



Comptroller General
of the United States

Washington, D.C. 20548

Mr. Pogony

548224

Decision

Matter of: Sonex Enterprises, Inc.

File: B-255293.4

Date: April 15, 1994

Richard D. Lieberman, Esq., Sullivan & Worcester, for the protester.
Thomas J. Touhey, Esq., and Donald A. Tobin, Esq., Bastianelli, Brown & Touhey, for Sytex, Inc., an interested party.
Vera Meza, Esq., and P. Diane Travers, Esq., Department of the Army, for the agency.
Andrew T. Pogony, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office will dismiss protest that proposal evaluation was improperly conducted where record does not support protester's contentions.
2. General Accounting Office has no jurisdiction concerning issues which involve dispute between private parties.
3. Contracting agencies have the discretion to select a more highly rated technical proposal if doing so is reasonable and consistent with the evaluation methodology set forth in the solicitation.

DECISION

Sonex Enterprises, Inc. protests the award of a contract to Sytex, Inc. under request for proposals (RFP) No. DAAB10-93-R-1012, issued by the U.S. Army Communications-Electronics Command for systems engineering, technical support, and administrative and project management support services for the agency's All Source Analysis System (ASAS) Project Office.¹ Sonex filed an initial protest and three

¹ASAS is a tactically deployable automated data processing system which is an element of the Army Tactical Command and Control System. ASAS will provide the Army with a battlefield processing system with the capability for targeting, conducting intelligence functions, and performing Electronic Warfare Command and Control. According to the

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supplemental protests principally alleging that the agency miscalculated proposals and failed to exclude Sytex from the competition.² We dismiss the protest in part and deny it in part.

The RFP contemplated the award of an indefinite delivery/indefinite quantity contract with delivery orders paid on a fixed-price basis.³ The period of performance was for a base year and 4 option years. The RFP stated that award would be made to the "best overall proposal offering the best value to the government." The RFP contained the following major evaluation factors: (1) technical, (2) personnel, (3) management, (4) past performance, and (5) price. Price was the least important stated factor.

Five proposals--including those of Sytex and Sonex--were received and evaluated. Specifically, the agency established three evaluation groups: the source selection evaluation board (SSEB) evaluated the technical, personnel, and management areas; the performance risk assessment group (PRAG) evaluated the past performance area; and the Contract Pricing Branch evaluated the offerors' pricing information. The SSEB's and PRAG's evaluation of initial proposals resulted in the following rankings:⁴

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agency, ASAS is "the central nervous system guiding field commanders to successfully execute the AirLand Battle/Deep Attack," by generating "near-real-time picture of the enemy situation to guide employment of maneuver forces and systems."

²We subsequently consolidated all protests into the third supplemental protest (B-255293.4); we address in this decision all issues raised by the protester's four filings.

³The record shows that the procurement was conducted on an expedited basis. The RFP was issued on June 23, 1993; the initial closing date, as extended, was July 30; responses to discussion questions were received on September 16; best and final offers (BAFO) were requested on September 16, and received on September 23; and award was made 6 days later on September 29. Despite the compressed time frame, the agency states that ample time was given to offerors to prepare their proposals since a draft RFP was previously issued to industry on February 26, 1993 (synopsized on February 4, 1993, in the Commerce Business Daily).

⁴The rating system employed by the agency consisted of a color rating (five colors) for the evaluation of the technical, personnel, and management factors. The rating
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<u>Offeror</u>	<u>Technical Factor</u>	<u>Personnel Factor</u>	<u>Management Factor</u>	<u>Past Performance Risk</u>
Sytex	Good	Good	Good	Moderate
Sonex	Acceptable	Susceptible	Acceptable	Low

The agency also evaluated the total prices of each offeror.⁵ Questions and clarifications were sent to the offerors which were tailored for each firm. Upon receipt of the information from the offerors, the SSEB evaluated the responses and had a meeting with the source selection advisory council (SSAC) to review the results. The agency again rated Sytex as "Good" for technical, personnel, and management; the agency rated Sonex as "Acceptable" in these categories. The Chairman of the SSAC recommended that BAFOs be requested and that if the BAFO responses did not change the evaluation ratings ("colors"), there would be no need to reconvene the SSAC; this recommendation was unanimously agreed to by the evaluation teams. The agency then requested and received BAFOs.

The SSEB evaluated the BAFOs and determined that there was no change in the "color ratings" for the offerors. The only change submitted with BAFOs by the offerors was Sonex's decrease to the number of personnel proposed against certain sample delivery orders. The final technical rankings still

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standards for performance risk consisted of three different colors. For the sake of simplicity, we have converted the color ratings to their corresponding adjectival ratings in this decision. The adjectival ratings corresponding to the color ratings were as follows: outstanding, good, acceptable, susceptible, and unacceptable. For performance risk, the standards were high risk, moderate risk, and low risk. While three offerors were ultimately included in the competitive range and submitted BAFOs, our discussion is limited to the proposals of Sytex and Sonex.

⁵Sytex offered a price of \$24,128,552; Sonex offered a price of \$23,854,519.

rated Sytex as "Good"; Sonex was rated as "Acceptable." The BAFO prices were evaluated as follows:

<u>Offeror</u>	<u>Price</u>
Sytex	\$23,640,042
Sonex	21,220,870 ⁶

The source selection authority (SSA) convened a meeting with the Chairman of the SSEB, the contracting officer, and others. The SSEB advised the SSA that there were no technical color changes based on the offerors' BAFOs. The SSA determined that Sytex should receive the award; the agency awarded the contract to that firm. This protest followed a debriefing given to Sonex by the agency.

As stated previously, the protester sequentially filed an original protest and three supplemental protests. The protester has advanced numerous allegations, mostly on the basis of "information and belief." We list and address the principal allegations below.

1. The protester alleges that the agency applied an unstated evaluation criterion in evaluating proposals-- "continuity of operations." The protester states that it learned of the agency's improper reliance on this unstated criterion at the debriefing during which the Chairman of the SSEB allegedly stated that "continuity was an important consideration [with which] the evaluators were very concerned."

ANALYSIS: The record shows that during the debriefing, the SSEB Chairman discussed the subject of continuity of services in the context of explaining to Sonex that the compressed time frame during which the procurement was conducted was necessary to maintain services and avoid a break in contract support. Our review of the evaluation documents and source selection documents shows that "continuity of operations" was not used by the agency as an

⁶Sonex's price was based on reduced staffing. Specifically, the RFP requested proposed staffing based upon a sample delivery order, which required 66 personnel; the RFP permitted offerors to deviate from this personnel level if the deviation was documented and justified. Sonex proposed a lower staffing level of 48 personnel for the first 1-1/2 years; Sytex's offer was based on a constant staffing level of 66 personnel. The level-of-effort proposed by each offeror (in terms of personnel) accounted for most of the difference in prices between the two offerors. In any event, price was the least important evaluation factor under the RFP's evaluation scheme.

unstated factor during the evaluation. We therefore dismiss this ground of protest. See Compadre Pipeline Corp., B-244636.2, Oct. 30, 1991, 91-2 CPD ¶ 405.⁷

2. The protester, on "information and belief," argues that because of the compressed time frame of the procurement, the Army's files must "not [have] adequately document[ed]" the award decision to Sytex.

ANALYSIS: The agency report submitted by the Army shows that the agency's evaluation was extensively and thoroughly documented. Specifically, the report contains, among many other things, technical narratives supporting the evaluation of proposals at each stage of the evaluation process, including detailed individual evaluator sheets, showing and documenting the ratings awarded under each factor. We therefore conclude that this allegation is not supported by the record.

3. Sonex alleges that Sytex hired an agency military employee--who previously had access to Sonex's cost data--less than 6 months before the RFP was issued and then used this employee in preparing its proposal; according to the protester, this represented a conflict of interest for which the agency should have excluded Sytex from the competition.

ANALYSIS: In addition to the agency's report explaining the military employee's previous duties, the record also contains unrebutted affidavits from individuals directly concerned which show that this individual employee never had access to any Sonex cost data; never had the responsibility to review such information; did not participate in preparing the RFP; and was not a procurement official of any kind. The protester has submitted no evidence supporting its allegations; we find these allegations are not supported by the record.⁸

⁷The protester also argues that the RFP contained restrictive limitations on the number of pages a proposal could contain. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1993), protests based upon alleged improprieties apparent on the face of the solicitation must be filed prior to the closing date for receipt of initial proposals. Since these issues raised by Sonex were apparent from the terms of the solicitation and were not raised until after award of the contract, we dismiss them as untimely filed.

⁸The protester also argues that Sytex improperly became aware of its selection as the awardee 1 day prior to the public announcement of the actual award; in support of its
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4. Sonex argues that the agency otherwise failed to take action to ensure the integrity of the competitive procurement system. Specifically, Sonex contends that Logicon, the subcontractor of Sytex and an incumbent for a portion of these services, communicated "threats of strong punitive action against any [of its own employees] who discussed possible employment with any [other] contractor [which] was considering a response to the RFP." Sonex states that while it advised the Army of these improper actions, the Army failed to exclude Sytex or require that it cease "these unfair and improper threats."

ANALYSIS: This issue involves a dispute between Logicon and its employees or between Logicon and Sonex. In either case, it involves a dispute between private parties which is beyond our Office's jurisdiction. See Arlington Pub. Schools, B-228518, Jan. 11, 1988, 88-1 CPD ¶ 16. Accordingly, we dismiss this ground of protest.

5. Sonex notes that the RFP required the agency to evaluate whether the key personnel of each offeror "have signed their resumes and a separate certificate that he/she will accept this employment and that a salary has been agreed to." Sonex alleges that it learned that four individuals were transferred from Logicon to Sytex, and that the resumes of these individuals were used in the Sytex proposal without Sytex having obtained the explicit permission of the individuals to do so and without their signature affixed or a separate certificate from each employee that he/she would accept employment.

ANALYSIS: Sytex's proposal, including the resumes of its proposed personnel, was included in the agency report. All 66 resumes were signed by the individuals identified on the resumes. Although there were no separate certifications, each resume contained the required certification, and the

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position, Sonex argues that Sytex and Logicon held a party 1 day prior to the award to celebrate their receipt of the contract. The record shows that Logicon scheduled the party well in advance to mark the closing of Logicon's Fairfax, Virginia, office because it would no longer be an ASAS prime contractor. The contracting officer did contact Sytex late in the afternoon of September 28, 1993, to advise Sytex that it was the successful offeror and to allow Sytex to review the contract document. The Army formally awarded the contract to Sytex the next day. We agree with counsel for the interested party that this communication does not represent the untimely disclosure of sensitive procurement information. See DRM & Assocs., Inc., B-240134.5, Nov. 28, 1990, 90-2 CPD ¶ 436.

combined resume/certification was signed by each person. We think that one signature by each proposed employee on the combined resume/certification document was sufficient and complied with the RFP's substantive technical requirements.⁹ Accordingly, we deny this protest ground.

6. The protester next argues that the agency, during its evaluation, ignored price as an evaluation factor. Specifically, Sonex argues that although price was evaluated by a price evaluation committee (PEC), whose report was documented, this was never taken into consideration by the selection officials. Sonex states that price was "critical to this procurement," and since Sonex's price was \$2.2 million (10.2 percent lower) than Sytex's price, the Army was required to accord "considerable weight" to Sonex's favorable price.

ANALYSIS: Under the RFP, price was the least important factor. Nevertheless, the record shows that the price factor was evaluated by the PEC, and its report was submitted directly to the SSAC. The contracting officer states that the SSAC and SSA "gave full consideration" to the price factor. The protester has furnished no evidence to show otherwise. Contracting agencies have the discretion to select a more highly rated technical proposal if doing so is reasonable and consistent with the evaluation methodology set forth in the RFP. See JSA Healthcare Corp., B-252724, July 26, 1993, 93-2 CPD ¶ 54. Given that price was the least important evaluation factor, we find the Army's decision to award to a technically superior offeror at a marginally higher price to have been consistent with the evaluation criteria. We deny this protest ground.¹⁰

⁹Contrary to the protester's arguments, the RFP did not require offerors to disclose any particular salary as long as a salary had been agreed upon. Sytex's proposed employees stated in their resume/certifications that they had agreed to a salary with the firm. In our view, this was all that was required by the RFP.

¹⁰The protester also argues that the Army did not consider risk/past performance in its evaluation. While the protester concedes that past performance was assessed by the PRAG, it argues that "there is no evidence that [the PRAG's] report was seriously considered in the Army's evaluation by either the SSAC or the SSA." The protester also argues that while "[t]he PRAG report is mentioned in the SSA award determination . . . the risk assessment of the PRAG were never applied in the evaluation."

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7. The protester also argues that the individual SSEB evaluators failed to score "colors" for each factor as required by the Source Selection Evaluation Plan (SSEP); according to the protester, there is only a summary color rating at the factor level by the "Factor Leaders."

ANALYSIS: Paragraph 5.1 of the SSEP stated that "the evaluation of factors will use subjective analysis leading to an overall narrative and color coding assessment." This was interpreted by the agency to require color coding at the factor level. Thus, each evaluator rating a portion of a factor would meet with other evaluators who would then together assign a color coding to the overall factor. We find nothing improper with this arrangement and deny this protest ground. Further, there is nothing in the record to show that this evaluation rating approach prevented a reasoned source selection decision.

8. The protester contends that the agency failed to conduct meaningful discussions with the firm regarding the number of personnel it proposed; the protester suggests that the agency penalized the firm for offering only 48 personnel without advising the firm of its concerns.

ANALYSIS: The record shows that the agency sent the protester a clarification question concerning staffing problems. Although mistakenly not specifically identified as a deficiency, the agency's question was specific as to which line items in Sonex's proposal were unclear about the personnel offered. After receipt of Sonex's response, the

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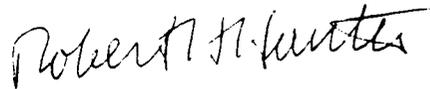
Past performance was the least important evaluation factor (except for price). The PRAG report to the SSAC noted that:

"The Performance Risk Assessments were very close, ranging from low to moderate risk only. The PRAG has determined that any of the . . . offerors . . . could successfully complete the effort."

The contracting officer states that the SSAC and SSA gave full consideration to the PRAG report. In any event, because of the very close risk rating of offerors, past performance/risk could not have been a major discriminator in the selection and award decision, given the technical superiority of Sytex in the other technical areas and its minimally higher price. Additionally, contrary to the protester's arguments, the SSEB and the PRAG did not file inconsistent reports about risk since the SSEB evaluated proposal risk (an offeror's proposed approach), while the PRAG evaluated an offeror's current and past performance record.

SSEB report identified no deficiencies or disadvantages in the Sonex proposal for the personnel factor; also, the agency raised Sonex's rating in this area from susceptible to acceptable. The agency states that to earn a higher rating, Sonex would have had to propose better qualified people, not simply more people. Nothing in the record shows otherwise. In any event, even if Sonex had received a "Good" rating in this factor, the record shows that the increased rating in that one factor, standing alone, would not have altered the selection decision. See ISS Energy Servs., Inc., B-249323.3; July 19, 1993, 93-2 CPD ¶ 30.

The protest is dismissed in part and denied in part.



 Robert P. Murphy
Acting General Counsel