



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Rome Research Corporation

**File:** B-245797.4

**Date:** September 22, 1992

Fred J. Wilmers for the protester,  
Jeffrey I. Kessler, Esq., and Robert F. Colvin, Esq.,  
Department of the Army, for the agency.  
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

1. Fourth-ranked firm which offered lowest proposed costs is an interested party under the General Accounting Office's Bid Protest Regulations to challenge the evaluation of its proposal; despite the fact that there is no requirement that award be made to the lowest-cost offeror under solicitation calling for award on the basis of the "best buy" to the government, if protest were sustained, the contracting agency could determine that protester's proposal represents the best buy to the government.

2. Agency properly excluded protester's proposal from further consideration after evaluation of best and final offers, where the record shows that the agency's technical evaluation panel reasonably downgraded protester's proposal in areas found deficient in accordance with the evaluation criteria announced in the solicitation, thus rating protester's proposal considerably below the three highest rated proposals.

3. Protest that the contracting agency should have evaluated protester's proposed site manager on the basis of his managerial and scheduling experience, rather than based upon the elements announced in the solicitation, is untimely filed and will not be considered, where the minimum experience requirements for each of seven key labor categories, including the site manager, were announced in the solicitation, and protest was not filed until after time set for receipt of proposals.

4. Award to a higher-cost offeror is unobjectionable where the solicitation provided that technical factors were significantly more important than cost, and the agency reasonably found that the awardee's additional costs were offset by its superior technical proposal and lower risks.

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## DECISION

Rome Research Corporation (RRC) protests the award of a contract to The Proteus Corporation under request for proposals (RFP) No. DAAD07-91-R-0003, issued by the Department of the Army for the operation and maintenance (O&M) of target control systems at the White Sands Missile Range in New Mexico. The contract is for continued O&M services previously provided by General Electric Government Services, Inc. (GEGS). RRC objects that the Army misevaluated its proposal and that award to Proteus at a higher cost than RRC proposed is improper.

We deny the protest.

## BACKGROUND

The RFP was issued on an unrestricted basis on December 10, 1990, and contemplated the award of a cost-plus-fixed-fee, level-of-effort contract, for 5 years. The RFP required the successful contractor to provide all labor, management, materials, and other resources required to perform the contract as specified in Purchase Description 0012D-90, "The Operation and Maintenance Services of the Target Control System," incorporated in full as an attachment to the RFP. Sections C.3 and L.13.4 of the RFP listed the government's best estimate of direct labor personnel required to accomplish the anticipated tasks, and minimum qualifications and educational experience for each of seven key labor categories.<sup>1</sup>

Offerors were required to submit technical and cost proposals in four separate volumes: (1) technical, (2) management, (3) quality assurance, and (4) cost. Section M of the RFP stated that the technical area was more important than the management area, and that those two areas would be considered more important than the quality assurance area.

The RFP stated that an evaluation panel would assign numerical scores to proposals in accordance with the evaluation factors and subfactors listed in the RFP and that proposed costs would be evaluated for realism. Section M of the RFP, as amended, further stated that overall technical merit would be considered significantly more important than

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<sup>1</sup>The labor categories and number of positions required for each were: site manager, 1; electronics engineer, 1; computer engineer, 1; electronics technician, 7; computer specialist or analyst, 2; computer programmer, 3; and computer operator, 1. The RFP also called for 1 administrative assistant, for a total of 17 persons.

cost, and that cost would be more important than performance risk. The RFP also stated that the agency would add a 10 percent preference factor to the costs proposed by non-small disadvantaged business (SDB) concerns. See Defense Federal Acquisition Regulation Supplement (DFARS) § 252.219-7006. The RFP indicated that as technical merit scores approached being equal, cost would become more significant in the selection process. Award was to be made to that offeror whose proposal represented the best value to the government.

Seven firms, including RRC, responded to the RFP by the January 24, 1991, extended closing date. A proposal evaluation board (PEB) evaluated initial technical proposals by assigning numerical scores on each of the evaluation factors and subfactors listed in the RFP. Each offeror's proposed costs were separately evaluated by a price analyst who recommended adjustments to certain costs for realism based on the Army's independent cost estimate for this procurement.

RRC's proposal was principally downgraded in the technical services and management areas. In the technical area, the PEB found that RRC's proposal lacked sufficient detail in various key areas. For example, the PEB found that RRC's proposed corrective maintenance for the target control system was described only in general terms, with little specific information provided. Also considered a weakness was RRC's description of its proposed interface of control systems to remote vehicles only in very general terms. The PEB found a lack of detail in RRC's proposed trouble shooting and test and analysis of the system. In addition, the agency considered as weaknesses RRC's brief description of its capability to test and analyze mission support software, and the fact that all software knowledge and experience apparently resided in only one of RRC's subcontractor employees.

In the management area, the PEB found that RRC's proposed site manager lacked managerial experience in technical fields associated with automated control systems; that the proposed electronic engineers did not have the required experience with applicable devices; that the proposed computer engineer did not have mainframe experience with target control systems; and that although RRC proposed to use the incumbent work force for a significant number of positions, RRC submitted no letters of commitment from any incumbent personnel. Following the initial evaluation, the PEB awarded RRC a total of 477 points in the technical area (out of 600 possible points); 250 points in the management area (out of 300); and 78 points (out of 100) in the quality assurance area, for a total of 805 points.

Based upon the results of the initial evaluation, the contracting officer eliminated two offerors from further consideration and included the remaining five proposals, including the protester's, within the competitive range. The Army then conducted written discussions with the remaining five offerors. In its written discussion items submitted to RRC, the Army listed 29 specific questions addressing each of the weaknesses the PEB found in the protester's proposal. The Army then requested best and final offers (BAFO) from all five.

The PEB reevaluated and rescored technical proposals based on BAFOs. The Army also analyzed final proposed costs for realism. Final overall technical scores (out of 1,000 possible points) were as follows:

<u>Offeror</u>	<u>Technical Score</u>
GEGS (non-SDB)	983.5
Proteus (SDB)	965.5
C (non-SDB)	940.0
RRC (non-SDB)	893.5
E (non-SDB)	778.5

In its discussion of the revised proposals submitted by GEGS and Proteus, the PEB stated that both firms responded to the RFP's requirements in "outstanding fashion," and that both firms were fully capable of providing "more than satisfactory [O&M] services." Although offeror C's proposal was acceptable, the PEB considered that proposal to present medium risk to the government. The PEB concluded that award to either GEGS or Proteus would present the lowest technical and cost-related risks to the government. The PEB found that based on RRC's BAFO, RRC's ability to successfully perform the contract presented a high risk to the government.

Based on those results, the contracting officer further considered only the proposals submitted by GEGS, Proteus, and offeror C, eliminating offeror E's and RRC's proposal from further consideration. The contracting officer made cost realism adjustments to both Proteus's and offeror C's proposed costs, making no adjustments to GEGS' proposed costs.<sup>2</sup> Since Proteus represented in its proposal that it is an SDB concern, the contracting officer also added a 10 percent factor to GEGS' and offeror C's evaluated cost, resulting in the following evaluated costs, including all

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<sup>2</sup>Proteus's cost proposal was adjusted upward to reflect overtime, New Mexico's applicable gross receipts tax, and estimated phase-in costs. Offeror C's proposed costs were also adjusted upward to reflect estimated phase-in costs.

cost realism adjustments: GEGS--\$4,682,410; Proteus--\$4,348,039; and offeror C--\$4,593,580. Based upon its evaluated costs, technical merit score, and low risk to the government, the contracting officer determined that Proteus's proposal represented the best value to the government, and awarded the contract to that firm on September 13, 1991.

#### PROCEDURAL HISTORY

RRC initially protested the award to our Office on September 23, 1991, alleging that the agency improperly evaluated its proposal and that award to Proteus at a higher cost than RRC proposed was improper. GEGS, the incumbent, subsequently protested the award to our Office on October 4, alleging, among other things, that Proteus violated certain provisions of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (1988 and Supp. II 1990).

The agency referred the issue GEGS raised concerning possible OFPP Act violations to the Army Criminal Investigation Command (ACIC) for investigation. On December 20, we dismissed GEGS' and RRC's protests pending the outcome of the ACIC's investigation and the Army's action based on those results. After the Army announced its decision to not disturb the award to Proteus based on the results of the ACIC investigation, GEGS and RRC reinstated their protests. The issues raised by RRC and GEGS are considered in separate decisions.<sup>3</sup>

The protester argues that since Proteus could not match RRC and its proposed subcontractor in the areas of management and technical expertise, RRC should have received higher scores in those areas. RRC also objects that award to Proteus at a higher cost than RRC proposed is inconsistent with the "best buy" basis for award announced in the RFP.<sup>4</sup>

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<sup>3</sup>The Army issued a stop work order to Proteus pending resolution of GEGS' and RRC's protests.

<sup>4</sup>In a separate submission dated October 22, 1991, after GEGS filed its protest with our Office, RRC argued that there was an "additional circumstance" related to the RFP that it wanted to call to our attention. In its submission, RRC essentially made the same allegations raised by GEGS in its protest, that former Army employees were currently Proteus employees. In its report, the agency argued that the issue concerning the former Army employees was untimely, and that RRC had not set forth a valid basis for protest. Except for a brief, general statement, RRC did not attempt to rebut the agency's arguments, and conceded that it had no evidence of  
(continued...)

## DISCUSSION

### Interested Party Status

The Army initially argues that the protest should be dismissed because RRC is not an "interested party" under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1992). Relying on our decision in Avondale Tech. Servs., Inc., B-243330, July 18, 1991, 91-2 CPD ¶ 72, the Army argues that since RRC's proposal was ranked fourth after the final evaluation, scoring significantly below the three highest-ranked proposals, RRC would not be in line for award.<sup>5</sup>

The Army's arguments overlook the substance of RRC's protest--that the agency improperly evaluated RRC's proposal. In this regard, RRC contends that had its management experience and technical qualifications been rated properly, RRC would have received a higher score in those areas, and since it proposed the lowest costs, its proposal represents the "best buy" to the government.

Under a solicitation like the one here that calls for award on a "best buy" basis, there is no requirement that award be made on the basis of low price. See Vicor Assocs., Inc., B-241496, Feb. 6, 1991, 91-1 CPD ¶ 127. Unlike the situation in Avondale Tech. Servs., Inc., if we found that RRC's arguments regarding the evaluation of its proposal had merit and sustained its protest, it is possible that the agency, upon reevaluation, could determine that the protester's proposal represents the best buy to the government, despite its higher evaluated costs. See Northwest EnviroService, Inc., B-247380.2, July 22, 1992, 71 Comp. Gen. \_\_\_, 92-2 CPD ¶ 38. We therefore consider RRC an interested party to maintain the protest.

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<sup>4</sup>(...continued)

any wrongdoing. We therefore consider RRC to have abandoned this issue. See Arjay Elecs. Corp., B-243030, July 1, 1991, 91-2 CPD ¶ 3. In any event, the issues concerning the former Army employees are addressed in a separate decision within the context of GEGS' protest.

<sup>5</sup>In the cited case, we found that the offeror with the lowest quality score and highest proposed cost was not an interested party to challenge the award to the offeror with the highest technical score and lowest evaluated cost. We found that even if the protest were sustained, an intervening offeror with a higher technical score and a lower proposed cost would be in line for award.

## Evaluation of RRC's Proposal

RRC states that since its primary line of business is operating and maintaining government ranges and facilities that use sophisticated instrumentation systems, the Army should have no question that RRC is qualified to perform the contract. The protester adds that since its proposed subcontractor is a manufacturer of the consoles used in target control systems, it has an understanding of the applicable systems unmatched even by the incumbent. Given its extensive experience, the fact that its proposal was initially included within the competitive range, and its low proposed costs, RRC questions the agency's rationale for not considering its proposal the best buy for the government.

It is not the function of this Office to evaluate technical proposals de novo; rather, in reviewing protests against allegedly improper evaluations, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the evaluation criteria listed in the solicitation. PHH Homequity, B-244683, Oct. 7, 1991, 91-2 CPD ¶ 316. A protester's disagreement with the agency's judgment or its belief that its proposal should have received a higher score is itself not sufficient to establish that the agency's evaluation was unreasonable. Id. Here, based upon our in camera review of the agency report, and the protester's submissions, we find that the Army's evaluation of RRC's proposal was reasonable and consistent with the RFP's evaluation criteria.

RRC's proposal was rescored following BAFOs in the technical, management, and quality assurance areas. Although the PEB noted some improvement in RRC's proposal, RRC's responses to the discussion items left doubt in the evaluators' minds regarding RRC's ability to successfully perform the contract. Of particular concern was the proposed site manager's lack of automated target control experience, and the computer engineer's marginal background with target control systems. The evaluators also noted that RRC's proposal contained general rather than specific information concerning its proposed approach as required by the RFP. The PEB was also concerned that all of the system software background and experience were within only one individual employed by RRC's proposed subcontractor. In view of RRC's proposing to use the incumbent's work force, the evaluators also faulted RRC for failing to submit any letters of intent from the proposed individuals.

The RFP required offerors to submit proposals in a clear, concise, narrative form in sufficient detail to reflect an a complete understanding of the work required. Section C.3.1 of the RFP specifically stated that the position of site manager required a minimum of 5 years of supervisory and



program management experience in technical fields associated with complex electronic and automated control systems, including administration of varying workloads, distribution of resources, coordination with other technical support agencies, and management of documentation as required by applicable regulations. Regarding the computer engineer, the RFP stated that, among other things, this position required at least 8 years of related engineering experience, including experience with peripheral systems closely associated with "large ADP mainframes." Section M.3.5, which contained the technical factors and subfactors to be evaluated, specifically listed the "adequacy of personnel's qualifications in terms of education and experience" as an area within the management factor that the Army would consider in evaluating proposals.

Our review of the record shows that despite the specific requirements listed in the RFP, and despite the detailed written discussion items submitted to RRC addressing the specific weaknesses in its proposal, including the site manager's and computer engineer's lack of experience, RRC failed to propose qualified individuals for those positions. In response to the discussion item addressing this weakness, for instance, RRC merely stated that although its site manager "does not currently possess experience on [automated target control systems]," RRC expected him to become proficient with the system during the phase-in period. The PEB found RRC's response insufficient to overcome its concerns regarding the site manager.

With respect to the technical area the record shows that RRC proposed only general information regarding various tasks, such as corrective maintenance for the target control system, interface of control systems with remote vehicles, and trouble shooting to the electronic component level, without providing sufficient detail of how these tasks would be accomplished. Since RRC proposed individuals without the required experience, and provided insufficient detail in its proposal regarding how various key functions would be accomplished, we find that the evaluators reasonably downgraded RRC's proposal in the technical services and management areas consistent with the announced evaluation criteria.

RRC maintains that it should not have been downgraded for proposing a site manager that lacked direct automated target control experience, arguing that instead, the Army should have evaluated its proposed site manager based upon his managerial and scheduling capabilities. This allegation concerns an apparent solicitation impropriety which RRC should have protested prior to the time set for receipt of proposals. See 4 C.F.R. § 21.2(a)(1). The minimum experience requirements for the site manager were clearly announced in section C.3.1 of the RFP. That section



specifically required a site manager with a minimum of 5 years of supervisory and program "manage[ment] experience in technical fields associated with complex electronic and automated control systems." Additionally, the evaluation areas and elements the agency would consider within each area, including the qualifications and experience of the proposed site manager, were announced in the RFP. If RRC had any objections to these requirements, it was required to raise its objections before the time set for receipt of proposals.

#### Award to Proteus at Higher Cost

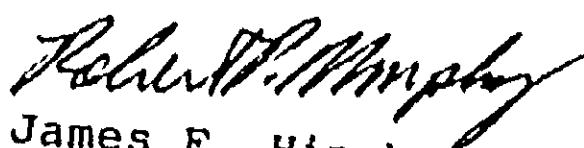
The protester also questions the agency's rationale for awarding a contract to a higher cost offeror where award was to be based on the "best buy" to the government. An agency may award to an offeror with a higher technical score and higher cost where it reasonably determines that the cost premium is justified considering the technical superiority of the awardee's proposal and the result is consistent with the evaluation criteria. See Hercules Engines, Inc., B-246731, Mar. 19, 1992, 92-1 CPD ¶ 297. Based on our review of the record, we find that the Army reasonably determined that the awardee's proposal was so technically superior to RRC's that, despite the protester's lower proposed costs, Proteus's proposal represented the best value to the government.

The record shows that the PEB reasonably concluded that based on the lack of experience of the management staff, coupled with RRC's inability to produce letters of intent from the incumbent's work force, RRC's technical proposal represented a high risk to the government. Adding to an already high-risk technical proposal, the PEB also found that RRC proposed unrealistic salary rates for several of its proposed key personnel. In this regard, the PEB stated that RRC would not be able to recruit professional personnel with the requisite experience at RRC's proposed salary rates, concluding that RRC's proposed cost proposal also represented a high risk.

Due to the numerous unresolved weaknesses remaining in its proposal following BAFOs, the protester's proposal was ranked fourth overall, 72 points lower than the awardee under the technical evaluation factors set forth in the RFP. Since section M of the RFP stated that technical merit would be considered significantly more important than cost in determining the awardee, and since the agency reasonably evaluated RRC's proposal, finding that award to RRC would present high risks to government compared to the negligible

risks presented by the awardee's proposal, we find unobjectionable the Army's decision to award the contract to Proteus.

The protest is denied.

  
for James F. Hinchman  
General Counsel