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

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REDACTED VERSION*

Decision

Matter of: TEAC America Corporation, Inc.

File: B-259831; B-259831.2; B-259831.3

Date: May 3, 1995

Ronald K. Henry, Esq., and John W. Schryber, Esq., Kaye, Scholer, Fierman, Hays & Handler, for the protester.
Donald G. Featherstun, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for Precision Echo, Inc., an interested party.
Charles J. McManus, Esq., and John E. Toner, Esq., Department of the Navy, for the agency.
Richard P. Burkard, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation sought proposals to provide nondevelopmental item (NDI) cockpit video recording systems but defined NDI broadly to permit offerors to propose a new design of repackaged components using features from existing products, the agency had discretion to accept offer of unproven equipment where agency reasonably determined that the proposed modifications to equipment needed to meet specifications were permissible under definition of NDI.

2. Protest challenging evaluation of awardee's technical approach is without merit where awardee's proposal included sufficient information for agency to conclude that approach was acceptable, and lack of information was reflected in awardee's less favorable risk rating, as provided for in solicitation.

3. Allegation that awardee's proposal contained understated product cost and overstated cost per repair which, due to allegedly defective repair estimates, led to distorted price evaluation, is without merit where estimates were based on best information available to the agency; there thus is no basis to conclude that awardee's proposed repair cost materially distorted the evaluation.

*The decision issued on May 3, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

4. Protest against the agency's price/technical tradeoff is denied where, despite its higher risk to the government, the awardee's proposal, like the protester's, was technically acceptable, but awardee's proposal offered substantial price savings.

DECISION

TEAC America Corporation, Inc. protests the award of a contract to Precision Echo, Inc. under request for proposals (RFP) No. N00019-94-R-0009, issued by the Department of the Navy for cockpit video recording (CVR) systems for installation in the F/A-18 aircraft. TEAC principally alleges that Precision Echo's offered product does not satisfy the RFP's nondevelopmental item (NDI) requirement, and that its technical proposal did not sufficiently demonstrate compliance with other RFP requirements.

We deny the protest.

BACKGROUND

The RFP, issued August 24, 1994, contemplated the award of a fixed-price contract to provide CVR systems to the Navy and for foreign military sales (FMS) requirements.[1] The RFP specified base period quantities and provided estimated quantities and numbers of repairs for 3 option years. Offerors were to submit prices for recorders, playback stations, technical data, integrated logistic support, materials and services necessary to repair the recorders and playback stations, and spare and repair parts.

Statement of Work and Specifications

Attachment (1) to the RFP contained the statement of work (SOW) for the CVR system video recorders defining the work required under the resulting contract for the "testing and support of the Non-Developmental Item" video recorders. This attachment provided that "[t]o the maximum extent possible, Commercial Off the Shelf (COTS) components will be used to assemble the video recorder." The attachment set forth the design, engineering, fabrication, and testing requirements of the contract. For example, the SOW required the contractor, within 30 days after contract award, to convene a preliminary design review which shall include

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[1]The Navy explains that a CVR system consists of three color cameras, a video recorder panel switch, two Hi-8 mm tape recorders, and an enhanced playback station. The recorders are used during F/A-18 flights for targeting and threat location data, reconnaissance, operational training, and aircrew performance evaluation.

"critical issue areas" and "preliminary design." The SOW explained further that, prior to performing required design verification testing, the contractor was required to convene a critical design review "at which all outstanding design issues shall be finalized." Concerning design verification testing, the SOW required such testing to determine whether the units "meet the design, physical characteristics, performance, reliability, maintainability and environmental requirements of the specification," and provided that the contractor shall not commence delivering the production lots prior to successful completion of design verification tests.

Attachment (2) contained the specification for the recorders and set forth the essential requirements and descriptions that apply to performance, design, and product characteristics. Among other requirements, the specification, at section 3.2.4, set forth the "environmental conditions" requirement. This section stated that "[t]he video recorder shall be capable of continuous operation, satisfying the functional and performance requirements specified herein, when exposed to several listed environmental conditions: thermal, altitude, vibration, shock, explosive atmosphere, salt and fog, and sand and dust.

Proposal Preparation Instructions

Section L of the RFP contained the instructions to offerors for proposal preparation and stated that:

> ". . . proposals must clearly and convincingly demonstrate that the Offeror has a thorough understanding of the requirements and associated risks, and is able, willing and competent to devote the resources necessary to meet the requirements and has valid and practical solutions for all requirements."

It stated further that it is the "responsibility of the offeror to present enough information to allow the various design, support and management approaches to be meaningfully evaluated."

With respect to the preparation of the technical portion of the proposals, offerors were to provide a detailed description of their baseline NDI recorder system, which already meets the solicitation requirements, or which the offeror proposed to modify in order to meet the solicitation requirements. Offerors were to clearly describe any proposed modifications. While the RFP did not include a definition of NDI, section L provided the following guidance:

> "Offerors are reminded, this is not a developmental effort. The Navy seeks proposals from suppliers who can provide recorders that already meet the government specification requirements, with only minor modifications (where "minor" is defined as capable of being performed within the contract delivery schedule . . . . The Navy, therefore, expects any design effort to be limited primarily to repackaging your existing (baseline) recorders to meet the defined space and interface requirements."

Section L contained a specification, 2.3.2 Characteristics, which provided that the offeror "shall provide testing and/or design data to demonstrate that the proposed system meets or exceeds the minimum requirements of the specification." Section L also required offerors to provide analysis or test data demonstrating compliance with the environmental conditions performance requirements in paragraph 3.2.4.

Evaluation Criteria

The RFP identified the following evaluation criteria, in descending order of importance: (1) technical approach; (2) price; (3) integrated logistics support (ILS); and (4) management. With respect to the evaluation of technical approach, the RFP provided as follows:

> "Each proposal will be evaluated on the extent to which it meets or exceeds the performance requirements of the solicitation. The Offeror's proposed design and test program will be evaluated for completeness and realism. Reliability and Maintainability of the recorder will be evaluated for Mean Time Between Failure (MTBF), Mean Time To Repair (MTTR), and the ease and depth of repair and spares failures."

The RFP further stated that in evaluating the proposals the agency would assess "the Offeror's understanding of the requirement, the proposal's compliance with the requirement, the soundness of the Offeror's approach and risk to the Government."

The RFP provided that the agency considered "risk to be a determinant element" underlying all of the technical factors and listed the following "risk indicators": (1) the magnitude of modification required for the Offeror's baseline recorder to meet the requirements, and (2) the degree to which the proposal contains actual test data rather than design prediction data for the performance specifications. It stated further that the agency would

review "any available test data/predictions to determine the degree of modification that will be required for compliance with the specifications."

The RFP stated that award would be made on the basis of the proposal providing the best value to the government, all factors considered, and that the agency intended to award the contract on the basis of initial proposals, without holding discussions.

Evaluation of Proposals and Selection Decision

The agency received three proposals by the October 17, 1994, closing date. The evaluation was performed by technical, ILS, and management evaluation teams, which assigned the following ratings:

	Precision Echo		TEAC	
FACTOR	RATING	RISK	RATING	RISK
Technical	[Deleted]	[Deleted]	[Deleted]	[Deleted]
ILS	[Deleted]	[Deleted]	[Deleted]	[Deleted]
Management	[Deleted]	[Deleted]	[Deleted]	[Deleted]

Precision Echo proposed the low price of $13,149,045; TEAC's proposed price was $25,909,865.[2]

The agency concluded that Precision Echo's proposal offered the best value. The agency noted that Precision Echo and TEAC had comparable technical and ILS proposals. It found that while the TEAC proposal was "slightly better in risk and management," Precision Echo's price advantage significantly outweighed the TEAC management and technical risk advantage. Thus, on December 16 the agency awarded the contract to Precision Echo.

DISTRICT COURT FILING

TEAC filed a protest with our Office on December 23 and filed a supplemental protest on January 3, 1995. On January 13, TEAC filed an action in the United States District Court for the District of Columbia. TEAC America, Inc. v. U.S. Department of the Navy, Civil Action No. 95-0069. During court proceedings TEAC raised additional grounds of protest not raised in the two protests to our Office; the protester filed an additional protest in our Office on February 7, setting forth the additional grounds raised in the court proceedings. The court has

[2]The third offeror's proposal was excluded from the competitive range.

requested that we provide it with an advisory opinion on the merits of the protests. Our decision here encompasses all issues raised in the three protests and in TEAC's court filings.

OVERVIEW OF PROTEST ALLEGATIONS

TEAC's protest broadly falls into two categories. First, the protester contends that the agency improperly evaluated Precision Echo's technical proposal. Specifically, TEAC alleges that the awardee's proposed recorder system was not an NDI and that the agency unreasonably concluded that it would meet all the specifications; it maintains that the awardee has simply repackaged a commercial Sony Corporation camcorder which is unsuitable for military use. TEAC also asserts that the Precision Echo CVR system does not comply with a number of essential performance or design specifications.

Second, TEAC maintains that the agency improperly evaluated the awardee's price. TEAC alleges that Precision Echo submitted unbalanced prices--in that its price for the CVR system units was understated while its price for repairs was overstated--and that, combined with allegedly faulty repair estimates, this resulted in a distorted price evaluation and an improper award decision. We discuss each of TEAC's arguments below.

NDI

TEAC argues that the agency should have rejected Precision Echo's proposal because it did not propose an NDI as was required by the RFP. In this regard, TEAC asserts that the Precision Echo recorder is not currently being produced, that the developmental effort required is so massive that at the time of contract award the recorder existed only in prototype form, and that the necessary modifications are beyond those permitted by the RFP.

Precision Echo proposed its WRR-818 Recorder, which consists of the following five major subassemblies: (1) tape transport[3]; (2) interface circuit card assembly; (3) analog buffer circuit card assembly; (4) power supply assembly; and (5) enclosure. The proposal described the tape transport, largely in issue here, as a "Sony Hi-8 mm tape transport" which was "adapted by Precision Echo to meet the needs of our WRR-818 product." The proposal explained that

[3]"Tape transport" refers to the components in a recorder that operate to move the tape back and forth between the cassette and the scanner, thread tape around the scanner, and record data.

Precision Echo has successfully produced rugged, reliable recorders for demanding military applications using a COTS tape transport. The proposal described the firm's experience with its WRR-8xx series of recorders as follows:

> "Beginning with the WRR-802 product in 1989, Precision Echo produced a standard 8 mm recorder (based on a COTS transport built by Sony Corporation), ruggedized for airborne military applications. The WRR-802 has been fielded for 5 years with a depot level support facility at Precision Echo in service today. The WRR-802 was successfully flown on the F/A-18 aircraft in 1993. . . . In 1993, the standard 8 mm transport of the WRR-802 was replaced with a Hi-8 mm COTS transport built by Sony to produce our next generation product, the WRR-812. The Hi-8 mm transport, combined with additional processing capability on the Interface Circuit Card Assembly (CCA), positions the WRR-812 for a wide variety of platforms. Production quantities are being supplied for the Canadian Light Armored Vehicle and the OH-58D helicopter. Our latest addition to the WRR-8xx series, the WRR-818, is a smaller version of the WRR-812, targeted specifically for use in space limited, environmentally demanding applications. The WRR-818 . . . teams the baseline electronics of the WRR-812 with a smaller COTS transport, also made by Sony, and a small . . . power supply assembly . . . ."

We find that the RFP did not preclude the approach taken by Precision Echo in its proposal to integrate the Sony tape transport into a product which would comply with the RFP's demanding space and environmental requirements. In our view, TEAC has interpreted the RFP in an overly restrictive manner. While the term NDI by itself may have created some confusion, when read as a whole the RFP was clear in allowing for the agency's acceptance of an unproven and substantially modified recorder.

First, contrary to the protester's position, the RFP did not require that the proposed recorder be one which is currently being produced. Second, in an August 9, 1994, written response (which was provided to all potential offerors, including the protester and awardee) to vendor questions about the NDI nature of the procurement, the Navy explained the term NDI as describing "equipment whose function, components, manufacturing techniques and operational concept are well established and do not require the vendor to expend any effort developing any of the above." The Navy explained further that "[t]he equipment may represent a new design which incorporates different packaging or combines existing

features from several current products." The agency's statement came in response to a request from a potential offeror to delete the design requirements of the contract; the potential offeror expressed its view that since the recorder is to be an NDI with only minor modifications, the design review aspects of the contract would be unnecessary. We read the agency's response as unequivocally rejecting this position.

Third, the evaluation criteria section of the RFP itself illustrated that an offer proposing even extensive modifications could be considered acceptable under the technical approach factor; such an approach would merely result in a downgraded risk rating under that factor. Specifically, the RFP provided the following example:

> "Offerors A and B propose equally sound technical approaches to meeting the Government requirement. Offeror A's baseline recorders will meet the Government requirements with only minor modification. Offeror B's recorders will require extensive modification. While both approaches are found to be equally sound, A's technical approach is rated low risk while B's technical approach is rated high risk."

Thus, contrary to the protester's assertions, we think it should have been clear to TEAC and other offerors that the term NDI was not intended to preclude the agency from accepting for award an item such as Precision Echo's, which was unproven and required significant modification. It was just as clear, we think, that the agency intended to take the extent of required modifications into account in the risk ratings, rather than in the technical approach evaluation. We conclude that the agency properly considered the awardee's proposal to provide a newly designed recorder incorporating existing features to be an acceptable approach. [4] See Harris Corp., B-235126, Aug. 8, 1989, 89-2 CPD ¶ 113.

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[4] TEAC argues that Precision Echo's proposal misrepresented its offered product as a fully developed NDI, and that the critical design review documents submitted by Precision Echo to the Navy under the awarded contract demonstrate the wholesale design and development of the recorder--including redesign of the circuit card assembly and power supply--which Precision Echo is undertaking. We do not agree that the awardee misrepresented its product. The proposal indicated, and the agency's evaluation acknowledged, that Precision Echo was offering to produce a new, unproven item, combining existing components that had never been

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PERFORMANCE UNDER SPECIFIED ENVIRONMENTAL CONDITIONS

TEAC maintains that the agency could not reasonably conclude that the recorder proposed by the awardee would be capable of performing in a military environment, since at the heart of the recorder is a COTS tape transport designed for home entertainment use. TEAC contends that the limitations of the commercial tape transport used in Precision Echo's recorder will prevent the recorder from meeting the functional requirements relating to the environmental parameters, and that the awardee's proposal did not provide sufficient information about the transport to permit the agency to meaningfully determine whether the transport would meet those requirements. TEAC concludes that it was irrational to rate Precision Echo's proposal technically acceptable.

The evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Steward-Davis Int'l, Inc., B-250254; B-250254.2, Dec. 17, 1992, 92-2 CPD ¶ 423. Thus, our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Id. A protester's mere disagreement with the agency does not render the evaluation unreasonable. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16.

The Navy evaluated the awardee's technical approach in accordance with the RFP. While offerors were to demonstrate through analysis or test data the ability of the proposed recorder to operate under the specified environmental conditions, there is no indication that the agency intended to downgrade a proposal to unacceptable under the technical approach factor for failing to present adequate data or analysis to demonstrate compliance with a particular environmental parameter. Rather, the acceptability of a technical approach was determined based on the proposal as a whole.

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[4](...continued)
integrated. The evaluation record shows that, while the Navy was aware that the awardee had successfully integrated similar commercial tape transports into the WRR series in similar applications, the agency recognized the risk involved and evaluated the proposal with this understanding.

Here, in addition to detailed descriptions, diagrams, and photographs of the recorder, Precision Echo's proposal reported the results of tests Precision Echo had performed on its proposed recorder. The proposal stated that thermal, vibration, and altitude tests were performed, described the test data, and stated that the data would be presented to the agency at the preliminary design review. The agency recognized, however, that Precision Echo did not provide complete environmental testing data; while its proposal summarized thermal, altitude, and vibration test results, it also stated that no testing had been performed to determine the recorder's compliance with the RFP requirements for shock, explosive atmosphere, salt/fog, and sand/dust.

In the absence of test data, Precision Echo provided an analysis describing why it believed its product would meet or exceed the performance requirements of the RFP. The proposal stated in this regard as follows:

> "Drawing on our extensive experience in designing and developing rugged, high performance recorder/reproducers for military applications, the WRR-8xx product line is designed to operate effectively in harsh environments such as those specified for the F/A-18 platform. Our enclosure designs are based upon the following:
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> "chassis construction from high grade aluminum; . . . direct chassis mount of all subassemblies; built-in plenums for heat dissipation; . . . all openings in the chassis are sealed with conductive gasketing; and, effective utilization of vibration isolators, as applicable.
>
> "These design parameters have proven to be very effective in shielding transports from environmental effects such as exposure to extreme temperature, excessive shock and vibration levels, high altitudes, and contamination from salt, fog, sand, and dust. Past products with enclosure designs based on these parameters . . . have successfully passed stringent environmental qualification testing. This technology has been applied to our latest product line of recorders, the WRR-8xx series."

Specifically, with respect to the shock and explosive atmosphere requirements, the proposal explained that, based on the design of the sealed enclosure described in its proposal, the WRR-818 would meet those requirements. Concerning the salt/fog and sand/dust requirements, the proposal stated that its design provides protection from these elements because "all exterior surfaces are painted

with corrosive preventive paint, all painted exterior surfaces . . . are corrosion resistant stainless steel; and, all openings in the aluminum chassis are sealed with conductive gaskets."

While TEAC correctly notes that it submitted more complete test data than Precision Echo and therefore did not need to rely as greatly on analysis to predict successful performance, this fact was recognized by the agency, as indicated by TEAC's [deleted] risk rating. Precision Echo's greater reliance on analysis as a predictor did not render the agency's evaluation of the awardee's proposal unreasonable or inconsistent with the RFP. In this regard, as indicated above, the RFP specifically tied the environmental data to the risk ratings, providing that the degree to which a proposal contained actual test data rather than design prediction data was a "risk indicator" which would be considered in the agency's risk assessment. The approach of considering the adequacy of the offered data and analysis only as affecting risk was consistent with both (1) the fact (discussed in detail above) that items which required significant modifications (such as Precision Echo's)--and which thus may not have been as susceptible of definitive testing or analysis--were acceptable under the RFP as modified NDIs, and (2) the inclusion of a post-award requirement that the environmental testing be satisfactorily completed prior to delivery of production lots.

We conclude that Precision Echo's failure to furnish complete test data did not warrant rejecting its proposal as unacceptable; that the agency properly evaluated compliance with the test data/analysis requirements under the risk factor; and that the agency properly rated Precision Echo's proposal as [deleted] risk (as compared to TEAC's proposal's [deleted] risk) based in part on the limited test data furnished.[5]

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[5]The protester's argument that the WRR-818 will not meet the environmental condition standards focuses on the Sony tape transport, which TEAC states is designed only for commercial use. In support of this position--which goes to the reasonableness of the agency's determination that Precision Echo's technical approach was acceptable--TEAC has submitted a letter from a Sony sales and marketing manager, stating that the transport does not use "rugged" components. We find this letter unpersuasive for several reasons. First, it appears from the record that he did not have an understanding, or even a copy, of the relevant RFP performance requirements. Second, he was not aware of the transport's incorporation into the WRR-818 or Precision Echo's proposed measures to "ruggedize" the recorder.

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ALL-POSITION ATTITUDE OPERATION

TEAC alleges that the awardee's proposed recorder cannot meet the RFP requirement that the recorder be capable of recording "in all flight conditions and attitudes." TEAC has submitted an affidavit stating that a Sony customer service representative advised that the commercial Sony camcorder, the [deleted], which contains the tape transport being used by Precision Echo, cannot successfully record in situations of vibration or rapid movement. For example, it "will not record properly when placed on a roller coaster or on the hood of a moving car." Based on this limitation of the [deleted], TEAC concludes that the proposed WRR-818 will not comply with the requirement.

This argument is without merit, since it merely presumes that the inability of the [deleted] to record in situations of vibration or rapid movement is attributable to the tape transport. This presumption is inconsistent with the affidavit itself, which attributes the inability of the [deleted] to operate in these conditions to "an image stabilizer based on a CCD chip," not to the tape transport. The record shows that the only [deleted] component used in the WRR-818 is the tape transport, which Precision Echo proposed to integrate with its own circuit card assemblies. Thus, the premise of TEAC's argument--that the performance of the [deleted] is indicative of the performance of Precision Echo's offered recorder--is unsupported, and provides no basis for concluding that the proposed recorder is noncompliant with this requirement.

Precision Echo's proposal explained that the position and orientation of its recorder has no effect on record capabilities. While the proposal did not explain in detail why its recorder would record in any attitude, TEAC's own proposal also did not contain a detailed explanation of how its recorder met this requirement. As TEAC has presented no legitimate basis for questioning the awardee's recorder's compliance with this requirement, we find nothing improper in this aspect of the evaluation.

CASSETTE DISLODGE PREVENTION

TEAC alleges that the awardee's recorder cannot comply with the RFP's requirement that the "cassette shall be prevented

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[5](...continued)
Third, he has no expertise in engineering and was unaware of any testing of the transport for "airborne military applications." Thus, this individual's opinion does not demonstrate that the agency's evaluation of Precision Echo's technical approach was unreasonable.

from falling from the recorder with the recorder mounted at any attitude and flight condition." This argument initially was raised in TEAC's January 3 protest based on its incorrect speculation that Precision Echo proposed a modified Sony EV-C100 video cassette recorder; TEAC alleged that since the cassette in the EV-C100 "simply rests in the tape carriage cavity under the weight of normal gravity," and is "designed to be used in a horizontal position only," the proposal was unacceptable. Although it now is clear that the WRR-818, not the Sony EV-C100, was the basis for Precision Echo's offer, TEAC states that the awardee's use of the [deleted] tape transport "does not negate any of the prior grounds of protest."

This argument is without merit. The awardee's proposal specifically provided that the WRR-818 incorporates a cassette restraining mechanism preventing the cassette from being dislodged from the transport with the front door assembly open, and that ejection of the cassette is performed by pushing a release button located inside the assembly. This design appears to comply with the cassette dislodge prevention requirement; TEAC does not assert otherwise.

UNTHREAD COMMAND

TEAC alleges that the Precision Echo recorder cannot meet the unthread requirement of the RFP, which provides that in the "unthread mode there shall be no tape motion, the tape shall be fully unloaded, and the cassette shall be ready for insertion or removal from the recorder." However, the record shows that the Precision Echo proposal addressed the requirement, stating that this operational mode is a feature of the COTS tape transport. Aside from its assertion that the EV-C100--a video cassette recorder, not a camcorder, and not the product Precision Echo offered--does not have an unthread command, TEAC does not provide any basis for its position that the WRR-818 as modified cannot meet the unthread requirement. TEAC's position thus amounts to mere disagreement with the agency's conclusion, and as such does not provide a basis for questioning that conclusion.

ELECTRICAL REQUIREMENTS

TEAC alleges that the Precision Echo recorder does not meet all of the electrical requirements under the RFP. In particular, TEAC maintains that the recorder will not comply with the RFP requirement that the recorder "operate directly from MIL-STD-704A Aircraft Power" and will be "damaged when subjected to the abnormal power condition as defined by MIL-STD-704A."

The protester's arguments again focus on the [deleted], rather than on the tape transport as incorporated in the WRR-818. The Precision Echo proposal contained substantial information concerning its recorder's electrical specifications. The proposal described its power supply assembly, stating that the "power supply converts the aircraft +28 VDC power to levels required by the electronics and servo motor portions of the WRR-818 recorder," and that "the power supply is fully compliant with the requirements of MIL-STD-704A." The proposal explained further that:

> "[the] Power Supply Assembly converts aircraft provided +28 VDC input into +8 VDC, which is supplied to the tape transport, Analog Buffer CCA, and fan. This assembly includes regulators that supply unswitched +5 VDC to the Interface CCA and customer specified loads external to the Tape Transport."

The proposal also included a table presenting interface data and recorder capabilities, and a table presenting "demonstrated Recorder Performance (Test Results)," which stated that the WRR-818 passed the requirements to operate on 28 VDC electrical power per MIL-STD-704A. TEAC does not assert that this information fails to show compliance with the requirement, and does not otherwise explain the basis for its position that Precision Echo's offered product does not meet the requirement. We therefore have no basis for questioning this aspect of the evaluation.[6]

ELECTROMAGNETIC INTERFERENCE (EMI)

TEAC alleges that the Precision Echo recorder will not comply with the requirement that the recorder be designed to ensure that it does not cause, and is not susceptible to, EMI with regard to other equipment in the cockpit, and that it contain noise suppression components, screening, or coatings at all ports of exit and entry. TEAC quotes from a Sony operation manual language warning users about possible

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[6]The protester also speculates that Precision Echo's proposed use of a heater and fan create the "probability" that Precision Echo's recorder will not exceed power limitations provided in the RFP. As already discussed at length, the possibility that Precision Echo's offered recorder ultimately would not meet all requirements was inherent in the unproven nature of the recorder, and was taken into consideration in the risk ratings. To the extent the protester argues that modifications to the awardee's recorder will be required to meet these requirements, such modifications are permitted under the design verification testing phase of the contract.

harmful interference to radio communications if the unit is not installed properly. The protester asserts that the Navy did not inquire about the manufacturer's specification, but instead simply accepted Precision Echo's claim that the problems had been solved.

The record simply does not support the protester's allegation. The Precision Echo proposal specifically addressed the EMI requirement and described the features which it has used in successfully producing EMI resistant recorders. In addition, the proposal stated that electromagnetic interference testing was "successfully performed on the WRR-818" in accordance with MIL-STD-461C, and included the test results. While the protester faults Precision Echo for not providing the actual test data (rather than merely the results), as discussed above, offerors were not required to provide comprehensive test data. The agency reasonably concluded that the awardee's approach to meeting the EMI requirement was acceptable.

CRITICAL THERMAL PROTECTION AND CONDENSATION

TEAC states that the RFP required that the recorder provide critical thermal protection by being equipped with a sensing device which will "power down" the recorder when a critical temperature is detected. The protester asserts that the awardee's recorder cannot comply, since the [deleted] has no internal temperature sensing device or any component that "powers down" the recorder when the critical temperature is reached. The protester also maintains that the Sony operations manual for the [deleted] states that when the [deleted] detects condensation, none of the functions except cassette ejection will work; the RFP provided that the recorder shall perform an "unthread" sequence if dew is detected.

The record supports TEAC's assertion that the Sony [deleted] does not satisfy either requirement in full but, again, the awardee did not offer an unmodified Sony [deleted]. Concerning the thermal protection requirement, although its proposal included limited detail concerning this requirement, Precision Echo has explained in connection with the protest that [deleted]. TEAC does not take issue with the technical feasibility of this approach.

Precision Echo's proposal also stated that its recorder would comply with the condensation requirement without explaining how it would comply. Again, however, in responding to TEAC's protest argument, Precision Echo explains that it designed its interface control circuit card first to detect when the sensor is activated, and then to command the tape transport to unthread. TEAC does not assert that this circuit card approach is not feasible, and

TEAC's own proposal did not explain in detail how the requirement would be met; TEAC's proposal indicated that its proposed recorder is not programmed to perform an unthread sequence and can "easily" be modified in order to perform the unthread sequence. Therefore, while these two requirements perhaps should have been addressed in more detail in Precision Echo's proposal, under these circumstances there is no basis to object to the agency's conclusion that Precision Echo's proposal was acceptable in these areas.

In sum, the Precision Echo proposal provided sufficient information for the agency to reasonably conclude that its product would comply with the various requirements at issue by utilizing the capabilities of the COTS tape transport as well as specific features of its electrical and circuit card assemblies. The protester has not demonstrated why it is not feasible to integrate the tape transport sufficiently to meet these requirements; rather, it essentially is merely predicting--without any technical support--that the awardee's proposed effort to incorporate the transport into a ruggedized and compliant item will be unsuccessful. This does not provide a basis to object to the award.

RELIABILITY AND MAINTAINABILITY (R&M)

Under the R&M program requirements, the SOW required that the successful contractor have a parts reliability program which:

> "establish in-house and vendor surveillance of parts, materials, and processes during fabrication and assembly to ensure that sources of degradation and variability are isolated and controlled [and] review and analyze proposed changes in parts . . . resulting from test, manufacturing and field experience."

TEAC argues, essentially, that Precision Echo is completely at the mercy of Sony regarding any aspect of the manufacture of the tape transport. Because of the awardee's inability to control the manufacturing of the part, it will be unable to meet various contractual requirements, such as the equipment continuity capability requirements, or to provide technical data to reflect any changes made resulting from the design verification tests, and interchangeability requirements. TEAC concludes that Precision Echo's proposal should have been downgraded for this reason.

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[7]The protester also argues that the awardee's recorder does not have standby capability required by paragraph 3.2.1.8.3. Amendment No. 1 to the RFP deleted this specification.

Section L of the RFP included a number of paragraphs outlining the information to be included in the proposal concerning R&M. It provided that each proposal shall include a description of the offeror's approach and procedures for meeting the R&M requirements. Specifically, offerors were to "clearly delineate reliability standards [Mean Time Between Failures (MTBF) or similar measure] and maintainability features"; provide a plan for provision of spare parts; and provide "design reliability prediction in accordance with MIL-STD-785B, notice 2, Task 201." Section M of the RFP provided that the R&M of the recorder would be evaluated under the technical approach factor for "Mean Time Between Failure (MTBF), Mean Time To Repair (MTTR), and the ease and depth of repair and spares requirements."

The evaluation of the awardee's technical approach to the R&M requirements was consistent with the terms of the RFP. We point out initially that the agency's evaluation did not focus solely on the availability and source of the tape transport; rather, it recognized that the transport was one of several components. Based on the detailed reliability prediction data provided by the awardee showing MTBFs, the agency concluded that the firm could achieve high reliability.[8] In addition, the record shows that the evaluators were impressed with the detailed MTTR data provided by Precision Echo.

The agency also found that Precision Echo provided "good information" regarding spares reliability provisions. The proposal stated that Precision Echo has identified the Interface CCA, Analog Buffer CCA, and Power Supply Assembly as candidates for sparing at the Intermediate Level, with the tape transport repaired at the Depot level. Concerning

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[8]TEAC argues that Precision Echo's reliability calculations for the tape transport were meaningless because they were based on default stress values rather than actual stress values. The record shows, however, that Precision Echo used the best information it had--the actual stress values for the transport were not available--and used the highest allowable default values to make its calculations as conservative as possible; Precision Echo maintains that, as a result, its calculations show the maximum likely failure rate. TEAC does not dispute this point, and we find nothing unreasonable in the explanation. Therefore, to the extent that Precision Echo's reliability information enhanced its evaluation, the evaluation was reasonable.

replacement tape transports, the proposal recognized that the transport is a reliability critical item, but stated that Precision Echo had a "long term support agreement in place with Sony" and that "the WRR-818 design facilitates conversion to alternative commercial tape transports."

While the protester argues that the agency should have downgraded the Precision Echo proposal for failure to have control over the Sony component, we find that the agency could reasonably consider the awardee's approach acceptable. The agency states that a contractor does not have to have control over the design of a vendor's design to implement a parts reliability program because the contract does not require the contractor to provide a parts reliability program for the various components and subassemblies that comprise a COTS component. It contends that the awardee can comply with the contract requirement by maintaining surveillance over incoming parts and materials, including the Sony transport, by inspection and functional testing. In our view, this approach is consistent with the evaluation criteria, which stated that MTBF, MTTR and "ease and depth of repair and spares requirements" would be evaluated, and did not indicate that part control would be evaluated.[9]

Finally, the record supports the business relationship mentioned in the proposal, which the agency relied on in evaluating the awardee's proposal. The awardee has provided a letter from Sony assuring it that the transport will be available until at least 1998 and that replacement parts will be available until at least 2005. Moreover, Sony advised that in the event that Sony discontinues the product, Precision Echo would be given 6 months notice to make one last purchase. The letter noted that Sony and Precision Echo have worked together on other projects that resulted in successful product developments and that Sony has an engineering facility located near Precision Echo, which would permit Sony to respond quickly in the event technical support were required. We conclude that the

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[9]The protester also argues that because Precision Echo does not have access to Sony data on the transport, it does not have the capability to develop an integrated logistics support (ILS) program as required by the RFP. While the ILS requirement stated that source data, documentation, reports and other data that have application to the recorders shall be utilized to the maximum extent possible to prevent duplication of effort, we do not agree that the inability to obtain data on the transport demonstrates an inability to develop an ILS program which encompasses all tasks defined in the SOW.

evaluation of Precision Echo's R&M plan and its ability to meet the interchangeability requirements was reasonable.[10]

PRICE EVALUATION

TEAC alleges that in comparison to its own prices, Precision Echo's price per recorder is unrealistically low, and its price per repair unreasonably high. This the protester asserts, because the estimate of the number of repairs to recorders delivered to the Navy under the contract set forth in the RFP was "essentially random," and the Navy had no idea of its expected repairs; the protester contends that the actual number of repairs will be significantly higher than the estimate. Thus, TEAC concludes that, because Precision Echo has taken advantage of the alleged defective estimate in structuring its pricing, the cost to the Navy of awarding to Precision Echo will be much higher than the evaluated price, rendering the price evaluation here invalid.

TEAC's argument turns entirely on whether the repair estimates were proper. See Capitol Paving of D.C., Inc., supra. The RFP stated that the evaluated price would include the per unit repair price multiplied by "expected quantities" listed in the RFP. The RFP estimated 38 repairs per year for the estimated 370 recorders which would be purchased by the Navy. The RFP also estimated 38 repairs for the estimated 120 recorders for the FMS customers.

Initially, we point out that no offeror--including TEAC, which, the record shows, had specific data on the actual repairs required for the recorders in the F/A-18 (the recorders were TEAC products)--took exception to the RFP estimates before the closing date for receipt of proposals. The agency thus evaluated the proposals in accordance with the estimates it believed were correct, precisely as the RFP advised TEAC and the other offerors the evaluation would be performed. TEAC has not explained why it did not raise this challenge in a timely fashion.[11]

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[10]TEAC also alleges that the transport will not comply with MIL-STD-5400, which it argues is applicable to the tape transport. The RFP stated that MIL-STD-5400 applied only to non-COTS components. Since the transport is a COTS component, the argument is without merit.

[11]Under our Bid Protest Regulations, TEAC's challenge to the estimate as defective should have been raised before the closing date for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (1995) (protests based upon alleged improprieties apparent on the face of a solicitation must be (continued...)

There is no basis to object to the repair estimates here; they appear to be based on the best information available to the agency at the time the solicitation was developed.[12] Contrary to the protester's position that the repair estimates were random, the Navy states that the annual repair estimate for the Navy items was primarily based on failure data available for CVR systems installed in Marine F/A-18 squadrons stationed in Aviano, Italy to support reconnaissance missions being flown over Bosnia. While the

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[11](...continued)
filed by the closing time for receipt of proposals). TEAC's delay in raising this issue deprived the agency of the opportunity to consider corrective action, if warranted, before the expenditure of significant time and effort and the exposure of prices. See Capitol Paving of D.C., Inc., B-256896, July 5, 1994, 94-2 CPD ¶ 10. We address the merits of the issue in response to the court's request.

[12]On April 28, 1995, TEAC raised, as an additional allegation, a challenge to the accuracy of the estimate of 120 FMS recorders to be purchased in each of the three option years. The protester's allegation is insufficient to form a basis of protest since protesters must provide more than a bare allegation; rather, the allegation must be supported by some explanation that establishes the likelihood that the protester will prevail in its claim of improper agency action. Federal Computer Int'l Corp.--Recon., B-257618.2, July 14, 1994, 94-2 CPD ¶ 24. Here, the protester's new allegation is based solely on a statement by the Navy that while the Swiss are purchasing 74 recorders as part of the base contract, they "are unlikely to buy any additional recorders under the option items of the awarded contract." Contrary to the protester's position, however, the RFP did not indicate that any of the 120 estimated FMS recorders in any option period would be purchased by the Swiss. In this regard, the record shows that Finland purchased 140 recorders under the base period of the contract, and there is no indication in the record that future purchases would be limited to these two countries. In any event, even we were to read the RFP as contemplating additional sales to Switzerland based on the percentage of base period sales, the estimate of FMS recorders would be overstated by only 120 recorders. Assuming that to be the case, the difference between the awardee's and TEAC's price would be reduced by approximately $800,000. Given the difference in price of nearly $13,000,000, there is no reason to believe that such an overstatement in FMS estimates would have affected the selection decision. See RMS/NTT, a Joint Venture, B-245243.2, Sept. 8, 1992, 92-2 CPD ¶ 157.

protester disputes the agency's use of the repair data, we find the agency's estimate to be reasonably based. For example, TEAC asserts that the estimates were understated based on its belief that agency will use the contractor for routine cleaning and servicing of the heads. While TEAC's argument apparently is based on its experience providing repairs for the Navy, the Navy has stated that it intends to perform routine maintenance and minor repairs itself.[13]

Further, despite the fact that TEAC has experience in providing and repairing the F/A-18 CVR systems, TEAC has not provided during these protest proceedings any basis for establishing a more accurate estimate which takes into account the Navy's intent to provide in-house capability for minor repairs. The protester's first attempt to provide any analysis to support its contention that the estimate was understated came in response to a document submitted by the Navy, at the request of our Office, explaining the basis for its estimate. The protester's analysis of its repair data also ignores the fact that, as required by the RFP, Precision Echo's proposal provided that each unit delivered would have warranty coverage for 18 months from the date of acceptance. As we have no basis to question the accuracy of the estimates, there is no basis for questioning the validity of the price evaluation, which showed that award to Precision Echo will result in the lowest cost to the government.[14]

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[13]The Navy's intent to perform minor repairs itself is consistent with the Precision Echo proposal, which recommended only that major, or "depot level," repairs be performed by Precision Echo. In fact, the proposal even seems to have recognized the feasibility of the Navy's performing all maintenance in-house, stating that, should the agency "choose to establish a depot level repair facility other than Precision Echo," support data could be made available. TEAC suggests that the RFP would require all repairs to be performed by the contractor, since it provided that a single price would be applicable regardless of the extent of the repair. However, while this provision established a single price for each repair performed by the contractor, it did not obligate the agency to have tape transport cleaning or any other specific maintenance or repair performed by the contractor.

[14]TEAC suggests that the repair costs over the life of the contract should have been evaluated. However, the RFP did not contemplate such an evaluation, and there was no legal requirement that these costs be evaluated on a life cycle basis. See generally International Terminal Operating Co.,

(continued...)

PRICE/TECHNICAL TRADEOFF

TEAC challenges the agency's price/technical tradeoff, arguing that the agency ignored differences between the technical proposals and simply made the award to the low-priced offeror.

This argument is without merit. Agencies have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. Browning Constr. Co., B-250788, Feb. 11, 1993, 93-1 CPD ¶ 126. In reaching an award decision, an agency may make price/technical tradeoffs, subject only to the test of rationality and consistency with the established evaluation factors. Id. As discussed, we have found nothing improper in the Navy's conclusion that Precision Echo's proposal was technically acceptable. While Precision Echo's proposal was rated higher risk than TEAC's, the Navy was fully aware of this risk; it simply concluded that the 100-percent price premium associated with an award to TEAC was not warranted by TEAC's lower risk. This decision to award the contract to Precision Echo based on its higher-risk, substantially lower-priced proposal was consistent with the stated "best value" evaluation methodology. See W.M. Schlosser Co., Inc., B-247579.2, July 8, 1992, 92-2 CPD ¶ 8.

The protest is denied.

Robert P. Murphy
General Counsel

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[14](...continued)
Inc., B-229591; B-229591.2, Mar. 18, 1988, 88-1 CPD ¶ 287.