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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** DCT, Inc.

**File:** B-261894.2

**Date:** November 22, 1995

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John Biscoe Bingham, Esq., for the protester.  
Jeffrey A. Lovitky, Esq., for NVT Technologies, Inc., an interested party.  
Michael Colvin, Department of Health and Human Services, for the agency.  
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision

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## DIGEST

1. Awardee's proposal satisfied a solicitation requirement that the offerors provide resumes for key personnel where the awardee provided resumes for the project manager, quality control officer, and personnel responsible for the major functional areas; solicitation did not require that offerors submit resumes for other personnel.
  2. There is no basis for concluding that awardee's proposal misled agency concerning prospective employment of a particular individual as project manager (who withdrew from working as project manager after the award was made) where, although individual involved submitted conflicting affidavits in connection with the protest, other evidence corroborates version stating that awardee discussed employment with the individual and that he gave the firm permission to submit his resume for project manager position.
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## DECISION

DCT, Inc. protests the award of a contract to NVT Technologies, Inc. under request for proposals (RFP) No. 222-95-2002(P), issued by the National Center for Toxicological Research, Department of Health and Human Services (HHS), for operations and maintenance services at its facilities in Jeffersonville, Arkansas. DCT argues that the agency improperly evaluated NVT's proposal.

We deny the protest.

The solicitation was issued as a competitive section 8(a) set-aside<sup>1</sup> on December 22, 1994. The RFP contemplated the award of a fixed-price contract consisting of a number of line items, for a phase-in period of 1 month and a base year, with 4 option years. Offerors were to submit separate technical, management, and business proposals. The RFP listed three technical factors to be considered, one of which was "experience/qualifications," which included as subfactors "corporate ability" and "individual qualifications." The technical factors were worth a total of 100 points and were more important than price, but price would increase in importance as the proposals become more technically equal.

Six proposals were submitted by the February 23 closing time, and the technical evaluation panel (TEP) evaluated the technical proposals and established a competitive range which included three offerors, including those of NVT and DCT. Both the TEP and the cost advisory activity evaluated the price proposals. Discussions were conducted in writing, and best and final offers (BAFOs) were submitted and evaluated.

DCT's proposal received a technical score of 66 points, and its evaluated price was \$14,612,552.90. NVT's proposal received a technical score of 65.2 points, and its evaluated price was \$13,571,381.96. (The third offeror submitted two proposals which were higher-rated technically, but both were ultimately deemed not to warrant the associated price premium, and thus are not relevant here.) After the proposals of NVT and DCT were determined to be essentially technically equal, award was made to NVT based on its lower cost.

DCT challenges the evaluation of NVT's proposal on the ground that, although NVT failed to include in its proposal the resumes of craftspersons, as allegedly required by the RFP, the TEP failed to downgrade NVT's proposal for this omission.

The evaluation of technical proposals is primarily within the discretion of the contracting agency; we will review an evaluation only to ensure that it is reasonable and consistent with the evaluation scheme. See Electrolux SARL, B-248742, Sept. 21, 1992, 92-2 CPD ¶192; CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454.

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<sup>1</sup>Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to provide for the performance through subcontracts designed to assist "developing" small business concerns which are owned and controlled by disadvantaged individuals. See 13 C.F.R. Part 124 (1995); New Life Group, Inc., B-247080.2, May 22, 1992, 92-1 CPD ¶ 463.

The evaluation of NVT's individual qualifications was both reasonable and consistent with the terms of the RFP. Contrary to DCT's understanding, the RFP simply did not require that offerors submit resumes of individual crafts personnel. Under the RFP, offerors were to include in their management proposals resumes of only the key personnel, defined in the RFP as the "project manager, quality control officer, and personnel responsible for the major functional areas." NVT's proposal included resumes for the six key managerial personnel who would lead the phase-in period. NVT's proposal also included resumes for eight additional key personnel, such as the project manager, quality control officer, mechanical shop lead and pipe shop lead. Since NVT furnished the resumes specifically called for, and DCT's objection is based on the premise that NVT's proposal should have been downgraded for failure to provide information which was not required by the RFP, we have no basis to find the agency's evaluation unreasonable.<sup>2</sup> (Further, we note that both offerors offered to do the bulk of their staffing by recruiting the incumbent contractor's personnel; the agency reasonably gave them substantially comparable scores for these similar approaches.)

DCT also complains that NVT materially misrepresented an individual's availability for the position of project manager for NVT. DCT argues that Mr. Mayberry, who was employed by the incumbent contractor as a project manager, did not give permission for NVT to propose him for the position of project manager, and that he withdrew from that position after the contract was awarded to NVT.

An offeror's misrepresentation concerning personnel that materially influences an agency's consideration of its proposal generally provides a basis for proposal rejection or termination of a contract award based upon that proposal. Intermetrics, Inc., B-259254.2, Apr. 3, 1995, 95-1 CPD ¶ 215.

There has been no showing that NVT misrepresented the availability of Mr. Mayberry for the project manager position. First, there is no dispute that NVT contacted Mr. Mayberry before it proposed his name, and was given permission to submit his resume with its proposal; the parties only disagree as to whether Mr. Mayberry specifically authorized NVT to propose him for the position of project manager. DCT's position is based on a September 1, 1995, affidavit in which Mr. Mayberry states that he specifically told NVT in January or February 1995 that "I would not be project manager for NVT . . . if they received the award . . . ." The validity of this statement, and Mr. Mayberry's credibility on this issue, is cast into

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<sup>2</sup>To the extent that the protester argues that the RFP should have required submission of resumes by individual crafts personnel, this allegation is untimely. Arguments based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1995).

doubt, however, by an earlier, July 21, 1995, affidavit in which Mr. Mayberry states that NVT contacted him while he was the project manager for the incumbent, and that he advised NVT that he "would have no objection to NVT's using my name in its proposal." This affidavit states further that, prior to stepping down from the project manager position after contract award, "I did not at any time . . . advise NVT that I would be unable to serve as Project Manager.

As there is no explanation as to these conflicting accounts, and they appear to us irreconcilable, we must turn to the other evidence in the record to resolve the issue. The record includes an affidavit by the NVT employee, Mr. Oney, who spoke with Mr. Mayberry. Mr. Oney states that when he contacted Mr. Mayberry on February 14, 1995, to obtain his consent to be listed as NVT's project manager, Mr. Mayberry "fully consented to having his name listed as NVT's proposed Project Manager," and that "he fully consented to performing the duties of Project Manager in the event of award of a contract to NVT." As Mr. Oney apparently was the only other party to the conversation with Mr. Mayberry, his version of the conversation is corroborated by one of Mr. Mayberry's affidavits, and there is no other information bringing into question Mr. Oney's credibility, we think his statement provides a basis to find that NVT reasonably believed that Mr. Mayberry had agreed to be proposed as NVT's project manager for the contract in issue. Thus, there is no basis to conclude that NVT's proposal representations concerning its proposed project manager were false or misleading.

The protest is denied.

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