



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Columbia Research Corporation

**File:** B-247631

**Date:** June 22, 1992

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Analytical Systems Engineering Corporation, an interested  
party.

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agency.

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Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Contracting agency failed to conduct meaningful discussions with protester where the agency's discussion questions only concern relatively insignificant aspects of the agency's evaluation and did not inform the protester of the central deficiencies in its "poor" technical approach and unacceptable cost proposal, which failure effectively precluded the protester from having a reasonable chance for award, since it did not address these deficiencies.

### DECISION

Columbia Research Corporation protests the award of a contract to Analytical Systems Engineering Corporation (ASEC) under request for proposals (RFP) No. N00039-91-R-0065(Q), issued by the Department of the Navy, Space and Naval Warfare Systems Command (SPAWAR), for test and evaluation services. Columbia contends that meaningful discussions were not conducted and proposals were not evaluated in accordance with the RFP.

We sustain the protest since meaningful discussions were not conducted with Columbia.<sup>1</sup>

<sup>1</sup>Since we sustain this protest and recommend reopening discussions, our discussion of the evaluation and Columbia's proposal is necessarily general.

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The RFP was issued on March 12, 1991, for test and evaluation services in support of SPAWAR's Advanced Tactical Data Link Systems (ATDLS)<sup>2</sup> program office. The RFP contemplated a cost-plus-fixed-fee contract for a base year and 4 option years of support services and associated technical data.

The RFP requested the submission of technical and cost proposals, and contained detailed instructions regarding the preparation of the proposals. The RFP advised that technical factors were more important than the cost factors. The technical criteria, listed in descending order of importance, were technical approach, corporate experience, personnel experience, and management structure. The technical approach criterion had four equally weighted subcriteria encompassing technical support services for the four primary ATDLS subsystems.<sup>3</sup> The other technical criteria were also described with appropriate subcriteria listed. The agency's cost evaluation approach was described as follows:

"Cost will be evaluated to determine whether the estimate is both reasonable and realistic for the technical/management approach offered, as well as to determine the offeror's practical understanding of the effort and to assess the degree to which the cost proposal reflects the approaches/risk assessments in the required services for the offered costs. Reasonableness and realism are of equal importance. Offerors are required to meet the full level of effort specified."

In evaluating costs, SPAWAR developed a standard government labor mix<sup>4</sup> against which each offeror's proposed labor mix was evaluated for cost reasonableness<sup>5</sup> and

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<sup>2</sup>The ATDLS is a communication system used with aircraft and shipboard communication equipment that integrates various programs and equipment into a communications network that transmits information by data link.

<sup>3</sup>The four subsystems are Link 16, Multifunctional Information Distribution System (MIDS), Command and Control Processor, and Link II.

<sup>4</sup>The labor mix was composed of various percentages of senior personnel, mid-level personnel, junior personnel, and support personnel.

<sup>5</sup>Under the reasonableness evaluation of the cost evaluation, the technical evaluation board (TEB) assigned a numerical score to each offeror's proposal for the degree to which each offeror's distribution of personnel matched the

realism,<sup>6</sup> which resulted in a numerical score for each factor that was combined to form an overall cost score. The actual probable costs of the offerors were not directly evaluated.

On April 22, SPAWAR received six offers in response to the RFP. These offers were evaluated by the TEB, which separately scored technical and cost proposals on a 100 point scale.<sup>7</sup> Of the six offerors, Columbia received the lowest overall rating, which was in the "poor" range under SPAWAR's evaluation scheme. Columbia's technical proposal was scored in the "fair" range overall but each of the subcriteria for the most heavily weighted "technical approach" criterion was scored in the "poor" range. Columbia's cost proposal was scored in the "unacceptable" range.

The Contracts Award Review Panel (CARP) reviewed the evaluation and initially recommended a competitive range consisting of the three offers which received the highest total combined cost and technical scores. The CARP recommended eliminating the three lower-scored offers, including Columbia's low cost offer, as having no reasonable chance for award.

The Source Selection Authority (SSA), however, decided to include all six offers in the competitive range for the purpose of conducting discussions. The SSA found that no offer had a total point score in the "unacceptable" range, there was not enough of a point spread between offerors' scores to warrant the elimination of any offeror, and all offers were considered to be susceptible of being made acceptable for award.

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standard labor mix. This standard labor mix, which was not disclosed to the offerors reflected the TEB's judgment of the extent to which each offeror's labor mix reflected an understanding of the effort.

<sup>6</sup>To evaluate realism, SPAWAR created a government estimate that presumably was supposed to represent the realistic cost of each offeror's proposal. This estimate was created from the standard government labor mix and composite hourly labor rates calculated for each offeror by the Defense Contract Audit Agency. The TEB then scored this subcriterion by judging how close the offeror's proposed costs were to the government estimate.

<sup>7</sup>Under the SPAWAR evaluation scheme, the numerical scores were based on various adjectival ratings: excellent, very good, good, fair, poor, and unacceptable.

In separate letters to offerors dated October 3, SPAWAR conducted discussions by posing questions to each offeror regarding particular areas of concern in the proposal.<sup>8</sup> SPAWAR received responses on October 16 and the TEB rescored the offers considering the offerors' responses. Because offerors' scores did not significantly change, the CARP and SSA retained all offers in the competitive range. On November 21, SPAWAR requested best and final offers (BAFO), without conducting any further technical or cost discussions. Columbia's proposed costs were significantly lower than the other offerors', but its final cost rating was still in the unacceptable range because its labor mix significantly differed from the government estimate.

The CARP determined ASEC's offer to be the most advantageous offer because it received the highest overall combined cost and technical score and the highest technical score. On December 31, SPAWAR awarded ASEC the contract. Columbia filed this protest on February 18, 1992, after receiving the agency's late-mailed award notification letter and a February 3 debriefing. Contract performance was not required to be withheld since the protest was filed more than 10 days after the award. See 31 U.S.C. § 3553(d)(1) (1988).

The gravamen of Columbia's protest is that the required meaningful discussions were not conducted. In negotiated procurements, contracting officers generally are required to conduct discussions with all offerors whose proposals are within the competitive range. 10 U.S.C. § 2305(b)(4)(B) (1988); Federal Acquisition Regulation (FAR) § 15.610. FAR § 15.609(a) provides that the competitive range must include all proposals that have a reasonable chance of being selected for award. National Sys. Mgmt. Corp., 70 Comp. Gen. 443 (1991), 91-1 CPD ¶ 408. Although discussions need not be all-encompassing, discussions are required to be meaningful; that is, an agency is required to point out weaknesses, excesses or deficiencies in proposals unless doing so would result in technical transfusion or technical leveling. FAR § 15.610(c), (d); Mikalix & Co., 70 Comp. Gen. 545 (1991), 91-1 CPD ¶ 527; URS Int'l, Inc. et al., B-232500; B-232500.2, Jan. 10, 1989, 89-1 CPD ¶ 21. In general, agencies must lead offerors into the areas of their proposals which require amplification or correction, Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424, and discussions should be as specific as practicable

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<sup>8</sup>SPAWAR reports that the relative number of questions was consistent for all offerors and depended upon the number of specific deficiencies noted, and that no offeror was asked more than five questions.

considerations will permit. Data Preparation, Inc., B-233569, Mar. 24, 1989, 89-1 CPD ¶ 300.

Discussions cannot be meaningful if an offeror is not advised, in some way, of the weaknesses, deficiencies or excesses in its proposal that must be addressed in order for the offeror to be in line for award. See Mikalix & Co., supra; Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54, aff'd, B-220049.2, Apr. 7, 1986, 86-1 CPD ¶ 333. In any case, an agency may not mislead an offeror, through the framing of discussion questions, into responding in a manner that does not address the agency's concerns. Son's Quality Food Co., supra; Vitro Servs. Corp., B-233040, Feb. 9, 1989, 89-1 CPD ¶ 136.

Our examination of the evaluation documents establishes that the TEB attributed two fundamental deficiencies to Columbia's initial offer and BAFO: that Columbia's technical approach lacked specific details with regard to how Columbia intended to accomplish the four technical tasks, and that Columbia's cost proposal was unacceptable. For example, the TEB report states that Columbia's technical approach, which was the most important technical evaluation criterion, reflected a "tutorial understanding of the tasks, and [did] not offer any specific details" and "tended to merely restate the [statement of work] with no real plan or definition." The TEB's low regard for Columbia's technical approach was reflected in point scores in the "poor" range for the technical approach subcriteria. Columbia's cost proposal received unacceptable "reasonableness" and "realism" point scores because it proposed to perform the requirements with more junior and support personnel than anticipated in the SPAWAR labor mix used to evaluate cost proposals.

In conducting discussions, SPAWAR raised the following questions with Columbia:

- "1. Please clarify which cited contracts had cost overruns and which ones did not.
- "2. Please identify which employees for whom you provided resumes are full and which are part time.
- "3. Please explain in more detail your quick reaction capability.
- "4. What Navy C3I programs has offeror been involved with?

"5. Does offeror have any plans to increase the technical ability of those staff members who have no technical training via qualifications/training program? If so, what are the details of such a program?"

While these questions reflected some of the weaknesses that the TEB attributed to Columbia's initial offer,<sup>9</sup> we find that SPAWAR failed to conduct meaningful discussions with Columbia, because the discussion questions did not point out, or even hint at, the principal deficiencies in Columbia's initial offer, which resulted in the TEB's low overall score. Instead, SPAWAR's questions address the less significant technical evaluation areas, i.e., corporate experience, personnel experience, and management structure. They did not reasonably lead Columbia to the deficient areas in its proposal that required amplification, i.e., the lack of technical approach details and variances from the government labor mix.

SPAWAR justifies the content of the discussions with Columbia on the grounds that Columbia's proposal was determined to be acceptable overall, and that pointing out the lack of details in its technical approach and its deficient labor mix would have constituted impermissible technical leveling in view of the detail requested by the RFP.

As discussed above, agencies must conduct meaningful discussions with all offerors in the competitive range, whether their proposals are acceptable, outstanding or only susceptible of being made acceptable. Here, Columbia's overall rating was "poor" and its "cost" rating was unacceptable, but the SSA determined, given the competition, that Columbia's proposal should nevertheless be included in the competitive range. That being so, SPAWAR was required to conduct sufficient discussions to lead Columbia to the central areas of concern about its proposal, so that Columbia would have the opportunity to improve its proposal such that it would have a reasonable chance for award. Son's Quality Food Co., supra; URS Int'l, Inc. et al., supra. Columbia was unlikely to improve from its "poor" rating so as to be seriously considered for award unless it was apprised of the basic deficiencies in its proposal in both the technical and cost areas that warranted attention in a revised proposal. Furthermore, where, as here, an

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<sup>9</sup>The TEB report also specifically noted that the Columbia's knowledge of the MIDS was weak and that no distinctions were made as to the uniqueness of the MIDS program, that Columbia did not adequately relate personnel experience to their intended task assignments and that the proposal did not list graphic and reproduction equipment.

unrevealed government manloading estimate is used to evaluate offers, without regard to the particular technical approaches, the contracting agency should conduct discussions with an offeror whose proposal substantially deviates from that estimate to determine the reasoning for the offeror's particular approach to ascertain whether the offeror's manning in fact can satisfy the government's needs. See Kinton, Inc., 67 Comp. Gen. 226 (1988), 88-1 CPD ¶ 112. SPAWAR did not do that here.

We also see no reason why technical leveling should have been a problem here. Technical leveling occurs when successive rounds of discussions are conducted and the need for further improvement is pointed out in each round. Technical leveling would not have occurred if SPAWAR had simply but adequately pointed out, during the initial round of discussions, the deficiencies at issue here. FAR § 15.610(d).

We sustain the protest.

We recommend that SPAWAR conduct meaningful discussions with all offerors that were determined to be in the competitive range. If as a result of the revised proposals and a proper cost evaluation,<sup>10</sup> an offeror other than ASEC is found to be entitled to award, ASEC's contract should be terminated for the convenience of the government and award made to that firm, if otherwise eligible. In addition, Columbia is entitled to recover its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1992).

  
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<sup>10</sup>As stated above, the actual probable costs of the offerors were not directly evaluated, and it is not clear what weight, if any, was given to estimated costs as required by 10 U.S.C.A. § 2305(b)(4)(B) (West Supp. 1992). See ILC Dover, B-182104, Nov. 29, 1974, 74-2 CPD ¶ 301. In evaluating revised proposals, the agency should give appropriate weight to the probable costs.