



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Binghamton Simulator Company, Inc.

**File:** B-244839

**Date:** November 5, 1991

David H. Bateman for the protester,  
David R. Johnson, Esq., Gibson, Dunn & Crutcher, for  
Quintron Corporation, an interested party,  
Gregory H. Petkoff, Esq., and Susan V. Podsedly, Esq.,  
Department of the Air Force, for the agency,  
Barbara C. Coles, Esq., and Andrew T. Pogany, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

1. Where the contracting officer determined the prospective awardee to be a responsible contractor based on a pre-award survey and where there is no showing that this determination was made in bad faith, there is no basis to object to the agency's affirmative determination of the prospective awardee's responsibility.

2. There is no requirement for a cost realism analysis before the award of a competitive, fixed-price contract, and there is no legal basis to challenge the low offeror's failure to explain a reduction in its best and final offer price where the agency increased the offeror's risk rating for failing to explain its reduction in some areas and nevertheless found that the low-priced, responsible offeror understood the solicitation requirements and proposed an approach that provided an acceptable risk of performance, notwithstanding its low proposed price.

3. Protest that agency was biased in favor of awardee is denied where the protester gives no persuasive support or specific details for its allegation of bias and where there is no corroborating evidence that supports the protester's speculative claim.

### DECISION

Binghamton Simulator Company, Inc. protests the award of two contracts to Quintron Corporation under request for proposals (RFP) No. F33657-91-R-0091, issued by the Department of the Air Force, Aeronautical Systems Division, for the modernization of aircraft cockpits and contractor logistics

support in connection with the Euro-NATO Joint Jet Pilot Training Procedures Trainer Modernization (EPTM) program.

We deny the protest.

#### BACKGROUND

The purpose of the EPTM program is to ensure that critical ground and in-flight emergency and instrumentation procedures for T-37 and T-38 aircraft are taught to future Air Force and NATO pilots. Under a modernization contract, the contractor will replace existing analog computers with state-of-the-art digital computers. The contractor is also required to install a new instructor station for each trainer, to replace the control loading system with digital systems, and to replace the analog driven instrumentation with digital driven components. The work called for under a contractor logistic support contract includes maintenance, refurbishment of parts and spares, operation of the training system support system, and pilot instruction.

The RFP, issued on March 6, 1991, contemplated the award of two separate firm, fixed-price contracts (one for the modernization effort and one for contractor logistics support) to one offeror. The RFP required technical and price proposals and advised offerors that the Source Selection Authority (SSA) would award the contracts on the basis of an integrated assessment of each offeror's proposal. The solicitation listed the following four factors in descending order of importance: (1) technical considerations, (2) logistics, (3) management, and (4) most probable life cycle cost (MPLCC). The RFP also advised offerors that "MPLCC will always be a significant factor in the source selection decision." Price proposals were to consist of two "books"--EPTM production costs and logistics support costs.

Four firms submitted proposals by the April 5 closing date. After the initial evaluation, the agency determined that all four offerors, including Quintron and Binghamton, were within the competitive range. Discussions were held, and one offeror was eliminated from the competitive range. Best and final offers (BAFO) were then requested by June 14.

After the evaluation of the BAFOs of the three remaining offerors-- Binghamton, Quintron, and ECC International Corporation--the SSA concluded that Binghamton's and Quintron's proposals were technically equal and superior to ECC's technical proposal. With regard to their price standing, Quintron's BAFO price (significantly reduced from its

initial price) was lower than Binghamton's BAFO price.<sup>1</sup> Since Quintron's technical proposal was rated technically equal to Binghamton's technical proposal and Quintron's evaluated MPLCC was lower than Binghamton's MPLCC, the SSA determined that Quintron's proposal represented the best overall value to the government. As a result, the Air Force awarded both contracts to Quintron on July 11. Binghamton subsequently filed a protest with our Office principally challenging the agency's affirmative determination of Quintron's responsibility and the evaluation of Quintron's MPLCC.

#### AFFIRMATIVE DETERMINATION OF RESPONSIBILITY

Binghamton contends that the award to Quintron was improper because Quintron is not a responsible contractor. Specifically, Binghamton claims that the agency's affirmative determination of Quintron's responsibility was made as a result of either bad faith or negligence on the part of the Air Force. In this regard, the protester alleges that the agency overlooked the following indications that Quintron is not a responsible contractor: (1) the fact that Quintron failed to explain or trace the significant reduction in its BAFO price; (2) Quintron's past performance, which demonstrates its propensity to use low bidding techniques and then have attendant delivery delays, contract price increases, and cost overruns; and (3) Quintron's failure to show its ability to perform the contract at its BAFO price.

Procurement authorities are presumed to act in good faith when they make affirmative determinations of responsibility. In order for our Office to conclude otherwise, the record must show that the procuring officials had a specific intent to harm the protester. NFI Mgmt. Co., 69 Comp. Gen. 515 (1990), 90-1 CPD ¶ 548. An allegation that the determination was made negligently does not show bad faith; therefore, the scope of our review of such affirmative determinations does not extend to cases that may involve negligence. American Athletic Equip. Div., AMF Inc.--Recon., 59 Comp. Gen. 90 (1979), 79-2 CPD ¶ 344.

We find no showing of bad faith here. The record shows that an affirmative determination of Quintron's responsibility was made on the basis of a pre-award survey that found Quintron to have satisfactory personnel and labor resources and satisfactory production capability. Further, the survey team found Quintron's past performance and ability to meet the schedule to be satisfactory. This rating was based in part on the fact that Quintron has been marketing similar

---

<sup>1</sup>Quintron proposed a price of approximately \$28 million, while Binghamton proposed approximately \$34 million.

simulators, trainers, and upgrade packages for 7 years, and deliveries have been on schedule. While Binghamton maintains that Quintron has had delivery delays in the past and, therefore, should be found nonresponsible, the survey team concluded that even though there had been some delays in certain contract data items, Quintron was not always responsible for these delays. There is nothing in the record to show that the contracting officer unreasonably relied on the survey teams to find that the awardee was a responsible prospective contractor.

#### MPLCC EVALUATION

Binghamton contends that the agency failed to adhere to the MPLCC evaluation scheme set forth in the solicitation. Specifically, Binghamton claims that while the scheme stated that "cost proposals" would be evaluated to ensure realism (e.g., that the "costs and the scope of the work are compatible"), the contracting agency either failed to conduct a cost realism analysis or failed to conduct an analysis in accordance with the terms of the solicitation. In this regard, Binghamton alleges that the agency's concession in its report--that Quintron's significantly reduced BAFO price was not traceable in some of the areas of contractor logistics support--demonstrates that if the agency did conduct a cost realism analysis, it must have been conducted unreasonably and unfairly.

The Air Force argues that the agency properly evaluated the price proposals in accordance with the evaluation scheme set forth in the solicitation. The agency contends that notwithstanding the absence of a "traceability" requirement in the solicitation, the source selection evaluation team recognized that Quintron did not explain all of its BAFO price reductions.

Where fixed-price contracts are solicited, "cost realism" ordinarily is not considered in the evaluation since a firm, fixed-price contract provides for a definite price and this contract type places upon the contractor the risk and responsibility for all contract costs and resulting profit or loss. Corporate Health Examiners, Inc., B-220399.2, June 16, 1986, 86-1 CPD ¶ 552. However, agencies, in their discretion, may provide for a cost realism analysis in the solicitation of firm, fixed-price proposals for such purposes as measuring an offeror's understanding of the solicitation requirements. Id.

Here, the Air Force performed a price analysis to determine the reasonableness of Quintron's price. In doing so, the Air Force evaluation team compared Quintron's price and the other offerors' prices and found that while Quintron's price was substantially lower than the other offerors' prices,

Quintron's proposal nevertheless demonstrated its clear understanding of and compliance with the solicitation requirements. Notwithstanding this finding, the agency evaluators increased Quintron's risk rating in the logistics area because some of Quintron's price reductions in that area were not explained; the agency evaluators also adjusted Quintron's MPLCC because Quintron's proposed escalation rate was considered too low as compared with the government's inflation rate.

Although the agency's adjustment of Quintron's escalation rate increased Quintron's MPLCC, Quintron's MPLCC remained substantially lower than that of any other offeror, and the evaluators specifically found that Quintron understood the requirement and proposed an approach that provided an acceptable risk of performance, notwithstanding its low price. On this record, we have no basis for finding the evaluation to be unreasonable.

#### BIAS IN FAVOR OF THE AWARDEE

Binghamton contends that the Air Force was biased in favor of Quintron, and this bias is reflected in the way the Air Force handled the procurement from the time it issued the solicitation to the time it awarded the contracts to Quintron.

Binghamton first claims that this bias surfaced at the pre-proposal conference when one company objected to the fact that the Air Force was allowing Quintron to submit technical and price proposals in response to the RFP. According to Binghamton, the firm based its objection on its belief that Quintron had an unfair advantage due to its involvement on the T50/T51 project.

Binghamton also argues that the Air Force "forced" the offerors to submit BAFOs "for the benefit of Quintron." Specifically, Binghamton states that prior to discussions, its proposal was superior to the other offerors' proposals. Binghamton contends that since its initial proposal was superior technically and its initial price was lower than the other offers, the agency should have made award to Binghamton based on its initial proposal rather than generating deficiency reports (DR) that were "trivial and insubstantive."

We have examined the whole record and see no evidence to support Binghamton's allegation that the Air Force was biased in favor of Quintron. The first allegation--that one offeror objected to Quintron's participation based on its prior performance--does not, by itself, demonstrate any bias on the part of the Air Force. Further, the record shows that the DRs Binghamton received were far from being

trivial; rather, the technical evaluator found that Binghamton was deficient, for example, in the maintenance and support area because, contrary to the solicitation requirements, Binghamton proposed to provide only contractor support maintenance for the unmodified trainers instead of complete contractor logistics support. As discussed above, the record does not support Binghamton's other contentions regarding the affirmative determination of Quintron's responsibility and the evaluation of its prices. Since the protester has presented no evidence to substantiate its allegations, and we see none elsewhere in the record, we find that the agency acted properly in making award to Quintron.

The protest is denied.



*for* James F. Hinchman  
General Counsel