



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Teledyne-Commodore, LLC

**File:** B-278408.5; B-278408.6

**Date:** March 8, 1999

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## **DIGEST**

1. Where four technical proposals, which received scores ranging from 78 to 84 points out of 100 points, were reasonably determined to be essentially equal technically, selection of the three lower-cost proposals, two of which received slightly lower technical scores than the protester's proposal, is unobjectionable notwithstanding the solicitation's emphasis on technical merit over cost.
2. Allegation that agency's cost realism analysis was flawed because it failed to consider differences in direct labor hours between one awardee's proposal and the protester's proposal is denied, where the record shows that the agency reasonably determined that the firms' direct labor hours were reasonable and appropriate for the contractors' different approaches.
3. Allegation that firm providing support as a subject matter expert to agency evaluators had an organizational conflict of interest is denied where there is no evidence that the support contractor was improperly influenced or biased in its recommendations to the agency; there is no evidence that support contractor exerted improper influence in the procurement on behalf of the awardees or against the protester; and record shows that support contractor could not gain any financial benefit as a result of its recommendations.

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## **DECISION**

Teledyne-Commodore, LLC (Teledyne) protests the issuance of task orders to General Atomics, Burns & Roe Enterprises, Inc., (Burns & Roe) and Parsons

Infrastructure and Tech Group/Allied Signal (Parsons) by the Department of the Army, to proceed with the technology demonstration phase of the Assembled Chemical Weapon Assessment (ACWA) Program under indefinite-delivery, indefinite-quantity, contracts awarded under request for proposals (RFP) No. DAAM01-97-R-0031.<sup>1</sup> The Army issued the RFP for identification of technologies other than incineration for demilitarization of assembled chemical weapons.<sup>2</sup>

We deny the protest.

## BACKGROUND

On July 28, 1997, the agency issued the RFP here, for the selection and demonstration of approaches, other than the "baseline" incineration approach, for demilitarization and disposal of stockpiled assembled chemical weapons.<sup>3</sup> RFP § C.1. The RFP contemplated the award of multiple task order contracts. RFP § A. The solicitation advised offerors that the ACWA Program was separate from the chemical stockpile disposal program, constituting an effort to find whether there existed "mature technology" alternatives to incineration. RFP § C.1.2. The

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<sup>1</sup>The RFP was issued by the U.S. Army Chemical and Biological Defense Command, now the U.S. Army Materiel Command Acquisition Center, which is part of the Soldier and Biological Chemical Command.

<sup>2</sup>Teledyne's protest was initially dismissed pursuant to the statutory restriction on protests in connection with task orders contained in 10 U.S.C. § 2304c(d) (1994). Teledyne-Commodore, LLC, B-278408.3, Sept. 15, 1998, 98-2 CPD ¶ 70. On reconsideration, we reversed the dismissal and reinstated the protest. Teledyne-Commodore, LLC--Recon., B-278408.4, Nov. 23, 1998, 98-2 CPD ¶ 121. In response to the agency's request, we have reviewed the jurisdictional question in light of the fully developed record, and we affirm our conclusion that we have jurisdiction to consider the protest.

<sup>3</sup>Assembled chemical weapons consist of rockets, projectiles and mines. RFP § C.1.2.1. The agency issued the RFP in response to the Department of Defense Appropriations Act, 1997, Pub. L. No. 104-208, § 8065, 110 Stat. 3009-71, 3009-101-3009-102 (1996), which provides for "the conduct of a pilot program to identify and demonstrate not less than two alternatives to the baseline incineration process for the demilitarization of assembled chemical munitions . . . [and evaluation of] the effectiveness of each alternative chemical munitions demilitarization technology identified and demonstrated under the pilot program . . . ." The statute essentially suspends construction activities on certain facilities for incineration until the agency has identified, analyzed, and reported to Congress on promising alternative technologies.

culmination of the ACWA Program will be a recommendation sent to Congress detailing the results of the technologies evaluated and demonstrated. RFP § C.1.2.2.

The RFP divided the work into the following three distinct contract line item numbers (CLIN), each corresponding to a particular phase of the contract effort: CLIN 0001, data gap resolution; CLIN 0002, demonstration work plan; and CLIN 0003, technology demonstration. RFP §§ A (executive summary), B, C.4, M.2. Each of the three requirements would be accomplished under separate task orders. RFP §§ B.1, C.4.

The RFP contained three levels of evaluation criteria, each to be applied during different phases of the assessment. The RFP stated that all offerors which met the threshold "go/no go" criteria listed in section M.6.1.2 of the RFP, the first level of evaluation, and whose proposals were responsive to the solicitation requirements, would be awarded a contract and issued a task order for CLIN 0001 in the amount of \$50,000 to prepare a data gap resolution work plan. RFP §§ C.1.2.4, C.1.2.5, M.4, and M.5.1. The second set of criteria contained the following detailed list of evaluation areas and factors (relative weights for each factor, which were not released to the offerors, are shown in parenthesis):

#### Process Efficacy

1. Process Performance Effectiveness (15)
2. Process Performance Products (5)
3. Process Performance Sampling and Analysis (5)
4. Process Maturity (10)
5. Process Operability (5)
6. Process Monitoring and Control (5)
7. Process Applicability (5)

#### Safety

8. Design or Normal Facility Occupational Impacts (10)
9. Facility Accidents with Worker Impacts (8.75)
10. Facility Accidents with Public Impacts (6.25)

#### Human Health and Environment

11. Effluent Characterization and Impact on Human Health and Environment (10)
12. Completeness of Effluent Characterization (15)

#### Business Factors/Non-cost Factors

- Demonstration Schedule
- Technical/Management Approach
- Past Performance
- Socioeconomic Plan

## Demonstration Cost

RFP §§ M.6.2-6.3.<sup>4</sup>

The first three areas (process efficacy, safety, and human health and environment) were to be applied in the evaluation and award of the second task order, with all four technical areas used in the evaluation and award of the third task order. The demonstration work plans submitted under CLIN 0002 would become the proposals for CLIN 0003. RFP § M.2.5. The RFP stated that process efficacy, safety, and human health and environment, combined, were significantly more important than demonstration cost. RFP § M.6.3.5.2. Demonstration cost was not to be numerically scored and would not be evaluated until the evaluation conducted prior to the award of task orders under CLIN 0003. RFP § M.6.3.7.

Based on the relative technical rankings of proposals, a program evaluation team (PET) would recommend, to the extent possible, a minimum of two technologies for demonstration testing. RFP § C.1.2.6. Those contractors recommended for demonstration testing were to receive a second task order under CLIN 0002 to prepare a demonstration work plan. *Id.* The PET would then evaluate the demonstration work plans in accordance with the factors announced in the solicitation, and recommend contractors who would be issued a third task order under CLIN 0003, on a cost-plus-fixed-fee basis, to perform demonstration testing. RFP § C.1.2.7. Contractors that were not issued a task order under CLIN 0002 would not be considered for a task order under CLIN 0003. RFP § M.5.2.<sup>5</sup>

Regarding the issuance of the third task order, the RFP stated that to the maximum extent practicable, the government would issue at least two CLIN 0003 task orders (technology demonstration) to those contractors whose proposals represented the "best value" to the government. RFP § M.5.3.1. The RFP explained that the contracting officer's (CO) best value determination would be based on an integrated assessment of all the demonstration selection factors, considering their relative order of importance. *Id.* The integrated assessment would consider the technical rankings performed prior to issuance of CLIN 0002 task orders (data gap resolution), as well as the business factors, including cost, and specifically stated

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<sup>4</sup>The RFP explained that process efficacy was approximately twice as important as safety or human health and environment, while safety and human health and environment were of equal importance. RFP § M.6.2.1.1. The RFP also explained the relative importance of the subfactors within each factor. RFP §§ M.6.2.1.2-6.2.1.4.

<sup>5</sup>The third set of evaluation factors, not relevant here, contained criteria that will be used to evaluate the technologies demonstrated and will form the basis for ACWA's final recommendation to Congress.

that the government might issue task orders under CLIN 0003 "to other than those contractors with the lowest demonstration cost and/or to other than those contractors with the highest technical ratings." Id. The RFP specifically stated that cost could become more significant in the event competing proposals' ratings were closely grouped and proposed technologies were deemed to offer "comparable merit contributions" to the government. RFP § M.6.3.5.2.

The agency awarded contracts and issued CLIN 0001 task orders to seven firms. The agency subsequently issued task orders under CLIN 0002 to six contractors (including Teledyne). The PET evaluated the information the contractors submitted in response to the CLIN 0002 task orders and their original proposals by assigning a numerical point score and an adjectival rating<sup>6</sup> under each evaluation factor, and a total weighted score.<sup>7</sup> Based on this evaluation, the PET recommended that the CO issue CLIN 0003 task orders in the order of priority shown below:

Offeror	Score	Cost
General Atomics	86	\$5,506,904
Burns & Roe	81	5,296,901
Parsons	78	6,019,002
Teledyne	84	7,028,697
Offeror A	83	10,957,442
Offeror B	88	8,238,887

CO's Statement, Dec. 28, 1998, at 13.

The PET concluded that the two highest-rated firms (Offeror B and General Atomics) offered essentially the same technology (hydrolysis followed by super critical water oxidation), and that as between those two firms, General Atomics offered the best value because of its significantly lower cost. PET Report, July 22, 1998, at 5-2. The PET further determined that of the four remaining contractors (Burns & Roe, Parsons, Teledyne, and Offeror A), no one firm's technology was superior to any other across all evaluation factors, and that all had a high

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<sup>6</sup>The adjectival ratings were assigned according to the following scheme: 91-100 points, excellent; 81-90, good; 71-80, average; 61-70, marginal; and 60 points or less, unacceptable. PET Report, April 28, 1998, at 2-5.

<sup>7</sup>The RFP provided that the evaluation and ranking from task order No. 0002 was to be carried forward into the CLIN 0003 evaluation. RFP § M.6.3.1.

probability of successfully demonstrating their respective technologies. In light of the narrow range of technical scores for those four firms (78-84 points), the PET concluded that despite their different technical approaches, all offered "comparable technical merit contributions" to the government. *Id.* at 5-2-5-3. Based on that conclusion, cost became a significant factor in establishing the PET's recommended priority of the firms to be awarded a task order under CLIN 0003 as shown in the table above. The CO concurred with that recommendation and issued CLIN 0003 task orders to General Atomics, Burns & Roe, and Parsons. By letter dated July 29, 1998, the agency informed the protester of the issuance of the task orders under CLIN 0003. This protest followed a debriefing by the agency.

## PROTESTER'S CONTENTIONS

Teledyne challenges the agency's decision not to issue the firm a task order under CLIN 0003 on various grounds, including that (1) the agency improperly determined that the technologies proposed by two of the awardees (Burns & Roe and Parsons) were essentially technically equal to Teledyne's, arguing that the agency improperly made cost rather than technical merit the predominant source selection factor; (2) the agency failed to perform a proper cost realism analysis of the competing proposals; (3) it was improper for the agency to allow Arthur D. Little (A.D. Little), a support contractor providing subject matter expertise to the evaluators, to participate in the procurement, because the firm had an organizational conflict of interest.<sup>8</sup>

## DISCUSSION

### Technical Equivalence of Proposals

Teledyne argues that the CO improperly issued two of the three task orders on the basis of low cost. The protester asserts that despite the evaluated advantages and disadvantages between Teledyne's, Burns & Roe's and Parsons's proposals, the agency unreasonably determined that all three technologies were comparable. The protester thus alleges that, in light of the fact that its proposal was rated as having more advantages and received a higher point score (84 points) than the proposals of Burns & Roe (81 points) and Parsons (78 points), and in light of the solicitation's emphasis on technical considerations over cost, the agency's determination that its proposal was essentially equal to those two lower-rated firms', and its emphasis on cost, were in error.

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<sup>8</sup>In its protest, Teledyne also challenged the evaluation of its proposal in the process efficacy, safety, and human health and environment areas. In its report, the agency responded to this allegation, and in its comments Teledyne did not rebut the agency's response. Accordingly, we consider this issue to be abandoned. See Appalachian Council, Inc., B-256179, May 20, 1994, 94-1 CPD ¶ 319 at 8 n.8.

A finding of technical equality need not be based on strict equality in terms of point scores. The Gerard Co., B-260495, June 22, 1995, 95-1 CPD ¶ 290 at 2; WB Inc., B-250954, Feb. 23, 1993, 93-1 CPD ¶ 173 at 3. The significance of a given point spread depends upon all the facts and circumstances surrounding a particular procurement; the point scores themselves are not controlling, reflecting as they do the disparate subjective judgments of evaluators, but are useful as guides to intelligent decision-making. Earle Palmer Brown Cos., Inc., B-243544, B-243544.2, Aug. 7, 1991, 91-2 CPD ¶ 134 at 10. Proposals have properly been viewed as essentially equal from a technical standpoint notwithstanding scoring differentials similar to or significantly greater than the one here--Parsons's proposal score was approximately 7 percent lower than Teledyne's. Ogilvy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332 at 5-6 (a difference of approximately 6 percent reasonably found approximately equal); Lockheed Corp., B-199741.2, July 31, 1981, 81-2 CPD ¶ 71 at 6-9 (differential of more than 15 percent).

Teledyne's argument that the agency deviated from the evaluation and award methodology and converted the basis for issuing CLIN 0003 task orders from one emphasizing technical merit into one emphasizing lowest cost, is not supported by the record. Cost became the determinative factor only after the agency determined that the proposals of Teledyne, Burns & Roe, and Parsons were essentially equal technically; the record here supports that determination. Contrary to the protester's contentions, there is no basis to conclude that the slightly higher score its proposal received, or the number of advantages the evaluators attributed to its proposal, represent a finding by the PET of Teledyne's technical superiority over the other firms' proposals.

The record shows that based on its review of the detailed evaluations, the PET found that the scores alone did not imply strong technical preferences between proposals and stated that the scores could not be used without considering the supporting advantages and disadvantages. PET Report, July 22, 1998, at 5-1. In this connection, the PET identified both advantages and disadvantages for each of the six technologies proposed, including those with the highest and lowest technical ratings in several evaluation factors. Id. In addition, the PET identified duplications among proposed technologies in an effort to minimize overall program costs, without eliminating a technology from future consideration. The PET also considered the demonstration cost of each proposed technology. Below we discuss some of the more significant findings of the PET regarding the proposals of Teledyne, Burns & Roe, and Parsons in support of our conclusion.

For example, under the effectiveness factor within the process efficacy area,<sup>9</sup> the PET found that the proposals had advantages associated with the ability to destroy agent and energetics based on the robustness of the technology or the data that were presented. PET Report, July 22, 1998, at 5-3. While the PET found that Teledyne's proposal was the strongest in this area, the PET found that Burns & Roe's and Parsons's proposals were also strong. The evaluators explained that the essential difference between Teledyne's and Burns & Roe's technology is in the nature of the testing: Teledyne provided a more extensive database than Burns & Roe and has tested at laboratory and bench scale with the actual agent and energetics, whereas Burns & Roe has tested at laboratory scale with simulants for the agent and energetics. The evaluators concluded, however, that since both firms proposed "robust" technologies, there is no significant difference in their expected effectiveness.

Under the products factor,<sup>10</sup> the PET noted that Teledyne had an advantage, while Burns and Roe and Parsons had disadvantages with respect to complete and validated mass balances. The PET also noted that Parsons had a disadvantage associated with the lack of characterization of the oxidation step that follows biotreatment. However, the PET found that the disadvantages associated with Parsons's and Burns & Roe's technologies under this factor potentially can be resolved by generating additional data, and thus were not significant. The PET concluded that as between Teledyne and Burns & Roe, neither firm's technology has a clear technological advantage over the other under this factor, while Teledyne had an advantage over Parsons under this factor.

Under the sampling and analysis factor,<sup>11</sup> the PET noted that Teledyne had an advantage which reflected the specificity and maturity of Teledyne's sampling and analysis methodologies, supplemented by validation studies and documentation. The PET concluded, however, that these advantages were somewhat offset by the complexities of Teledyne's systems and the need for extensive sampling and analysis. The PET also noted that Burns & Roe and Parsons had disadvantages in this factor associated with inadequate specifications and validation of sampling

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<sup>9</sup>Under this factor, Teledyne's proposal earned a raw score of 92 points and was rated "excellent"; Burns & Roe's and Parsons's proposals earned raw scores of 82 and 81 points, respectively, and were both rated "good."

<sup>10</sup>Under this factor, Teledyne's proposal earned a raw score of 86 points, and was rated "good"; Burns & Roe's and Parsons's proposals earned 83 and 68 points, respectively, and were rated "good," and "marginal."

<sup>11</sup>Under this factor, Teledyne's proposal earned a raw score of 92 points, and was rated "excellent"; Burns & Roe's and Parsons's proposals earned raw scores of 75 and 78 points, respectively, and were rated "average."



techniques. The PET found, however, that these disadvantages were offset by Burns & Roe's and Parsons's advantages associated with thermal treatment of metal parts and solid wastes since this treatment reduces the need for some sampling and analysis. In addition, the evaluators explained that a positive feature of the Burns & Roe technology--that its approach involved a straightforward matrix to analyze, presenting a relatively simple challenge to the analytical laboratory--offset the difference in score between Teledyne's and Burns & Roe's proposals under this factor.

Under the process maturity factor,<sup>12</sup> the PET noted that the technologies proposed had comparable advantages primarily associated with prior operation of prototype units or commercial applications of similar processes. However, the technologies had disadvantages in this area. Teledyne's technology had only one disadvantage associated with maturity of the accessing system, while each of the other technologies had multiple disadvantages. As for the disadvantages, the PET noted that neither Teledyne nor Parsons had built or operated an integrated munitions accessing system involving the many required manipulation steps using ammonia (Teledyne) and water jet cutting, mining, and washing (Parsons). The PET also noted that Burns & Roe has no experience in processing neat energetic material, and had provided insufficient evidence linking personal experience to the plasma arc applications data the firm supplied. The PET noted that all of the disadvantages related to the lack of data on the operation of certain portions of each firm's proposed total solution. The PET concluded, however, that although the different scores reflect these uncertainties, there was no reason to conclude that the technologies could not perform successfully in all elements of a total solution.

In the process operability area,<sup>13</sup> the PET also noted advantages for each of the technologies. Specifically, the PET noted that Burns & Roe's and Teledyne's technologies had essentially the same advantage of being indiscriminate processes, meaning that they should tolerate modest process changes. In addition, Burns & Roe's and Parsons's technologies were relatively simple, which the PET found to be an advantage. Overall, the PET found that Burns & Roe and Parsons compared favorably with each other, and were better than Teledyne under this factor, especially since Teledyne's technology had the disadvantage of being more complex. With respect to this latter conclusion, the PET noted that Teledyne's system is very complex. Specifically, the evaluators explained that Teledyne's process has the

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<sup>12</sup>Under this factor, Teledyne's proposal earned a raw score of 84 points, and was rated "good"; Burns & Roe's and Parsons's proposals earned raw scores of 72 and 75 points, respectively, and both were rated "average."

<sup>13</sup>Under this factor, Teledyne's proposal earned a raw score of 72 points, and was rated "average"; Burns & Roe's proposal earned a raw score of 82 points, "good"; while Parsons's proposal earned a raw score of 79 points, "average."

disadvantage of being inherently complex with significant challenges in material segregation, transport of non-homogeneous mixtures, mass transfer, and process control, while necessarily operating at high pressure to maintain ammonia in the liquid state. The PET concluded that Burns & Roe and Parsons had the technological advantage over Teledyne under this factor.

In the safety area, the PET noted that Parsons's technology fared better than Burns & Roe's, and Teledyne's. While, for Teledyne, the PET identified several advantages in the safety area, the PET found that these advantages were offset by disadvantages associated with the need for large quantities of hazardous materials and the generation of large quantities of flammable/explosive gas. In the human health and environment area, the PET identified a significant disadvantage for Teledyne due to the large volume of waste that will require off-site disposal; the PET also found that Parsons had disadvantages in this area. On the other hand, Burns & Roe had unique advantages due to the treatment of metal parts and minimization and vitrification of other solid waste.

In sum, based on its detailed summary of the advantages and disadvantages of the technologies proposed by Teledyne, Burns & Roe, and Parsons, the PET concluded that no proposal compared more favorably with any other across all evaluation factors. In addition, the PET found that all three technologies have a high probability of successful demonstration. Given the narrow range in technical scores (78-84 points), the PET concluded that despite the different technical approaches, the technologies offered comparable technical merit contributions to the government.

Teledyne argues that in concluding that the proposals were essentially technically equal, the PET "blurred" the advantages and disadvantages between proposed technologies because the PET noted more advantages associated with its technology than with either Burns & Roe's or Parsons's.<sup>14</sup>

The protester's arguments are without merit. Selection officials must decide whether the point scores show technical superiority and what that difference may mean in terms of performance. Computer Tech. Servs., Inc., B-271435, June 20,

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<sup>14</sup>The protester points out, for example, that its proposal received more than twice as many advantages and fewer disadvantages than Parsons's. The record shows, however, that the evaluators did not consider any of the enumerated advantages as more meaningful or so significant as to distinguish Teledyne's proposal over any other firms' under any area. In this connection, the CO explains that Teledyne's strict mathematical approach does not adequately reflect differences between the proposals since advantages and disadvantages are not necessarily of equal significance and a simple numerical count does not accurately reflect the benefits or drawbacks of a specific technology. CO's Supplemental Statement ¶ 9.

1996, 96-1 CPD ¶ 283 at 6. Here, the record shows that the PET was unable to attribute any meaningful significance in terms of probability of successful demonstration to the slight point differences between Teledyne's, Burns & Roe's, and Parsons's proposals, and the CO reasonably concurred with the PET's conclusion that the proposals were essentially equal. Contrary to the protester's position, the record shows that the PET recognized the diversity of advantages and disadvantages for each technology and, in its detailed analysis, highlighted those significant differences by each factor among the evaluated technologies. Based on its analysis of the advantages and disadvantages associated with each of the proposed technologies, the PET concluded that no single proposed technology was superior to the rest across all the evaluation factors considered. In other words, while each of the technologies evaluated had advantages under virtually all factors, the PET found that no single solution had any significant qualitative advantage that made that technology stand out above all others. The PET also found that the technologies recommended for selection, including Teledyne's, had a high probability of a successful demonstration.

The CO reviewed and concurred with the PET's recommendation. Specifically, the CO noted that the two highest-rated firms (Offeror B and General Atomics) offered similar technologies and the PET considered their proposals essentially technically equal. Memorandum of Decision, July 29, 1998, at second unnumbered page. As to those two firms, the CO concurred with the PET's recommendation that General Atomics' proposal represented the best value based on its lower demonstration cost. Of the four remaining firms (Burns & Roe,<sup>15</sup> Parsons,<sup>16</sup> Teledyne, and Offeror A), the

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<sup>15</sup>Teledyne contends that the PET failed to recognize that Burns & Roe's technology is essentially the same as baseline incineration. In this regard, the agency explains that the PET found that Burns & Roe's Plasma Waste Converter is a high temperature dissociation and reformation process in an inert atmosphere, while incineration was considered by the PET to be a high temperature combustion/burning process in an oxygen atmosphere. According to the agency, another characteristic that distinguishes Burns & Roe's technology from incineration is that the plasma-converted gas in a holding tank is tested for traces of chemical agents prior to its release. The agency states that this "hold test and release" process is not found in baseline incineration. Based on its evaluation of the proposed technologies and given these distinctions, the PET concluded that the technology proposed by Burns & Roe is an alternative to baseline incineration. We have no basis to question the PET's conclusion in this regard.

<sup>16</sup>Teledyne also argues that Parsons's technology duplicates that proposed by General Atomics. The agency points out, however, that while both technologies make use of modified reverse assembly and hydrolysis, there are important differences with respect to munitions access, and hydrolysate and metal parts  
(continued...)

CO noted that the PET found that all four firms were determined to be acceptable on each of the four non-cost business areas, and that despite their different approaches, all four technologies offered comparable merit contributions to the government, with no one firm's technology being superior to the others under any factor. Id. at fourth unnumbered page.

Teledyne argues that in its evaluation, the PET omitted specific disadvantages associated with Parsons's and Burns & Roe's technologies which, according to Teledyne, were particularly serious.<sup>17</sup> The fact that the PET did not discuss every disadvantage associated with each proposal, however, does not mean that the PET "blurred" technical distinctions between proposals, as the protester argues. What the record shows is that the PET's analysis focused on the more significant advantages and disadvantages of each technology, highlighting the differences among the technologies factor-by-factor, and noted no meaningful distinction overall between the proposals. Based on our review of the record, we have no basis to question the agency's conclusion that Teledyne's, Parsons's and Burns & Roe's proposals were essentially technically equal, thus properly making cost the

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<sup>16</sup>(...continued)

treatment. The agency states that these differences are significant because General Atomics uses cryofracture for munitions access, while Parsons uses pressurized fluid cutting and washout. In addition, General Atomics uses supercritical water oxidation for hydrolysate treatment, while Parsons uses a bio-treatment process. CO's Supplemental Statement ¶¶ 24-25. In view of the agency's explanation of these distinctions, we have no basis to conclude that Parsons's technology essentially duplicates that of General Atomics.

<sup>17</sup>For example, for Parsons, Teledyne argues that the PET failed to discuss a disadvantage under the process efficacy and the products factors; for Burns & Roe, the protester points out that the PET did not discuss disadvantages in the process monitoring and design or normal facility occupational impacts factors.

determining factor in the issuance of the CLIN 0003 task orders.<sup>18</sup> PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 12-14.

Teledyne points to our decision in Chemical Demilitarization Assocs., B-277700, Nov. 13, 1997, 98-1 CPD ¶ 171, where we determined that the agency's source selection decision finding proposals equivalent under every individual evaluation criterion under the two most important evaluation areas (technical and management) was unreasonable, arguing that the facts here are similar to that case. We disagree.

In Chemical Demilitarization, the evaluation and source selection officials provided testimony at a hearing on the determination of equivalence under the two most important evaluation factors (technical and management). The source selection authority (SSA) testified that the two competing proposals had no meaningful differences under any of the 27 technical and management evaluation criteria. Id. at 7. We found, however, that the evaluation and hearing records did not support the SSA's determination. Id. We noted that the evaluation record showed that the most marked difference between the proposals was under the technical factor, the most important area, where the protester's proposal received a higher raw score under three quarters of the criteria, a large number of which reflected a significant difference in score, and the awardee's proposal did not receive the higher score on any of the criteria.<sup>19</sup> Unlike the present case, however, our review of the detailed evaluation narratives describing the advantages and disadvantages showed that the

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<sup>18</sup>Teledyne also argues that at some point after June 26, when the CO learned that the agency had insufficient funds to issue CLIN 0003 task orders to all contractors, the CO changed the basis for award from one emphasizing technical merit to one based on low cost. According to Teledyne, the agency should have informed all contractors of that change in the selection criteria and provided them an opportunity to further revise their proposals. Comments, Jan. 12, 1999, at 38-39. Contrary to the protester's suggestion, the CO did not change the evaluation or selection criteria. As permitted by the solicitation, cost became a determining factor in the issuance of CLIN 0003 task orders only after the agency reasonably determined that the proposals were technically essentially equal. Since, as already explained, the record reasonably supports that determination, we see no basis to conclude that the CO should have requested further cost revisions simply because Teledyne's proposal was more expensive than the other firms' lower-cost, technically equal proposals.

<sup>19</sup>By contrast here, for example, the record shows that Teledyne's proposal received a lower raw score than both Burns & Roe's and Parsons's proposals in the process operability and the safety areas. However, as already discussed, the PET found that the scores did not reflect any meaningful differences between the proposals.

higher scores appeared to reflect actual qualitative differences between the two proposals. In attempting to explain their conclusion, the evaluation and source selection personnel recognized that differences existed between the proposals, but could not explain in any detail why the proposals were equivalent with no meaningful or significant differences under any given criterion.

Unlike the facts in Chemical Demilitarization, our review of the detailed evaluation narratives describing the advantages and disadvantages here does not reflect any significant documented qualitative differences between the competing proposals. Rather, while the PET recognized the diversity among the different approaches evaluated, the record shows that the PET explained in detail the advantages and disadvantages of each, and reasonably concluded that no technology had any meaningful or significant advantage over any other in any area.

### Cost Realism Analysis

The protester contends that the agency's cost realism analysis was flawed. In this connection, Teledyne primarily argues that in performing its cost realism analysis the agency failed to properly analyze the contractors' proposed program management costs, and failed to account for the cost of supplying hydrolysate to General Atomics and Parsons.

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated costs of contract performance and proposed fees are not considered controlling since an offeror's estimated costs may not provide valid indications of final actual costs that the government is required, within certain limits, to pay. See Federal Acquisition Regulation (FAR) § 15.605(c) (June 1997). An agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting a cost realism analysis. Rather, the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess the realism of cost and technical approaches and must bear the difficulties or additional expenses resulting from a defective cost analysis. Because the contracting agency is in the best position to make this cost realism determination, our review is limited to determining whether the agency's cost realism analysis is reasonably based and not arbitrary. The Warner/Osborn/G&T Joint Venture, B-256641.2, Aug. 23, 1994, 94-2 CPD ¶ 76 at 5.

Regarding the evaluation of demonstration cost, the RFP stated as follows:

The Government will evaluate the contractor's proposed cost and fee for performing the Demonstration Test. This will include an evaluation for cost realism, affordability, and reasonableness, with appropriate consideration given to any information the [CO] deems appropriate. This may include information from the Defense Contract

Audit Agency (DCAA), Government technical personnel, and other sources. After this analysis, the contractor's cost may be adjusted using cost realism principles, and by any other adjustments deemed necessary by the [CO] to arrive at a most probable cost.

RFP § M.6.3.7.1, at M-9.

The record shows that a cost evaluation committee (CEC) and the CO performed a detailed evaluation of each offeror's proposed cost and fee. In reviewing costs, the CEC evaluated each firm's labor categories and proposed labor hours, the types and quantities of materials and equipment needed, as well as each firm's travel and support costs to ensure that these costs were realistic and reasonable based on the proposed effort. The agency also verified direct and indirect labor rates with the DCAA, Defense Contract Management Command, or average industry rates. CO's Statement ¶ 55. The CEC then identified specific cost issues and concerns which were communicated to the offerors. The CO states that all firms addressed the issues raised to his satisfaction. As a result of those communications, the CO concluded that the cost and fee for each contractor's demonstration work effort were reasonable, and that no adjustments to any of the contractors' proposed costs were needed.

#### Program Management Hours

As part of its analysis, the CEC developed for each offeror a matrix that reflected proposed costs and hours for the following major items: program management hours, plans and reports, meetings, and demonstration testing. Under program management, Teledyne proposed [DELETED] direct labor hours, while Parsons proposed [DELETED] direct labor hours. After evaluating the cost proposals, the CEC identified several concerns for each offeror, classified either as "critical issues/concerns" or "other issues/concerns." Under the "other issues" category, the CEC noted, among other things, that Teledyne's "[p]roject management hours appear high." CEC Report, July 8, 1998, at A-4. Based on communications with the protester, the CEC concluded that the complexity of Teledyne's system and the need to test at two different sites explained its higher labor hours. For Parsons, the CEC did not identify any critical issues or concerns, and did not identify any issues or concerns regarding its proposed program management hours.

Teledyne argues that while the CEC recognized that testing at two sites would reasonably increase its hours, the CEC improperly failed to reach the same conclusion regarding Parsons's labor hours, even though Parsons proposed testing at three sites. Teledyne thus argues that since testing at three sites requires a greater program management effort than testing at two sites, the CEC should have

questioned Parsons's relatively low proposed direct labor hours for program management.<sup>20</sup>

The CEC considered Parsons's direct labor hours reasonable and appropriate for the technical and management approach proposed for the demonstration testing. In this regard, the agency points out that task order No. 0002 instructed contractors on how to prepare their cost proposals for the CLIN 0003 effort. That task order provided a work breakdown structure (WBS) which included the four main elements of the demonstration testing (program management, plans and reports, meetings, and demonstration testing).

The agency explains that Parsons's cost proposal allocated program management hours among [DELETED] WBS elements, including [DELETED], so that it actually proposed far more program management hours than the [DELETED] under the program management element. Including all such hours, the aggregate program management hours for Parsons totaled [DELETED]. The record shows that the CEC recognized that Parsons's demonstration program consisted of testing at three sites. CEC Report, July 8, 1998, at B-10. Although the protester maintains that the CEC should have questioned Parson's relatively lower program management hours, the CEC found that Parsons's proposed program management hours in all WBS elements reflect a realistic level of effort to manage the CLIN 0003 demonstration effort at all three sites, and was consistent with its approach. The fact that the CEC concluded that Teledyne's relatively more complex demonstration system explained its higher labor hours does not compel a conclusion that the CEC's cost realism analysis of Parsons's proposed program management hours, which the CEC found to be consistent with its approach, was unreasonable.

#### Hydrolysate

Teledyne also argues that the agency improperly failed to consider the cost of supplying hydrolysate to General Atomics and Parsons for demonstration testing, which resulted in a flawed cost realism analysis. Teledyne contends that it was prejudiced by the agency's action because its proposed technology does not require the use of hydrolysate.

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<sup>20</sup>The protester's argument that the agency did not conduct a proper cost realism analysis of Parsons's proposal is without merit. The record shows that the CEC considered Parsons's loaded rates (e.g., benefits, overhead, and facilities cost of money), to be reasonable and appropriate. CEC Report, July 8, 1998, at B-9. In addition, the CEC found that Parsons's subcontractor's wage structure was comparable to typical industry wages.



By way of background, the RFP stated that not every step of a proposed process for a "total solution" would be tested.<sup>21</sup> The RFP further stated that the demonstration test program was designed to individually test the proposed solution's critical process steps (unit operations), and explained that the government did not intend to test all of the process steps for every proposed solution, but only those critical steps where there was uncertainty about the approach or to validate the contractor's claim. RFP § C.4.3.2.

The CO explains that since the critical process steps to be demonstrated vary according to each process, the agency had planned to provide each government test site with the necessary raw materials to conduct each company's critical process steps, or demonstration. CO's Statement ¶ 62. For instance, where the agency is testing the agent destruction process, it planned to provide that site with munitions-grade chemical warfare agents. Similarly, where the agency was not testing the agent destruction process, it would provide only the by-products of the agent destruction process in order to test the post-destruction critical process steps. Thus, for contractors for whom the testing process started at the beginning, the government would furnish chemical agents and munitions metal parts for use at the first step of process testing. On the other hand, it would provide only the raw materials or by-products of the initial process to contractors for whom the initial process would not be tested. The CO states that in all cases, the agency would provide the feedstock (i.e., the raw materials) for all contractors' critical steps, even though the feedstock varies depending on the critical step being tested. As such, for General Atomics and Parsons, the CO explains that since the agency would not test those firms' proposed hydrolysis step, the agency planned on providing the hydrolysis by-product, known as hydrolysate, to test those firms' post-hydrolysis critical steps.

The CO states that he did not consider the costs associated with the production of the hydrolysate because, in accordance with the terms of the RFP, he did not include any in-house costs associated with the feedstock generated and provided for any contractor's demonstration. In this connection, the RFP stated that the most probable cost analysis would include an evaluation of the contractor's proposed cost and fee for performing the demonstration test, and did not state that government-furnished materials would enter into the analysis. RFP § M.6.3.7.1.

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<sup>21</sup>The RFP defined the concept of a "total solution" as follows:

The technologies offered for consideration shall provide a total solution. A total solution is defined as one capable of demilitarizing and disposing of all components and process related materials of a fully assembled chemical weapon.

RFP § C.3.1.

Although the RFP permitted the CO to make adjustments to the contractor's proposed cost and fee based on the information provided by DCAA, for example, there was no requirement for the inclusion of costs which the government would incur in conducting each demonstration test.

In addition, the CO states that his cost realism analysis did not include any other costs to the government such as for sampling and analysis, or for site personnel. Nor did the analysis include, for example, the government's cost for preparing the propellant feedstock Teledyne would require for its demonstration, or the costs associated with packaging and shipping the required agent for Teledyne's demonstration test.

Teledyne argues that the agency should have included the cost of supplying hydrolysate in its cost realism analysis of the General Atomics's and Parsons's proposals because, regardless of whether the costs are considered "contractor" or "government" costs, the government will ultimately bear all of the costs associated with the demonstration testing. Teledyne asserts, "upon information and belief," that the government's costs for building the reactor, and then providing personnel and material to operate it and process the hydrolysates, "may exceed \$4 million." Protest, Aug. 10, 1998, at 21. According to Teledyne, had these costs been considered, the evaluated costs of General Atomics's and Parsons's proposals may have been higher than Teledyne's. Id.

Even assuming that the cost to the government of building and operating the hydrolysis reactor should have been considered in the cost realism analysis, there is no basis to conclude that Teledyne was prejudiced by the CO's decision not to consider those costs. While Teledyne asserts that the costs associated with providing the hydrolysate "may exceed" \$4 million, it has provided no basis or explanation as to how it arrived at that figure. Given its speculative nature, this assertion is insufficient to show that Teledyne was prejudiced by the agency's action. Teledyne's argument also overlooks the fact that after the demonstration tests are completed, the agency intends for another Army unit to use the reactor to conduct research unrelated to the demonstration tests contemplated here. Thus, since the reactor will not be used exclusively for this procurement, it would not have been reasonable for the agency's cost realism analysis to have included the entire cost of building and operating the reactor in connection with the demonstration testing. Teledyne's position also fails to take into account that the cost to the government associated with Teledyne's own approach was not included in the agency's cost realism analysis. Under these circumstances, there is no basis to conclude that Teledyne was prejudiced by the agency's decision not to include in the cost realism analysis the costs associated with providing the hydrolysates to

General Atomics and Parsons.<sup>22</sup> McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3 (our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions); see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

### Organizational Conflict of Interest

In May 1998, the agency tasked A.D. Little to design and build a hydrolysate production system. As explained earlier, the Army planned to supply the hydrolysate to those offerors that required it for their demonstration. The agency planned to use the hydrolysis reactor designed and built by A.D. Little to produce the hydrolysate that the agency intended to supply for the demonstration testing.

Teledyne argues that the role of A.D. Little presented an organizational conflict of interest (OCI). According to Teledyne, A.D. Little's OCI arose because the firm had a significant role in evaluating each offeror's technology and had considerable influence over which technologies the Army ultimately selected for demonstration under CLIN 0003. Teledyne maintains that by evaluating the proposals in a manner that could have favored the selection of offerors whose technologies relied heavily on hydrolysate, A.D. Little could have directly influenced the Army's requirement for the production of hydrolysate.

According to the agency, A.D. Little assisted in several aspects of demonstration planning by identifying critical unit operations for each technology proposed, determining available analytical chemistry methods needed for the demonstrations, and recommending potential test sites for each technology. CO's Statement ¶ 81. The CO explains that the agency obtained support from A.D. Little personnel from February through April 1998, to support demonstration test planning rather than proposal evaluation. CO's Supplemental Statement, Feb. 2, 1999, ¶ 3. A.D. Little's recommendations were presented orally and discussed with agency personnel (the PET, Demonstration Team, and Environmental Team Chairpersons). The CO states that A.D. Little did not score proposals, identify advantages or disadvantages in the offerors' technologies, or have the authority to make any final decisions regarding the location where any technology would be demonstrated. *Id.*; CO's Statement ¶ 81. Instead, government evaluators made those decisions based on the unique

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<sup>22</sup>Teledyne also complains that the agency's cost realism analysis failed to take into account the effect on offerors' costs of the government's assignment of differing test sites, arguing that the test sites it was assigned were disadvantageous to the firm. In essence, Teledyne contends that the increased costs it will incur due to the unfavorable test site assignments it received should be deducted from its evaluated cost. There is no basis to make such a cost adjustment, however, since any such higher costs properly reflect the actual costs of demonstrating its technology at those sites.

complex requirements of each technology as measured against the resources available at each test site (e.g., chamber size, available utilities, and agent and explosive limits).

In addition, the CO explains that the agency's requirement for a hydrolysate production reactor was not based upon the number of hydrolysis technologies selected for demonstration testing. CO's Supplemental Statement ¶ 2. In other words, since the agency planned on providing the feedstock required for the demonstration, the selection of a single hydrolysis-based technology would have triggered the need to build a hydrolysis production reactor. The CO further states that since A.D. Little's contract is only for the design and construction of the reactor, which will then be operated by government personnel, the firm will not gain any financial benefit based on the number of hydrolysis-based technologies demonstrated, or the amount of or effort required to produce hydrolysate.

The CO further explains that the timing of A.D. Little's selection to design and build the hydrolysis reactor does not support the protester's position. The CO explains that A.D. Little was tasked to design and build the reactor in May 1998, when the agency believed that it would have sufficient funds to issue CLIN 0003 task orders to all six contractors to demonstrate their technologies. According to the CO, it was not until approximately June 29, that the agency realized that it would not have sufficient funds to issue CLIN 0003 task orders to all six contractors. *Id.* ¶ 83. The agency was thus contractually obligated to pay A.D. Little for the reactor, regardless of how many firms that required hydrolysate were issued CLIN 0003 orders.

A conflict of interest exists where, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. FAR § 9.501; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 *et al.*, July 27, 1995, 95-2 CPD ¶ 129 at 12. Contracting officials are to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., *supra*. Since the regulatory guidance cannot anticipate all situations which pose potential conflicts of interest, contracting officers must exercise common sense, good judgment, and sound discretion in assessing the existence of significant potential conflicts of interest, and in developing appropriate means to resolve them. FAR § 9.505; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., *supra*. Where a protester asserts that an evaluator (in this case, A.D. Little acting as a subject matter expert to the evaluators) was improperly influenced or biased because of past experiences or relationships, we will examine both the nature of the relationship, and whether the evaluator exerted improper influence in the

procurement on behalf of the awardee, or against the protester. ATLIS Fed. Servs., Inc., B-275065.2, B-275065.3, Feb. 12, 1997, 97-1 CPD ¶ 84 at 8.

The record shows that, while A.D. Little had already been tasked to design and build the hydrolysis reactor in May 1998, the agency did not realize that it would not have sufficient funds to issue CLIN 0003 task orders to all six contractors until late June. Once A.D. Little had been tasked to design and build the hydrolysis reactor, it had no further financial interest in whether the agency selected hydrolysis-based technologies. Moreover, since A.D. Little's contract was only for the design and construction of the hydrolysis reactor, which would then be operated by government personnel, the firm could gain no financial benefit based on the number of hydrolysis-based technologies ultimately selected for CLIN 0003 task orders. In light of these facts and this chronology, we fail to see how A.D. Little's role in designing and building the reactor could be viewed as impairing its objectivity in its role as a subject matter expert, and we have no basis upon which to conclude that A.D. Little's role in the procurement could be found to create an appearance of a conflict of interest. Further, there is no evidence in the record that the firm actually exerted improper influence in the procurement on behalf of General Atomics or Parsons, or against Teledyne.

The protest is denied.

Comptroller General  
of the United States