



Comptroller General
of the United States

Washington, D.C. 20548

Gordon

Decision

REDACTED VERSION

Matter of: Harris Corporation; PRC Inc.

File: B-247440.5; B-247440.6

Date: August 13, 1992

Clayton S. Marsh, Esq., Ropes & Gray, and James S. Kurz, Esq., Kurz Koch Doland & Dembling, for the protesters. John J. Fausti, Esq., for Sterling IMD, Inc., an interested party.

Joseph M. Goldstein, Esq., Department of the Air Force, for the agency.

Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that awardee's proposal contained a material misrepresentation provides no basis to sustain a protest, where any possible misrepresentation was immaterial and the agency did not rely on the statement at issue in evaluating the proposal.

2. Protest challenging the agency's method of calculating awardee's evaluation score is denied, where the method is reasonable, consistent with the technical evaluation guide, and was equally applied throughout the evaluation process.

3. Protest allegation that the agency based its evaluation of the size of offerors' proposed work force on "secret" staffing numbers is denied, where the agency explicitly informed the protester during discussions of the number which formed the agency's baseline figure.

4. Protest challenging the agency's technical evaluation is denied, where that evaluation was reasonable and consistent with the solicitation's evaluation criteria, and the protester simply disagrees with the agency's technical judgment.

* The decision issued on August 13, 1992, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

DECISION

Harris Corporation and PRC Inc. protest the award to Sterling IMD, Inc. of a contract for Satellite Data Handling System (SDHS) support and services under request for proposals (RFP) No. F11623-91-R0001, issued by the Department of the Air Force. Both protesters challenge the technical evaluation of Sterling's proposal and contend that Sterling's proposal contains a material misrepresentation. PRC also objects to several aspects of the technical evaluation of its own proposal and contends that the agency based its technical evaluation on a staffing model which was not disclosed to offerors.

We deny the protests.

The RFP, which was issued on July 1, 1991, provides for support and services at the Air Force Global Weather Central (AFGWC), Offutt Air Force Base. AFGWC collects, analyzes, and disseminates meteorological and astrogeophysical data to Department of Defense customers. The RFP covers program management services, support and engineering services, hardware and software maintenance, and SDHS meteorological applications. The base period for the cost-plus-award-fee contract award was to run from February 1 through September 30, 1992, with four 1-year option periods.

Section M of the RFP states that proposals would be evaluated in three areas: management, technical, and cost, in descending order of importance, that award would be made to the offeror whose proposal was most advantageous to the government, and that award could be made to other than the low-cost offeror. Section M also detailed the items, factors, and subfactors that the agency would evaluate; and it informed offerors that the evaluation would follow guidelines of Air Force Regulation 70-30, Streamlined Source Selection Procedures.

Certain additional provisions in the RFP which are relevant to the protests are briefly summarized here. While the RFP does not disclose the number of employees used by the incumbent, it does contain detailed information about the historical workload, including the fact that approximately 65,000 hours were used in a typical 6-month period. Except for limited guidance regarding labor categories and minimum qualifications, the RFP leaves offerors with broad discretion to determine the number and level of employees needed to perform the work. Regarding evaluation of past and present performance, Section M states that the agency reserves the right to seek information about an offeror's

performance on any government or commercial contract, even for contracts about which the offeror volunteers no information.

Proposals were received from Harris, PRC, Sterling, and two other firms by the September 9, 1991, closing date. After a first technical evaluation, the agency sent each offeror a letter dated September 30, 1991, requesting that the offeror respond in writing by October 18, 1991, to enumerated clarification requests (CRs) and deficiency reports (DRs). Upon receipt of those responses, the agency conducted a second technical evaluation, which led to a second round of CRs and DRs being sent out on October 28, 1991, with responses due by November 22, 1991.

Among the various CRs and DRs in this second round was one DR relevant to PRC's protest. Almost identical versions of that DR were sent to PRC and to Sterling, each of which was informed that its proposal was "deficient in providing the personnel resources required to perform the basic work." Those two offerors had proposed considerably fewer personnel than the agency felt appropriate (Sterling had proposed [deleted] and PRC [deleted]). The agency explained that the 65,000 hours cited in the RFP as having been used during a typical 6-month period represented approximately 67 full-time personnel per year. The DR put the two offerors on notice that, while proposing that many employees:

"may not be optimum, deviations from this baseline workload using a unique approach must be justified without excessive risk to the Government to allow for fluctuations in actual workload. Significant changes from the baseline workload must be substantiated to include risk factors."¹

Sterling's response stated, inter alia, that "until receipt of this Deficiency Report, the significance of the correlation between the 65,000 hours historical workload and the magnitude of the fluctuations in the actual workload to accomplish the basic work was not apparent." Accordingly, the response continued, Sterling "now possess(es) increased sensitivity to the Government's perception of high risk if an offeror proposes less than . . . approximately 67 personnel[] to accomplish the basic work element. . . . Consequently . . . we are revising our proposed staffing upward to [deleted]."

¹Although the language is quoted from the DR sent to PRC, the language used in the report sent to Sterling was almost identical.

PRC's response consisted of a long, detailed analysis explaining why that company elected to deviate from the agency's stated 67-person baseline. Based on that analysis, PRC proposed to perform the work with [deleted] full-time employees.

Having received responses from all offerors, the agency conducted a third round of technical evaluations of the proposals. Although PRC's proposal was considered acceptable, the low number of employees proposed was a key reason for its not receiving a blue (exceptional) color rating in the technical or management areas; Sterling's and Harris' proposals received significantly higher ratings, with both receiving blue for the technical and management areas. Best and final offers (BAFOs) were requested by letter dated December 10, 1991, and were received from all five firms by the January 3, 1992, due date. Because no changes were made to the technical proposals of the three firms participating in the protests, the agency did not conduct a further technical evaluation of those firms' proposals.

Award was made to Sterling on January 23, 1992, for an estimated dollar amount of \$4,131,332 and a total estimated life-cycle cost of \$29,153,437. The comparable figures for PRC were [deleted] and [deleted]; for Harris, the figures were [deleted] and [deleted]. PRC's proposal was thus estimated to cost [deleted] less than Sterling's for the entire life-cycle cost; Harris' was estimated to cost [deleted] more.

THE HARRIS PROTEST

The protest contentions of Harris, the incumbent contractor, can be briefly summarized.² First, Harris contends that Sterling made a material misrepresentation in its proposal by claiming that many of the incumbent employees (that is, Harris' employees) had contacted Sterling concerning employment prior to the date of submission of Sterling's proposal. Second, Harris alleges that the agency acted improperly in concluding that Sterling's proposal was exceptional (earning a blue color rating); Harris claims that only its proposal deserved a blue rating.

Concerning the alleged material misrepresentation, Harris points to two sections in Sterling's proposal. In one of those sections, Sterling stated:

"Sterling IMD recognizes that a substantial number of qualified individuals currently serve SDHS

²PRC adopted these protest grounds.

requirements as employees of the incumbent contractor. Many of these individuals have contacted Sterling and Grumman [with whom Sterling teamed] regarding employment. We appreciate that retaining these individuals may be of interest to the Government."

In the other section, Sterling wrote:

(deleted)

Harris alleges that Sterling falsely claimed to have been contacted about employment by "many" Harris employees, and that Sterling used that misrepresentation as the basis of its claim that it could obtain 60 percent of Harris' employees. Harris and Sterling have sparred over how many Harris employees did, in fact, contact Sterling prior to submission of Sterling's proposal: Harris contends that only two of its employees did so, while Sterling claims it was eight or more.

The Air Force responds that it paid little attention to Sterling's statement that it had been contacted by many Harris employees, since the claim was vague, unsubstantiated, and not accompanied by the names of particular individuals. Hearing Transcript (Tr.) 00:39:00-23 (Stanfield).³ Indeed, the Air Force points out that its evaluators consistently treated Sterling's assumption that it could hire a significant number of incumbents as a risk to the government.

We will find a material misrepresentation where an offeror knowingly submits a proposal that does not reflect what it intends to furnish and that representation could have had a significant impact on the evaluation. TECOM, Inc., B-239892, Oct. 2, 1990, 90-2 CPD ¶ 267. Where an agency has relied on a material misrepresentation, we will sustain a protest. See, e.g., Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD ¶ 53.

³Citations are to the video transcript of the hearing conducted in conjunction with these protests.

Here, we need not resolve the factual dispute about precisely how many Harris employees contacted Sterling. Regardless of whether Sterling was contacted by two Harris employees or eight (and eight could be said to represent "many"), Sterling never claimed that 60 percent of Harris' current contract workforce--which would amount to more than 35 of those employees--had contacted Sterling to discuss employment. Yet the only manner in which Sterling could have materially misled the Air Force was through its suggestion that it could hire 60 percent of the incumbent's employees. That was the only claim which could have had any impact on the evaluation; mere contact by a much smaller fraction of Harris employees would not have demonstrated Sterling's ability to retain the majority of those employees. Hence, Sterling's claim about "many" individual contacts is simply not material.

As to the 60-percent retention claim, Sterling's proposal makes unambiguously clear that its claim is based on historical patterns, not on actual contact, much less a commitment, by current Harris employees. Harris does not allege misrepresentation in Sterling's statement that its experience supported the probability of being able to retain at least 60 percent of the incumbent's employees.⁴

Harris' other protest ground concerns the blue color rating which the Air Force assigned to Sterling's proposal in the technical area. According to Harris, the agency incorrectly averaged Sterling's scores for the factors under the system maintenance item, assigning that item a blue rating instead of the green rating which Harris contends was appropriate. The blue rating for system maintenance, in turn, caused Sterling's overall technical area score to rise from green to blue, leading to the agency's conclusion that Sterling's proposal was "exceptional," rather than merely "acceptable" (green).

Specifically, Harris contends that the agency departed from its technical evaluation guide (TEG) in the way it averaged the scores under the system maintenance item. There are three factors within that item, and four criteria under each factor, for a total of 12 criteria color ratings under the system maintenance item. Harris points to the language in the TEG stating that "[a]ll evaluation criteria and factors will be algebraically averaged." According to Harris, this

⁴We also find, based on our review of the agency evaluation of Sterling's proposal, that the Air Force clearly did not rely on either of Sterling's claims pertaining to hiring of the incumbent's employees. The evaluation documents repeatedly refer to Sterling's reliance on hiring incumbents as a weakness.

language required the Air Force to convert the 12 criteria color ratings into numbers (five points for blue and three points for green) and then calculate an average for the entire item. If that had been done here, the average would have been 3.83, which would have been rounded down to 3.0 (as opposed to rounding up to 5.0 for a blue rating), giving Sterling a green rating for this item and, due to the other scores received, a green rating for the technical area overall.

The Air Force responds that its methodology, used consistently in evaluating all offerors at all stages in this procurement, was to convert the criteria color ratings to numbers separately for each of the three factors, calculate the average score for a factor, and then convert that number to a color rating for each of the three factors. The three factor color ratings are then converted into numbers and averaged, and a numerical score for the item results; that score is then converted into a color rating.

Without setting forth and analyzing the charts and calculations proffered by the parties, we point out that the key difference between the two calculations is at the factor level. The agency's method requires it to convert from color to number at the criterion level, average those numbers, and then convert the result back to a color at the factor level, before converting back to numbers in order to reach an average for the item level; Harris' approach would have the agency assign no color to the factor level. The parties agree that the two methods produce identical results for all proposals and all items, except for Sterling's system maintenance item score.

Harris' contention that the TEG called for the methodology advocated by the protester is erroneous. Harris' method effectively ignores the factor level entirely, which is contrary to the explicit direction of the TEG. The language that Harris cites in the TEG states that evaluation criteria and factors will be averaged--while Harris' method never averages the factors. More importantly, Harris' quotation of the TEG omits the beginning of the sentence. The sentence that Harris relies on actually says, with emphasis added to the words overlooked by Harris, "Within a given item, color values of all evaluation criteria and factors will be algebraically averaged." The TEG thus requires that color values be assigned to factors, yet that is allowed only under the agency's approach; it is precluded by Harris' methodology. Accordingly, there is no basis for Harris' contention that the agency's method of averaging is contrary to the TEG.

While it is true that the conversion and reconversion between numbers and color values lead to a repeated process of rounding, Harris offers no reason to conclude that color values, with the associated rounding, are appropriate for criteria (the first and lowest evaluation level) and for items and areas (the third and fourth levels), but not for factors (the second level). Once it is conceded that it is reasonable to assign color scores to factors, the agency's approach is not only reasonable, but it is the only feasible methodology.

In any event, Harris places too much weight on algebraic averages and manipulation of the numeric scores. Numeric point scores and adjectival ratings are merely guides to intelligent decision-making; they do not mandate automatic selection of a particular proposal. Peterson Builders, Inc.--Recon., B-244614.2, Apr. 7, 1992, 92-1 CPD ¶ 349; Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44. The determination of the merits of proposals is primarily a matter of agency discretion to which we will defer unless it is shown to be arbitrary. Pro-Mark, Inc., B-247248 et al., May 18, 1992, 92-1 CPD ¶ 448. Even where there is a difference in scores, the agency retains discretion to determine the significance of that difference. General Offshore Corp., B-246824, Apr. 1, 1992, 92-1 CPD ¶ 335. The Air Force would thus have discretion here to conclude, with appropriate support in the record, that Sterling's proposal was exceptional even if Harris' averaging methodology were mandated.³

THE PRC PROTEST

PRC contends that the agency based its technical evaluation on a staffing model which was not disclosed to offerors. PRC also contests several aspects of the technical evaluation of its proposal.

³Harris also suggests that the agency performed an improper cost/technical tradeoff, selecting Sterling's lower cost, allegedly lower rated proposal over Harris' higher cost, higher rated proposal. Because the agency reasonably concluded that both proposals were exceptional technically, it did not have to perform a cost/technical tradeoff in order to make award to Sterling. To the extent that Harris' proposal had any technical advantage, the record makes clear that the agency considered that the substantial cost difference between the two proposals--Harris' proposal was estimated to cost almost 30 percent more than Sterling's over the life of the contract--justified the selection of Sterling. That decision was consistent with the RFP award criteria.

PRC presents its challenge on the staffing issue as a matter of the agency evaluating proposals on the basis of "secret staffing numbers" that the agency allegedly failed to disclose to offerors. The record provides no basis for such a characterization of the agency's action. PRC and Sterling both received a DR notifying the offerors that, in the agency's view, 67 employees constituted the baseline and that offerors would bear the burden of persuading the agency of the feasibility of their approach if they proposed to deviate from that baseline. Sterling chose to accept the agency's judgment and revised its offer to propose 67 employees. PRC elected not to accept the agency's judgment and offered only [deleted] employees, albeit with a long and detailed explanation. No secret staffing numbers or other undisclosed information is required to understand that the agency continued to have concern about PRC's ability to perform the work with [deleted] fewer than 67 employees, although PRC continued to receive an "acceptable" rating overall. Tr. 02:26:44-25 (Stanfield).

On the question of whether [deleted] PRC employees can do the job as well as 67 employees of another company, there is understandably a difference of opinion between PRC and the agency. A disagreement with the agency's technical judgment does not, however, form the basis of a valid protest. Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288. There is clearly no factual basis for PRC's actual protest ground: there were no "secret staffing numbers," because PRC was unambiguously informed that 67 employees was the agency's baseline.

PRC's challenges to the technical evaluation of its proposal relate primarily to the agency's treatment of references obtained from other PRC contracts. As explained above, the RFP indicates that the agency was free to contact sources concerning any past or present contract held by an offeror, regardless of whether the offeror volunteered information about that contract. Concerning PRC, the agency reached five of the seven references named by the offeror; failed to reach two of them; and contacted one agency, the Patent and Trademark Office, where PRC had a contract, referred to as the APS contract, which was not mentioned in PRC's list of references.

In the course of contacting references, the Air Force evaluators, using a form as a guide and for note-taking, asked the contact to rate the offeror on an adjectival scale (exceptional/acceptable/marginal/unsatisfactory). Where the rating was other than "acceptable," the evaluators were to ask for substantiation. Tr. 05:18:45-51; 06:43:36-42 (French). After all references had been contacted, the evaluators met in group session to reach a consensus evaluation. Tr. 00:52:05-32 (Stanfield).

The Air Force evaluator who contacted the Patent and Trademark Office was told that, for personnel management, PRC merited an "acceptable" score, and that PRC had "problems in the personnel area because they are thin, technically, don't have lots of experts. It takes them quite a while to bring someone in from the outside." When the Air Force evaluators met to reach a consensus scoring, they recorded that comment under "past and present performance" for the Personnel Management item within the management area. The comment was noted on the evaluation criteria matrix as "a little thin on people for APS contract/causes some trouble." In the final analysis report, the comment was recorded as: "Thin allocation of resources on a previous contract caused some minor problems, but this situation was rectified expediently." Although PRC suggests that the events related to the APS contract may have occurred as long as 8 years ago and near the beginning of contract performance, it has not refuted the substance of the criticism.

Instead, PRC argues that the agency acted irrationally in the way the APS comment was treated. Specifically, PRC points out that, in the first and second rounds of the technical evaluation, the consensus evaluation assigned PRC a blue rating for past and present performance in the Personnel Management item, despite the negative comment about the APS contract. It was only in the third round of the evaluation that the evaluators decided to lower that rating to green. The rating was lowered without written explanation and without any new information about the APS contract or any other reference. PRC argues that lowering its score for past and present performance in this way was irrational.

The Air Force explains that the evaluators were free to reassess their scoring in the successive rounds of the evaluation. In particular, the agency contends that the problem mentioned in connection with the APS contract--PRC beginning a contract with too few employees--took on heightened significance when PRC appeared, in the agency's opinion, to be doing the same thing in this procurement: i.e., proposing a staffing structure that was a "little thin." Tr. 00:57:30-59; 01:02:50-03:59; 01:08:05-45 (Stanfield).

In reviewing an agency's technical evaluation, we consider whether it was reasonable and consistent with the solicitation's evaluation criteria. Systems Research Laboratories, Inc., B-246242.2, Apr. 21, 1992, 92-1 CPD ¶ 375. In light of the way PRC responded to the agency's explicit concern about the low number of employees proposed, we find that the agency acted reasonably in reassessing the significance of the reported APS contract problem. It was

not unreasonable for the agency, on this basis, to assign PRC an "acceptable" (rather than "exceptional") rating for past and present performance for the Personnel Management item in the management area. That rating was both reasonable and consistent with the RFP's evaluation criteria.

PRC also challenges the green rating that it received in the technical area. Specifically, PRC contends that the agency had no basis in the reference contacts to assign a green rating for past and present performance for the support and engineering item, and that, if that green rating were changed to a blue rating, the effect would be to shift PRC's rating for that item as well as for the technical area overall to blue.

As noted above, the agency evaluators spoke with five of the seven contacts named by PRC and with an APS contract reference, for a total of six. Two of those six contacts indicated that no support and engineering services were involved in PRC's contract with them, so that no rating was offered. Of the remaining four, (1) one reference evaluated PRC's performance as acceptable; (2) one offered an "exceptional" rating, but qualified it by adding, "Limited but do excellent support when asked"; (3) one notetaker recorded no adjectival rating in the space for support and engineering, but wrote, next to that heading, "on call support excellent"; and (4) one contact sheet recorded an "exceptional" rating, but included no reason for that score.

During the group meeting after the references were contacted, the evaluators reached a consensus green rating for PRC's past and present performance for support and engineering. The evaluators noted that, although two of the references labeled PRC's performance exceptional, one failed to provide substantiation and the other's "substantiation" ("Limited but do excellent support when asked") was viewed as undercutting the exceptional rating. Tr. 05:36:45-37:18; 05:39:07-40:03 (French). The evaluators discounted the "on call support excellent" rating because they concluded it did not refer to support and engineering, since no adjectival rating was marked for that item and on-call support was viewed as not appropriate for the item. Tr. 05:31:12-58 (French). Accordingly, the evaluators' consensus was that there was not adequate justification to assign PRC a blue rating for past and present performance for the support and engineering item.

For the purpose of our review, the only relevant question here is whether the assignment of a blue rating was reasonable and consistent with the governing evaluation criteria. We find that the agency had a reasonable basis, even if PRC disagrees with it, for concluding that the

references did not support a blue rating. Nothing in the RFP, the TEG, or any other relevant document would require a different result. Accordingly, we conclude that the Air Force reasonably assigned PRC green ratings in both the management and technical areas.

Finally, we reach the question of the cost/technical tradeoff between PRC's and Sterling's proposals. As noted above, the RFP did not require that award be made to the lowest cost, technically acceptable proposal and, indeed, it explicitly made cost the least important evaluation area, behind the management and technical areas. In such circumstances, an agency has the discretion, consistent with the solicitation's evaluation criteria, to make the award to an offeror with a higher technical score and a higher cost where the agency reasonably determines that the cost premium is justified in light of the technical superiority of the awardee's proposal. Technical Evaluation Research, Inc., B-247200, May 1, 1992, 92-1 CPD ¶ 411. In view of the RFP's weighing management and technical areas more heavily than cost, and of the agency's having reasonably assigned Sterling blue ratings in both management and technical areas and PRC green ratings in both areas, we find that the agency's cost/technical tradeoff between PRC's proposal and Sterling's higher rated, slightly higher cost proposal was reasonable.⁶

The protests are denied.

James F. Hinchman
General Counsel

⁶PRC also challenges the high risk rating assigned in the evaluation of its transition plan and for the Logistics Support item. Because the difference in color rating alone provides adequate support for the Air Force's determination to select Sterling's proposal for award, we need not address the issue of the risk evaluation.