



Comptroller General
of the United States

Washington, D.C. 20548

Decision

REDACTED VERSION

Matter of: TRW, Inc.
File: B-254045.2
Date: January 10, 1994

Joel R. Feidelman, Esq., John W. Chierichella, Esq., Anne B. Perry, Esq., and Lawrence E. Ruggiero, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.
C. Stanley Dees, Esq., Thomas C. Papson, Esq., and Patrick K. O'Keefe, Esq., McKenna & Cuneo, and Laurence S. Fedak, Esq., Martin Marietta Corporation, for the interested party.

John R. McCaw, Esq., and Sybil Horowitz, Esq., Federal Aviation Administration, Department of Transportation, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's source selection of a cost reimbursement contract under best value evaluation criteria is unreasonable where the source selection official fails to reasonably resolve the evaluated negative questions in the awardee's technical proposal, caused by its apparent inconsistency with the cost proposal, or to adequately assess the substantial "unquantified" concerns about the awardee's evaluated costs.

DECISION

TRW, Inc. protests the award of a contract to Martin Marietta Corporation under request for proposals (RFP) No. DTFA01-92-R-06689, issued by the Federal Aviation Administration (FAA), Department of Transportation, for systems engineering and technical assistance (SETA) services. TRW challenges the agency's technical and cost realism evaluations of Martin Marietta's proposal, and argues that the agency improperly conducted discussions with only Martin Marietta after receipt of best and final offers (BAFO).

The decision issued January 10, 1994, contained confidential or source selection sensitive information, and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

We sustain the protest because the source selection decision did not reasonably consider or resolve the significant discrepancies between the awardee's technical and cost proposals.

The RFP contemplated the award of a cost-plus-fixed-fee, level of effort, task order contract for a 3-year base period with 2 two-year option periods for SETA support services for the agency. The SETA contractor will provide professional, technical and management support to the FAA in the agency's efforts to upgrade the national airspace system.¹ The majority of the contract work will be performed at a contractor-provided facility within a specified distance from the FAA Headquarters in Washington, D.C. The SETA contract will in part supersede a systems engineering and integration (SEI) contract that the FAA currently has with Martin Marietta.

Offerors were informed that award would be made on a "greatest value basis" and that technical competence was more important than cost in determining which offer was the best value to the government. The following technical evaluation factors were stated in descending order of importance:

Points²

General evaluation [deleted]
(knowledge and understanding
of FAA mission and organization)

Sample task orders³ [deleted]
Contract management plan [deleted]
(ability and capability of
proposed organization to perform
requirements)

Transition plan [deleted]
(capability of meeting
initial staffing targets)

Offerors were informed that cost proposals would be evaluated for realism and reasonableness.

¹"National airspace system" refers to the infrastructure of facilities, equipment, personnel and procedures required for the operation of an air flight system.

²The points were not disclosed in the RFP.

³As amended, the RFP provided that sample task orders would only be evaluated in the initial technical evaluation.

As amended, the RFP provided an estimated maximum level of effort of 2,351 man-years for the total 7-year contract period. The RFP also stated the FAA's estimated personnel requirements, by man-years, for each work breakdown element and by man-hours for each labor category. Definitions of the labor categories that the FAA considered appropriate to the SETA contract, as well as the four labor category skill levels applicable to the contract, were provided. Offerors were informed that they must use FAA's man-year and man-hour labor estimates, labor categories and skill levels in preparing their technical and cost proposals, but that the offerors should propose their own estimated mix of personnel skill levels within each labor category.

Proposals were received from three offerors, including TRW and Martin Marietta. Requests for clarifications were sent to the offerors, and initial cost proposals were evaluated by the FAA's cost evaluation team and audited by the Defense Contract Audit Agency (DCAA). Martin Marietta's technical proposal received a point score of [deleted] of a maximum 100 points while TRW's proposal received [deleted] points. Martin Marietta's higher point score reflected in part its proposal to [deleted]. Martin Marietta's and TRW's initial proposed costs plus fees and the independent government estimate (IGE) for the entire 7-year contract period were as follows:

Martin Marietta	\$(deleted)M ⁴
TRW	\$(deleted)M
IGE	\$(deleted)M ⁵

All three proposals were determined to be in the competitive range. Discussions were conducted and BAFOs received.

Immediately prior to the submission of BAFOs, Martin Marietta merged with GE Aerospace. This merger and Martin Marietta's [deleted] were identified in its BAFO cost proposal. By fundamentally restructuring its cost proposal to [deleted], Martin Marietta lowered its proposed cost by approximately \$(deleted) million. Martin Marietta's BAFO technical proposal did not indicate that [deleted]; rather, the firm's BAFO technical proposal again referred [deleted].

Martin Marietta's BAFO technical proposal received a point score of [deleted] of a maximum 75 points while TRW's BAFO

⁴"M" is a million.

⁵This figure is taken from the agency's final cost evaluation report; elsewhere, the agency states that the IGE is \$(deleted) million.

received [deleted] points.⁶ Martin Marietta's slightly higher technical evaluation point score again reflected in part its advantage as the incumbent contractor on the SEI contract. Specifically, Martin Marietta's offer of [deleted] was evaluated to be a significant proposal strength under the [deleted] factors. For example, the evaluators stated that "[Martin Marietta] proposes to [deleted]" and "[deleted]." Similarly, TRW's offer of [deleted] was also an evaluated proposal strength under the [deleted] factors. The FAA's technical evaluation team considered the technical difference between TRW's and Martin Marietta's proposals to be insignificant.⁷

Several members of the FAA's cost evaluation team performed a technical quantitative and qualitative (Q&Q) evaluation to determine whether "the technical and cost proposals [were] consistent and based on the same information." The Q&Q evaluation team determined that Martin Marietta's BAFO technical proposal was inconsistent with the firm's BAFO cost proposal. The major inconsistency was that while Martin Marietta proposed [deleted], and on this basis received high technical evaluation scores, the cost proposal was based upon [deleted]. The Q&Q evaluation team listed a variety of statements taken from Martin Marietta's BAFO technical proposal that suggested that [deleted]. The team noted that the technical proposal only indirectly referenced [deleted]. The Q&Q evaluation team noted that [deleted].⁸ Based on the foregoing, the Q&Q evaluation team considered Martin Marietta's BAFO "to be misleading."

The FAA's cost evaluation team were also concerned with the inconsistency in Martin Marietta's BAFO technical and cost proposals, stating:

"The validity of the overall cost comparison is questionable, based on serious concerns in regard to [Martin Marietta's] overall change in approach from initial proposal to BAFO. [Deleted]. This complete change in approach is not reflected in the Technical Proposal, thereby creating a significant disconnect between [Martin Marietta's] Technical and Cost Proposals, and raising

⁶In accordance with the RFP as amended, sample task orders, which had an evaluation weight of [deleted] points in the initial technical proposal evaluation, were not evaluated.

⁷The third offeror's technical proposal was considered to "[deleted]."

⁸[Deleted].

significant question in regard to cost realism. . . ."

The cost evaluation team was also concerned with the direct labor rates for both Martin Marietta and its subcontractors;⁹ with the indirect rates derived from Martin Marietta's [deleted]; with the lack of [deleted] costs in Martin Marietta's proposal although Martin Marietta identified [deleted]; and with the allocation of the costs of [deleted] to a labor overhead pool in the [deleted]. To account for some of these concerns, the cost evaluation team states that it upwardly adjusted Martin Marietta's proposed costs to reflect what the agency believed would be more likely probable costs for direct labor and the use of [deleted]. However, the cost evaluation team, despite its stated concerns, did not quantify Martin Marietta's allocation of [deleted].¹⁰

TRW's and Martin Marietta's proposed BAFO costs were adjusted as follows:

	<u>Proposed</u>	<u>Probable Cost</u>
Martin Marietta	[deleted]	[deleted] ¹¹
TRW	[deleted]	[deleted]

The findings of the cost and technical evaluation teams were presented to the SEB. Because of the nature of the discrepancies identified in Martin Marietta's proposals, the SEB met with the source evaluation board oversight board (SEBOB) to discuss how to proceed. Possible options presented to the SEBOB included requesting a full audit of Martin Marietta's cost proposal by DCAA or reopening discussions and requesting further BAFOs. The SEBOB directed the SEB to continue with its evaluation and to present its findings in its report to the SSO.

The SEB presented the evaluation conclusions of FAA's technical and cost evaluation teams to the SSO in a report and briefing. The SEB informed the SSO that while the two firms' technical proposals were considered to be technically equivalent, Martin Marietta's BAFO technical proposal was not "substantiated" by the BAFO cost proposal. The SEB

⁹[Deleted].

¹⁰The Source Evaluation Board (SEB) briefing chart to the Source Selection Official (SSO) stated that still other cost concerns were not included in Martin Marietta's probable cost.

¹¹Martin Marietta's total proposed and probable costs reflect its offered [deleted].

stated that "it cannot determine if [Martin Marietta] [deleted]."¹² Even after considering the adjustments in Martin Marietta's probable cost to account for some, but not all, of Martin Marietta's understated costs, the SEB informed the SSO that, notwithstanding Martin Marietta's lower proposed and adjusted probable costs, the SEB:

"has serious reservations in regard to award of the SETA contract to [Martin Marietta]. The Should Cost prepared by the Cost Evaluation Team has addressed those concerns regarding [Martin Marietta's] proposal that can be quantified. However, a number of additional concerns cannot be quantified, and therefore have not been factored into the Should Cost. Further, there are inconsistencies between [Martin Marietta's] Technical and Cost Proposals that raise concerns regarding what resources [Martin Marietta] would provide if awarded the contract."

Martin Marietta's BAFO proposals, the SEB stated, were "so full of inconsistencies and so lacking in substantiation that the SEB has been unable to determine the validity of its proposals." In the SEB's view, there was a greater likelihood of significant cost overruns if Martin Marietta were awarded the contract rather than TRW.

The SSO determined that award should be made to Martin Marietta as the offeror whose offer presented the greatest overall value to the government. The SSO states that in making this determination he reviewed the SEB's report, was briefed by the SEB, received a legal opinion concerning the impact of the SEB's concerns, and had discussions with his "senior advisors." In his June 28, 1993, source selection statement, the SSO stated:

"I find all offerors that responded to the solicitation are eligible to receive the award. TRW and Martin Marietta have submitted proposals that received the highest technical scores, and the [SEB] considers them technically equivalent. Further, each has an acceptable business management proposal. Since these offers are technically equivalent, in accordance with the evaluation criteria, cost has become more important. Martin Marietta submitted the lowest cost [BAFO]. Although the cost team identified some discrepancies in Martin Marietta's cost

¹²The SEB also found that:

"[deleted]."

proposal, the Government Should Cost for Martin Marietta is lower than TRW's (BAFO). On this basis, I select Martin Marietta as the successful offeror."

In an affidavit provided to our Office in response to the protest, the SSO further explained that the SEB report indicated that both Martin Marietta and TRW had demonstrated substantial knowledge and understanding of the FAA's organization and missions. Regarding the SEB's concerns that Martin Marietta's BAFO technical and cost proposals were inconsistent, unsubstantiated and misleading, the SSO stated:

"I believed that the evaluation of [Martin Marietta's] technical proposal showed [Martin Marietta's] knowledge and understanding of the FAA and its ability to perform the requirements of the [c]ontract. With regard to the SEB's concern over the [deleted], I expected [Martin Marietta] to [deleted] and that [Martin Marietta] would deliver quality services."

The SSO also explained that he concluded that Martin Marietta was the low cost offeror, even considering the "unquantifiable" costs raised by the SEB, because of the "\$[deleted] million difference in the should cost analysis" and the fact that "the indirect costs were capped." No further explanation for the SSO's resolution of the SEB's concerns or for the SSO's source selection was provided in the record.

Martin Marietta was notified of the SSO's source selection on July 1. Prior to the execution of the contract award to Martin Marietta, the FAA drafted several additional special contract requirements. Specifically, FAA added a clause to prohibit Martin Marietta from shifting indirect costs to direct costs and from shifting indirect costs between different indirect cost pools without the contracting officer's approval. The FAA also added a clause that allowed the agency to reduce Martin Marietta's fixed fee in the event that Martin Marietta did not provide the level of uncompensated overtime proposed in its BAFO. Upon approval of these additional contract provisions by Martin Marietta, the FAA awarded the contract to Martin Marietta on July 2. TRW's protest followed on July 9. Performance of the contract has been stayed pending our decision in this matter.

TRW contends that given the evaluated inconsistencies between Martin Marietta's BAFO technical and cost proposals, the agency acted unreasonably in failing to account for the change in Martin Marietta's proposed approach in the

agency's technical evaluation and to fully account for Martin Marietta's new approach in the agency's cost realism analysis. TRW argues, as supported by the detailed analysis of its cost experts, that if the concerns identified by the agency's own cost evaluation team were accounted for in a proper cost realism analysis, TRW's probable costs of performance are lower than Martin Marietta's.¹³ TRW also protests that negotiation of the special contract clauses with Martin Marietta prior to award constituted improper post-BAFO discussions that required the FAA to also conduct further discussions with TRW.

FAA argues that, despite Martin Marietta's BAFO discrepancies and the agency's admittedly unquantified cost concerns, "there is no factual basis to conclude that [Martin Marietta's] should cost would exceed TRW's proposed cost." In this regard, the agency argues that the discrepancies and cost concerns were considered by the SSO, and he concluded that Martin Marietta's BAFO nevertheless represented the greatest value to the government. The agency argues that by negotiating the special contract clauses with Martin Marietta prior to award, the agency "mitigated some of the unquantifiable concerns in [Martin Marietta's] proposal." The FAA also claims that TRW's and Martin Marietta's relative technical equivalence would not change, even if the agency had considered whether Martin Marietta's BAFO cost proposal indicated a change in technical approach.

Martin Marietta seeks to explain the apparent discrepancy between its BAFO technical and cost proposals by asserting that it intends [deleted]; Martin Marietta also states that the [deleted].

We will not question an agency's evaluation of proposals unless the agency deviated from the solicitation's evaluation criteria or the evaluation was otherwise unreasonable or not in accordance with applicable law or regulations. Foundation Health Fed. Servs., Inc., QualMed, Inc., B-254397.4 et al., Dec. 20, 1993, 93-2 CPD ¶ ____.

Based on our review of Martin Marietta's BAFO, we conclude that the agency's Q&Q evaluation team, cost evaluation team, and SEB reasonably determined that Martin Marietta's BAFO cost proposal did not "substantiate" its technical proposal but provided for a different technical approach than did the

¹³TRW specifically argues that the FAA's cost realism adjustments of Martin Marietta's BAFO cost proposal were significantly understated because the agency did not adjust Martin Marietta's proposed costs to reflect the firm's [deleted].

technical proposal. Specifically, under the [deleted] factors, Martin Marietta's technical proposal offer of [deleted] was an evaluated proposal strength, demonstrating [deleted]. Martin Marietta's BAFO cost proposal indicated, however, [deleted], which conflicted with Martin Marietta's BAFO technical proposal that [deleted]. In addition, the labor rates used in Martin Marietta's BAFO cost proposal were [deleted].

The record fairly establishes that if the different technical approach evidenced in Martin Marietta's cost proposal had been considered in the source selection, Martin Marietta's proposal may not have been considered technically equivalent to TRW's.¹⁴ Martin Marietta and TRW were considered technically equivalent under each of the RFP's three evaluation factors. As noted above, the technical equivalence and high ratings of the two firms' technical proposals under the [deleted] factors were based in part upon the firms' offers of [deleted]. Thus, the approach reflected in Martin Marietta's cost BAFO, if properly considered, might have led to a lower point score for these factors. Given the stated importance of [deleted], a Martin Marietta proposal based on [deleted] could have been found to be a discriminator between the firms' technical proposals, in view of TRW's evaluated strengths for its proposed [deleted], such that the technical proposals would no longer be considered technically equivalent.

While source selection officials are entitled to independently judge the merits of competing proposals, these judgments must have a rational basis. See DynCorp, 71 Comp. Gen. 129 (1991), 91-2 CPD ¶ 575. In this case, there is no evidence in the record that the SSO meaningfully considered the effect of the technical evaluation concerns raised by the lower level evaluators. The source selection decision is silent on this point. The SSO in his affidavit addressing the protest simply states that given Martin Marietta's evaluated "knowledge and understanding of the FAA" as well as the firm's "ability to perform the requirements of the contract," the SSO "expected" Martin Marietta to [deleted]. Thus, the SSO's determination was apparently predicated upon his belief that capable contractors who understand the RFP requirements will

¹⁴Federal Acquisition Regulation (FAR) § 15.608(a)(1) requires that a contracting officer use cost analysis to determine the offeror's understanding of the work and ability to perform the contract.

[deleted].¹⁵ In reaching his conclusion, the SSO did not perform an independent technical evaluation or review Martin Marietta's BAFO technical or cost proposals. We do not find in the record a rational basis for the SSO's judgment regarding the technical merits of Martin Marietta's proposal. See DynCorp, supra.

With respect to the cost evaluation, from our review of the record, including TRW's expert's affidavits, we find it likely that Martin Marietta's probable costs of performance are significantly greater than the cost evaluation team's determination of those probable costs.¹⁶ For example, the FAA made no adjustments in Martin Marietta's proposed costs to account for [deleted]. We agree with TRW that these concerns can be quantified; in this regard, we note that TRW's cost experts assert that these cost issues alone could result in additional adjustments of nearly \$[deleted] million to Martin Marietta's probable costs.¹⁷

The SSO, however, accepted the cost evaluation team's probable cost determination without reasonably resolving the team's and the SEB's stated concerns (as set out above) that Martin Marietta's probable costs would be higher than evaluated. Instead, the SSO essentially determined that the difference between Martin Marietta's and TRW's probable costs was so great--\$[deleted] million--as to justify the conclusion that Martin Marietta would be low in any event, even considering the "unquantified costs raised by the SEB."

¹⁵We note that Martin Marietta has attempted to explain its BAFO by stating, among other things, that it intends to [deleted], and has proffered a post-award [deleted]. This post-award information was not considered by the agency; nor has the FAA asserted that Martin Marietta's explanation of its BAFO is reasonable or consistent.

¹⁶While Martin Marietta has provided detailed explanations of its BAFO cost proposal, which were not reasonably evident to the FAA from its review of the BAFO, we note that the FAA has not offered its views as to the reasonableness, acceptability or consistency of Martin Marietta's explanations made during the course of this protest.

¹⁷We do not decide the reasonableness of the TRW's cost analysis of Martin Marietta's proposal other than to note that the cost concerns were quantifiable. The FAA did not rebut TRW's experts' cost analysis, even though it had the opportunity and employed a cost expert from an outside contractor to aid in defending the cost evaluation. FAA provided no documentation or opinions from this outside expert.

There is no contemporaneous or subsequent analysis supporting the SSO's assumption that Martin Marietta's probable cost of performance will be low in any case. Nor does the record support the agency's assertion that these costs cannot in some way be quantified, e.g., as was done by TRW's cost experts, so as to support a reasoned source selection.

Considering the significant inconsistencies in Martin Marietta's BAFO, as well as the magnitude and nature of the discrepancies in the agency's cost evaluation, the agency could not reasonably determine which proposal represented the greatest value to the government without first resolving these matters through further negotiations. See The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174. We therefore recommend that the agency reopen negotiations, obtain revised proposals, and conduct a new evaluation. If the proposal of an offeror other than Martin Marietta is determined by this new evaluation to represent the greatest value to the government, the FAA should terminate Martin Marietta's contract for the convenience of the government and make award to that other offeror. We also find that TRW is entitled to its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1993). TRW should submit its certified claim for its protest costs directly to the FAA within 60 working days of the receipt of this decision. 4 C.F.R. § 21.6(f)(1).

We sustain the protest.¹⁸

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¹⁸TRW argued, citing Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD ¶ 53, that Martin Marietta should be disqualified from this procurement. We disagree. There is no evidence that Martin Marietta made intentional misrepresentations to materially influence the agency's consideration of its BAFO. See Earth Resources Corp., B-248662.5; B-248662.7, Dec. 29, 1992, 93-1 CPD ¶ 17. Also, in light of our recommendation to reopen negotiations and obtain new proposals, we need not consider TRW's protest that the agency post-BAFO negotiations with Martin Marietta were improper discussions.