



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Central Texas College

File: B-245233.4

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the decision.

DIGESTS

1. The interpretation and enforcement of post-employment conflict of interest restrictions are primarily matters for the procuring agency and for the Department of Justice. The General Accounting Office's 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. The mere employment of a former government employee who is familiar with the type of work required but not privy to the contents of proposals or any other inside information does not confer an unfair competitive advantage.

2. Contention filed after contract award that awardee should have been ineligible for award because its performance of earlier pilot contract resulted in an organizational conflict of interest is untimely where a solicitation amendment issued before receipt of proposals informed offerors that the awardee had performed the pilot contract and would be permitted to compete under the current solicitation since, under the circumstances, the contention involves a solicitation impropriety, and under General Accounting Office Bid Protest Regulations protests based upon such improprieties must be filed before time set for receipt of proposals.

3. There is no requirement that an agency equalize competition with respect to the advantages that an incumbent contractor may have so long as the advantages do not result from unfair action by the government.

4. Although the agency used in the source selection erroneous point scores for the protester that did not reflect increases in points achieved by protester's best and final offer, since contracting officer did not rely on point scores alone in making the source selection, but instead based his judgment of the technical superiority of the awardee's proposal on an assessment of the strengths and weaknesses of the proposals, use of the erroneous point scores resulted in no harm to the protester.

DECISION

Central Texas College (CTC) protests the award of a contract to Resource Consultants, Inc. (RCI) under request for proposals (RFP) No. MDA903-91-R-0040, issued by the Department of the Army for the development, administration and management of job assistance centers. CTC argues that RCI should have been excluded from the competition as a result of a personal conflict of interest of one of its key employees and the firm's organizational conflict of interest. The protester also argues that the agency improperly evaluated the proposals.

We dismiss the protest in part and deny it in part.

BACKGROUND

The solicitation contemplated the award of a cost-plus-fixed-fee contract for a base period of approximately 3 months and 4 option years. The job assistance centers to be developed and managed under the contract are to provide assistance to Army personnel, both military and civilian, and their families who are leaving the service or Army employment. Services to be provided at each job assistance center include advice on civilian job expectations, labor market analysis, resume preparation and job search skills. The contractor is to operate 55 permanent and 8 mobile job assistance centers, including 7 pilot centers created and managed by RCI under delivery order No. 0008 issued under RCI's contract No. DACA65-89-D-0107.

The solicitation stated that "award shall be made to that responsible offeror whose offer, conforming to the solicitation, is determined to be the best overall response, price or cost and other factors considered." Also, according to the solicitation, technical superiority was to be more important than cost. The solicitation included the following evaluation factors, most with subfactors:

1. Capability to Perform
2. Program Content
3. Organization Experience and Capabilities

4. Personnel Qualification and Experience
5. Updated Materials
6. Management
7. Quality Control Plan
8. Subcontracting Plan

Under the RFP, factors 1 and 2 were of primary importance, factors 3, 4 and 5 were of secondary importance, and factors 6 and 7 were of tertiary importance. Factor 8 was valued at 10 percent of the combined weight of factors 1 through 7.

Thirteen firms submitted offers. The agency evaluated the proposals and created a competitive range consisting of the proposals of RCI, CTC, Planning Research Corporation (PRC) and one other firm. After several rounds of discussions, the competitive range offerors submitted best and final offers (BAFO) which were evaluated. The final technical scores and proposed costs including options of the three highest rated competitive range offerors were as follows:

	<u>Score</u>	<u>Proposed Cost</u>
RCI	83	\$51,320,459
PRC	79	\$45,258,834
CTC	73 (77) ¹	\$47,987,035

In justifying the award, the agency noted that RCI's proposal had been determined to be technically superior to the others submitted and that technical superiority was the most important consideration under the solicitation. The agency also noted that although RCI's proposed cost was higher than that of two other offerors, its overall approach and its comprehensive implementation plan for conducting the effort, as well as the company's insight into the problems that might be encountered, offset the cost difference. The agency also thought that RCI, through its higher level-of-effort for management level personnel, would assure greater responsiveness to the job center customers than would PRC, the next highest rated offeror, and that the government would receive more value for its money by awarding the contract to RCI.

PROTEST ALLEGATIONS

CTC argues that RCI is ineligible for award as a result of a personal conflict of interest on the part of an RCI

¹As we explain below, although the score for CTC's BAFO used in the source selection was 73, its correct BAFO percentage score was 77. All the scores are percentages of a total of 1,100 points available under the evaluation criteria.

employee. CTC also argues that RCI had an unfair advantage in the competition as a result of its performance of the earlier pilot contract--No. DACA65-89-D-0107--to develop and manage job assistance centers for the Army. In this respect, CTC maintains that RCI had superior knowledge of the development, operation and updating of the software and database required for the job assistance centers and that the agency took no steps to correct this improper advantage but, in fact, exacerbated the advantage by refusing to give other offerors the same information. Additionally, CTC alleges that under the pilot contract, RCI helped prepare specifications and/or evaluation factors for this solicitation so that RCI has an organizational conflict of interest and should be ineligible for award.

CTC also argues that the agency evaluators made errors to its detriment in the scoring of its proposal so that the BAFO score for the firm presented to the contracting officer should have been higher than it was. CTC argues that the agency did not properly consider cost in the evaluation and selection and that the evaluation panel misapplied the RFP evaluation factor relating to organization experience. CTC also argues that the agency failed to conduct meaningful discussions and that a misrepresentation in RCI's proposal with respect to the previous experience of one of the firm's key personnel misled the evaluation panel and improved RCI's position in the competition.

PERSONAL CONFLICT OF INTEREST ALLEGATION

We first address CTC's contention that RCI should be ineligible for award because an RCI employee, Mr. Gerald L. Jenkins, has a personal conflict of interest. Mr. Jenkins retired as a colonel from the Army in December 1989. From December 1988 until his retirement, Mr. Jenkins was the chief of the Army's Transition Management Division, which processes Department of the Army retirements and separations. According to CTC, in that position Mr. Jenkins supervised personnel responsible for the current job assistance solicitation and an earlier closely related Transition Job Assistance Services (TJAS) solicitation. The protester maintains that in his position with the Army, Mr. Jenkins had hands-on involvement with the TJAS solicitation as a result of his supervisory role and was very familiar with the subject matter of the earlier procurement which involved the same concept as the current solicitation.

CTC maintains that Mr. Jenkins, as a result of his duties with the Army and his later work for RCI, has violated a number of statutory and regulatory conflict of interest provisions. For example, CTC refers to statutory procurement integrity restrictions which pertain to a

"procurement official," defined as a civilian or military official or employee of an agency who "participated personally and substantially" in the conduct of a federal agency procurement. 41 U.S.C. § 423(p)(3) (Supp. I 1989). Among other restrictions, a procurement official is prohibited during the conduct of a federal procurement from engaging in employment discussions with any competing contractor or participating for 2 years on behalf of any contractor in negotiations leading to a contract for such procurement or the performance of such a contract. 41 U.S.C. §§ 423(a), (b) and (f). CTC maintains that Mr. Jenkins' supervision of Army personnel responsible for the current solicitation and the earlier related TJAS solicitation and his familiarity with the job assistance concept amounted to personal and substantial involvement in both procurements so that employment discussions he had with RCI in October and November 1989 and his employment by RCI in January 1990 violated these provisions.

CTC also argues that as a result of his former position with the Army, Mr. Jenkins had internal agency information concerning the TJAS solicitation and the current procurement and that this information was exploited by RCI to obtain the earlier pilot contract for job assistance centers and to obtain award under the current solicitation.

Within the confines of a bid protest, our role is to determine whether any action of the former government employee may have resulted in prejudice for, or on behalf of, the awardee. Technology Concepts and Design, Inc., B-241727, Feb. 6, 1991, 91-1 CPD ¶ 132. The employment of a former government employee who is familiar with the type of work required but not privy to the contents of proposals or any other inside information does not confer an unfair competitive advantage. Id.

We held a hearing to determine whether Mr. Jenkins had a conflict of interest, for instance, as a result of access to procurement sensitive information that gave RCI an unfair competitive advantage. Mr. Jenkins and Mr. Larry Holmes, another RCI employee, testified and were subject to cross examination.²

²Two other individuals also testified: Mr. Charles W. Burns, an RCI employee, and Ms. Susan J. Harvey, the chair of the agency's evaluation panel. The testimony of these two witnesses focused on the allegation that RCI had an organizational conflict of interest and an unfair competitive advantage as a result of its performance of the earlier pilot contract.

The protester argues that the need for job search assistance for retiring Army personnel was identified while Mr. Jenkins was still with the Army. Mr. Jenkins admits that he was very familiar with the job assistance concept. Video Transcript (VT) at 11:06-07. According to the protester, these circumstances establish that Mr. Jenkins had access to inside information not available to other offerors. The Army has explained that the procurement process leading to the protested solicitation was initiated in July 1990 and nothing in the record refutes that explanation. Thus, since the procurement was not initiated until 7 months after Mr. Jenkins retired, his position with the Army could not have given him access to procurement sensitive information related to the protested solicitation.

CTC nonetheless argues that the current solicitation and the earlier TJAS procurement "involved the same concept" and, for that reason, Mr. Jenkins' position with the Army, in which he supervised personnel responsible for the TJAS solicitation, gave him "insider knowledge" that was used by RCI in preparing its proposal.

Under the circumstances here where the subject matter of the two solicitations is nearly identical and the current solicitation was initiated a little more than a year after the cancellation of the prior solicitation, we think that it is appropriate for us to consider CTC's argument concerning Mr. Jenkins' alleged possession of "insider knowledge." Mr. Jenkins was the chief of the Army's Transition Management Division, and personnel in one of the four branches of that division were responsible for developing the specifications and the statement of work for the TJAS solicitation, RFP No. MDA903-89-R-0017. VT 10:35. The TJAS solicitation was canceled due to funding constraints in March 1989 after proposals had been submitted. VT 10:36, 10:56.

Mr. Jenkins testified that he had no contact with the procuring activity personnel responsible for the TJAS solicitation, VT 10:36; he had no role in determining the evaluation factors or their weights for that solicitation, VT 11:00; he did not review or evaluate offers, VT 10:36, 10:59; and he did not participate in discussions with offerors. VT 10:36. In addition, Mr. Jenkins testified that he did not serve on an evaluation team or as a source selection official or on a source selection advisory council, VT 10:36. The record provides no basis for us to dispute this testimony and we have no reason to believe that as a result of his position with the Army Mr. Jenkins obtained any information that would provide an unfair competitive advantage to his employer related to the TJAS solicitation.

More importantly, while with the Army Mr. Jenkins' activities concerned the development and implementation of the job assistance program and not procurement activities. The protester's submissions to this Office repeatedly argue that in his position with the Army, Mr. Jenkins was "personally and substantially" involved with the job assistance "concept" or the job assistance "program" and that, as a result of that involvement, he had "inside" information and his employment discussions and later employment by RCI violated procurement integrity restrictions. In this respect, CTC states that Mr. Jenkins admitted at the hearing that his assistance to RCI in preparing its proposal for the pilot contract included "internal agency information concerning the [TJAS] procurement." VT 11:58-59, 12:02-03, 12:06-07. In fact, what Mr. Jenkins stated was that while working for RCI he shared with RCI everything he knows about job assistance including such matters as seminar and workshop materials for job assistance and management information systems for job assistance. VT 11:52. No unfair competitive advantage results from the employment of a former government employee who is familiar with the type of work required but not privy to the contents of proposals or any other inside information with respect to the procurement at issue. Technology Concepts and Design, Inc., supra. On the record before us, CTC's allegation that Mr. Jenkins had inside information is unsupported. Contrary to the protester's assertions, we do not believe that any unfair advantage resulted from Mr. Jenkins' familiarity with the job assistance concept or program.

ORGANIZATIONAL CONFLICT OF INTEREST

CTC argues that RCI should have been ineligible for award based on an organizational conflict of interest under Federal Acquisition Regulation (FAR) § 9.505-2. According to CTC, under FAR § 9.505-2, if a contractor prepares or assists in preparing specifications or a work statement to be used in competitively acquiring a system or service, or provides material leading directly to such work statement, that contractor may not supply the system or service. In this case, CTC maintains that RCI's performance of the pilot contract, which included creation of seven job assistance centers and preparation of written materials to be used by the contractor on the current contract, created an organizational conflict of interest requiring RCI's exclusion from the competition.

The Army responds that this aspect of CTC's protest is untimely because the solicitation informed offerors of RCI's work on the pilot contract. In this respect, in response to a question raised before the closing date for receipt of proposals, a March 27, 1991, solicitation amendment stated

that RCI had been issued delivery order No. 0008 under the pilot contract for "design, development and implementation of the seven (contractor operated) Pilot Job Assistance Centers." That amendment also stated that RCI would be permitted to compete under the current solicitation.

Under our Bid Protest Regulations, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested by the closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Here, the solicitation amendment stated that RCI could compete under the current solicitation in spite of its "design [and] development" work on the pilot contract. Thus, CTC's allegation that RCI should have been ineligible to compete concerns an alleged defect incorporated into the solicitation by the amendment and should have been filed before the time set for the receipt of initial proposals. MAR, Inc., B-215798, Jan. 30, 1985, 85-1 CPD ¶ 121; RMS Technology, Inc., B-215242, Dec. 17, 1984, 84-2 CPD ¶ 671; JVAN, Inc., B-202357, Aug. 28, 1981, 81-2 CPD ¶ 184. Since the protest was not filed until after the contract was awarded, this issue is untimely and will not be considered.

UNFAIR COMPETITIVE ADVANTAGE

In addition to arguing that RCI should have been excluded from the competition because of its work on the pilot contract, CTC also argues that the pilot contract gave RCI an unfair competitive advantage and that the agency did not make sufficient efforts to neutralize that advantage. In this respect, CTC maintains that RCI's performance of the pilot contract gave it access to information not available to other offerors and that the agency exacerbated the situation by refusing to give the same information to other offerors. As CTC recognizes, there is no requirement that an agency equalize competition with respect to the advantages that an incumbent contractor may have so long as the advantages do not result from unfair action by the government. ADT Facilities Mgmt. Inc., B-236122.2, Dec. 12, 1989, 89-2 CPD ¶ 541.

In support of its view that RCI had an unfair competitive advantage, CTC argues that the Army's issuance of the delivery order to RCI to create the pilot job assistance sites in spite of Mr. Jenkins' conflict of interest amounted to unfair action which eventually gave RCI an advantage in the current competition. We do not agree with this aspect of the protest because, as explained above, we do not think that the record indicates that Mr. Jenkins had a conflict of interest.

CTC further argues that the Army failed to disclose information to CTC and other offerors that was available to RCI and that this "selective disclosure" created an unfair competitive advantage. We have carefully considered CTC's numerous specific allegations of selective disclosure and, based on our review of the record, we do not find that any advantages possessed by RCI were the result of improper action by the government.

First, based on testimony at the hearing, we conclude that a large portion of the information CTC argues it was deprived of was available in the solicitation or in other publicly available documents. For example, the work statement for the current solicitation requires the contractor to assure 97 percent accuracy for data entries into the Army Employer Network and CTC argues that while performing the pilot contract only RCI was specifically told what types of information would be considered to determine the accuracy rate. Nonetheless, the current solicitation provided the same information to other offerors that was otherwise available to RCI. VT 15:22-15:24.

With respect to other information that CTC argues it was deprived of, CTC suffered no competitive harm. For example, CTC argues that RCI was the only offeror that knew during the proposal preparation process that the agency intended to use a nine-digit military occupational specialty (MOS) numbering system instead of a three-digit MOS. However, although CTC has reviewed the entire evaluation record, it has cited no instance in which its proposal was criticized for not addressing the nine-digit MOS or RCI's proposal was given credit for such a discussion.

Similarly, we find no merit to another alleged example of an unfair advantage concerning a modification to RCI's delivery order No. 0008, in which RCI was given a materials and equipment list that included the government's estimate of the costs of each item and the quantities needed for the pilot job assistance centers. CTC explains that the current solicitation, while including essentially the same list of materials and equipment as provided to RCI, did not include cost estimates or estimated quantities. According to CTC, the agency's disclosure of this information to only RCI was an unfair advantage that skewed the competition in RCI's favor.

According to the agency, the cost figures which CTC refers to were not government estimates of quantities and costs of equipment and materials for the pilot contract. Rather, the figures are the negotiated costs for the list of materials and equipment under the pilot contract. The materials and equipment list which CTC complains gave RCI an unfair

competition advantage included only standard office supplies and equipment. We do not believe that possession of the quantities and cost figures for only the seven pilot sites would have made a significant difference in CTC's ability to estimate the quantities and costs for over 50 other sites of various sizes. In any event, although the pilot contract documents which CTC refers to were not given directly to each offeror by the agency, the solicitation stated that these documents were available--CTC simply did not ask for them. VT 15:08.

Other alleged informational disparities were raised by CTC for the first time at the hearing on this protest held on December 11. For example, at the hearing, CTC argued for the first time that only RCI was informed of the length of training programs and seminars that the agency preferred. This allegation was based on documents given to CTC on November 7, and therefore should have been raised within 10 days thereafter. 4 C.F.R. § 21.2(a)(2). Since it was not, it is untimely and will not be considered.³

Based on our review of the record, including testimony at the hearing, we conclude that RCI did not have an unfair competitive advantage. Although RCI clearly had advantages related to its performance of the pilot contract, we have no grounds to conclude that those advantages were the result of any improper action on the part of the government.

EVALUATION, SCORING AND SOURCE SELECTION

Proposal Scoring

CTC argues that the evaluation and selection were flawed because the summary evaluation score sheet for CTC's BAFC, which was used by the contracting officer in the source selection, includes incorrect entries from the score sheets of three of the five members of the evaluation panel. According to CTC, these errors indicate that the evaluation was not conducted according to the criteria in the solicitation and that the agency did not perform a proper cost/technical tradeoff because, with respect to CTC, it was

³CTC also argues that it attempted "to review the software and associated database during a site visit but was refused." The site visit occurred on February 26 and 27, 1991, before proposals were submitted. CTC was required to protest this matter by the closing time set for receipt of proposals. 4 C.F.R. 21.2(a)(1), supra; William Hunter and Assocs., B-235123; B-235164, June 20, 1989, 89-1 CPD ¶ 58. Since it failed to do so, this issue is untimely and will not be considered.

faulty data. Further, CTC argues that had the correct scores been presented to the contracting officer and had a proper cost/technical tradeoff been conducted, CTC would have been the awardee because the technical differences between its proposal and RCI's were minor and CTC's cost was lower. Alternatively, CTC maintains that it is impossible now to determine what would have occurred had the contracting officer had the correct scores when he made the source selection.

The agency concedes that, in fact, there were 33 errors, all to CTC's detriment, in the CTC BAFO scoring summary used by selection officials and included in the agency report. The agency explains that after discussions, but before BAFOs were requested, offerors submitted revised proposals which were scored by the evaluation panel. According to the agency, CTC's summary score sheet for this interim evaluation was incorrectly labeled as its BAFO summary and used in the source selection. As a result, CTC's BAFO summary score sheet was not updated to reflect increases in scores which CTC gained through scoring of its BAFO.

The agency provided a corrected summary of the scores assigned by the five members of the evaluation panel to CTC's BAFO. Our review of the BAFO score sheets of the individual evaluators indicates that the corrected BAFO summary submitted by the Army accurately reflects the scores given by the evaluators for CTC's BAFO. Further, as the agency indicates, when the erroneous scores of the evaluators are corrected, CTC's percentage technical evaluation score is raised from 73 to 77.⁴

The Army maintains that this was a minor error that had no impact on the evaluation panel's recommendation of award to RCI or on the selection decision. The agency points out that CTC's corrected percentage score of 77 was still two points less than PRC's second ranked score and PRC's cost was lower. Under the circumstances, the agency argues that, even with the correct scores, PRC and not CTC would be next in line for award after RCI.

In addition, the agency notes that RCI's high score of 83 was still six points higher than CTC's corrected score. The agency argues that this scoring difference reflects a significant difference in quality between the two proposals and

⁴As set out above, the BAFO percentage scores for two of the other competitive range offerors were as follows: RCI 83 and PRC 79. As explained above, these percentage scores represent the percentage of 1,100 total points earned by each offeror.

that the recommendation of the evaluation panel and the selection decision were not based on the scoring difference alone. In this respect, in a submission to this Office, the chair of the evaluation panel maintains that the panel was not misled by the incorrect scores because the recommendation to award to RCI was based on the superior technical capability found in that firm's proposal and not on the scores alone. Similarly, the contracting officer maintains that the selection decision was unaffected by the erroneous CTC scores and that, even with the corrected scores, based on a comparison of the strengths and weaknesses of the proposals of CTC, RCI and PRC, he stands by his decision to award to RCI. The contracting officer explains that he views RCI as superior as an outplacement firm and with respect to its headquarters management team, quality assurance plan and corporate capability.

While the point scores used by the contracting officer in the source selection overstated the inferiority of CTC's proposal in relation to that of RCI and PRC, the contracting officer did not rely simply on RCI's higher score to determine that its proposal was technically superior and worth the additional cost over an award to CTC or PRC. Rather, the contemporaneous evaluation record supports the contracting officer's assertion to this Office that he based his judgment of the technical superiority of RCI's proposal on an assessment of the strengths and weaknesses of the proposals as described by the technical evaluation panel. This included review of individual evaluator worksheets that included numerous comments reflecting their views as to the strengths and weaknesses of the various proposals, as well as a memorandum, prepared at the contracting officer's request, which compared the three highest scored proposals and considered whether award to RCI at a higher cost was justified. That memorandum compared the proposals not in terms of the points assigned by the evaluators, but based on the evaluators' assessments of strengths and weaknesses of the proposals. The memorandum includes a detailed explanation of why the evaluation panel believed that PRC and CTC could not perform the contract as effectively as RCI. The memorandum also states that job assistance is clearly not a primary emphasis of CTC and that, comparatively, CTC lacks this important focus. Moreover, after explaining that PRC's proposal was not technically equal to RCI's, the evaluation panel stated that "CTC was even less effective when addressing the requirements of the statement of work and when responding to the questions." Thus, in our view the evaluation and selection were based on actual technical judgments regarding the relative strengths and weaknesses of the competitors and were not skewed by the scoring errors.

Cost in the Selection Decision

CTC also alleges that the contracting agency failed to consider cost as a "substantial" factor in the award decision as required by the solicitation. According to the protester, the record includes no attempt by the agency to compare the benefit of the lower cost of the other proposals to RCI's evaluated technical superiority.

Although CTC and PRC proposed lower costs than RCI, in a negotiated procurement there is no requirement that award be made on the basis of lowest cost. Agency officials have discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one is sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 169; Environmental Health Research & Testing, Inc., B-237208, Feb. 9, 1990, 90-1 CPD ¶ 169. We will uphold awards to offerors with higher technical ratings and higher costs so long as the results are consistent with the evaluation criteria and the contracting agency reasonably determines that the cost premium involved is justified considering the significant technical superiority of the selected offeror's proposal. Midwest Research Inst., B-240268, Nov. 5, 1990, 90-2 CPD ¶ 364.

Here, the solicitation stated that technical quality was more important than cost, and consistent with that standard, the contracting agency determined that acceptance of RCI's proposal was worth the additional cost associated with it. As we explained above, at the contracting officer's request the evaluation panel prepared a memorandum that specifically addressed whether the award to RCI at a higher cost was justified. That memorandum concluded that RCI's proposal showed that firm to be the most experienced and effective offeror with the best personnel. The agency further concluded that these technical advantages more than overcame the difference in the proposed cost estimates. In short, the record does not support the conclusion that the agency did not give cost the appropriate consideration in making its selection.

Alleged Misapplication of the Evaluation Criteria

CTC also argues that the agency misapplied the evaluation criteria in evaluating CTC's experience in the job assistance business. According to the protester, one of the members of the evaluation panel limited his definition of the job assistance business to include only experience on

the pilot contract. CTC argues that this restrictive definition was inconsistent with the definition of experience used by the other evaluators and with the solicitation, which did not limit the evaluation of experience to work on the pilot contract.

We disagree with CTC's characterization of the evaluator's views. The comment by the evaluator that a particular CTC employee could not have "learned JAC-MIS [a database used in the job-assistance centers] when the only people who know it are the current contractor, RCI" shows only that the evaluator did not see how the employee in question could have knowledge of the database. Also, the comment was made in the context of his evaluation of CTC's proposed personnel under the RFP factor concerning personnel qualifications and experience. We fail to see how this demonstrates that the evaluator restrictively evaluated CTC's organizational experience, which was evaluated under a different factor. We think it shows only that the evaluator did not consider that the claim of experience made for one of CTC's employees was justified.⁵

Alleged Misrepresentation in RCI's Proposal

Finally, CTC argues that a misrepresentation in RCI's proposal with respect to the previous experience of Mr. Jenkins, one of the firm's key personnel, misled the evaluation panel and improved RCI's position in the competition. The protester points out that Mr. Jenkins' resume, which was included in RCI's proposal, states that he was the Deputy to the Adjutant General at Army headquarters from December 1989 to December 1990. The protester also points out that this was incorrect since a statement submitted by Mr. Jenkins and other information in the record indicate that he retired from the Army on December 31, 1989, and started working for RCI in January 1990. According to CTC, since RCI's strengths reflected in the evaluation panel's report include references to the firm's management team, the misstatement of Mr. Jenkins' experience obviously materially

⁵Although CTC argued in its initial protest that the agency failed to hold meaningful discussions, the firm gave only a single specific example of an issue that should have been raised in discussions. According to CTC, since one of the evaluators questioned where CTC's proposed database administrator could have gained knowledge of the database, the agency should have asked CTC in discussions where this particular employee acquired that knowledge. CTC added this particular employee in its BAFO, after discussions had occurred; therefore, the agency no opportunity to raise this matter in discussions.

influenced consideration of the proposal. Under the circumstances, CTC argues that the contract should be canceled and RCI's proposal should be disqualified from the competition.

Mr. Jenkins' resume incorrectly stated he was still with the Army after December 1989. Nonetheless, comments in the contemporaneous evaluation record establish that the evaluators were aware that he left the Army at that time and they were not misled in the evaluation. Under the circumstances, and since there is no reason to believe that the error was deliberate or that it resulted in any advantage to RCI in the evaluation, we find that this allegation provides no basis for sustaining the protest.

The protest is denied in part and dismissed in part.

Ronald Berger
James F. Hinchman
General Counsel