



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: PRC, Inc.

File: B-274698.2; B-274698.3

Date: January 23, 1997

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DIGEST

1. Award to lower-rated, lower-cost offeror is unobjectionable where, although the solicitation emphasized technical factors over cost, the agency reasonably determined that there was no substantive difference between the proposals that warranted the additional cost of the higher-rated proposal.
2. Protest alleging unfair competitive advantage accruing to an offeror as a result of employing the retired commanding officer of an organization which included the procuring activity is denied where the record does not show that this individual accessed competitively useful inside information.

DECISION

PRC, Inc. protests an award to TESCO, a joint venture,¹ under request for proposals (RFP) No. DATM01-95-R-0019, issued by the U.S. Army Materiel Command (AMC), Operational Test and Evaluation Command (OPTEC) Contracting Activity, for test support services required by the Test and Evaluation Command (TEXCOM), Fort Hood, Texas. PRC protests the reasonableness of the evaluation and source selection decision, and that TESCO obtained an unfair competitive advantage through its employment of an Army procurement official.

¹TESCO's joint venture partners are DynCorp, COMARCO, and EWA Services, Inc. DynCorp is the managing partner.

We deny the protest.

BACKGROUND

The RFP, issued on November 9, 1995, contemplated the award of a cost-plus-award-fee contract for 1 year with 3 option years. The RFP stated a best value basis for award with the following evaluation factors listed in descending order of importance: technical, management, past performance, and cost. The technical and management factors, which were to be rated both adjectivally and with numerical scores, contained numerous stated subfactors and sub-subfactors with their relative importance. Past performance was to be rated adjectivally and with a performance risk assessment. Cost was not to be point scored, but was to be evaluated by a cost realism analysis and a most probable cost (MPC) estimation.

The agency received proposals from three offerors, including PRC and TESCO--the incumbent contractor--by the February 4, 1996, due date. The proposals were evaluated, discussions conducted with all three offerors, and best and final offers (BAFO) requested. All three offerors submitted BAFOs which the agency evaluated as follows:

	PRC	TESCO	Offeror A
Technical	93--Excellent	92--Excellent	89--Good
Management	87--Good	83--Good	85--Good
Combined	90.6--Excellent	88.4--Good	87.4--Good
Past Performance	Superior Low Risk	Good Low Risk	Good Low Risk
Proposed Cost	\$67,881,347	\$66,455,607	\$66,310,264
Total MPC	\$69,706,454	\$67,264,257	\$67,289,092

The following numerical and adjectival rating scale was stated in the source selection plan (SSP), which was not disclosed to offerors prior to these protests: excellent 90-100; good 80-89; marginal 70-79; and unacceptable 1-69.²

There were separate evaluation committees for each factor. The evaluators on both the technical committee and management committee individually assigned adjectival

²The SSP also stated that past performance would be rated as either superior, good, adequate, inadequate, or not applicable, and performance risk would be assessed as either high, moderate, low, or unknown.

ratings to each proposal for every evaluation criterion beginning at the sub-subfactor level and working up through the subfactors to the overall technical or management factor rating. They followed the same process for assigning numeric scores, except they started assigning point scores at the subfactor level. Additionally, each evaluator provided narrative comments describing any advantages, disadvantages, or deficiencies which that evaluator determined to exist in a proposal.³

The evaluators within each committee then met as a group and, using this same general format, assigned consensus ratings, scores, and narrative comments to each proposal. The consensus narrative comments for each committee specifically stated the benefit or impact to the government associated with each evaluated advantage or disadvantage and, where a specific advantage was considered to be an innovation, the narrative so stated.

These consensus ratings, scores, and narratives, along with the results of the past performance and cost evaluations, were submitted to the source selection evaluation board (SSEB), which included the chairmen of each evaluation committee. The SSEB Chairman prepared the final evaluation report. The report was submitted to the source selection advisory council (SSAC) and then to the source selection authority (SSA).

The final evaluation report essentially summarized with some revisions the consensus evaluations of the committees. The report described the evaluation findings for each subfactor under the technical and management factors for each proposal and separately described the advantages/benefits which the committee consensus had identified, particularly those identified as innovations. The report identified two innovations each for PRC's and TESCO's proposals. The report then compared the evaluation findings for all three proposals and recommended TESCO's proposal for award. Although the report acknowledged that PRC received the highest evaluation ratings, it stated that none of PRC's "significant innovations, methodologies or advantages" warranted the additional cost of that proposal. The report further compared the proposals of TESCO and the third offeror and determined that TESCO not only had a higher rating for approximately the same price, but also offered innovations of greater value than this third proposal.

The SSA reviewed the final evaluation report and accepted its recommendation. The SSA's source selection decision document stated the following rationale for not selecting PRC:

³No deficiencies were found in any of the BAFOs here.

"PRC had the highest rated proposal in all areas and highest overall scores. However, there was nothing so exceptional in their proposal that warranted paying \$2.4 [million] in additional costs. Therefore, PRC, despite its technical merit, does not represent the best value to the government."

The SSA's decision document then compared the proposals of TESCO and the third offeror, particularly their evaluation ratings and identified innovations, and stated that TESCO's proposal represented the best value to the government. On September 27, the agency awarded the contract to TESCO. This protest followed.

PRC's protest allegations are numerous and fall into two general categories. The first category involves allegations that the evaluations and source selection decision were unreasonable and improper. The second category concerns the allegation that TESCO gained an unfair competitive advantage as a result of employing the retired commanding officer of OPTEC.

PROPOSAL EVALUATION ISSUES

PRC first contends that the evaluation scores on which the source selection was based were not supported by adequate documentation.

In reviewing an agency's evaluation of proposals and source selection decision, our review is confined to a determination of whether the agency acted reasonably and consistent with the stated evaluation factors. Main Bldg. Maintenance, Inc., B-260945.4, Sept. 29, 1995, 95-2 CPD ¶ 214. An agency's evaluation of proposals and source selection decision should be documented in sufficient detail to allow for the review of the merits of a protest. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3; B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56. An agency which fails to adequately document its evaluation of proposals or source selection decision bears the risk that its determinations will be considered unsupported and, absent such support, our Office may be unable to determine whether the agency had a reasonable basis for its determinations. Engineering and Computation, Inc., B-261658, Oct. 16, 1995, 95-2 CPD ¶ 176; U.S. Defense Sys., Inc., B-245563, Jan. 17, 1992, 92-1 CPD ¶ 89; American President Lines, Ltd., B-236834.3, July 20, 1990, 90-2 CPD ¶ 53. That is not to say that our Office, in determining the reasonableness of an agency's evaluation and award decision, limits its review to the contemporaneous evaluation and source selection documentation. Rather, we will consider, in addition to the contemporaneous documentation, all information provided to our Office for consideration during the protest, including the parties' arguments and explanations and testimony elicited at a hearing. Southwest Marine, Inc.; American Sys. Eng'g Corp., *supra*. In considering the entire record, we accord greater weight to contemporaneous evaluation and source selection material than to

the parties' later explanations, arguments, and testimony. Id.; DynCorp, 71 Comp. Gen. 129 (1991), 91-2 CPD ¶ 575.

Here, the evaluators' worksheets provided numerical scores for the technical and management factors and subfactors, as well as adjectival ratings for the factors, subfactors, and sub-subfactors. Although some narrative comments were provided for the sub-subfactor level to explain the bases for the ratings assigned, many of the sub-subfactors which received ratings in the good range had no supporting narrative comments. The chairmen of the management and technical committees testified that this meant that the proposal was at least minimally acceptable under the respective criterion with no notable advantages or disadvantages. Hearing Transcript (Tr.) at 21-22, 63, 65, 245-246. This explanation is consistent with the definitions for ratings stated in the SSP and the evaluator workbooks under which a "good" rating indicated that all minimum requirements were met, a "marginal" rating indicated that deficiencies were found, and an "excellent" rating indicated that all requirements were met and that advantages clearly outweighed disadvantages.⁴ In other words, without any narrative comments noting deficiencies or advantages, a rating of "good" reasonably evidences that the evaluators determined the proposal to be at least minimally acceptable.⁵ Here, although protester's counsel had access to all of the proposals and evaluation documentation under a protective order issued by our Office, PRC has not identified a single example where a proposal rated "good" without corresponding comments was not at least minimally acceptable, and thus it has not shown that the ratings assigned were not warranted.

There are also evaluation criteria stated in the RFP under the technical sub-subfactors, for which the technical committee did not provide adjectival ratings. PRC alleges that this demonstrates that these criteria were not evaluated as contemplated by the RFP. The technical chairman, referencing the SSP, identified these criteria as technical sub-subfactors or elements of the technical sub-subfactors. Tr. at 232-243. He stated that although all of these elements were evaluated, no ratings or scores were assigned, but if notable advantages or disadvantages were found during the evaluation of these elements, they were

⁴There are some inconsequential variations between the rating definitions stated in the SSP and the workbooks.

⁵To the extent PRC alleges that the rating and scoring scales are unreasonable or improper, the protest is untimely because the rating and scoring scales were stated in the SSP, which PRC received as part of the agency report on October 28, and PRC did not raise this issue until its December 30 comments on the hearing, long after the 10-day period for filing protests had expired. Bid Protest Regulations, § 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)).

recorded in the evaluators' narrative comments. Tr. at 241-246. In this case, all of the technical sub-subfactors with subordinate elements were rated at least "good". Here also, PRC has not identified any aspects of any proposal which would be inconsistent with the chairman's explanation of the evaluation and the corresponding evaluation ratings.

PRC also alleges that the narrative comments only document advantages and disadvantages, which are respectively defined in the SSP as elements of a proposal which increase or decrease the proposal's value to the government. PRC thus alleges that the evaluations failed to consider or document strengths or weaknesses in proposals which might further differentiate proposals but not necessarily increase or decrease their value.

The SSP instructs evaluators to document advantages, disadvantages, and deficiencies in their narrative comments and this is all that the evaluators addressed in their written comments. Tr. at 66, 109-110, 245-247. Thus, the protester's contention that strengths and weaknesses not determined to be advantages or disadvantages were not documented is essentially correct. Tr. at 66-67, 107-111. Nevertheless, the evaluators did consider all aspects of the proposals in their evaluations. Tr. at 111-113, 245-247. PRC has not identified any examples of strengths or weaknesses in a proposal, which were not documented but reasonably would be considered significant discriminators between the proposals.

PRC thus has failed to show that the evaluation scores or ratings are unreasonable as a result of inadequate documentation.

Second, PRC contends that the evaluation was otherwise unreasonable in numerous respects. For example, PRC alleges that the SSEB chairman, in the final evaluation report, unreasonably represented the degree of risks in TESCO's BAFO as evaluated by the management committee. In this regard, the management committee's consensus narrative summary stated the following with regard to TESCO's BAFO:

"(1) General Management: . . . The offeror's proposal describes the use of a 'Leveraged Workforce,' [TSC Information Management System] TIMS, [DELETED], inclusion of poorly or unsubstantiated claims of innovation, leading to cost avoidance and personnel reductions [which] has made it almost impossible to access/evaluate if the resourcing data is accurate or reasonable. The ambiguous nature of most of this offeror's proposal makes difficult reading.

IMPACT: Significant risk of mission accomplishment. The main theme seems to be: 'Trust me, I've done this before.' But, the offeror fails to be specific in either methodology or details pertaining to the required tasks. Methodology is often contradictory, depending on the section one reads. There is, throughout the proposal, reliance on a

'yet-to-be' developed [automated data processing] Base and Management System (TIMS). Base personnel reductions are tied to it in the out-years. The lack of clarity makes you wonder what we (TEXCOM) are really going to get with the overall proposal. There is high risk of incurring additional government cost by maintaining [DELETED]." [Emphasis in original.]

The final evaluation report presented to the SSA restated almost verbatim the concerns quoted above, although it restated the "significant risk of mission accomplishment" as "a risk to mission accomplishment" and restated the "high risk of incurring additional" cost as "a moderate risk of incurring additional cost."

PRC alleges that this altering of the risk by the SSEB Chairman was improper and unreasonable because it did not accurately reflect the degree of risk determined by the evaluators, and that this significant risk in TESCO's proposal, if properly considered, would have indicated that award should be made based on PRC's higher-rated proposal.

Source selection officials, which includes officials at an intermediate level, are not bound by the recommendations or evaluation judgments of lower-level evaluators, even though the working level evaluators may normally be expected to have the technical expertise required for such evaluations. Loral Aeronutronic, B-259857.2; B-259858.2, July 5, 1995, 95-2 CPD ¶ 213; Benchmark Security, Inc., B-247655.2, Feb. 4, 1993, 93-1 CPD ¶ 133. The judgments of these officials are governed only by the tests of rationality and consistency with the stated evaluation criteria. Loral Aeronutronic, *supra*; Benchmark Security, Inc., *supra*.

The chairman of the management committee stated that, in their risk assessment, the evaluators combined their concerns about TESCO's leveraged workforce and [DELETED], together with their concerns about TIMS. The consensus discussion revealed that the evaluators did not completely understand these elements of the BAFO and became frustrated with TESCO's presentation of them in its BAFO and this frustration resulted in the high risk assessment. Tr. 142-147. As the evaluators' comments were reviewed by higher-level selection officials in the SSEB and the SSAC, the evaluated risk was not considered as significant as the management committee had evaluated. Tr. at 268-269, 300-301.

As discussed below, our review indicates that the higher evaluation officials reasonably based their reevaluation of the risks associated with these aspects of TESCO's proposal on actual knowledge, and we cannot say that their downplaying of this risk was unreasonable.

First, TESCO's leveraged workforce concept involves the [DELETED]. TESCO's BAFO refers to the category of personnel identified by the RFP to be dedicated full-

time to provide "base" services common to supporting the TSC contract as "base personnel." The RFP also identified a category of personnel to be hired on a temporary basis as needed to perform specific test services; TESCO's BAFO refers to this category of personnel as "augmentee personnel." The cost of base personnel is funded by TEXCOM's base funds, whereas the cost of augmentee personnel is funded by the specific test funds of the respective test under which the augmentee personnel are hired. Tr. at 90, 153.

TESCO's BAFO identifies, as a potential problem arising from this dual-category workforce, the lack of [DELETED]. In response to this potential problem, TESCO proposed [DELETED]." (Emphasis in original.)⁶

TESCO's description led the management committee to conclude that TESCO might be attempting to deceive the agency into believing that TESCO would give the agency "some free people"--i.e., that the agency would receive [DELETED] at no cost under the contract--and the evaluators knew that "there is no free lunch." Tr. at 143, 146. There was also concern that the [DELETED] would result in the contractor's "mak[ing] work in order to keep these people on" the payroll when their test projects were complete, thus increasing the cost to the government. Tr. at 71-75.

The SSEB downplayed this risk, however, as it was familiar with TESCO's leveraged workforce concept because TESCO had implemented the concept under the current contract and it had been working well. Tr. at 312-316. The SSEB also was aware of strong cost controls in place which made it almost impossible for contractors to increase costs by fabricating work to keep idle personnel employed. Tr. at 355-358. We see nothing improper with this SSEB approach. Evaluators and source selection officials generally may consider their own past knowledge and experience with offerors in evaluating proposals and do not always have to limit their evaluation to the four corners of the proposal. Coe-Truman Technologies, Inc., B-257480, Sept. 12, 1994, 94-2 CPD ¶ 136. Moreover, our review of TESCO's BAFO shows that although the leverage workforce concept was difficult to understand, it clearly indicates that TESCO was not proposing free personnel. Accordingly, the SEEB could reasonably conclude that the risk associated with TESCO's leveraged workforce plan was not as significant as it was initially evaluated.

With regard to the other major concern of the management committee, TESCO's BAFO also proposed, as an option, TIMS, an automated management information system that would integrate the various existing databases and permit both contractor and government personnel to retrieve information using this integrated computerized system. Currently, the contractor must retrieve such information

⁶[DELETED]

directly from contractor-maintained databases and provide it to agency personnel on a periodic basis in the form of reports. Tr. at 131-136. TESCO's BAFO included a detailed discussion of the proposed architecture and implementation schedule for TIMS. TIMS would be based on integrating commercial-off-the-shelf (COTS) and existing database software and tailoring it to the specific needs of TEXCOM. The proposed system was divided into 10 modules which would share a common database and could be developed and implemented separately. The proposed implementation plan was 11 months from the contract start date. Since TESCO's BAFO emphasized the use of TIMS and cited efficiencies that would result from its use, the evaluators were concerned that TIMS was not yet developed, that a risk existed that TIMS could not be developed as quickly as proposed, and that the BAFO did not provide much information about contract performance in the event TIMS were not developed on time.

However, here too the SSEB members (and SSA) were somewhat familiar with the TIMS automation system, as the COTS software had been demonstrated for the agency at a presentation given by a vendor upon the request of TESCO under the incumbent contract. Since the system was highly dependent on COTS components, it did not have the significant development risks of an entirely undeveloped system. Tr. at 268-270, 279-288, 291-293, 303-306. Also, TESCO's BAFO's explanation of TIMS stated that the system was based on tailoring COTS software to the needs of TEXCOM, that this design was complete on five of the ten modules proposed, that a pilot module had been implemented, and that a prototype of a second module had been completed--this evidences that there is not much additional development needed and thus no significant development risk.⁷

⁷Although the evaluators considered TESCO's proposal of TIMS to be a risk, they also considered it an innovative approach and evaluated it as an advantage, assuming it was implemented as proposed. Indeed, the final evaluation report stated this as one of TESCO's two innovations:

"The innovation of TIMS adds to the overall excellent concept of what is required. Successful implementation has the benefit of adding increased productivity and improved efficiency."

PRC alleges that TESCO received an unfair competitive advantage as the result of development of TIMS commencing under TESCO's incumbent contract. The implication in the protester's filings on this issue is that the agency directed TESCO to develop this system under the incumbent contract during the competition for the protested contract with the intention of conveying a competitive advantage upon TESCO. However, to the extent work on TESCO's management information system began under the prior contract, there is no evidence to suggest that it was ordered

(continued...)

Thus, we find that the reduction of the degree of risks in the final evaluation report was not unreasonable because this adjustment was based upon actual experience and a reasonable understanding of TESCO's BAFO. Moreover, although the degree of risks was reduced in this report, the original basis for the risks was fully stated in the report and the original ratings and scores of the evaluators remained unchanged; therefore, the report did not present misleading information to the SSA.

PRC next alleges that the rating of "good" given to TESCO for the management sub-subfactor, organization and staffing, was unreasonably high because the evaluators' narrative comments noted only disadvantages under this sub-subfactor. However, as discussed above, under the rating scale used here, some deficiencies must exist for a proposal to receive a "marginal" rating.⁸ Since the evaluators did not find any deficiencies under this sub-subfactor, their ratings should not have been any lower than "good" on the SSP scale.⁹ Moreover, this sub-subfactor falls under the resourcing subfactor, which also received a rating of "good", as well as a numerical score of 80--the lowest possible score for a "good" rating. Since the management committee found no other disadvantages, one advantage, and no deficiencies under the other sub-subfactors of this subfactor, we think that the relatively low subfactor score reasonably reflects the disadvantages evaluated in TESCO's BAFO under the sub-subfactor.

PRC also alleges that the evaluation of TESCO's proposal concerning the Mobile Army Instrumentation Suite (MAIS) was unreasonable. Specifically, PRC states that the original technical committee found a deficiency in TESCO's MAIS

⁷(...continued)

to give TESCO a competitive advantage or that it is outside the scope of the incumbent contract. Any advantages which TESCO may have received by performing under the incumbent contract are not "unfair" and the agency is not required to eliminate such advantages of incumbency from the competition. Versar, Inc., B-254464.3, Feb. 16, 1994, 94-1 CPD ¶ 230.

⁸The SSP stated that a proposal receiving a "marginal" rating "does not meet all of the requirements." The technical and management evaluator workbooks both state that such a proposal "has some deficiencies."

⁹Notwithstanding that one agency witness also stated that TESCO's proposal should be rated "poor" if only disadvantages were noted, Tr. at 22, the record otherwise shows the rating for this sub-subfactor was consistent with the rating plan employed.

staffing in its initial proposal,¹⁰ and alleges that the management committee's evaluation of TESCO's BAFO indicates that the deficiency remains and that TESCO's rating should be lower. We disagree.

MAIS is a significant instrumentation system developed by another contractor. The MAIS development contract includes support services that, upon expiration of the MAIS contract, will be transferred to this contract. In evaluating MAIS, the evaluators determined whether an offeror clearly proposed to handle it under the same approach proposed for other support services. The overall evaluation for a proposal was adjusted only to the extent this portion of the proposal enhanced or degraded the overall proposal. Tr. at 248-260, 387-398.

The technical committee's evaluation of TESCO's initial proposal considered that the proposed use of [DELETED] personnel to provide MAIS support services was inadequate and that this was a deficiency. TESCO was advised of this deficiency during discussions and increased its MAIS staffing to [DELETED] personnel [DELETED].

The management committee's evaluation of MAIS in TESCO's BAFO identified as a disadvantage TESCO's failure to identify all of the [DELETED] positions proposed in the job descriptions, or any of these positions in the skills cross-reference chart, both of which were part of the management and technical proposals. The management committee stated:

". . . These dichotomies made it impossible to evaluate the proposed staffing for MAIS.

IMPACT: There is a risk to the Government that MAIS will not be adequately staffed. In any case, the Management Committee is not technically competent to make a determination as to the correctness of the manning and defers that determination to the Technical Committee." [Emphasis in original.]

Our review of the technical proposal in TESCO's BAFO shows that it contains a detailed explanation of the proposed MAIS staffing. The explanation specifically identified the staff positions; these staff positions were included in the job descriptions and the skills cross-reference charts. While it is true that the MAIS staffing is more difficult to follow in the management proposal, the technical proposal's explanation was specifically referenced in the management proposal. The management and technical committees thus had sufficient information upon which to determine the adequacy of TESCO's proposed MAIS staffing. The

¹⁰The original members of the technical committee were replaced after initial evaluations for reasons unrelated to this protest.

technical committee, to which the management committee deferred, did not identify a deficiency in staffing in its consensus evaluation.¹¹ The final evaluation report, although it stated the management committee's concern, did not identify any deficiencies in TESCO's proposal and the protester has not shown this to be unreasonable based on TESCO's proposal.

In sum, PRC has not shown that the evaluation of proposals was unreasonable or unsupported.

SOURCE SELECTION DECISION ISSUES

PRC alleges that the SSA's selection decision is unreasonable essentially because it is a superficial analysis that does not apply the relative weight of the evaluation factors stated in the RFP. PRC specifically complains that the SSA did not give adequate consideration to the fact that PRC's BAFO was higher rated than TESCO's, but placed too much importance on cost, the least weighted evaluation factor, in selecting TESCO.

In a negotiated procurement with a best value evaluation plan, point scores and adjectival ratings are only guides to assist contracting agencies in evaluating proposals; they do not mandate automatic selection of a particular proposal. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; Harris Corp.; PRC, Inc., B-247440.5; B-247440.6, Aug. 13, 1992, 92-2 CPD ¶ 171. Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results subject only to the tests of rationality and consistency with the evaluation criteria. Grey Advertising, Inc., *supra*; A & W Maintenance Servs., Inc.--Recon., B-255711.2, Jan. 17, 1995, 95-1 CPD ¶ 24. An agency properly may award to a lower rated, lower cost offeror, even if cost is the least important evaluation factor, if it reasonably determines that award to the higher cost offeror is not justified given the level of technical competence available at the lower cost. Calspan Corp., B-255268, Feb. 22, 1994, 94-1 CPD ¶ 136. Even where a source selection official does not specifically discuss the cost/technical tradeoff in the source selection decision, we will not object if the

¹¹Although the technical committee's narrative contained no documentation of the MAIS evaluation, the technical chairman stated that the technical committee did evaluate MAIS in TESCO's BAFO, reached consensus that there were no concerns, and thus did not prepare any narrative comments. Tr. at 249-250. We note that PRC's MAIS staffing ranged from [DELETED], depending on the option year, and thus never exceeded TESCO's proposed MAIS staffing level. Since PRC's staffing level was not deficient, it is reasonable to conclude that TESCO's higher proposed staffing level would not be deficient either.

tradeoff is reasonable based on the record before our Office. Lloyd-Lamont Design, Inc., B-270090.3, Feb. 13, 1996, 96-1 CPD ¶ 71.

Here, although the SSA's tradeoff analysis between PRC's and TESCO's BAFOs was minimally documented, the basis for his selection is reasonable and consistent with the RFP evaluation scheme. The SSA acknowledged that PRC's BAFO received the highest ratings in all areas, but determined that neither PRC's proposal's overall superiority in the technical, management and past performance areas, nor any other particular advantage in PRC's proposal, warranted paying the associated additional cost. We find no evidence in the record that belies the reasonableness of the SSA's judgment in this regard.

For example, under the technical factor, the most important factor, both BAFOs were rated "excellent" with only one point separating them. Under the next factor, management, both BAFO's received the same "good" ratings and the difference in point scores, although larger than under the technical factor, appears, as discussed above, to arise from the evaluators having difficulty in understanding a few elements of TESCO's proposal, as opposed to their identifying any substantive weakness in these elements.¹² Under past performance, where PRC was rated "superior" on all the subfactors, TESCO was rated "superior" on technical/quality performance and "good" in every other area, and both offerors were evaluated as having low performance risk.

In attacking the source selection, PRC essentially asserts that, based upon comments of the evaluators (discussed above), TESCO's BAFO should have been rated lower than it actually was. However, as discussed above, the evaluators' comments referenced by PRC were not indicative of any major weaknesses in TESCO's capabilities and proposed management and technical approach that demonstrated that TESCO's BAFO was significantly inferior to PRC's; indeed, in some cases, the evaluators' negative comments regarding TESCO's proposal were overstated and reasonably modified by higher level officials. PRC does not identify any other significant technical or management differences not considered above or in the evaluation to discriminate between these BAFOs, nor does it identify any particular strengths, advantages, or innovations in PRC's proposal that would justify the cost premium in making award to PRC.

¹²The chairman of the management committee characterized the evaluators as "wrapped around the axle" over their frustration with TESCO's method of presenting the leveraged workforce concept and TIMS. The evaluators mixed these points together and allowed it to shape their overall evaluation of TESCO's BAFO. Tr. at 143-147.

In short, we think the record establishes that the SAA viewed PRC's technical superiority as minimal and therefore not worth the \$2.4 evaluated cost difference between the PRC and TESCO proposals. Under these circumstances, we find nothing improper in the SSA selection of the lower cost, slightly lower-rated proposal, notwithstanding the lesser weight of cost under the RFP evaluation scheme. See Calspan Corp., supra.

PRC's claims that the SSA's source selection decision placed undue weight on the evaluated innovations in TESCO's BAFO. However, the record indicates that the SSA only considered these innovations in his tradeoff analysis between the BAFOs of TESCO and the third offeror after he had determined that PRC's BAFO proposed nothing in excess of TESCO's to offset the higher cost. Tr. at 370-371. There is thus no basis for finding that undue consideration was given to TESCO's innovations.¹³

PRC also claims that the SSA improperly relied on a dissenting opinion of a technical evaluator to reduce the significance of PRC's higher technical score. This contention has no merit. The record confirms that one technical evaluator could not agree to the consensus evaluation of PRC's BAFO and filed an opinion for the record opposing the high consensus rating and score given to PRC's BAFO; the opinion stated that the BAFO only warranted a technical rating of "good" and a score of 89. The SSA made his initial selection of TESCO's BAFO over PRC's based on the consensus technical rating/score. When he was briefed on the dissenting opinion and saw that, if valid, it would only support lowering PRC's score, he concluded that it had no effect on the decision; the SSA "did not concern [himself] with the dissenting opinion." Tr. at 369-370, 378-381.

OTHER EVALUATION/DISCUSSIONS ISSUES

PRC raises other sundry issues concerning evaluations or discussions, none of which provides a basis to sustain its protest. Specifically, PRC alleges that its

¹³To the extent PRC asserts that it was improper to evaluate innovations, or that identifying each innovation in addition to the numerical score or adjectival rating constituted double counting of evaluation criteria, the protest lacks merit. The RFP specifically identified innovation as an evaluation criterion to be considered in rating proposals. Also, identification of specific aspects of proposals which are the basis for the evaluations ratings/scores, such as the identification of innovations here, is proper in order to provide source selection officials with a basis in addition to ratings/scores upon which they may determine whether any meaningful differences exist between proposals. Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 et al., Dec. 6, 1996, 97-1 CPD ¶ 41.

BAFO's MPC was incorrectly calculated.¹⁴ Although we believe PRC's contentions in this regard lack merit, the SSA, subsequent to this protest, issued a sworn statement explaining that, even disregarding the MPC evaluation, there was no substantive difference between proposals that would warrant award to PRC, considering the somewhat smaller but still significant difference in proposed costs reflected in the BAFOs. This statement was not contradicted in the SSA's hearing testimony and has not been otherwise shown by PRC to be unreasonable or inconsistent with the RFP. Thus, the alleged errors in the MPC evaluation, even if assumed to exist, did not prejudice PRC.

Another example is PRC's allegation that the agency did not conduct meaningful discussions in that it did not advise PRC that it failed to propose a lead mechanic. The record shows that this was only a minor issue in PRC's evaluation; it was not a deficiency and its effect on PRC's evaluation, if any, was negligible. This is not sufficient evidence to show that discussions were not meaningful. See Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306.

UNFAIR COMPETITIVE ADVANTAGE

PRC alleges that TESCO received an unfair competitive advantage in this competition by means of DynCorp's employing the former commanding officer of OPTEC, Major General (Retired) Robert B. Rosenkranz, to help prepare TESCO's proposal.

OPTEC, which is headquartered in Washington, D.C., is divided into two major supporting commands: TEXCOM, located in Fort Hood, Texas, and the Operation Evaluation Command, located in Washington, D.C. Tr. at 423-424. Most of the contracting activities for OPTEC, including this procurement, are performed by the OPTEC Contracting Activity (OCA), which is located at Fort Hood with TEXCOM. OCA is under a split command: While the head of OCA reported on staff supervision issues directly to the General's chief of staff, OCA's contracting activities are supervised by AMC's Test and Evaluation Command in Aberdeen Proving Ground, Maryland. Tr. at 426-429.

General Rosenkranz was assigned to the OPTEC command in 1992. Tr. at 429-430. In an internal memorandum dated January 6, 1995, General Rosenkranz advised Army officials that he "may possibly negotiate employment with [DynCorp]" and that he was therefore disqualified from "participation in any official matter that will have a direct and predictable effect on the financial interests of [DynCorp]." On

¹⁴For example, PRC alleges that the agency improperly applied general and administrative costs to the designated reimbursable costs in determining the MPCs of the BAFOs.

March 8, General Rosenkranz submitted to the Army Standards of Conduct Office a request for an ethics opinion advising him of any post-government employment restrictions which would apply to him. This request included an ethics questionnaire completed by the General which disclosed that he was seeking employment with DynCorp, the DynCorp official with whom he had contact, his proposed job responsibilities at DynCorp, and information about his participation in procurements over the previous 2 years as a government employee. By letter of March 16 to General Rosenkranz, the ethics attorney stated that he had concluded that the General was not a "procurement official" under the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (1994), and was thus not subject to the applicable post-employment restrictions.¹⁵ The letter identified other post-employment restrictions that were applicable under other statutes.

General Rosenkranz's employment with DynCorp began in July 1995. As part of his job responsibilities at DynCorp, he participated in the preparation of TESCO's proposal. Tr. at 491-496.

The protester's allegations concern procurement-related information which was not disclosed to the ethics attorney at the time he issued his opinion finding that General Rosenkranz was not a procurement official. PRC essentially asserts that General Rosenkranz was in fact a procurement official for this procurement while he was serving as commanding officer for OPTEC and/or that he violated various post-government employment restrictions. PRC also alleges that General Rosenkranz had access to source selection sensitive information pertaining to this procurement and/or proprietary information of DynCorp's competitors, and that he or other TESCO personnel used such information in the preparation of TESCO's proposal. Based on these allegations, PRC contends that TESCO had an unfair competitive advantage under this procurement and must be found ineligible for award.

Contracting agencies are to avoid any conflict of interest or even the appearance of a conflict of interest in government-contractor relationships. FAR § 3.101-1; Guardian Technologies Int'l, B-270213 et al., Feb. 20, 1996, 96-1 CPD ¶ 104. A contracting officer may protect the integrity of the procurement system by

¹⁵Under the OFPP Act, as implemented at Federal Acquisition Regulation (FAR) § 3.104, a procurement official is a person "who has participated personally and substantially" in any of a list of specified activities for a particular procurement. FAR § 3.104-4(h)(1). A person who is found to be a procurement official for a particular procurement, for a period of 2 years, may not participate on behalf of a competing contractor in the negotiations for award of a contract under the procurement, nor participate in the performance of such a contract. FAR § 3.104-3(d)(1).

disqualifying an offeror from the competition where the firm may have obtained an unfair competitive advantage, even if no actual impropriety can be shown, so long as the determination is based on facts and not mere innuendo or suspicion. NKF Eng'g. Inc., 65 Comp. Gen. 104 (1985), 85-2 CPD ¶ 638; Holmes & Narver Servs., Inc./Morrison-Knudson Servs., Inc., et al., B-235906; B-235906.2, Oct. 26, 1989, 89-2 CPD ¶ 379; Laser Power Technologies, Inc., B-233369; B-233369.2, Mar. 13, 1989, 89-1 CPD ¶ 267. Our review is to determine whether the agency has a reasonable basis for its decision to allow an offeror to compete in the face of an allegation of an apparent conflict of interest. Holmes & Narver Servs., Inc./Morrison-Knudson Servs., Inc., et al., supra.

The issue of whether an individual violated procurement integrity standards is not determinative in a protest of an award to that individual's employer; the question is whether an offeror may have prepared its proposal with knowledge of inside information, regardless of whether the information was actually obtained or used, sufficient to establish a strong likelihood that the offeror gained an unfair competitive advantage in this procurement. Guardian Technologies Int'l, supra. To resolve this question, we typically consider all relevant information, including whether (in cases such as this) the former government employee had access to competitively useful inside information, as well as whether the former government employee's activities with the firm were likely to have resulted in a disclosure of such information. Physician Corp. of Am., 270698 et al., Apr. 10, 1996, 96-1 CPD ¶ 198; Guardian Technologies Int'l, supra.

The specific information in the record before us which General Rosenkranz had reviewed as commanding officer of OPTEC, from which PRC alleges TESCO would have gained an unfair competitive advantage are: (1) an undated document entitled "acquisition plan" for this procurement; (2) a December 15, 1994, letter from TEXCOM, sent through General Rosenkranz, to Aberdeen nominating an SSA for this procurement; (3) a March 15, 1995, presentation given by Research Analysis and Maintenance, Inc. (RAM) (PRC's proposed subcontractor on this RFP) at OPTEC; and (4) meetings of the Test Integration Working Group (TIWG). Based on our review, we conclude that none of the information contained in these documents or meetings would have given TESCO an unfair competitive advantage on this RFP.

The acquisition plan is a 29-page document with an attached signature page which included the signature of General Rosenkranz. The signature page shows that the plan was approved by AMC, and that General Rosenkranz, as well as officials at TEXCOM and OCA, concurred in that decision. The December 15 letter nominated a person for the SSA position; however, this was not the person who ultimately served as the SSA. The General signed his initials next to his name and address at the beginning of this letter. The dates corresponding to the signature and initials indicated that the General signed both of these documents on December 22.

General Rosenkranz stated that he does not recall seeing either of these documents prior to being shown them during this protest, and thus he did not disclose his concurrence on them to the Army ethics attorney who found he was not a procurement official. Tr. at 445, 450, 457. He stated that the contracting function was not under his command and that he normally did not receive documents related to the contract function. Tr. at 428-429, 440-441. He speculated that these documents were sent to him as a package to show that OCA was acting on his previous advice that the SSA appointed for procurements should not always be the director of OCA. Tr. at 457-458. In any event, since it was not related to his command responsibility, he stated that he would have paid little attention to these documents. Tr. at 460.

The General's testimony in regard to these documents seems credible. His description of his responsibilities revealed that a large volume of paperwork associated with his command function crossed his desk. Tr. at 438-439, 442-444. His testimony explaining that he did not recall the documents is thus consistent with this workload.

More importantly, though, the content of these documents could not have been competitively useful in this competition. The acquisition plan, although a procurement planning document, was not marked as source selection material not to be released outside of the agency. Instead, the document was a general overview of the process which largely addressed information that would be in the solicitation, such as a description of the services to be acquired and the applicable regulatory provisions, contract clauses and standard forms. The only information of a nature which arguably would be competitively sensitive is the cost estimate included in the plan. However, this preliminary estimate varied considerably from the government estimate ultimately used for the procurement. We fail to see how outdated cost information could be of value here. Nor does PRC identify anything in TESCO's BAFO which would support a conclusion that TESCO used this information.

As for the identity of the person nominated for SSA in the December 15 letter, this information had no competitive value because a different person actually served as SSA. There is no evidence that the General was ever notified of the appointment of the ultimate SSA.

The March 15, 1995, presentation by RAM was arranged by PRC. It was held at OPTEC and the General attended. Tr. at 468-469. However, the subject matter addressed RAM's modeling and simulation capabilities and their application to testing and evaluation. Modeling and simulation was not part of this protested procurement. Nor was it a part of either TESCO's or PRC's proposal.

The TIWG established the tests that would be performed over a 5-year period with emphasis on the first 2 years. Tr. at 525-527. General Rosenkranz was the TIWG

chairman. Tr. at 526. He last participated in the TIWG in May 1995. Tr. at 526. The 5-year test plan in the RFP was dated March 1995. Thus, General Rosenkranz had access to slightly more current test information than would an offeror reading the RFP. He stated that, although the TIWG at his level of command met approximately every 6 months, the lower levels of the TIWG had to meet constantly because the test schedule was always changing. Tr. at 525-531.

Initial proposals on this RFP were submitted nearly a year after the General's last TIWG meeting. Based on the ever-changing test environment, neither the information at the May TIWG meeting nor the RFP March test schedule was likely to accurately represent the actual test requirements. Nor does it appear that any test schedule at any point in time was likely to remain accurate for long. Under the RFP, offerors were not expected to anticipate the actual test schedule, but rather to demonstrate an understanding of the demands of the test schedule stated in the RFP. Thus, preparing a proposal based on a test schedule different from that stated in the RFP would have no advantage; to the contrary, an offeror using a different test schedule could be evaluated as having a poor understanding of the stated solicitation requirements.

As indicated, none of the above referenced information has competitive value. Moreover, General Rosenkranz has testified that he had no knowledge of any source selection or procurement sensitive information relating to this procurement. In sum, nothing in the record evidences that TESCO gained an unfair competitive advantage from employing General Rosenkranz.¹⁶

Nevertheless, PRC alleges that an appearance of impropriety exists here, and this is sufficient to disqualify TESCO from the competition. We disagree. While the disqualification of an offeror need not be based on actual impropriety, it must be based on more than mere innuendo or suspicion. NKF Eng'g, Inc., supra; Holmes & Narver Servs., Inc./Morrison-Knudson Servs., Inc., et al., supra; Laser Power Technologies, Inc., supra. Even assuming that TESCO's employment of the commanding officer of OPTEC and the use of his services in the preparation of a proposal submitted to one of his prior subcommands just months after his retirement may raise some suspicion of impropriety, a person's familiarity with the type of work required resulting from the person's prior position in the government

¹⁶The Army Inspector General's office is currently conducting an investigation concerning [DELETED]. We note in this regard that PRC has also speculated that General Rosenkranz may have violated 18 U.S.C. § 207(c)(1) (1994), which prohibited him from contacting any officer or employee for 1 year after his retirement. General Rosenkranz denies this allegation. Since this is not a matter subject to our jurisdiction, we presume that the Inspector General's investigation will consider it.

is not, by itself, evidence of an unfair competitive advantage. Physician Corp. of Am., supra. Nothing in the record before us provides factual evidence about information which could have been conveyed to TESCO to give it an unfair competitive advantage. Compare Guardian Technologies Int'l, supra (sufficient evidence of access to competitively sensitive inside information) with Physician Corp. of Am., supra (insufficient evidence of access to competitively sensitive inside information).

The protest is denied.

Comptroller General
of the United States