award Trijicon a "met" score for this element, rather than any of the higher scores available--i.e., "exceed minus," "exceed," or "exceed plus"--results from several analytical steps, explained below. First, the agency evaluators expressly considered whether Trijicon's proposed resolution of 10 seconds of arc was achievable with its telescope. The evaluators stated:

"Trijicon's proposed resolution of 10 seconds of arc for a 3.5 power telescope is considered unrealistic for production hardware because manufacturing glass tolerances will cause deviation greater than the design calculated resolution claimed. The [g]overnment accepts Trijicon's proposal to meet the 20 seconds of arc requirement with a nominal resolving power between 17 and 13 seconds of arc with 3.5 power magnification." Source Selection Board BAFO Reevaluation.

Second, although the evaluation materials projected Trijicon's likely resolution at between 13 and 17 seconds of arc, the Army's legal argument, submitted with the agency report, estimated that Trijicon's proposal only "supported a

theoretical resolution of 17.1 seconds of arc." Agency Legal Opinion, March 4, 1992, p. 7. The discrepancy between the evaluation materials and the Army's legal opinion--a range of 13 to 17 seconds versus 17.1 seconds--was explained as supported by an engineering analysis performed by the agency in order to prepare the report on the current protest.⁶ According to this document, Trijicon's proposal only provided detailed design information to support a conclusion that Trijicon could achieve a resolution of 17.1 seconds of arc.

The third step in the Army's analysis was its projection from theoretical design values for resolution to a conclusion that the resolution achieved during production would be lower. According to the analysis performed for the agency's lawyers, since Trijicon's resolution was design-based--and therefore, theoretical--the Army should assume that Trijicon's production resolution would be much closer to 20 seconds of arc. Thus, Trijicon was awarded a "met" score for this element.

As a starting point, we have no basis to question the evaluators' conclusion that Trijicon's proposed resolution of 10 seconds of arc is unrealistic--nor does Trijicon offer one. As quoted above, the evaluators decided that Trijicon's proposed resolution would not be achievable in production. As a result, the evaluators decided instead that Trijicon would probably provide a scope with a resolution of 13 to 17 seconds of arc.

However, even accepting the evaluation materials at face value, we fail to see why Trijicon did not receive a higher score than "met." As stated above, two other offerors who proposed to provide telescopes with 15 seconds of arc were awarded "exceed" scores in this area. The average of the range stated by the evaluators as the likely resolution of Trijicon's telescope $((13+17)/2)$ is precisely the same as those scopes, yet Trijicon received a lower score.

'Neither the initial agency report, nor the supplemental agency report, explained the discrepancy between the agency's legal arguments and the evaluation materials. Rather, in a conference call involving the parties, as well as the Army's counsel and a representative of this Office, the Army explained that its position was based on an undated, unidentified memorandum included with the agency's documents. This memorandum was prepared at the direction of agency counsel to assist with the agency's response to the protest.

The Army proposes that we disregard the findings of its evaluators, and replace those findings with the conclusions reached in a memorandum prepared in response to the protest at the direction of the agency's legal counsel. The Army has offered no convincing rationale for dismissing the materials provided by its own evaluators in favor of this document.

Replacing the judgment of the evaluators with this later-prepared memorandum is troubling for two reasons. First, this document purports to reach its conclusion based on supporting documentation in Trijicon's technical proposal. While, presumably, the Army's evaluators also read Trijicon's technical proposal, they reached a different conclusion. Second, the conclusion in the document prepared for counsel--that Trijicon will not be able to manufacture a telescope that achieves the claimed resolution--has already been reached in the evaluation materials, and was taken into consideration there. Specifically, the evaluators stated that Trijicon's resolution would be less than planned in the manufacturing process, and that therefore, Trijicon would probably achieve only 13 to 17 seconds of arc, rather than 10 seconds. In short, the Army twice makes upward adjustments to Trijicon's proposed resolution based on the difference between design calculations and manufacturing ability.

In addition, we have reviewed the comments of the evaluators and those of the engineer whose memorandum suggests that the original evaluation gave too much credit to the Trijicon proposal. We question whether the analysis provided with the Trijicon proposal supports the engineer's conclusion that Trijicon's telescope will only be able to achieve resolution of 17.1 seconds of arc. Not only do the materials in the Trijicon proposal not provide a basis for the Army's subsequent conclusion, but they appear to correspond closely with the evaluator's findings. Specifically, we read the Trijicon materials as supporting a design capability of approximately 12 seconds of arc. Therefore, the evaluator's conclusion that, in production, Trijicon could probably achieve 13 to 17 seconds appears both reasonable and correct. Nothing in the materials provided afterwards provides any sound reason for abandoning the initial results of the evaluation.

In summary, we find no support in the record for abandoning the findings of the agency evaluators. The reasonableness of the agency's reliance on a memorandum prepared to assist agency counsel in responding to the protest, rather than on the evaluators' conclusions, is particularly questionable given that the evaluators were reconvened to reevaluate BAFOs in light of a sustained protest; the agency states that it undertook the reevaluation because it was relatively

certain that the results would not change; and the agency explains that it had no additional funds to perform testing should it select a new awardee.

As Trijicon claims, an exceed score on this element alters the ranking of offerors; as a result, Trijicon, not OEC, would have ranked fourth among the six offerors. Based on this change in ranking, at a minimum the Army would have had to reconsider its selection of OEC and perform a cost/technical tradeoff to determine if award to Trijicon at its higher price was warranted in view of Trijicon's superior technical rating. Therefore, we sustain Trijicon's challenge to the evaluation in this area.

Parallax and Anti-Reflection Coatings

The remaining two elements of the optical characteristics subfactor challenged by Trijicon are the elements dealing with parallax and anti-reflection coatings.

With respect to the evaluation element called parallax, the solicitation required offerors to provide a telescope for which parallax was "[l]ess than 30 seconds of arc at 300 meters plus or minus 20 meters. . . ." According to Trijicon, it should have received a score of "exceed" on this element, rather than a score of "met," because the evaluators concluded that each of the offerors proposing to meet the requirement would actually exceed the requirement in production.

Trijicon's argument here is defeated by the terms of its own proposal. While the RFP required telescopes with less than 30 seconds of arc, Trijicon proposed a telescope with 30 seconds or less of arc. Even though the evaluators concluded that Trijicon has the ability to exceed this requirement, Trijicon, in fact, only proposed to meet the requirement. Accordingly, Trijicon properly received a score of "met."

Trijicon also challenges the evaluation of its proposal under the anti-reflection element of the optical characteristics subfactor. All the other offerors, including Trijicon, received "exceed" scores under this element; Trijicon argues that the Army should have recognized that it submitted the best proposal. In our view, Trijicon has not established that its proposal was unfairly treated because it did not receive a higher rating than other proposals in this area.

The anti-reflection element included two separate attributes: (1) the degree of anti-reflection had to meet or exceed specification MIL-C-675, and (2) the rate of photopic luminous transmission had to meet or exceed 23 percent.

With respect to the first attribute, Trijicon argues that it exceeded the requirements of the military specification--a contention the Army vigorously disputes. However, even if we accept Trijicon's claim in this area, we must also examine Trijicon's proposed capability under the second attribute--the requirement for photopic luminous transmission. In this area, even though Trijicon's proposal exceeded the solicitation requirement, it did so by the smallest amount of any offeror. Since the score for the anti-reflection element was a combination of these two attributes, we do not find the agency's decision to award an "exceed" score to Trijicon, and not to rate Trijicon higher than the other offerors, to be unreasonable.

Mechanical/Physical Subfactor

Trijicon also argues that the agency's reevaluation of four of the elements under the mechanical/physical subfactor lacked a reasonable basis. We have examined each of Trijicon's four challenges in this area, as well as the agency's response and the evaluation materials. We find no basis to overturn the agency's evaluation in three of the areas; the fourth challenge is untimely.⁷

For example, Trijicon argues that the Army unreasonably awarded it a score of "exceed" under the evaluation element of weight, rather than a score of "exceed plus." As explained in our prior decision, since a heavier telescope is presumably more difficult to use, the RFP, at paragraph M.3.1.5q, stated that the Army preferred a telescope weighing 1.0 kilogram or less. Although Trijicon proposed the lightest telescope, weighing only 0.47 kilograms, the Army explains that Trijicon did not provide the weight of the telescope mount. Since the Army assumed that the weight of the telescope with its mount would still be less than the solicitation's weight requirement, it awarded an "exceed" score to Trijicon. In our view, there is nothing unreasonable about withholding an "exceed plus" score from Trijicon on this basis. The Army properly concluded that Trijicon would likely exceed the requirement, but did not give extra credit because it could not tell precisely what the equipment would weigh.

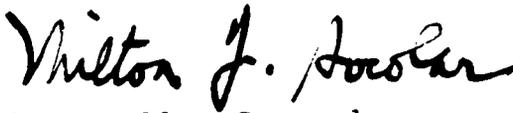
⁷In its comments on the agency report, Trijicon challenges, for the first time, the agency's decision to award an "exceed minus" score to the element called Azimuth and elevation adjustment. Since Trijicon was provided with a copy of the agency's evaluation materials prior to filing this protest, its challenge to its score under this evaluation element is untimely and will not be considered. 4 C.F.R. § 21.2(a)(2) (1992).

RECOMMENDATION AND CONCLUSION

For the reasons stated above, we find that the Army's evaluation of the resolution element of the optical characteristics subfactor lacked a reasonable basis.

We recommend that the Army review the results of its reevaluation in light of this decision and conduct a cost/technical tradeoff to determine whether Trijicon, or some other offeror, should receive award. We also find that Trijicon is entitled to the costs of filing and pursuing this protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1). Trijicon should submit its claim for costs directly to the agency.

We sustain the protest.

for 
Comptroller General
of the United States