

*L. Glass*



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Technology Concepts and Design, Inc.  
**File:** B-241727  
**Date:** February 6, 1991

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William D. Johnson for the protester.  
Jordan S. Musen, Esq., Defense Communications Agency, for the agency.  
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest that awardee's employment of a former agency employee as its technical advisor constituted a conflict of interest and gave awardee an unfair advantage is denied where the record does not show that any action by the former agency employee resulted in prejudice for, or on behalf of, the awardee.
2. Agency reasonably found that an offeror demonstrated a limited understanding of agency requirements where offeror was determined to have provided insufficient man-hour effort to accomplish the requirements.
3. Award to higher-rated offeror with higher proposed cost is not objectionable where agency reasonably concluded that the cost premium involved was justified considering the technical superiority of the selected offeror's proposal and the greater importance of technical considerations in proposal evaluation.

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## DECISION

Technology Concepts and Design, Inc. (TCDI) protests the award of a cost-plus-fixed-fee contract to C-Cubed Corporation under request for proposals (RFP) No. DCA100-90-R-0118, issued by the Defense Communications Agency as a total small business set-aside for technical and administrative support for the Shared Resources (SHARES) High Frequency Radio Program Interoperability Working Group and SHARES Project Office in the areas of exercise planning, observation and evaluation,

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publication development and maintenance.<sup>1/</sup> TCDI contends that C-Cubed had a conflict of interest and an unfair competitive advantage in the procurement, that the agency improperly used its man-hour estimates as a basis for concluding that TCDI had a limited understanding of the SHARES project, and that the agency did not demonstrate a clear technical advantage for C-Cubed which warranted awarding the contract to the higher-priced offeror.<sup>2/</sup>

#### BACKGROUND

In 1984, a contract was awarded to Electrospace Systems, Inc. (ESI) for technical and administrative support for federal interagency high frequency exercises, which would eventually become SHARES. These exercises simulated emergency high frequency traffic to test the ability and validate the concept of high frequency interoperability.

In 1987, the SHARES support contract was first competed as a small business set-aside. The contract support included SHARES Interoperability Work Group technical and administrative support, SHARES documentation and maintenance, and SHARES exercise planning and reporting. Award of a 3-year contract was made to C-Cubed with ESI as the exercise subcontractor. In 1990, a decision was made to continue the SHARES support program. As a result, this RFP was issued on April 20, 1990, with a closing date of May 22, 1990.

The RFP provided for the award of a cost-plus-fixed-fee contract to the offeror best able to satisfy the government's requirements based on the quality of the offeror's proposal with respect to the stated evaluation factors. The stated evaluation factors listed in descending order of importance were technical and management. The technical evaluation

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<sup>1/</sup> The SHARES High Frequency Radio Program was established to provide a federal high frequency radio communications capability in support of National Security and Emergency Preparedness requirements. It consists of the combined resources and capabilities of existing federal and federally affiliated high frequency radio stations to provide critical backup telecommunications during emergencies.

<sup>2/</sup> In addition, TCDI in its initial protest alleged that C-Cubed had an organizational conflict of interest which resulted in an unfair advantage and which should have disqualified the firm from the competition. The agency in its report responded to this issue, and TCDI in its comments did not rebut the agency's response. We consider this issue to be abandoned by the protester and will not consider it. See TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

factor included, in descending order of importance, an evaluation of understanding of acquisition tasks, feasibility of approach for tasks, expertise in related areas, and comprehensiveness and clarity. The RFP further provided that cost would be considered but would be of much less importance than the technical and management evaluation factors.

Three firms, including TCDI and C-Cubed, submitted proposals by the closing date which were evaluated by the agency. C-Cubed's proposal was rated outstanding with a score of 973.33 out of a possible 1,000, and TCDI, which proposed ESI as its exercise subcontractor, was rated acceptable with a score of 765. The third firm was found to be technically unacceptable. Oral discussions were conducted with both remaining offerors. TCDI was informed of clarifications required and deficiencies noted in its cost and technical proposals and was asked to submit responses in its best and final offer (BAFO). TCDI was specifically advised that its proposed labor hours were below the government estimate and were considered to be inadequate for performing the requirements. TCDI was asked to reevaluate and clarify its proposed labor hours. Discussions with C-Cubed were limited to cost issues since the agency's technical evaluation revealed no technical deficiencies.

BAFOs were received from both offerors and evaluated. As a result of the BAFO evaluation, there was no change to the technical scores. C-Cubed's final proposed cost was \$917,900 while TCDI proposed a final cost of \$839,000. The agency determined that C-Cubed's superior technical proposal outweighed its higher cost and made award to that firm.

#### CONFLICT OF INTEREST

TCDI, in its initial protest letter, alleges that a former government employee proposed by C-Cubed was the contracting officer representative (COR) for the SHARES program, and Government Program Manager and Chairman of the SHARES Interoperability Working Group for the 1987 procurement and contract. TCDI argues that the former government employee had "substantial participation" in the original procurement, including preparing the statement of work (SOW), preparing the man-hour estimates, obtaining program funding and serving as president of the Technical Evaluation Board for the original procurement. TCDI maintains that the former government employee's continuous involvement in the SHARES program from the time he was the Government Program Manager through this procurement provided him the opportunity to exert improper influence on this procurement and provided C-Cubed an unfair competitive advantage. TCDI contends that C-Cubed should have been disqualified from this procurement.

The interpretation and enforcement of post-employment conflict of interest restrictions are primarily matters for the procuring agency and for the Department of Justice. Our general interest, within the confines of a bid protest, is to determine whether any action of the former government employee may have resulted in prejudice for, or on behalf of, the awardee during the award selection process. Wall Colmonoy Corp., B-217361, Jan. 8, 1985, 85-1 CPD ¶ 27. The mere employment of a former government employee who is familiar with the type of work required but not privy to the contents of the proposals or to other inside agency information does not confer an unfair competitive advantage. Regional Env'tl. Consultants, 66 Comp. Gen. 67 (1986), 86-2 CPD ¶ 476, aff'd on recon., 66 Comp. Gen. 388 (1987), 87-1 CPD ¶ 428.

Many of TCDI's arguments are in the form of speculative assertions.<sup>3/</sup> TCDI also does not identify any specific statute or regulation which has been violated. Moreover, we find nothing in the record that provides a basis for questioning the award on conflict of interest grounds.

The record shows that the former government employee was a member of the technical evaluation team for the 1987 procurement and was the COR for the 1987 procurement. The former government employee did sign an amended SOW in March 1988 which revised the Option 2 period of the 1987 contract. The former employee retired from government service and went to work for C-Cubed in July 1988, a year prior to the development of the 1990 SOW, which was written between August 1989 and February 1990. The protester maintains that since the agency admits that the 1990 SOW was mainly based on the revised 1987 contract SOW and the former government employee was an active participant in the revision of the 1987 contract, C-Cubed had access to details regarding the SOW development process and details about the technical evaluation factors and man-hour

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<sup>3/</sup> TCDI attempts to suggest that the former government employee had access to a draft form of a document entitled "NCSH 3-3-2 'SHARES HF Interoperability Process'" that was denied other offerors and was necessary to complete a requirement of the RFP. The agency states, however, that no such document exists and that, at most, only an outline enumerating the possible contents and topics for the document was discussed at a March 1990 meeting of the Interoperability Working Group. The minutes from that meeting were a part of the reading room materials available to all offerors.

estimates.<sup>4/</sup> Although the 1987 SOW and technical evaluation factors were available to all offerors, the protester maintains that not having access to the amended 1987 SOW placed it at a disadvantage. We do not agree.

The RFP contained a complete statement that detailed the SHARES project and the agency's requirements. In addition, all other materials necessary for an offeror to obtain a clear understanding of the requirements were available in a reading room established for all offerors. Moreover, we cannot see how TCDI had been prejudiced since the record shows that ESI, which was C-Cubed's exercise subcontractor on the 1987 contract, signed the 1987 revised SOW and thus had access to this same information. There is no evidence that any action of the former government employee resulted in an improper advantage for C-Cubed.

In fact, C-Cubed under the 1987 procurement received a rated score of 991.25 (out of 1,000) while under the current procurement, after employing the former government employee, C-Cubed received a score of only 973.33. There is no evidence demonstrating that C-Cubed was afforded access to internal agency information concerning the procurement, and no evidence that the former employee otherwise improperly influenced the award selection. As previously stated, the mere fact that a former government employee is subsequently employed by a company awarded a contract is an insufficient basis to challenge the award where, as here, there is no evidence that the former employee influenced the award. The record shows that C-Cubed garnered no advantage during the award process from employment of the former employee. The only advantage C-Cubed may have had was the fact that it was the incumbent contractor with extensive knowledge of the SHARES project. An agency is not required to equalize the competition with respect to an incumbency advantage so long as the advantage does not result from unfair action by the government. Wolf, Block, Schorr & Solis-Cohen, B-221363.2, May 28, 1986, 86-1 CPD ¶ 491. Accordingly, we find no basis to conclude that the former employee improperly influenced the award selection.

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<sup>4/</sup> To the extent TCDI is arguing that the mere employment of the former government employee gave C-Cubed a competitive advantage, its protest is untimely. TCDI admits it knew of the former employee's employment history prior to the October 4, 1990 debriefing and did not protest this matter within 10 working days after this basis was known. See 4 C.F.R. § 21.2(a)(2) (1990).

## PROPOSAL EVALUATION

TCDI contends that the agency improperly relied on its man-hour estimates to conclude that TCDI had a limited understanding of the SHARES project and failed to take into consideration TCDI's use of more highly skilled personnel with the specific experience required to perform the tasks. The protester further argues that the agency did not demonstrate a clear technical advantage for C-Cubed that would justify award to it at a higher cost. After examining the record, we find the agency's evaluation was reasonable and consistent with the solicitation evaluation criteria.

In reviewing protests of allegedly improper evaluations, our Office will examine the record to ensure that an agency's evaluation was fair and reasonable and consistent with the evaluation criteria stated in the RFP. A protester's disagreement with the agency's evaluation is itself not sufficient to establish that the agency acted unreasonably. See Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

Here, with respect to labor hours, TCDI, in its initial proposal, proposed labor hours significantly below the government estimate of what was needed to perform the tasks. During discussions, TCDI was specifically informed that its proposed labor hours were below the government's estimates and it was suggested that TCDI reevaluate the effort or clarify the hours proposed. TCDI in its BAFO raised the number of man-hours for one task but decreased the hours for another task, so that its hours were still below the agency estimates.

The agency concluded that TCDI's proposed labor hours suggested that TCDI had a limited understanding of the requirements. We find nothing improper in the agency's evaluation. TCDI's estimated hours were 21 percent below the government estimates, and the evaluators did not feel that TCDI adequately supported its approach. While the record shows that the evaluators considered the proposed use of more highly skilled people, they simply did not find convincing TCDI's explanation that its use of highly-skilled personnel resulted in the need for only the reduced labor hours proposed by TCDI. The protester has not shown that the agency's judgment was unreasonable. While the protester's proposal was determined to be acceptable under both the understanding the requirements and the personnel factor, the evaluators, in our view, reasonably determined that there was a risk of whether TCDI could perform at its proposed cost in light of the man-hours proposed.

The protester also argues that the agency did not justify award to C-Cubed at a higher cost than TCDI's.

A contracting agency, in making an award decision, must determine if the technical superiority of a proposal is worth the cost associated with that proposal. These cost/technical tradeoffs are governed only by the tests of rationality and consistency with the established evaluation criteria. Tracor Marine, Inc., B-226995, July 27, 1987, 87-2 CPD ¶ 92. We have upheld awards to higher rated offerors with significantly higher proposed costs where the agency reasonably determined that the cost premium involved was justified considering the significant technical superiority of the selected offeror's proposal. See University of Dayton Research Inst., B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178.

Here, the RFP specifically provided that the government would select an offeror who was best able to satisfy the government's requirements. Cost was to be considered but was less important than technical. While there is an 8.6 percent difference in cost, C-Cubed's proposal was rated 21.4 percent higher technically than TCDI's. Further, C-Cubed proposed more staff months for performing the requirements with less cost per staff month than did TCDI.<sup>5/</sup> C-Cubed's proposed technical approach provided the government 23 percent more hours for the effort. The agency rated C-Cubed's proposal outstanding because C-Cubed demonstrated an excellent understanding of the SHARES program and proposed more quality personnel with great knowledge and insight in the federal high frequency problems and issues affecting it. C-Cubed's history in SHARES-related projects was excellent, and C-Cubed's approach to future SHARES program activities was considered to be innovative, flexible, and effective. On the other hand, TCDI, with ESI as its subcontractor, was rated acceptable. Although the evaluators found that TCDI demonstrated a good understanding of the SHARES program, they also determined that TCDI in its BAFO continued to show a misunderstanding of the roles of the specific groups involved, did not specifically define the roles and extent of some of its proposed participants and, as previously stated, did not propose an adequate level-of-effort to perform the requirements. Although TCDI's proposal was rated acceptable, it was considered to present some risk to the successful completion of the requirement and simply was not rated as high as C-Cubed's.

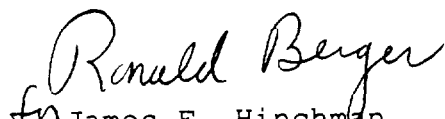
Here, C-Cubed submitted a technically superior proposal, and it was within the agency's discretion to determine that this

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<sup>5/</sup> Although TCDI asserts that this was an improper basis for making a cost/technical tradeoff decision, the record is clear that this was merely one point taken into consideration by the agency in making its cost/technical tradeoff decision.

superior proposal was worth its cost, especially in light of the evaluation criteria that assigned cost far less weight than technical considerations.

The protest is denied.

  
for James F. Hinchman  
General Counsel