



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ingersoll-Rand Company; Trilectron
Industries, Inc.

File: B-232739; B-232739.2; B-232739.3;
B-232739.4; B-232739.5

Date: February 7, 1989

DIGEST

1. Agency did not give either insufficient or too much weight to research and development contract test data in evaluating proposals submitted on request for proposals (RFP) for production quantity, where the RFP indicated proposals would be evaluated on compliance with RFP requirements as verified by test data or analyses.
2. Where a request for proposals (RFP) provides that extra credit will be given in assessing risk to offerors who contractually commit to performance in excess of RFP technical requirements, source selection authority may reasonably consider such contractual commitments in making award selection.
3. Procuring agency's rejection of protesters' proposals was not unreasonable where the technical evaluation reasonably determines that the protesters failed to demonstrate in their proposals their ability to comply with the solicitation requirements within the established production schedule.
4. In a negotiated procurement, agency is not required to make award to the low-priced acceptable offeror, regardless of relative technical merit, unless the solicitation states that price will be the award determinative factor.

DECISION

Ingersoll-Rand Company (I-R) and Trilectron Industries, Inc., protest the award of a contract to Teledyne Continental Motors Aircraft Products Division under request for proposals No. F33657-88-R-0034, issued by the Air Force Aeronautical Systems Division, Wright-Patterson Air Force Base, Ohio. The RFP is for the production of ground power generator (GPG) systems used to provide electrical power,

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compressed air and air conditioning for use during the servicing and maintenance of tactical aircraft. Both I-R and Trilectron contend that the Air Force failed to make award on the basis of the evaluation criteria set forth in the RFP and failed to provide for full and open competition.

We deny the protests.

The Air Force initially planned to acquire the new GPG system through a two-phase Research/Development and Production procurement. Consistent with that plan, in December 1983, the agency awarded to I-R and Teledyne parallel contracts for the Phase I research, design, development and testing portion of the acquisition. Following the completion of those research and development contracts, however, the Air Force, having defined through that effort the technical requirements for a GPG system which would meet its needs, determined that it would be appropriate and in the best interest of the government to procure the system through competitive negotiations instead of limiting the competition to the two contractors who participated in the research and development procurement.^{1/}

Consequently, the RFP, which is the subject of these protests, was issued on March 30, 1988, for a fixed-price contract for the initial production of 104 GPG systems, and associated testing, warranty, data, training, engineering drawings, unlimited data rights, technical manuals, and initial spare parts, with options for an additional 1152 systems. The program schedule called for the delivery of the first units approximately 2 years after award of this contract.

^{1/} I-R protested the Air Force's determination in this regard to the contracting agency. By letter dated June 22, 1987, the Air Force denied that protest on the grounds that the determination was proper in view of (1) changes in the initially anticipated scope of the procurement due to budgetary constraints; (2) changes in the technical requirements of the production phase; (3) the results of a sources-sought synopsis for the production phase, which indicated a possibility that several other contractors could meet the technical and schedule requirements; and (4) the requirements of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. §§ 2301 and 2304 (Supp. IV 1986). The matter was not protested to the General Accounting Office.

The RFP stated that award selection would be made by the source selection authority (SSA) "on the basis of a total evaluation and integrated assessment" of each proposal. Proposals were to be evaluated in the following areas, listed in descending order of importance: (1) technical; (2) life-cycle cost (LCC); (3) manufacturing/management; and (4) logistics. The RFP advised that proposed systems were presumed to have successfully completed all development qualifications prior to a contract award, but any remaining tasks necessary "to complete qualification or to qualify changes to a qualified system" must be identified in the proposal and must not compromise other program constraints, such as the delivery schedule. The RFP further advised that the SSA would determine the overall merit of each proposal in terms of its potential to satisfy the requirements of the Air Force and meet the production schedule.

The record indicates that 57 potential offerors were solicited and four submitted proposals in response to the RFP by the closing date, May 16, 1988. Three offerors (the parties to this protest) were determined to be within the competitive range after the initial evaluation of proposals. The agency conducted three rounds of discussions (which culminated on August 15) and issued numerous clarification requests and deficiency reports. Best and final offers (BAFOs) were received on August 23.

The Air Force source selection evaluation committee rated proposals in accordance with the evaluation criteria and Air Force Regulation (AFR) 70-15 and made color coded ratings and risk assessments for each non-cost evaluation area. In the heaviest weighted "technical" area, Teledyne received an acceptable (green) rating with a low risk, I-R received an acceptable rating with a moderate, almost high, risk and Trilectron received a marginal (yellow) rating with a high risk. In the "manufacturing/management" area, Teledyne was rated acceptable with a very low risk, I-R was acceptable with a moderate risk and Trilectron was rated very unacceptable (red) with a very high risk. In the "logistics" area, Teledyne was rated on the high end of the exceptional (blue) range with a low risk, I-R was rated acceptable with a low risk and Trilectron was rated on the high end of the acceptable range with a moderate risk. Trilectron's evaluated LCC was substantially lower (\$365.4 million) than I-R's LCC (\$560.1 million) and Teledyne's LCC (\$564.7 million), which were approximately equal.

On September 16, the SSA selected Teledyne for award because the GPG system it proposed was found to provide the best overall value to satisfy the needs of the Air Force under the evaluation criteria established in the RFP. The source selection decision further states that Teledyne's system meets or exceeds all technical requirements--in fact Teledyne contractually agreed to exceed certain requirements--and provides higher confidence that it will achieve the required system performance and the estimated system life cycle cost. Although the total life cycle cost of its system is not the lowest of all those proposed, it is less than one percent higher than "the only other adequate proposal" (I-R's), which difference, in the opinion of the SSA, is more than offset by "the superior characteristics of Teledyne's system."

Trilectron protests that it was entitled to the award by virtue of its low cost and that the award was not based on the evaluation criteria. I-R's initial protest raises numerous allegations, central to which are that Teledyne's proposal was informationally deficient and did not conform to the RFP requirements; that the Air Force did not follow the evaluation criteria set forth in the RFP; and that Teledyne's proposed model contract contains exceptions, terms and conditions different from I-R's proposed model contract.

On the basis of information obtained as a result of a debriefing with the Air Force subsequent to the filing of its initial protest, I-R protests that the technical evaluation and source selection process of the procurement were "flawed" and lacked a rational basis, in that they did not adequately consider the performance, experience, and technical accomplishments of the "Phase I" GPG developers--I-R and Teledyne--and because certain technical and cost factors were improperly evaluated. Trilectron also timely filed a post-debriefing protest which disputes each of the agency's explanations of why Trilectron received a low rating. Like I-R, Trilectron maintains that the Air Force's source selection decision had no rational basis because the agency did not fairly evaluate its proposal, but disqualified its offer by insignificant criticisms in order to make award to one of the two research and development contractors.

It is well established that in reviewing protests of allegedly improper technical evaluations, our Office will not evaluate the proposals de novo and make our own determination of their relative merits or substitute our judgment for that of the contracting agency whose function

it is to evaluate proposals. Tampa Shipyards, Inc., B-231802, Sept. 30, 1988, 88-2 CPD ¶ 304. We will, however, examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria, and whether there were any violations of procurement statutes and regulations. Talbot and Korvola, B-231569, Sept. 27, 1988, 88-2 CPD ¶ 288.

I-R expresses the view that in the evaluation and source selection process, the Air Force should have considered the technical accomplishments under the Phase I research and development contract for the GPG system. During the performance of that contract, I-R states, its level of performance exceeded that of Teledyne "in every head-to-head competition conducted." I-R contends that to the extent Teledyne's proposal under the subject RFP offered or claimed any improvements over what Teledyne accomplished under the "Phase I" contract in most if not all areas of evaluation--for example, fuel efficiency, system performance, reliability, risk, maintainability, capability or cost--the source selection was flawed, because "there were to be no . . . 'blue sky' predictions of problems being resolved, or of characteristics being enhanced, [or unqualified statements] other than what had been demonstrated by specific testing already."

Trilectron expresses the view that the Air Force specifically intended to award the contract to one of the two contractors that participated in the research and development effort and, therefore, did not provide for full and open competition but, in essence, competed the requirement in bad faith.

The Air Force states that in the evaluation of proposals, the contractors' accomplishments under the Phase I contracts were considered, where applicable, but proposals under the subject RFP were not specifically compared to the performance of the contractors under the Phase I contract, except in the LCC evaluation, e.g., fuel consumption and weight. Rather, the agency states, it compared proposals submitted under the RFP to the RFP requirements.

Based on our in camera review, we find the Air Force made appropriate use of Phase I results and test data in evaluating the proposals of I-R and Teledyne in both the

technical and LCC areas^{2/}. The RFP clearly did not contemplate merely continuing the Phase I developmental effort; offerors were required to submit proposals in accordance with the RFP statement of work (which varied in some respects from the Phase I effort), the proposal instructions and the evaluation criteria. Under the RFP, it was said that the evaluation of an offeror's compliance with technical requirements could be satisfied by either test data or analyses; that is, the Phase I test results were not the totality of the competition. In a similar instance in which a contract was protested on the basis that the awardee had not been required to meet the same test standard as the protester had earlier accomplished, we stated that each procurement is a separate transaction, and must be evaluated on the basis of the factors and requirements specified in the solicitation in response to which they were submitted. Everpure, Inc., B-231732, Sept. 13, 1988, 88-2 CPD ¶ 235; see also Ingersoll-Rand Co., B-224706, Dec. 22, 1986, 86-2 CPD ¶ 701.

On the other hand, the RFP explicitly warned that offerors were expected to have completed sufficient development and testing to proceed directly into production. The RFP required offerors to identify how each system specification was "qualified (inspection, analysis, or test) and what other tests and analyses are required to demonstrate operational performance and reliability." That is, although the competition was not limited to the Phase I contractors, only vendors who were virtually ready to commence production of GPG's in accordance with the RFP delivery requirements would be given serious consideration under the RFP.

Within those parameters, there is no evidence that the Air Force gave insufficient or too much consideration to the Phase I test results or contractors. The record shows that the agency reasonably found Teledyne's proposed system acceptable through evaluating Teledyne's proposal as supported by Phase I test results and other technical

^{2/} I-R and Trilectron filed extensive requests for documentation from the Air Force pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(c) (1988). Although I-R and Trilectron were provided documents concerning the evaluation of their own proposals, they were not provided documents that were proprietary to Teledyne. Nevertheless, our Office has reviewed all documents in camera concerning the evaluation of the proposals.

analyses. In addition, as discussed below, the agency reasonably considered I-R's poor software development practices as a significant risk factor.

Moreover, contrary to Trilectron's speculation, we find no evidence of a hidden agenda by the Air Force to only seriously consider the proposals of the Phase I contractors. As discussed below, Trilectron, which was well aware of the RFP ground rules when it submitted its proposal, was not highly rated because of its own proposal inadequacies--not because it was not given an opportunity to compete.

I-R also alleges that instead of properly assessing proposals in accordance with the stated evaluation factors, the agency applied as an award criterion compliance of price proposals with its FY 1988 \$54 million budget allocation for the GPG system program and made award based on Teledyne's "unrealistic" price of \$48,015,456 for the basic (first year) contract. I-R, whose proposed basic contract price was \$83,012,805, maintains that if the budgetary "award criteria" had been stated in the RFP the competition would have been "materially different."

The Air Force denies that any such unstated evaluation criterion existed. Moreover, the record provides no support for I-R's speculation; there is no hint that Teledyne's low first year costs were given any particular weight in the evaluation. Moreover, considering that this is a fixed-price procurement, we find that the Air Force analysis of Teledyne's first year price was appropriate in the circumstances. See Norden Systems, Inc., B-227106.9, Aug. 11, 1988, 88-2 CPD ¶ 131.

I-R also challenges the Air Force's interpretation and use of modification request (MR) 001 to the RFP in the evaluation process. I-R contends that the Air Force gave inordinately high evaluation weight for "above-contract" offerings proposed by Teledyne, even though MR-001 did not clearly provide for such credit.

MR-001 states in pertinent part:

"1. . . . The requirement to identify all exceptions or deviations to any requirement of the RFP includes not only reductions (lessening) in requirements, but also increases (extras) in requirements; i.e., the offeror is proposing to contractually agree to meet a requirement that exceeds the original RFP requirement.

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"Proposals which provide clear evidence of work effort or system performance above the minimum requirements in this RFP may be used by the source selection team in reducing their assessment of the risk of the offeror meeting the minimum requirements. If the offeror desires to attempt to improve the rating of his proposal per AFR 70-14, Section 3-9, it is necessary for the offeror to include the appropriate deviations in his proposal to clearly demonstrate a commitment to perform at a level beyond the minimum required." (Emphasis added.)

I-R maintains that it was misled by this modification because of its erroneous reference to Air Force Regulation (AFR) 70-14, section 3-9 (instead of AFR 70-15, section 3-5) concerning the possibility of improving the agency evaluation of its proposal. I-R indicates that during the debriefing conference, it first learned that the agency expected offerors to indicate their commitment(s) to perform at a level beyond the required minimum by separately identifying all such exceptions to the RFP requirements in the same manner as they identified deviations or exceptions representing any proposed reductions in the requirements, as well as by including such offerings in their proposal. I-R maintains that it considered that it had complied with the MR-001 requirements for improving its risk assessment rating when it indicated in its proposal that it had "already demonstrated performance in many areas well beyond the minimum levels required." Thus, the protester admits, such offerings "were not stressed in the I-R proposal, if they were included at all," since it perceived no requirement under MR-001 that previously "demonstrated performance results" be separately "listed" outside of the proposal.

I-R also alleges that the source selection decision unfairly placed increased, if not paramount, evaluation weight on the above-minimum requirement offerings made in Teledyne's proposal, since such consideration is not included in the evaluation scheme and since improvement of proposal ratings by such offerings under the modification should only pertain to the assessment of risk. Thus, I-R argues that it was "misled . . . into not insisting" that the above-minimum requirement offerings be included in its model contract, and concludes that the competition was not conducted on an equal basis because it was not clear that these extra offerings would essentially be the basis of selection.

We do not find these arguments persuasive. First, it should have been clear to the protester that the reference in MR-001 to AFR 70-14, section 3-9 was an error since a cursory examination of AFR 70-14 would have revealed that it does not pertain to the rating of proposals, nor does it contain a section 3-9.

Second, we find the language of MR-001 unambiguously requires a contractual commitment on the part of the offeror to perform above the minimum level required in order to reduce the risk assessment of its offer. Although I-R maintains that the "indication" in its proposal that it had previously demonstrated above-minimum performance in many areas should have been sufficient to meet the requirements of MR-001, it is clear from the RFP that such "indications" did not constitute "commitments." In this regard, the model contract in the RFP required a contractor to comply with contractual, including statement of work, requirements, but did not specifically incorporate the contractor's proposal. Consequently, we find the RFP required a separate listing of those performance items exceeding statement of work requirements to which an offeror is willing to contractually commit. While Teledyne did contractually commit itself to deliver various items in excess of the statement of work requirements, I-R failed to take the requisite action to reduce the risk assessment of its proposal. Consequently, the SSA could positively consider Teledyne's contractual commitment in making the award selection.

Third, the record does not support I-R's contentions that Teledyne's above-minimum requirements offerings essentially constituted the paramount basis of the source selection. The source selection decision does mention several areas in which the awardee contractually agreed to exceed the minimum requirements as affecting the risk assessment of its proposal. However, the record clearly indicates that the source selection decision was primarily based upon the higher level of confidence in the awardee's ability to attain the requirements of the GPG system program on schedule.

I-R's initial protest also alleges numerous informational deficiencies and other inadequacies in Teledyne's proposal; for example, I-R argues that Teledyne's proposal contained unsubstantiated, ambiguous and unqualified statements, and that the proposal was not specific, complete, and self-sufficient, and did not provide cost data for all its aspects. However, I-R failed to provide facts or evidence to support these allegations; indeed, the protester states that the assertions were made on the basis of "information

and belief," which I-R did not specify in the protest.^{3/} We have held that the procuring agency is responsible for ascertaining whether the information furnished by an offeror is sufficient for the agency to determine the acceptability of an offeror's product; we will not disturb the agency's technical determination unless the protester affirmatively proves it was unreasonable. See Pack Equipment Co., B-227135, July 13, 1987, 87-2 CPD ¶ 40 at 2. Although I-R has not had access to Teledyne's proposal and the detailed evaluation documentation, our in camera review does not confirm I-R's allegations that Teledyne's proposal was informationally deficient or that Teledyne did not substantiate its proposed system.

I-R alleges that Teledyne's proposal was not properly evaluated in the areas of system maintainability, life-cycle cost, and risk. I-R has listed numerous items in Teledyne's proposal which it speculates were not properly evaluated; we have reviewed these contentions in camera and concluded that the Air Force had a reasonable basis for the evaluation. We will discuss some of these matters below.

I-R asserts that Teledyne's offer to provide, at no additional cost to the government, field service representatives to assist with fielding the new system was improperly considered a strength in its proposal since it evidences instead a level of risk that requires such assistance.^{4/} However, the agency persuasively argues that the mere presence of a field service representative while government operators and maintainers become familiar with new equipment is not in any way an indication that Teledyne or the Air Force regards as risky the reliability and/or maintainability of the equipment. We agree that this was reasonably regarded by the SSA as a strength.

I-R states that Teledyne's proposed spare parts pricing was approximately twice the amount which I-R proposed for spare parts. The protester expresses the view that this alleged pricing difference indicates the superiority in the maintainability of I-R's system. In denying this

^{3/} In its comments on the report, I-R lists various items where Teledyne's proposal could have been ambiguous or unqualified. However, our review does not substantiate I-R's allegations.

^{4/} This was one of the contractual commitments offered in Teledyne's BAFO that was mentioned by the SSA in the source selection decision.

allegation, the Air Force states that during the evaluation, the assessment of this area of risk resulted in a determination that the proposed lower cost for spare parts in I-R's BAFO was unacceptable because it was created by the protester's deletion from its initial proposal of certain high-level dependability spare parts to such an extent that the agency considered I-R's spare part costs to be unrealistic.^{5/} In any case, we do not believe Teledyne's higher spare part costs are a reasonable indication that its GPG systems are less maintainable or reliable.

Based on our review of the record, I-R has not shown the Air Force evaluation of Teledyne's proposal was unreasonable.

Concerning I-R's challenge to the LCC assessment in general, the record indicates that this aspect of the evaluation was conducted in a manner consistent with the evaluation scheme and was not unreasonable. In this regard, the record shows that, contrary to I-R's speculation, the agency accounted for mean time between failures, fuel effectiveness, and weight in the LCC evaluation and that other items, for example, turbine engine replacements and additional fault performance analyzers did not have to be included in the LCC evaluation of Teledyne's proposal as was contended by I-R.

I-R contends that Teledyne did not include reliability verification testing requirements in its proposal and model contract. However, our review indicates these test requirements were included in Teledyne's proposal and were evaluated by the Air Force. These requirements were, the Air Force states, inadvertently omitted from the contract, but have been incorporated in the contract by a modification.

I-R also protests that its system was as good as or better than that offered in Teledyne's proposal. However, the record indicates that a key discriminator between Teledyne and I-R that led to the selection of Teledyne was that I-R's risk in the technical area was moderate, almost high, as

^{5/} I-R denies that it deleted parts to reduce its spare parts pricing but says it only corrected a duplication in the cost proposal. However, I-R's BAFO states that the correction of duplicate costs is only one of four elements that caused it to reduce its BAFO spare part costs. Since the other three elements are judgmental and, from our review, not readily segregable, we find the agency could reasonably find I-R's spare part costs were unrealistically low.

compared to Teledyne's low risk. Also, Teledyne's evaluated risk in the "manufacturing/management" area was lower than I-R's moderate risk.

The "overriding" reason for I-R's higher evaluated risk was that certain corrective changes which I-R made to its fault performance analyzer will necessitate a development effort to restructure and retest its software late in the production program as a result of what the Air Force describes as I-R's failure to follow good industry software practices. Consequently, the technical evaluation analysis concluded that there was a low probability of production software being available for the first article testing, the reliability verification testing, and the physical configuration audit, as scheduled. The evaluation report further explains that, in an effort to meet the schedule, I-R proposed concurrency in some software development tasks which are normally sequential. This plan, the report explains, resulted in an improper and illogical sequence of software life cycle events which would result in difficulties with the integration of hardware and software.

I-R disagrees with the assessment of the time required to accomplish the necessary software changes and alleges that Teledyne's proposal also necessitates software changes. The technical evaluation report indicates, however, that no significant modifications to Teledyne's software are required and, furthermore, that such modifications as are necessary require less time to accomplish than do those which I-R must accomplish and will not adversely impact the schedule requirements. As the Air Force points out (and the record substantiates), the evaluation conclusions as to the anticipated program schedule delay that would result from the changes to I-R's software program were based on engineering experience with similar software development efforts and on software development computer models. Neither I-R's disagreement with the technical evaluation of the relative merits of its proposal, nor I-R's attempt to support its position on the basis of past performance, is sufficient to show that the evaluation was unreasonable. See Sal Esparza, Inc., B-231097, Aug. 22, 1988, 88-2 CPD ¶ 168. Based on our review of the record, we conclude that the evaluation and source selection decision were not unreasonable or inconsistent with the stated evaluation scheme.

Trilectron also disputes the evaluation of its proposal and has submitted a point by point rebuttal to evaluation comments made during its debriefing. Trilectron claims that the Air Force did not fairly evaluate its proposal, but created "inconsequential negatives" to disqualify it.

As indicated above, Trilectron's proposal was rated significantly lower than either Teledyne's or I-R's proposal. The evaluation documents reveal that although Trilectron's proposed system was determined to be capable of meeting the RFP's minimum requirements, it would require significant reliability design changes, such that a complete developmental effort would be required. The record indicates that in an effort to meet the production schedule, Trilectron proposed to complete the necessary system design within an unrealistic time period and to test the system concurrently with production. Trilectron's approach was found to have a very low probability of meeting the required program test schedule. Thus, in the "technical" area, Trilectron's proposal was rated as marginal with a high level of risk. Furthermore, Trilectron's proposal was rated very unacceptable with a high level of risk in the evaluation criterion category of manufacturing and management. As explained in the technical evaluation documents, one week prior to submission of BAFOs, Trilectron proposed significant modifications to its initial proposal, with only minimal planning and an "unrealistic" lead time period. The technical evaluators concluded that Trilectron's approach would result in at least an 11-month delay in the delivery of the system, and the only way this problem could be remedied was for Trilectron to submit a new proposal for a system which is presently closer to production readiness.

Although Trilectron disagrees with the technical evaluators' assessment of the amount of time required to complete the design changes and testing requirements and the significance of these changes, we are persuaded that Trilectron's proposal essentially requires that the Air Force accept the risk of timely completion based on the protester's past performance record, not on a technical and manufacturing and management proposal that shows how it realistically can and will accomplish these tasks within the necessary time frame.

We have held that where an offeror has failed to show in its management plan and technical proposal how it will meet the government's production requirements within the necessary time period, the contracting agency is not required to assume the risk, based on the offeror's earlier performance, that the offeror is capable of timely compliance. See De La Rue Giori, SA, B-225447, Mar. 19, 1987, 87-1 CPD ¶ 310 at 14. Moreover, in this case, the RFP specifically stated that it was structured on the presumption that the proposed systems would have successfully completed all development qualifications prior to award, and any remaining tasks necessary to complete qualification must not com-

promise program constraints such as the delivery schedule. Accordingly, we conclude that the Air Force's rejection of Trilectron's proposal was not unreasonable or in violation of federal procurement statutes or regulations.

Trilectron argues that the Air Force should have given substantial consideration to Trilectron's record of performance on other defense contracts, specifically in the evaluation of its producibility program, manufacturing and management capability, and the physical configuration audit [schedule] as reflected in its proposal. Regardless of the protester's claims with respect to its record of performance under other procurements, there is no legal basis for favoring a firm in the evaluation of its proposal with presumptions based on its prior performance. An offeror's technical evaluation is based on information submitted in its proposal, and an offeror runs the risk of having its offer rejected if it does not submit an adequate proposal. Vista Videocassette Services, Inc., B-230699, July 15, 1988, 88-2 CPD ¶ 55 at 5; Intelcom Support Services, Inc., B-225600, May 7, 1987, 87-1 CPD ¶ 487 at 6.

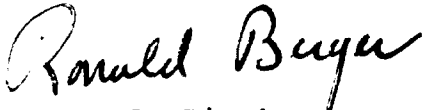
Trilectron also complains that the evaluation was subjective. However the RFP itself stated that, "subjective judgment on the part of Government evaluators is implicit during the entire evaluation process." Moreover, we have recognized that the evaluation of technical proposals under an RFP is inherently a subjective process. tg Bauer Assocs., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ ____; The Earth Technology Corp., B-230980, Aug. 4, 1988, 88-2 CPD ¶ 113, at 4.

Trilectron further states that a major reason its proposal was found deficient was the agency did not provide adequate time for it to prepare its proposal. However, not only did Trilectron not timely protest this matter prior to the closing date for receipt of proposals, as required under our Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1988), but it did not adequately respond to numerous clarification requests and notices of deficiencies that were identified during discussions. Therefore, this contention has no merit.

Finally, Trilectron maintains that the Air Force improperly failed to award the contract to it in accordance with the "rule" that award should be made to that offeror who submits a technically acceptable offer at the lowest price. However, in a negotiated procurement, the agency is not required to make award to the firm offering the lowest priced acceptable proposal, regardless of relative technical merit, unless the RFP specifies that price will be the

determinative factor. Sal Esparza, Inc., B-231097, supra. Here, the RFP ranked technical factors higher in importance than LCC and did not state that the lowest price or LCC would be the award selection basis. Therefore, award was not legally required to be made to Trilectron as the lowest priced offeror. The Earth Technology Corp., B-230980, supra at 6.

I-R's and Trilectron's protests are denied.

for 
James F. Hinchman
General Counsel