



**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Litton Systems, Inc.

**File:** B-239123

**Date:** August 7, 1990

Paul G. Dembling, Esq., Schnader, Harrison, Segal & Lewis, for the protester.  
E. Sanderson Hoe, Esq., McKenna, Conner & Cuneo, for ITT Electro-Optical Division, and Paul Shnitzer, Esq., Crowell & Moring, for Varian Associates, Inc., the interested parties.  
Craig E. Hodge, Esq., and Robert A. Russo, Esq., Office of Command Counsel, Army Materiel Command, for the agency.  
John Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Under a solicitation that calls for award to offeror submitting best overall proposal, with consideration given to price and nonprice factors, and which states that proposals are to meet or exceed the solicitation requirements, the selection official in making a selection decision may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to stated evaluation criteria.
2. The evaluation of technical proposals is primarily the responsibility of the contracting agency which is responsible for defining its needs and the best method of accommodating them and must bear the burden of any difficulties resulting from a defective evaluation.
3. Although protester argues that contracting officials did not consider its alternative proposal of a unibody construction for night vision devices because it is not mentioned in evaluation documents, since the alternative was mentioned in a discussion question, the record indicates that the agency considered it but concluded that it was merely an alternative design that offered no advantage.

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4. Award to higher priced offeror which had higher rated proposal under nonprice factors is proper where contracting agency's selection decision is reasonable since selection officials have broad discretion in making price/technical tradeoff, so long as it is consistent with solicitation's evaluation scheme.

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#### DECISION

Litton Systems, Inc. protests the award of contracts by the Army under request for proposals (RFP) No. DAAB07-89-R-F112 to ITT Electro-Optical Products Division and Varian Associates, Inc. for night vision devices. Among numerous other allegations, Litton maintains that the award selections were inconsistent with the solicitation's evaluation criteria.<sup>1/</sup>

We deny the protest.

#### BACKGROUND

Night vision devices amplify light so as to enhance vision at night and under low light conditions. Several generations of this equipment exist; the RFP here solicited proposals for third generation equipment (Gen III). The Army also issued RFP No. DAAB07-89-R-F113 for less advanced second generation equipment (Gen II).<sup>2/</sup>

The solicitation included requirements for AN/AVS-6 devices which are used by military helicopter pilots and crews, MX-10160 image intensifier assemblies (spare tubes for the AN/AVS-6), AN/PVS-7 night vision goggles which are ground use monocular systems and spare goggle tubes, designated as

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<sup>1/</sup> Subsequent to filing its protest with this Office, Litton filed suit in the United States District Court for the District of Arizona seeking declaratory and injunctive relief based on essentially the same grounds as raised in its protest of the awards to ITT and Varian. The court has requested our decision on this protest.

<sup>2/</sup> Litton also protested the award under RFP No. DAAB07-89-R-F113. The Gen II solicitation included requirements for AN/PVS-4 devices which are used by ground personnel, AN/VVS-2 devices which are mounted on vehicles, 25mm image tubes and 18mm image tubes. We will issue a separate decision on that protest under file number B-237596.3.

MX-10130. For the AN/PVS-7 devices and tubes, offerors could propose either one of two alternative models, the "A" or "B" which are similar in performance.

The RFP solicited firm, fixed-price proposals and limited competition to the domestic manufacturers who comprise the mobilization base for the devices. Under the solicitation, awards were to be made to the best overall proposal or proposals with consideration given to four factors: price; technical; product assurance and test (PA&T); and production and management (P&M). Each of the nonprice factors included subfactors. The solicitation indicated that the three nonprice factors were of equal importance and combined were significantly more important than price, although price was more important than any one of the other factors. To receive award under the solicitation, a rating of no less than acceptable was required on each of the overall factors and the two technical subfactors of performance specification requirements and interoperability and interchangeability of the proposed system with previously fielded systems of the same model. Further, under the solicitation, past performance was to be separately evaluated to assist in determining overall performance risk. In addition, offerors were requested to submit four sample tube assemblies of each type proposed. The samples were to be evaluated to determine the extent to which they met or exceeded listed performance specifications and complied with assembly drawings to assure interchangeability and demonstrate performance characteristics proposed.

The solicitation was structured to require a minimum of two and a maximum of four 3-year, multi-year contracts. The awards could be split, 60 percent/40 percent either by the total requirement or by separate line items and were to include 100 percent options (150 percent for the MX-10130 tube).

Four firms submitted proposals: Optic Electronic Corp. (OEC) for AN/PVS-7 devices/tubes only and Varian, Litton and ITT for the total requirement. The final nonprice factor ratings, past performance risk ratings and the evaluated prices were compared by the SSAC and presented to the SSA.

The final ratings, incorporating the risk assessment, were as follows:<sup>3/</sup>

AN/AVS-6 AND MX-10160

<u>OFFEROR</u>	<u>TECHNICAL</u>	<u>PA&amp;T</u>	<u>P&amp;M</u>	<u>EVALUATED PRICE</u> <u>60%/40%</u>
Varian	Acceptable	Marg. Accept.	4/Acceptable	\$93,206,552/ \$ 65,580,440
Litton	Marg. Accept.	Marg. Accept.	Acceptable	\$105,810,084/ \$ 72,122,326
ITT	Outstanding	Acceptable	Acceptable	\$164,375,050/ \$132,592,308

AN/PVS-7 AND MX-10130

<u>OFFEROR</u>	<u>TECHNICAL</u>	<u>PA&amp;T</u>	<u>P&amp;M</u>	<u>EVALUATED PRICE</u> <u>60%/40% (LINE</u> <u>ITEM APPROACH)</u>
OEC	Acceptable	Marg. Accept.	Acceptable	\$205,635,609/ \$120,076,151
Varian	Outstanding	Marg. Accept.	Acceptable	\$164,192,114/ \$111,388,480
Litton	Outstanding	Marg. Accept.	Acceptable	\$187,252,676/ \$129,069,122
ITT	Outstanding	Acceptable	Acceptable	\$234,748,215/ \$184,574,155

The SSA determined that awards should be made to ITT for 60 percent of the total requirement and Varian for 40 percent. According to the SSA, the evaluation established that ITT submitted the superior overall proposal with low performance risk for both the AN/AVS-6 and AN/PVS-7 devices and tubes, and that Varian submitted the second best proposal. The SSA cited two significant enhancements in ITT's proposal: in the AN/AVS-6, the proposed use of a new material, ULTEM, which is stronger and more durable than the previously used material and is expected to result in a cost saving of about \$5.7 million; and ITT's proposal to use a universal tube in the AN/PVS-7 which will simplify supply

<sup>3/</sup> A number of offerors included alternative proposals; this list includes only each offeror's best proposal.

<sup>4/</sup> As will be explained in more detail later, this rating was used for the agency's internal evaluation purposes. It was a gradation of an acceptable rating and was not considered as a basis for proposal rejection.

and logistics and result in a cost savings of approximately \$900,000 since it will replace the two versions of the MX-10130 tube currently being used. The SSA also cited as advantages a proven statistical process control (SPC) program and a total quality management (TQM) program, and cited as minor advantages an improved storage case, a universal coated optical component and an improved low battery indicator.<sup>5/</sup>

The SSA also noted that ITT's past performance rating was clearly superior to that of the other offerors indicating low performance risk. Although ITT's proposed price was the highest, the SSA determined that ITT's superiority on the nonprice factors and low performance risk more than compensated for its higher price.

The SSA noted that Varian's proposal was the second best overall on the nonprice factors and also was the lowest priced proposal. According to the SSA, Varian offered an improved storage case, increased photoresponse and a partially implemented SPC program on the AN/AVS-6. Also, the SSA noted that Varian has an established TQM program resulting in reduced performance risk. On the AN/PVS-7 the SSA noted that although the Litton and Varian proposals were essentially equal on the nonprice evaluation factors, Varian's performance risk was rated lower based on its established TQM program.

Thus, the SSA determined that a 60 percent award to ITT and a 40 percent award to Varian represented the best overall value to the government.

#### PROTEST ALLEGATIONS

Litton first contends that the Army improperly gave extra credit in the evaluation for proposed enhancements that went beyond the RFP specifications since the solicitation did not advise offerors that enhancements were necessary or desired. Nor did it include a clear statement of how evaluation credit would be assigned for extra features proposed. In a related allegation, Litton contends that the evaluation plan used by the SSEB deviated from the evaluation scheme set out in the solicitation and was contrary to source selection guidelines issued by the Army.

According to Litton, the Army's evaluation demonstrates that the agency was actually interested in technical advancements

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<sup>5/</sup> SPC is a program for identifying, controlling and continuously improving critical manufacturing processes. TQM is a management approach that relies on principles of quality assurance and makes managers and employees alike responsible for providing quality products and services.

but this interest was not revealed in the solicitation. Litton suggests, however, that the Army may have revealed its interest in enhancements to ITT and no other offerors since ITT's high prices showed that it had no concern for competition and must have known that it had a "lock" on the 60 percent award. Litton also argues that the enhancements with which ITT was credited were not significant, did not justify ITT's outstanding technical rating and were not worth the additional cost of awarding a contract to ITT.<sup>6/</sup>

Further, Litton maintains that if the solicitation in fact allowed extra credit for enhancements, it should have received an outstanding rating on the technical factor for its alternative offer of unibody construction and a deeply recessed eyepiece for the AN/AVS-6 device. Litton also argues that the Army placed undue emphasis in the evaluation on the SPC and TQM subfactors under the PA&T and P&M evaluation factors which carried over into the past performance risk evaluation.

Also with respect to the past performance risk evaluation, Litton argues that risk was given undue weight and that the Army failed to use outside data in evaluating past performance as required by the solicitation. Further, Litton argues that the record indicates that the ratings for risk (high, moderate and low) were arbitrarily assigned.

Litton also states that there is no justification for paying a price premium (according to Litton, approximately \$50 million, if all options are exercised) over the price of awarding the two Gen III contracts to Litton and Varian. According to the protester, the Army did not perform a rational tradeoff between price and technical considerations. Litton argues that the enhancements offered by ITT which were cited as significant by the Army, ULTEM and the universal tube, simply cannot justify ITT's higher price.

Finally, Litton argues that the Army engaged in improper negotiations with both ITT and Varian since contracting officials disclosed to those firms, or compelled them to insert in their proposals, certain testing procedures not contained in the solicitation or in their initial proposals.

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<sup>6/</sup> The protest is aimed at the validity of the selection of ITT for the 60 percent award. Litton does not in this protest directly challenge the 40 percent award to Varian, although in another protest (B-239123.3) Litton challenges the evaluation of Varian's proposal and argues that Varian's prices are unbalanced. We will address those allegations later in a separate decision.

## ANALYSIS

### 1. The solicitation

We first address Litton's argument that the solicitation did not inform offerors that extra credit would be given in the evaluation for enhancements beyond the minimum RFP requirements and did not state how such extra credit would be assigned. Litton argues that the Army could not give ITT extra evaluation credit for enhancements like the universal tube or the use of ULTEM since enhancements were not listed in the solicitation as necessary or even desired.

Litton is correct that the enhancements credited to ITT were not specifically set forth as RFP requirements; nonetheless, we think they were properly considered. In making an award decision, the agency may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. We think the proposed ITT enhancements which were considered by the agency, including the universal tube and the use of ULTEM, were directly encompassed by and related to the technical evaluation factor which listed as its subfactors "Performance specification requirements" and "Interoperability and interchangeability of proposed system with previously fielded systems of the same model." While we think that the solicitation should have been more explicit in informing offerors that technical enhancements were encouraged and would result in evaluation credit, it clearly placed the three non-price related factors, including technical, on a higher plane than price and indicated at several places that proposals should "meet or exceed" the RFP requirements. We think it should have been evident from a reasonable reading of the solicitation as a whole that the agency envisioned a selection that was to be based on more than the low priced, technically acceptable offer and, in fact, since Litton itself proposed enhancements such as unibody construction and a recessed eyepiece on the AN/AVS-6, we believe that Litton fully expected that the Army desired and would evaluate enhancements.

With respect to the weight to be given to enhancements in the evaluation, Litton argues that it believed such matters would only be "taken into consideration as tiebreaking factors between two otherwise equivalent proposals." We do not agree that technical enhancements should only be used as tiebreakers under the solicitation. We do not think that it is necessary or even practicable to assign specific weights in a solicitation to enhancements, the nature of which the agency cannot be aware of until they are actually proposed by an offeror. It is our view that such enhancements should be evaluated under the appropriate evaluation factor or

subfactors in the solicitation and assigned the weight in the overall evaluation commensurate with the weight given to the factor or subfactor in the solicitation's evaluation scheme. Our view of the record indicates to us that this was done here.

We also do not agree with Litton that the evaluation plan used by the Army was inconsistent with the evaluation scheme announced in the solicitation. Litton argues that the Army's four-tiered evaluation plan (using the rating factors of outstanding, acceptable, marginally acceptable and unacceptable), which defined "acceptable" to require a proposal to include "minor advantages," had "secretly upped the ante" for acceptability. Under the evaluation plan used by the Army, there were, in effect, three rating levels for proposals or aspects of proposals that were considered acceptable, i.e., that met and/or exceeded the minimum requirements of the RFP. Defining the ratings in this manner simply allowed evaluators to make distinctions among acceptable proposals; it did not change the substance of the evaluation. No proposal which received a rating of marginally acceptable under any factor was rejected as unacceptable. The evaluators simply gave ITT credit for what they considered were enhancements in its proposal and rated it more highly than Litton's which in the evaluators' view did not offer comparable enhancements. We think this was appropriate under the solicitation and, in our view, the terminology used to accomplish that is not legally relevant.

Finally, Litton argues that it was prejudiced by the emphasis on enhancements since, according to the protester, had it known of the Army's interest in enhancements, it "could have offered features conferring meaningful advantages." Since Litton actually offered enhancements beyond the minimum specifications, we fail to see the basis for this argument.<sup>7/</sup>

## 2. The Evaluation

Litton argues that the enhancements proposed by ITT which were considered significant by the Army, the use of ULTEM in the AN/AVS-6 and the universal tube for the AN/PVS-7, were

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<sup>7/</sup> Although Litton also argues that the four-tiered evaluation plan used by the Army deviated from guidelines issued by the Army Materiel Command, those internal agency guidelines were not a part of the solicitation and do not have the force and effect of law, so that the alleged failure to comply with them in a particular instance involves a matter for consideration within the agency itself, rather than through the bid protest process. Interaction Research Inst., Inc., B-234141.7, June 30, 1989, 89-2 CPD ¶ 15.



not in fact significant and did not justify ITT's outstanding ratings under the technical factors for both items.

#### A. ULTEM

The record indicates that Army evaluators concluded ULTEM is a significant improvement since it is more durable than the previously used LEXAN and therefore will reduce field failures attributable to material breakage, make the AN/AVS-6 a more reliable system and result in significant life cycle cost savings. According to the Army, the AN/AVS-6 system previously experienced a severe breakage problem with the visor link assembly during maintenance actions and after using replacement parts made of ULTEM, no additional failures have been experienced. The Army also reports that its decision that ULTEM was a significant improvement was based on the recommendation of the Army's Materials, Fuels and Lubricants Laboratory.

Litton, nonetheless, argues that ITT proposed the use of ULTEM to correct deficiencies experienced only in ITT products and such a "fix" should not result in extra credit. Further, Litton maintains that ULTEM will not solve the breakage problem with ITT devices which relates to bonding of the image tubes to the saddle, a problem caused by construction of the devices. The protester states that the greater strength of ULTEM is of no value since LEXAN and ULTEM both can withstand forces greater than the user of the device or an aircraft could withstand. Litton also questions the value of ITT's use of ULTEM, since Varian is not committed to use the material on its 40 percent of the devices and argues that ITT also is not committed to delivering ULTEM since its contract calls for ULTEM "or equivalent," which can be met by LEXAN.

The evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Therefore, our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the agency evaluation to ensure that it was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Mere disagreement with the agency does not itself render the evaluation unreasonable particularly where, as here, the procurement concerns sophisticated technical hardware. Litton Sys., Inc., et al., B-229921 et al., May 10, 1988, 88-1 CPD ¶ 448.

The record before us does not show that the agency's technical evaluation of ITT's proposal was unreasonable or that the agency erred in giving ITT "outstanding" ratings on the technical factors for both the AN/AVS-6 and AN/PVS-7. With respect to the use of ULTEM, the record does not indicate that the new material was proposed merely as a "fix" for problems with ITT's AN/AVS-6 as Litton contends, but rather, because ULTEM is stronger than LEXAN and thus less likely to break when stressed, during maintenance for instance. Although Litton argues that LEXAN night vision devices can withstand forces that an aircraft and pilot would not and thus the extra strength is not necessary, the protester does not address the Army's explanation that the new material, which has previously been supplied by ITT, has helped avoid breakage during maintenance. Further, the fact that Varian's contract for 40 percent of the requirement does not call for ULTEM does not, in our view, lead to the conclusion that ULTEM in the devices delivered by ITT is not a significant advantage. Also, contrary to the protester's contention, the fact that ITT's contract requires ULTEM "or equivalent" does not allow ITT to use a material such as LEXAN with a different chemical composition. The Army explains that it used the "or equivalent" designation because ULTEM is a trade name of General Electric.

#### B. Universal Tube

Agency evaluators also concluded that ITT's proposed universal tube was a significant enhancement of the AN/PVS-7 since it could be used interchangeably in both the "A" and "B" versions with no loss of performance, thus simplifying agency supply and logistics problems. According to the Army, although Litton argues that the universal tube is not technically possible, that conclusion is based on Litton's incorrect assumptions that the radius of curvature of the eyepiece and that of the image tube must match exactly and that an AN/PVS-7 with a universal tube could not meet the off-axis resolution requirement. The Army reports that the AN/PVS-7 system specification allows a certain level of distortion caused by variations in the radii of curvature of the eyepiece and the image tube and that tests it performed on ITT's universal tube verified that it meets all specifications, including the off-axis resolution requirement. The Army also reports that tests indicated that ITT's universal tube was interoperable and interchangeable with existing AN/PVS-7 systems from all sources, including both the "A" and "B" versions and resulted in no degradation of performance.

Although Litton argues at great length that the universal tube is not technically possible because a compromise between the radii of curvature required for the "A" and "B"

versions would cause distortion or otherwise degrade performance in both, the protester also appears to argue that it could have designed a similar device had it been given the same information as ITT. As previously noted, the Army credibly explains that a compromise between the radii of curvature of the two versions of the AN/PVS-7 is possible because the specifications allow some distortion caused by variations between the radii of curvature of the eyepiece and the tube. Further, the Army reports that its tests of ITT's universal tube verify that it is interchangeable and interoperable with both versions of the AN/PVS-7 tube without any degradation below the performance requirements.

The use of a single tube which will operate in both versions of the AN/PVS-7 is, according to the Army, a great benefit in that it eases difficult supply and maintenance problems inherent in handling two separate tubes. In addition to reducing stockage, storage and maintenance and supply costs, the Army notes that a single replacement tube will enhance its ability to meet the crucial need for a reliable source of replacement tubes during night fighting missions.

Under the circumstances, we have no basis to disagree with the agency's determination that the universal tube is technically possible and an advantage.<sup>8/</sup>

Finally, the record indicates that ITT's outstanding ratings on the technical factors were not based simply on the proposed use of ULTEM and the universal tube. The evaluators also considered to be minor advantages ITT's offer of an improved storage case, a universal coated optical component and low battery indicator for both the

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<sup>8/</sup> According to Litton, the universal tube should not have been evaluated under the "Performance specification" technical subfactor but rather under the interchangeability-interoperability subfactor, which was worth only one-third as much. In our view, it was reasonable to evaluate the universal tube under the performance specification subfactor since the specifications for the AN/PVS-7 included the concern that configuration changes not affect the present logistics concept. In any event, we believe in light of all the advantages to the ITT proposal, it would have reasonably received an "outstanding" technical rating no matter how the proposed use of a universal tube was classified.

AN/PVS-7 and AN/AVS-6 and a high light level cut off for the AN/PVS-7 only. Under the circumstances, we have no basis to challenge the "outstanding" ratings given to ITT's technical proposal for both items.<sup>9/</sup>

#### C. Evaluation of Litton's Proposal

With respect to the evaluation of its own technical proposal, Litton argues that it should have received an outstanding rating primarily for its proposed "unibody construction" of the AN/AVS-6. According to Litton, it offered to design and fabricate the AN/AVS-6 housing in one piece to eliminate the possibility of joint separation. Litton argues that its unibody construction alternative was not evaluated and considered by the Army and was not presented to the SSA since it was not mentioned in the evaluation documents supplied to Litton or in the Army's report to this Office.

The Army reports that it, in fact, considered Litton's unibody alternative but concluded that it was an alternative design which offered no advantage to the government since joint separation, which the unibody alternative was intended to solve, is not a problem. We find no basis in the record to disturb this conclusion.<sup>10/</sup> The record confirms that the Army considered Litton's alternative proposal since one of the discussion questions addressed to Litton referred to the unibody construction alternative.

#### D. Evaluation of SPC and TQM

Litton argues that the Army gave undue weight to the SPC subfactor under the PA&T evaluation factor and the TQM subfactor under the P&M evaluation factor. According to

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<sup>9/</sup> Although Litton also argues that the Army unfairly failed to provide up-to-date drawings which included the use of ULTEM in ITT's AN/AVS-6 devices and information necessary to develop the universal tube, there was no requirement that drawings provided to offerors include all information necessary to reproduce the night vision devices. In fact, the RFP at section C.22 stated that drawings were "provided for informational purposes only," and do not contain complete details . . . ."

<sup>10/</sup> The Army's position here is consistent with its response to a similar offer of a unibody design 2 years ago by Varian. See Litton Sys., Inc., B-229921 et al., supra.

Litton, the Army ignored the other four subfactors under the PA&T evaluation factor and the other three subfactors under the P&M evaluation factor. The record does not support this contention. The Army evaluation documents establish that the evaluators considered and rated each offeror on all the applicable subfactors in the evaluation of the PA&T and P&M factors. Further, as the Army points out, its consideration of the other subfactors is demonstrated by the fact that ITT did not have outstanding ratings on the PA&T and P&M basic evaluation factors even though it received outstanding ratings on the SPC and TQM subfactors.

#### E. Past Performance Risk Assessment

Litton's also challenges the Army's evaluation of past performance under the solicitation and the use of the past performance risk evaluation results to affect the basic factor evaluation. Litton first argues that past performance risk was not evaluated in accordance with the solicitation. Section M.59e called for the evaluation of performance risk "as related to the respective factors and subfactors," but the Army only evaluated the risk information called for by section L.160, concerning the contents of proposals which instructed each offeror to "address his past performance" in a number of specified areas under the three nonprice evaluation factors which did not encompass all of the subfactors listed under the evaluation factors. According to Litton, the result of the Army's failure to consider all listed subfactors in the risk assessment was that critical past performance data on ITT, such as failures to meet delivery schedules and rejection of delivered products, was not considered. Litton maintains that had such information been considered, ITT would have had higher risk ratings and Litton's excellent past performance record would have caused it to be rated ahead of the others. Litton also maintains that the risk evaluation, by not considering all the subfactors listed in section M.59e, placed undue emphasis on SPC under the PA&T risk evaluation and on TQM in the T&M risk evaluation.

In response, the Army states that there was no requirement that it evaluate each offeror's past performance for each of the subfactors listed under the basic nonprice evaluation factors of technical, PA&T and P&M. According to the Army, section L.160 of the RFP required each offeror to submit detailed information on its performance under previous contracts for night vision devices and thus indicated what would be covered in the past performance evaluation.

In our view, the solicitation was unclear as to whether, in the past performance risk evaluation, contracting officials were to consider information only at the evaluation factor level or whether they intended to evaluate information under each of the 11 subfactors listed under the three nonprice evaluation factors. Section M.59e, which refers to factors and subfactors, supports the protester's view, while section L.160 suggests that the evaluation done by Army was correct. Nonetheless, for the reasons set forth below, we fail to see how Litton was prejudiced by the Army's evaluation of past performance.<sup>11/</sup>

Although Litton argues that the Army's failure to evaluate risk under each subfactor meant that information on ITT's performance history was not considered, the record indicates that, as required by section L.160, ITT submitted extensive information on its past performance and that information was evaluated. For instance, the initial and interim evaluation reports include information on ITT's production of night vision devices, numbers of devices delivered to the government, failure rates on required tests, reasons for failures, corrective actions required, trends in rejection rates, number and severity of quality deficiency reports (QDRs) and corrective actions on QDRs. Further, the Army explains that some of the ITT performance problems referred to by Litton, for instance, "shipping in place," or delaying delivery to the field while units were tested, were a result of the Army changing the contract requirements and asking that delivery be delayed for testing.

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<sup>11/</sup> Litton also argues that the Army applied risk ratings arbitrarily because, for instance, the same or similar rates of rejection on past contracts resulted in better (lower) risk ratings on the Gen III procurement than on the Gen II. We find no evidence that the ratings were arbitrarily assigned. With respect to this example, the Army explains that since Gen III devices are more difficult to produce, the criteria to judge rejection rates was slightly broader for the Gen III than the Gen II procurement. We do not think this was unreasonable. In another example, Litton argues that ITT's "low" risk rating on the PA&T factor was wrong because ITT had three "low" ratings, two "moderate" and one "high" on the six PA&T subfactors used to evaluate risk. The Army's interim evaluation report indicates that ITT's single high subfactor rating under the PA&T risk evaluation related to problems which were corrected in subsequent production. Under the circumstances, the evaluators considered the single high risk rating to be outweighed by the three low and two moderate risk ratings assigned to ITT under the other PA&T risk subfactors. In our view, this was reasonable.

We have reviewed the record concerning the risk evaluation of ITT and Litton and find that the evaluation was reasonable and evenhanded in that the same matters were evaluated for each offeror. Litton's position is based primarily on its premise that if the full history of ITT's past performance were considered it could not possibly qualify for the low risk ratings it in fact received. ITT has a long history as a large scale producer of night vision devices. While its performance has not been perfect, it is clear that the agency evaluators were well aware of its past problems but made an overall assessment that it was a qualified and experienced producer of these devices, and that it represented a lower overall risk than did Litton, which had considerably less experience in high volume production of these devices. While, not surprisingly, Litton believes strongly that a "proper" risk evaluation would produce a contrary result, we think that there is support for the Army's conclusion in the evaluation record and that the information offered by the protester, most of which is countered by ITT and the agency in their protest submissions, would not have altered the agency's risk assessment.

Litton maintains that the risk ratings were improperly used more than once in the evaluation. The SSA's selection document shows that he factored the risk ratings into the basic evaluation results to change the factor ratings. For example, in the final evaluation, ITT received a "marginally acceptable" rating for PA&T on the AN/AVS-6. Since ITT received a "low" risk rating under that evaluation factor, its overall final rating for PA&T on the AN/AVS-6 in the selection document was raised to "acceptable." While Litton does not specifically explain its concern here, the protester appears to object to the fact that after the risk ratings were used to adjust the basic evaluation factor ratings, the risk ratings also were independently presented to the SSA.

We do not see that this was a problem here since the charts used to brief the SSA included evaluation factor ratings from the final evaluation (without risk ratings applied), risk ratings and evaluation factor ratings raised or lowered based on risk. Thus, when he made the selection decision, the SSA was fully aware of how the risk ratings had been used.

### 3. Cost/Technical Tradeoff

Litton argues that it was unreasonable to award a contract to ITT at a price of approximately \$50 million (including options) more than the price of awarding the contracts in combination to CEC, Litton and/or Varian. In this regard, the protester states that the only two significant technical advantages in ITT's proposal, the use of ULTEM in the

AN/AVS-6 and the universal tube for the AN/PVS-7, do not enhance the performance of the devices and result only in a possible improvement in the maintenance of the items. In the AN/AVS-6, breakage during repair may be reduced and for the AN/PVS-7, savings may be realized because of the need to stock only one replacement tube for both the "A" and "B" versions. Noting that the agency's own life-cycle cost analysis of these enhancements indicates that at best they will result in combined savings of about \$6.7 million, the protester maintains that there simply can be no rational basis for paying a price of approximately \$50 million more for ITT's proposal when the award to ITT will at best save the agency about \$7 million.<sup>12/</sup> Further, Litton argues that the other reasons cited for choosing ITT, its SPC and TQM programs and its alleged lower risk ratings, simply do not begin to make up the enormous price differential.

The RFP specified that awards would be made to the firms submitting the best overall proposals with primary consideration being given to the three nonprice evaluation factors. Under a solicitation like the one here, which calls for award on the basis of best overall value to the government, there is no requirement that award be made on the basis of low price. Agency source selection officials have discretion in determining the manner and extent to which they will make use of the technical and price evaluation results. Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Technical and price tradeoffs are permitted but the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976) 76-1 CPD ¶ 325. We will accord due weight to the judgment of selecting officials concerning the significance of the difference in technical merit of offers and whether that difference is sufficiently significant to outweigh the price difference. See Institute of Modern Procedures, Inc., B-236964, supra.

Were we to agree with the protester that the predicted \$7 million logistical savings is the sole benefit to be derived from the use of ULTEM and the universal tube, which form the major portion of the agency's decision to award to ITT despite its higher price, we would have a serious question concerning the rationality of the Army's judgment.

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<sup>12/</sup> Litton argues that it was improper for the Army to use a life-cycle type cost analysis on ITT's proposed universal tube and the use of ULTEM. We see nothing improper or inconsistent with the RFP evaluation scheme about the Army's use of this analysis on the two enhancements for the limited purpose of assessing their impact on the agency's logistics and supply system.



However, our review of the record shows that the agency had a number of valid reasons above and apart from logistical savings for its choice of ITT.

First, in addition to the savings due to the agency's prediction that the use of ULTEM will reduce breakage in the AN/AVS-6 device, the agency emphasizes that these devices are used by helicopter pilots to provide critical support to night assault missions and that to the extent breakage of the devices can be reduced, this will enhance the Army's ability to have sufficient quantities of operational devices during critical times. Thus, according to the agency, the enhancement has a value which far exceeds mere dollar savings from reduced breakage. Similarly, the agency explains that the use of the universal tube in the AN/PVS-7 device will, in addition to reducing logistical expenses, enhance the availability of these devices to ground troopers during night fighting missions by eliminating the confusion inherent in having two different tubes which may have to be supplied and replaced in a battlefield environment.

While the protester disparages these matters and argues that even if they are advantages they will not be of great value because they will exist only in ITT's 60 percent of the devices, it is our view that the Army's judgment that these two enhancements would be of value to it in crucial combat situations cannot be ignored and is not on its face without a rational basis. When both the logistical savings and the combat readiness aspects of these technical enhancements are considered along with the agency's conclusion that ITT offered a number of other minor technical enhancements, proven and effective TQM and SPC programs as well as being rated as representing the lowest performance risk, we can not conclude that the agency's decision to expend \$50 million (approximately 10 percent) more than the lowest priced combination of awards (which would not include any award to ITT) was unreasonable. It is important to recognize that in matters such as this, where the agency must bear the additional expense for the proposal it views as superior, the relevant consideration is not whether we believe that the more expensive, higher rated proposal is worth the extra cost, but whether we can discern from the record a reasonable factual basis for the agency's choice. In this case, we do and therefore have no legal ground upon which to question the agency's exercise of its discretion in choosing the higher priced offeror.

#### 4. Improper negotiations/technical transfusion

Litton argues that both ITT and Varian benefited from improper negotiations in which agency contracting officials disclosed to ITT and Varian, or compelled them to insert in their contracts, certain testing procedures not contained in the solicitation or their proposals but included in

Litton's initial proposal. According to Litton, it discovered that AN/PVS-7B devices manufactured by other vendors have a design defect in the eyepiece such that the devices would not meet a required specification, the modulation transfer function (MTF). Litton explains that it proposed a redesign of the eyepiece (the details of which it considers proprietary) and proposed insertion of Group A level (100 percent) testing of the eyepiece in order to verify compliance with the MTF. Litton maintains that at some point, possibly after the selection decision was made, based on Litton's proposal the Army recognized that a redesign of the eyepiece was necessary and that ITT and Varian had not proposed a redesign or backup testing. Further, according to Litton, the Army instructed those firms to include in their proposals, or included in the final contracts, MTF testing and forced those firms to sign the contracts with increased testing requirements. Litton maintains that these actions by the Army amounted to technical transfusion and leveling by revealing Litton's solution to ITT and Varian in order to bring their proposals up to Litton's level.

Technical leveling arises when, as a result of successive rounds of discussions, the agency helps to bring one proposal up to the level of the other proposals by pointing out inherent weaknesses that remain in an offeror's proposal because of a lack of diligence, competence or inventiveness after having been given the opportunity to correct those deficiencies. Federal Acquisition Regulation (FAR) § 15.610(d)(1). Technical transfusion occurs when the government discloses one offeror's approach to another offeror. FAR § 15.610(d)(2). Here, the solicitation included a new MTF requirement not included in previous contracts for the AN/PVS-7B and the Army indicates that all offerors proposing the "B" version recognized that a minor redesign of the eyepiece assembly might be necessary to meet the new requirement. According to the Army, each offeror proposed a method to meet the new MTF specification and proposed procedures to verify that the requirement is met. Our review of the record confirms this explanation and we are aware of no evidence that the Army leaked or transfused Litton's technical solution to the MTF problem to ITT or Varian. With respect to testing, we are not prepared to assume, as Litton apparently argues, that discussions of the need for or level of MTF testing with the other offerors amounted to technical transfusion simply because Litton raised the issue first. Such an assumption ignores the more likely possibility that the Army was concerned that the contracts include adequate procedures, such as testing, to verify that the new MTF requirement is met.

5. Bias and unfair advantage.


Litton also argues that the Army was biased in favor of ITT and gave ITT advance knowledge that it would receive an award. According to Litton, the way in which these contracts were awarded suggests that the Army intended from the start that ITT would continue to be the major source of Gen III devices and "[t]his preference may have been communicated to ITT, as evidenced by its offered price."

We will not attribute prejudicial motives to contracting officials on the basis of unsupported allegations, inference and supposition. Systems & Processes Eng'g Corp., B-232100, Nov. 15, 1988, 88-2 CPD ¶ 478. Here, Litton offers no evidence that ITT was given advance knowledge that it would receive an award but merely infers bias and bad faith based on ITT's prices and the fact that it received an award. Such inference and supposition is insufficient to prove Litton's claims. Monarch Enters., Inc., B-233303 et al., Mar. 2, 1989, 89-1 CPD ¶ 222.

CONCLUSION

As indicated in the preceding discussion, we find no legal basis upon which to object to the awards. In reaching this conclusion, we have carefully reviewed the extensive evaluation records pertaining to this procurement in the context of all of the protester's contentions and arguments. While we have not treated in detail each and every one of the protester's multitudinous contentions and arguments, they all have been considered and have played a role in our decision in the case.

The protest is denied.

  
for James F. Hinchman  
General Counsel