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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

# Decision

**Matter of:** Colmek Systems Engineering

**File:** B-291931.2

**Date:** July 9, 2003

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Craig G. Adamson, Esq., and Craig A. Hoggan, Esq., Dart, Adamson & Donavan, for the protester.

Richard Dale, II, Esq., Department of the Navy, for the agency.

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## **DIGEST**

Protest that contracting agency improperly evaluated protester's proposal is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria, which logically encompassed the area for which the protester's proposal was downgraded.

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## **DECISION**

Colmek Systems Engineering, Inc. protests the award of a contract to RD Instruments (RDI) under request for proposals (RFP) No. N00174-02-R-0067, issued by the Department of the Navy for the production, delivery, and support of the MK 15 MOD 0 Underwater Imaging System for use by the Navy's explosive ordnance disposal forces. Colmek argues that the Navy improperly evaluated its proposal and improperly made award on the basis of initial proposals, without conducting discussions.

We deny the protest.

To eliminate hazardous ordnance that jeopardizes military operations, the Navy's explosive ordnance disposal forces must search, detect, locate, and classify mines and other explosive threats during explosive ordnance disposal mine counter-measure operations. The Navy anticipates that the integration of navigation and sonar tools in the underwater imaging system (UIS) it is procuring here will enhance warfighter effectiveness by allowing a single diver to operate the tools simultaneously and will greatly enhance underwater area searches and location capabilities. The UIS consists of a diver-held unit, two navigation beacons for long

baseline navigation, a battery and battery charger, ancillary equipment, and supporting documentation. RFP Statement of Work (SOW) ¶ 1.0.

The solicitation anticipated the award of an indefinite-delivery, indefinite-quantity contract with fixed-price and cost-plus-fixed-fee orders to perform various services over a 10-year period. Since this is the initial production contract for the UIS, the contractor is first required to conduct a pre-production evaluation of the build-to-print technical data package (TDP) to resolve any TDP deficiencies that would make it impossible to produce, fabricate, or assemble the contract items in the quantities specified in exact accordance with the TDP, and to incorporate any necessary changes prior to production. SOW ¶ 3.1. After this process has been completed, the contractor is required to fabricate four first article test units. Pending first article test acceptance, and if funded, the contractor is required to fabricate, build, assemble, and test up to 222 UIS units performing all inspections, calibration procedures, checkout procedures, and packaging necessary for delivery to the government. Id. ¶ 3.2. Finally, the contractor is required to provide various services in support of the UIS units over the life of the contract. Id. ¶¶ 3.3, 3.4.

Award was to be made to the firm whose offer represented the best overall value to the government following a two-phase evaluation process. Under the first phase, the Navy planned to consider, on a pass/fail basis, whether a submission included the offer/proposal, technical approach information, offeror capability information, a small business subcontracting plan (if applicable), and cost and price information. Only those submissions receiving a “pass” rating could be considered for further evaluation. Under the second phase, the Navy planned to evaluate offers against four factors: technical approach, offeror capability, small business subcontracting plan (if applicable)<sup>1</sup>, and cost/price. The technical approach factor was more important than the offeror capability factor, which was significantly more important than cost/price. RFP § M.I. The technical approach factor was comprised of five subfactors worth a total of 100 points: summary, pre-production and production evaluation, production plan, supply support services, and engineering services. These subfactors are listed in descending order of importance except for the least important summary subfactor. Id. The offeror capability factor was comprised of two subfactors, relevant experience and past performance; the former was more important than the latter. Id.

Source selection was to be determined using a specified methodology. The first step was to determine the “promised value” which, in this procurement, was the total point score awarded under the technical approach factor. RFP § M.II.(1). The second step was to assign a level of confidence assessment rating (LOCAR) to each offeror’s capability (including relevant experience and past performance) using a

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<sup>1</sup> The small business subcontracting plan factor was not applicable here because both firms submitting offers were small businesses.

scale indicating the degree of confidence the Navy had in the firm’s ability to succeed.<sup>2</sup> RFP § M.II.(2). The third step was to determine the Navy’s level of confidence and expected value associated with each offeror. The level of confidence was a subjective rating that would reflect the degree to which the Navy believed an offeror was likely to keep the promises it made in its offer. The expected value was to be ascertained by multiplying the promised value by the LOCAR and was to be expressed in terms of a percentage. RFP § M.II.(3). To determine which offeror represented the best value to the government, the Navy was to make a series of paired comparisons among the offerors, trading off the differences in the non-price factors against the difference in most probable price between the offerors. If the offeror with the higher expected value had the higher price, the Navy had to decide whether the margin of higher expected value (that is, the greater prospects for success) was worth the higher price. RFP § M.II.

The solicitation stated that the Navy planned to award the contract on the basis of initial proposals, without conducting discussions. RFP § M.I. As a result, offerors were told that their proposals should contain their best terms from a technical, cost/price, relevant experience and past performance standpoint. If considered necessary by the contracting officer, however, discussions would be conducted only with those offerors determined to have a reasonable chance for award. Id.

RDI and Colmek were the only firms that submitted offers. The Navy’s evaluation panel conducted an evaluation of both firms’ proposals, with the following results:

	<b>Colmek</b>	<b>RDI</b>
<b>Technical Approach</b>	<b>74.0</b>	<b>97.5</b>
Summary (10 points)	4	9.88
Pre-production and Production Evaluation (30 points)	19	29.75
Production Plan (25 points)	19.5	23.25
Supply Support (20 points)	17.5	19.88
Engineering Services (15 points)	14	14.75
<b>LOCAR Determination/Offeror Capability</b>	<b>0.81</b>	<b>0.95</b>
Relevant Experience	Satisfactory	Excellent
Past Performance	Excellent	Good

	<b>Promised Value</b>	<b>X</b>	<b>LOCAR</b>	<b>Expected Value</b>	<b>Evaluated Cost/Price</b>
Colmek	74.00	X	.81	60	\$6,743,935
RDI	97.50	X	.95	93	\$8,613,493

<sup>2</sup> The scale was 0 to .4 for “less confident”; .6 to .94 for “more confident”; “.95 to 1.0 for “most confident”; and .5 for neutral. RFP § M.II.(2).

The narrative report from the technical evaluation panel (TEP) summarized the bases for Colmek's technical approach factor scores. Under the summary subfactor, the Navy found that Colmek had not sufficiently demonstrated that the requirements had been analyzed, evaluated, and synthesized into approaches, plans, and techniques that should result in the delivery of systems and services that address all requirements and will be beneficial to the overall program. The Navy stated that its most significant concern was Colmek's ability to build acoustic transducers, and that it was also concerned that Colmek failed to clearly convey its understanding of magnetic signature requirements. The evaluators could not determine how the firm could produce and support an acoustic aspect of the system, and found that Colmek's ability to evaluate the TDP during the pre-production evaluation and over the life of the contract was a significant weakness. Technical Evaluation Chairperson's Final Report at 4. Under the pre-production evaluation subfactor, which required the offeror to describe its approach for conducting a TDP review, including the labor hours required to conduct the pre-production evaluation, the Navy found that, among other things, the level of effort outlined in Colmek's proposal did not appear to be sufficient and Colmek's ability to conduct the pre-production evaluation relevant to acoustic and magnetic signature areas was significantly lacking the categories of personnel to properly certify the adequacy and accuracy of the TDP. *Id.* at 5. Under the production plan subfactor, the Navy found that Colmek's failure to discuss how it intended to assemble acoustic transducers and meet the requirements was a minor weakness. *Id.* With respect to Colmek's relevant experience, the agency noted that Colmek had "good experience in electronics but [had] satisfactory or poor experience with acoustic transponders, underwater housings, diver-held equipment and low magnetic signature requirements." *Id.* at 6.

In contrast, the Navy found no weaknesses in RDI's proposal under the technical approach factor save for a minor weakness under one subfactor; the Navy concluded that RDI's approaches, plans, and techniques were "extremely" or "significantly" beneficial to the overall program. *Id.* at 7-8. The evaluation panel also found that RDI had more than 20 years of relevant experience and had demonstrated more than 10 years of experience in UIS functional areas of navigation, sonar transducers, electronic systems, underwater housings, and diver-held equipment. *Id.* at 8.

The source selection authority (SSA) reviewed these findings and noted that RDI offered 33 more points of expected value, which meant, according to the SSA, that the Navy was "33 percent more confident" that RDI would perform successfully than Colmek. Business Clearance Memorandum at 17. She also noted that the price difference between the two offerors was \$1,869,558, or 21.7 percent. She considered the effort that was to be performed and found that, while the UIS was a build-to-print item, many aspects of the procurement were very complex and required technical expertise and understanding. The SSA explained that RDI's technical proposal contained very few weaknesses and many strengths, resulting in its 97.5 percent promised value. On the other hand, Colmek's technical proposal had several weaknesses and very few strengths, resulting in its 74 percent promised value. She

also pointed out that RDI had extensive relevant experience in manufacturing hand-held systems and that Colmek had no experience in manufacturing similar systems. The SSA concluded that paying an additional \$56,653.27 per expected value point over a 10-year period was worth the additional technical and experience capability the Navy would obtain from RDI, and that RDI's offer represented the best value to the government. Id. Award was made to RDI on January 23, 2003.

On February 1, Colmek filed an agency-level protest challenging the award to RDI. After the Navy denied its agency-level protest, Colmek filed this protest in our Office. Colmek's protest enumerated 30 separate challenges to the award, each of which was fully addressed by the Navy in its agency report. Colmek's comments on the agency report were limited to two issues.<sup>3</sup> The protester argues that the Navy improperly downgraded its proposal for its failure to address transducer subassemblies, and that the Navy improperly awarded the contract based upon initial proposals, without conducting discussions.

Colmek first contends that the Navy unreasonably downgraded its proposal for its failure to address the assembly of transducers, arguing that the solicitation did not require such information.

In reviewing protests against an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Lear Siegler Servs., Inc., B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 7. Solicitations must describe the factors and significant subfactors that will be used to evaluate the proposals and their relative importance, and the evaluation of proposals must be based solely on the factors and subfactors contained in the solicitation. Federal Acquisition Regulation (FAR) §§ 15.203(a)(4), 15.303(b)(4). In performing the evaluation, however, the agency may take into account specific, albeit not expressly identified, matters that are logically encompassed by the stated evaluation criteria. Cobra Tech., Inc., B-272041, B-272041.2, Aug. 20, 1996, 96-2 CPD ¶ 73 at 3.

The Navy explains that the UIS allows divers to precisely navigate underwater, scan underwater sonar images and view an underwater map of the route in and out of mine fields. The UIS uses navigational beacons to receive and transmit acoustic signals that the diver-held unit (DHU) interprets to precisely display to the divers their location in the minefield. Transducers--which provide digital signals that are interpreted by processors and output as visual display information to the divers on the DHU--are component parts in the DHU and the floating beacons. The UIS does not operate without functioning transducers. Agency Supplemental Report at 1-2.

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<sup>3</sup> Since Colmek did not pursue the numerous other allegations it made in its protest, we consider them to be abandoned and do not address them further. Atlantic Coast Contracting, Inc., B-291893, Apr. 24, 2003, 2003 CPD ¶ 87 at 4 n.3.

The TEP chairperson explains that UIS assembly requires the encapsulation of underwater assemblies and testing requires the use of calibrated acoustic measurement facilities. The UIS has four transducers that require the potential contractor to follow assembly procedures delineated in the TDP. For example, the transducer on the master beacon, which contains 33 separate components, requires the contractor to fabricate the assembly from piece parts purchased from various sources and electrically test the assembly in multiple stages in accordance with a TDP drawing. Once the transducer is assembled and electrically tested, it is mounted onto a beacon assembly and acoustically tested in accordance with another drawing. This test requires the manufacturer to have test facilities and equipment to measure acoustic source level output. TEP Chairperson's Declaration ¶ 3.

The Navy argues that the solicitation instructions and evaluation factors logically encompassed a discussion of transducer assembly. Our review of the solicitation leads us to agree with the Navy.

The SOW described the program requirements in their entirety. As relevant here, during the pre-production evaluation, the contractor is required to resolve any TDP deficiencies that would make it impossible to "produce, fabricate, or assemble the contract items in the quantities specified in exact accordance with the TDP." SOW ¶ 3.1. After the pre-production evaluation, the contractor is to embark upon the production fabrication process, which requires it to "fabricate, build, assemble, and test each UIS performing all inspections, calibration procedures, checkout procedures, and packaging necessary to deliver production UISs to the Government." Id. ¶ 3.2.

Section L of the solicitation described the information offerors were required to include in their proposals, and section M of the solicitation described how the Navy planned to evaluate proposals under each of the technical approach subfactors. With respect to the summary subfactor, the RFP stated, "The proposal summary shall provide a concise statement of the Offeror's understanding of the overall concept of the work being proposed and provide a comprehensive plan for addressing the program requirements." RFP § L at 90. The Navy planned to evaluate the offeror's "understanding of the overall concept of the work being proposed and the comprehensive plan for addressing the program requirements. RFP § M at 96. With respect to the production plan subfactor, the RFP stated, "The Offeror shall describe in detail their plan for manufacturing the required quantity of production units," and the plan shall "address all actions that are necessary to produce, test, and deliver acceptable systems." RFP § L at 90. The Navy planned to evaluate the offeror's "plan for manufacturing the required quantity of production units" and the offeror's "proposed actions that are necessary to produce, test, and delivery acceptable systems." Id.

In view of the fact that the program requirements included the assembly of the UIS units, the fact that section L of the RFP required offerors to provide a comprehensive plan for addressing the program requirements and manufacturing the units and

section M of the RFP informed offerors that the Navy planned to evaluate these plans, and the fact that the assembly of transducers is an important aspect of the program requirements, we find that the Navy's consideration of offerors' plans to assemble the transducers was logically encompassed by the solicitation's evaluation criteria and the agency's downgrading of Colmek's proposal for failure to discuss these matters was proper.<sup>4</sup> Cobra Tech., Inc., supra.

Colmek also argues that it was unreasonable for the contracting officer to award the contract based on initial proposals, without conducting discussions. Colmek states that only two proposals were submitted in response to the solicitation, and that there was a wide price variation between these proposals. The firm asserts that the major reason for the price discrepancy was its level of effort estimate for the pre-production evaluation, which the Navy believed to be insufficient, and argues that this concern, which led the Navy to conclude that it did not understand the requirements, could have been clarified during discussions. Colmek also argues that the Navy's concern about its plans to assemble the transducers could have been clarified during discussions.

There generally is no obligation that a contracting agency conduct discussions where, as here, the RFP specifically instructs offerors of the agency's intent to award a contract on the basis of initial proposals. FAR § 15.306(a)(3); Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 11. The contracting officer's discretion in deciding not to hold discussions is quite broad. Our Office will review the exercise of such discretion only to ensure that it was reasonably based on the particular circumstances of the procurement. Robotic Sys. Tech., supra. We find no circumstances here that call into question the agency's decision not to engage in discussions.

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>4</sup> Colmek has not rebutted the Navy's position concerning the importance of the transducers and their assembly. In addition, the Navy states that the UIS must also comply with a certain military specification as a safety measure to operate near magnetically influenced mines--otherwise, the UIS will detonate magnetically influenced mines, most likely killing or seriously injuring the diver(s). The Navy points out that Colmek's proposal was also downgraded due to its insufficient approach to the subject of magnetic signatures, and Colmek has not rebutted the Navy's position regarding this aspect of its evaluation.