



Comptroller General
of the United States

Washington, D.C. 20548

Bednarz
149949

445258

Decision

Matter of: TRI-COR Industries, Inc.

File: B-252366.3

Date: August 25, 1993

Kenneth S. Kramer, Esq., and Anne B. Perry, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester. William L. Walsh, Esq., and William Craig Dubishar, Esq., Venable, Baetjer and Howard, for Research Analysis and Maintenance, Inc., an interested party. Captain Gerald P. Kohns, Department of the Army, for the agency. Christine F. Bednarz, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The Department of the Army properly made award based on initial proposals without conducting discussions, where the request for proposals advised offerors of the Army's intent to award the contract based on initial proposals and the Army properly determined that discussions were unnecessary.
2. The General Accounting Office cannot find unreasonable an agency's determination on a best value procurement that the awardee's significant technical superiority outweighs the protester's management superiority and lower price, where the record shows that the agency considered the awardee's and protester's relative strengths and weaknesses, and, in any event, the protester has not alleged how it was prejudiced by any variances from the evaluation scheme announced in the solicitation.

DECISION

TRI-COR Industries, Inc. protests the award of a contract to Research Analysis and Maintenance, Inc. (RAM), under request for proposals (RFP) No. DAEA32-92-R-0003, issued by the Department of the Army Information Systems Command, for the provision of non-personal technical support services for the software development center, Fort Huachuca, Arizona. TRI-COR contends that the agency improperly made an initial proposal award without discussions and unreasonably determined that RAM's higher-priced, higher-rated proposal represented the "best value" to the government.

We deny the protest.

The RFP was to obtain services to support Fort Huachuca's mission as a principal developer of the Army's management information systems (MIS), automated telecommunications systems, and special communications support systems. The RFP provided for contractor services in several software-related functions, including requirements studies; systems analysis and design; software engineering; software and firmware programming support; systems installation and operation; preparation of documentation for automated systems; and user training.

The RFP was issued on September 15, 1992, and contemplated the award of two fixed-price, loaded-labor-hour requirements contracts for a 1-year base period with four 1-year options. The RFP was a partial small business set-aside, reserving 40 percent of the total agency requirements exclusively for small business participation. The award under the set-aside competition is the subject of this protest.

Section M of the RFP, as amended, provided that the evaluation of proposals would be conducted under formal source selection procedures and that award would be made to the offeror whose proposal represented the best value to the government, considering price and other qualitative factors. The RFP provided that the proposed price would be "significantly less important than the combination of the quality factors," which were technical capability, management capability, past performance, and cost realism. As to the relative importance of these qualitative factors, the RFP stated that, "[t]echnical will have a weight that is slightly more important than management. . . . Past performance and price realism will be equal in weight. Each will be slightly less important than management."

The RFP provided for adjectival ratings and numerical scores to express the merit of the technical and management proposals, based upon the weighting scheme established in the Source Selection Plan for each proposal factor and sub-factor. The RFP set forth the following factors and sub-factors for the technical and management proposals, with the subfactors listed in descending order of importance:

TECHNICAL PROPOSAL

1. Comprehension of Requirements
 - (a) Software Engineering
 - (b) Systems Analysis, Systems Design, and Specifications Development
 - (c) Software/Firmware Systems Design and Development
 - (d) Software/Firmware Computer Programming Support

- (e) Software/Firmware Maintenance
- (f) Past Experience
- (g) Technical Instruction
- (h) Communications Networking
- (i) Computer Systems Administration
- (j) Onsite and Area Support Analysis

- 2. General Technical Factors
 - (a) Understanding Contract Objectives
 - (b) Software Engineering Standards
 - (c) Design Reviews
 - (d) Documentation Control
 - (e) Security Procedures
 - (f) Task Control and Scheduling

MANAGEMENT PROPOSAL

- 1. General
 - (a) Corporate Experience
 - (b) Total Quality Management
 - (c) Project Management Structure
 - (d) Labor Relations and Training
 - (e) Management Autonomy
 - (f) Management Techniques and Controls
 - (g) Government Interface
 - (h) Security
- 2. Organization and Staffing
 - (a) Key Personnel
 - (b) Other Personnel

The evaluation of cost realism and past performance was to be expressed through a risk assessment on a scale of high, moderate, or low risk. The RFP vested responsibility for the past performance evaluation in the Performance Risk Assessment Group (PRAG), which would assess the offeror's "ability to perform what has been promised in the proposal," based upon information collected as to the offeror's performance under other contracts.

Section M of the RFP reserved to the government the right to award without holding discussions and therefore encouraged offerors to submit their best offer in their initial proposal. In addition, the RFP incorporated Federal Acquisition Regulation (FAR) § 52.215-16, Alternate III, which states that the government intends to award a contract without discussions, but reserves the right to conduct discussions if such are later determined by the contracting officer to be necessary.

On November 15, 1992, five offerors, including TRI-COR and RAM, submitted proposals under the set-aside portion of the RFP.¹ TRI-COR submitted the low priced proposal at \$36,033,859, while RAM submitted the third low priced proposal at \$38,103,677.

The offerors' technical and management proposals were referred for evaluation to the Army's Source Selection Evaluation Board (SSEB). The SSEB followed the scoring system set forth in the Source Selection Plan, which provided numerical scores and corresponding adjectival ratings for evaluation purposes, as follows:²

<u>Point Score</u>	<u>Adjectival Rating</u>
9 or 10	Superior
7 or 8	Very Good
5 or 6	Acceptable
3 or 4	Marginal
1 or 2	Unacceptable

The SSEB derived the offeror's total score by multiplying the offeror's raw score for each evaluated technical and management subfactor by a numerical weight reflecting that subfactor's importance, as assigned in the Source Selection Plan. Under this scheme, an offeror could achieve a total of 990 points for the technical evaluation and a total of 700 points for the management evaluation, for a combined weighted score of 1,690 points.

Using this evaluation scheme, the SSEB assigned the awardee and the protester the following scores:

	<u>RAM</u>	<u>TRI-COR</u>
Technical	798	676
Management	488	599
Combined	1,286	1,275

¹RAM submitted offers on both the unrestricted and set-aside portions of the RFP, but did not receive the award for the unrestricted portion.

²The RFP did not disclose the scoring system in the rating plan.

In terms of the numerical scores, TRI-COR's management superiority almost precisely offset RAM's technical superiority.³ With regard to the adjectival ratings, RAM received 9 "superior," 3 "very good" and 4 "acceptable" ratings for the technical proposal subfactors, while TRI-COR received no "superior," 9 "very good" and 7 "acceptable" ratings for these subfactors. RAM numerically outscored or equalled TRI-COR in all but one of the technical subfactors. On the other hand, RAM received "very good" ratings in all but one of the management proposal subfactors, while TRI-COR received 5 "superior" and 5 "very good" ratings for these subfactors. The SSEB summarized that RAM had "no discernible weak points in their management approach," and that TRI-COR was "a highly acceptable candidate for award of this contract" based upon its technical proposal. While the SSEB prepared a few possible discussion questions for both TRI-COR and RAM to clarify aspects of their proposals, the responses to these questions were expected to have only a slight impact on their scores, if any.

With respect to the past performance evaluation, the PRAG received performance appraisals from two contracting agencies, or "raters," on behalf of both TRI-COR and RAM. The appraisals explored the contractor's performance in three general categories: program management, financial management, and technical capability. Based upon the responses received from these raters, the PRAG determined that RAM represented a high performance risk, while TRI-COR represented a moderate performance risk.⁴

The awardee's high risk rating stemmed primarily from the concerns one rater expressed regarding its program management capability. In particular, the rater felt that RAM's inadequate management was responsible for delays in meeting project milestones, which had required the contracting agency's intervention. As a result of these problems, the rater expressed reservations about recommending a future contract award to RAM. RAM's other rater found the firm satisfactory in all categories and expressed no reservations about recommending the firm for contract award.

³TRI-COR received the highest management score and third highest technical score, and RAM received the highest technical score and third highest management score.

⁴Of the three evaluators empaneled on the PRAG, two rated RAM a high risk and one, a moderate risk. TRI-COR, on the other hand, received two moderate risk ratings and one high risk rating.

The PRAG justified the protester's moderate risk rating based upon one rater's negative appraisal of its financial management capability. In particular, the rater commented that TRI-COR was dilatory in furnishing its close-out costs and did not work well independently. The PRAG noted that TRI-COR's other rater had reviewed the firm favorably and that neither rater had reservations in recommending TRI-COR for award.

The SSEB and PRAG evaluations, including all back-up worksheets, were forwarded to the Source Selection Advisory Committee (SSAC) for review.⁵ The SSAC decided that discussions were not necessary and made an award recommendation on the basis of the initial proposals, concluding from its review of the SSEB report and the proposal summaries that all offerors were "at least minimally qualified to provide the required services," and that discussions based upon the proposed clarification questions would not alter their technical or management rankings.

The SSAC identified a clear split between the top three offerors and the bottom two, based upon the SSEB technical and management scores.⁶ Accordingly, the SSAC confined its review to a comparison of the relative merits of the top three proposals, which included TRI-COR's and RAM's. In documenting its cost/technical trade-off of these proposals, the SSAC reversed the PRAG's determination that RAM constituted a high performance risk and changed the firm's rating to a low risk. The SSAC was persuaded, based upon its review of the appraisals generated at the PRAG level and "additional information," that the PRAG improperly relied upon an unsubstantiated, isolated incident to assign RAM a high risk rating.

⁵The SSEB and PRAG evaluation documents identified offerors by a letter code to preserve their anonymity during the SSAC evaluation, and the SSAC report uses these letter codes to identify the offerors.

⁶The SSAC also performed a cost realism analysis of the proposals and rated all offerors, including RAM and TRI-COR, as low risk in terms of their ability to perform the contract at their proposed prices.

⁷The SSAC requisitioned two additional appraisals for RAM, which its report characterizes as "additional information." One of RAM's additional raters appraised it as satisfactory in all performance categories, and the other gave the firm predominantly excellent scores.

The SSAC report listed the relative differences between the three competitive proposals in terms of their SSEB rankings, their performance risk assessments, and their prices. The SSAC then recommended RAM for award, stating that "the highest technical and total score combined with the low [performance] risk were the discriminators." The SSAC concluded that:

"[RAM's] total score (1,286) and in particular the technical evaluation point total (798), which was 122 points or 21.4 percent higher than [TRI-COR's] (676), represented such a substantial difference that [RAM's] proposal clearly represents the best value to the [g]overnment and their performance is anticipated to warrant the price premium."

After identifying RAM's overall technical superiority, including its "superior ratings in the two most heavily weighted technical subfactors," the SSAC went on to observe that RAM had "extensive experience in contracting with the [g]overnment." According to the SSAC report, RAM was "currently providing services in this locale," with "an infrastructure in place which would provide continuity." Also, the report stated that RAM and its proposed subcontractors "provide a variety of experience in MIS, Communications, High Order Languages ADA and C, CASE tools, and have a large staff with special security clearances."

The SSAC provided its findings and its recommendation to the Source Selection Authority (SSA) on January 15, 1993, who adopted them. In the Source Selection Decision statement, the SSA stated that he accepted and adopted the SSAC's recommendation of RAM, based upon his assessment of the evaluation results documented in the SSEB and SSAC report. Award was made to RAM on February 5, and this protest followed.

The protester first argues that it was unreasonable for the Army to fail to hold discussions. The protester notes that the SSEB had prepared a list of proposed discussion questions, which, in TRI-COR's view, demonstrates that the SSEB obviously believed that discussions were necessary. The protester argues that an award to RAM without such discussions was improper, since TRI-COR had underpriced the awardee by approximately \$2 million and had received only a nominally lower, combined SSEB score. Had it been given the opportunity to improve its technical proposal through discussions, TRI-COR believes that it might have "elevate[d] its combined technical/management score well above RAM's" and removed any doubt that its proposal represented the best value to the government.

Where, as here, an RFP incorporates the provisions of FAR § 52.216-16, Alternate III, advising offerors of the agency's intent to award without conducting discussions, the agency may properly do so, even to an offeror which did not propose the lowest price (like RAM), provided that the contracting officer determines that discussions are unnecessary. FAR § 15.610(a)(4); see Macro Serv. Sys., Inc., B-246103, B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200.⁸ While the contracting officer has discretion to decide whether or not to hold discussions, we will review the exercise of that discretion to ensure that it is reasonably based on the particular circumstances of the procurement. The Jonathan Corp., Metro Mach. Corp., B-251698 et al., May 17, 1993, 93-1 CPD ¶ ____.

As the protester observes, the SSEB prepared a list of proposed discussion questions for each offeror, as was required by the Source Selection Plan for this procurement. For TRI-COR, the SSEB proposed two discussion questions pertaining to its technical proposal, but had no questions pertaining to its management proposal. Contrary to TRI-COR's allegation, the preparation of such discussion questions does not, in itself, demonstrate that discussions are required. See The Jonathan Corp., Metro Mach. Corp., supra. What is relevant is whether the discussion questions would have generated answers that could have significantly affected the evaluation of proposals and thus changed the outcome of the procurement. Id.; see also BDM Int'l, Inc., 71 Comp. Gen. 363 (1992), 92-1 CPD ¶ 377.

Here, although the SSEB prepared two questions relating to TRI-COR's technical proposal, it added that, "[c]larification of the two issues discussed above could move them up slightly." Based upon its review of the SSEB's questions and a briefing by the SSEB, the SSAC similarly determined that "discussions with the offerors would not alter the technical and management rankings in the SSEB report," and were therefore unnecessary. We have no basis to disagree with this conclusion from our review of TRI-COR's proposed discussion questions, which request limited information to amplify that contained in TRI-COR's technical proposal and would likely have only a marginal impact on the protester's overall score.⁹ Nor has the protester attempted to explain

⁸This rule is applicable only to Department of Defense agencies.

⁹One of the protester's questions sought information on one of several requirements under the Software/Firmware Computer Programming Support subfactor, while the other question requested an extract of the information contained
(continued...)

how its responses to these questions could have "elevate(d) its combined technical/management score well above RAM's," particularly since the opening of discussions would have afforded RAM the same opportunity to improve its proposal based upon the SSEB's proposed set of technical and management questions. Therefore, the agency had a reasonable basis to make an initial proposal award without discussions.

The protester next contends that the agency's selection of RAM's higher-rated, higher-priced proposal was unreasonable and inconsistent with the stated evaluation scheme.¹⁰ Based upon its interpretation of the record, including testimony elicited at the General Accounting Office (GAO) hearing conducted on this matter,¹¹ TRI-COR argues that the

⁹(...continued)

in TRI-COR's Past Performance Proposal to supplement the information contained in its technical proposal under the past experience subfactor.

¹⁰It is alleged that TRI-COR's protest of the agency's best value determination is untimely, because TRI-COR did not protest within 10 days of receiving notice of the intended award to RAM on January 29, 1993. However, the January 29 notice did not disclose information critical to TRI-COR's protest basis, i.e., that the agency intended to award the contract to RAM at a price approximately \$2 million higher than its own. Since TRI-COR was not furnished with RAM's proposed price until February 5, its protest, filed 10 days later, is timely. 4 C.F.R. § 21.2(a)(2) (1993).

¹¹Because the record was not sufficiently complete to determine whether a proper source selection was made, we conducted a hearing pursuant to 4 C.F.R. § 21.5(a) to receive testimony regarding the protester's allegation that the Army departed from the RFP evaluation scheme and conducted an unreasonable past performance evaluation in making award to RAM. The protester does not challenge our statutory authority to conduct hearings on our own initiative. The protester claims that, under our regulations, the GAO may not hold a hearing absent a request made by the protester, an interested party or the contracting agency. The protester misunderstands our regulations. Section 21.5(a) states, without qualification, that, "[t]he determination to hold a hearing will be at the discretion of [GAO]." This language does not confine GAO to ruling on hearing requests, but contemplates "that GAO must use its experience and judgment to determine whether a hearing is required to ensure the accuracy and completeness of the record." 56 Fed. Reg. 3761 (1991); see also Border Maint. Serv., Inc.--Recon., B-250489.4, June 21, 1993, 72 Comp.

(continued...)

Army placed disproportionate weight on RAM's technical superiority to the exclusion of any other evaluation criteria.¹² In particular, the protester claims that the Army disregarded TRI-COR's management superiority in favor of RAM's technical superiority. This disregard, the protester claims, violated the stated evaluation scheme, which assigned technical capability only "slightly" more weight than management capability. The protester also asserts that the Army miscalculated the past performance criterion and lacked a reasonable basis to reverse RAM's high performance risk assessment, but not TRI-COR's moderate risk assessment. Had the agency evaluated proposals reasonably and according to the evaluation scheme, the protester claims that the Army could not have possibly justified paying a \$2 million price premium for a proposal that exhibited only nominal superiority.

In opposition, the Army and the interested party argue that the agency reasonably determined, consistent with the evaluation scheme, that RAM's superiority under the technical evaluation criterion outweighed TRI-COR's superiority under the management criterion and merited the associated price premium. The opponents argue that it was completely appropriate for the SSAC to place greater importance on the technical criterion, which was, after all, more important than the management criterion under the evaluation scheme. The fact that TRI-COR's aggregate technical/management score was a close second to RAM's aggregate score is not dispositive, according to the opponents, since the SSAC was not bound to a mathematical process in weighing the relative merits of the proposals, but was free to consider all the underlying proposal differences in assessing the signifi-

¹¹(...continued)

Gen. _____, 93-1 CPD ¶ 473. GAO's responsibility under the Competition in Contracting Act, 31 U.S.C. § 3554(b)(1), to determine whether there are violations of procurement statutes or regulations would not be served if the parties to the protest could constrain the development of an adequate record on which to base a decision.

¹²In its post-hearing comments, TRI-COR first argued that the weighting scheme followed in this procurement, which allowed for a maximum of 990 technical points and 700 management points, gave the technical evaluation factor more than a "slight" advantage over the management evaluation factor, as authorized by the RFP. Since the Army disclosed this weighting scheme to the protester in its agency report, well in advance of the hearing conducted on this matter, TRI-COR is untimely in its allegation that the weights given were inconsistent with the evaluation criteria. 4 C.F.R. § 21.2(a)(2).

cance of a given point spread. In this regard, the agency notes that, although TRI-COR received a higher management score, RAM still received "very good" ratings for all but one of the management subfactors and was well qualified to perform this aspect of the contract. Finally, the Army argues that the decision to reverse RAM's high performance risk rating was reasonably based and was, in any case, not prejudicial to the protester, because this rating did not materially affect the award decision.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Agencies may make cost/technical tradeoffs in deciding between competing proposals; the propriety of such a tradeoff turns not on the difference in technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of that difference was reasonable and adequately justified in light of the RFP evaluation scheme. Wyle Labs., Inc., Latecoere Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107; DynCorp., 71 Comp. Gen. 129 (1991), 91-2 CPD ¶ 575. We will review the agency's justification based upon its rationality and consistency with the established evaluation factors. Id.

Here, it is apparent from the record that RAM's technical superiority was the predominant factor in the award selection. This emphasis is not only revealed in the SSAC report--which emphasized RAM's significant technical advantages but did not emphasize TRI-COR's evaluated management advantages--but was confirmed by the hearing testimony of the SSAC chairman, who stated that, "the technical element was more important than the other elements, . . . this had a very significant bearing on the SSAC's selection." Tr. at 22, 29. The SSAC chairman also testified that the SSAC had already determined that RAM's proposal represented the best value before it decided to investigate the high risk rating RAM received from the PRAG, Tr. at 115, 122-123, 149, and that the SSAC did not make further inquiries into TRI-COR's moderate performance risk rating, because TRI-COR's risk assessment "was not a factor in [the SSAC's] choice of RAM" and its rating here "would not have made any difference" in the selection decision. Tr. at 37, 118.

While the agency does not clearly specify why RAM's technical superiority was so profound as to drive the source selection--why it outweighed TRI-COR's management superiority and lower price, and obviated the need to reevaluate TRI-COR's performance risk--we cannot say that the selection decision was unreasonable under the RFP evaluation criteria, or that TRI-COR was prejudiced by the agency's heavy empha-

sis on RAM's technical superiority in the award selection on this closely contested procurement. As discussed below, the record confirms that RAM submitted an undeniably superior technical proposal, that the agency considered the management differences between proposals and accounted for TRI-COR's slightly (6 percent) lower price,¹³ and that the agency did not give much weight to the PRAG's questionable performance risk ratings and properly modified RAM's rating under this factor.

At the outset, TRI-COR has never questioned, and the record confirms, RAM's superiority under the most important evaluation factor under the RFP, technical capability. RAM's technical proposal was the highest rated by a significant margin, whereas TRI-COR's technical proposal was only the third highest rated. The well-documented SSEB report, which guided the SSAC and the SSA, assigned RAM higher or equivalent point scores than TRI-COR in all but one technical subfactor and supported each technical rating by reference to the underlying proposal merits. It is particularly noteworthy that RAM received superior ratings in most of the technical subfactors while TRI-COR received none, and that RAM outscored TRI-COR in the three most important and heavily weighted technical subfactors, receiving superior scores in Software Engineering; Systems Analysis, Systems Design, and Specification Development; and Understanding of Contract Objectives.

While TRI-COR has not attacked RAM's superiority under the technical proposal factor, it does claim that its proposal was essentially equal when one considers both the technical and the management factors, as weighted to reflect the technical factor's "slightly" greater importance. TRI-COR thus claims that the best evidence of the two proposals' equality comes from their aggregate SSEB scores, which combine the technical and management factors into one weighted score and which give RAM only an 11-point advantage over TRI-COR on a 1690-point scale.

As noted by the Army, point scores themselves are not controlling as to the significance of actual proposal differences; the significance of a given point spread depends upon all the facts and circumstances since the point scores are useful only as guides to intelligent decisionmaking. See Earle Palmer Brown Co., Inc., B-243544;

¹³While the SSAC report states a 5 percent difference in price, the SSAC chairman confirms that this difference is actually closer to 6 percent. Tr. at 60. In any case, both the SSAC and SSA were cognizant of the total dollar difference (approximately \$2 million on a \$38 million contract) between TRI-COR's lower priced proposal and RAM's proposal.

B-243544.2, Aug. 7, 1991, 91-2 CPD ¶ 134. Here, the SSAC chairman testified that the SSAC relied upon the adjectival ratings for the technical and management subfactors, rather than the individual point scores, in judging the relative merits of the proposals. Tr. at 89-90. As discussed above, these ratings evidenced RAM's significant technical superiority, as well as its very good management ratings, while recognizing that TRI-COR's management was rated higher.

TRI-COR argues that the agency completely disregarded its evaluated management superiority, its low price, and its questionable, moderate performance risk rating, in favor of RAM's admitted technical superiority. Based upon our review of the record, we are unable to conclude that the agency evaluated only the technical merit of the competing proposals and was blind to the remaining considerations. For example, the record shows that the SSAC was fully cognizant that TRI-COR had a significantly higher rating than RAM for the management factor,¹⁴ and reported this fact to the SSA, who still adopted the SSAC's award recommendation of RAM. It is apparent from the record that TRI-COR's management advantage was counterbalanced by the fact that RAM received very good ratings for all but one of the management subfactors and displayed no significant weaknesses in this area. In particular, the SSAC report, while conceding TRI-COR's higher rating in the management area, specifically recounted some of RAM's management strengths, including its "extensive experience in contracting with the [g]overnment"; its "infrastructure in place which would provide continuity" of service;¹⁵ the large staff with special security clearances employed by RAM and its proposed subcontractors; and the experience of RAM and its proposed subcontractors in

¹⁴The SSAC chairman, when asked if the SSAC was aware of TRI-COR's higher management score in its best value determination, testified, "Oh, yes, we were, very much so." Tr. at 25.

¹⁵TRI-COR has argued that the agency improperly considered the fact that RAM could provide uninterrupted service by virtue of its subcontractor's presence at Fort Huachuca. The protester believes that this amounts to the use of an undisclosed evaluation criterion, since the current RFP omitted a requirement from the predecessor contract that the contractor maintain an office within 15 miles of Fort Huachuca. We think that the agency could appropriately consider RAM's proximity to Fort Huachuca, although the RFP did not expressly identify this as a requirement, since it logically relates to certain of the stated management subfactors. See RAI, Inc.; The Endmark Corp., B-250663 et al., Feb. 16, 1993, 93-1 CPD ¶ 140.

a variety of software technologies.¹⁶ While the SSAC chairman admitted that TRI-COR received even higher ratings under the management subfactors to which these considerations were relevant, Tr. at 100, 101, 102, 106, the discussion of these management concerns in the SSAC report demonstrates that the agency did not overlook the management evaluation factor in its source selection and appropriately determined that RAM's lower-rated management proposal nonetheless evidenced significant strengths.

In addition, the record confirms that the agency considered the price differential between RAM's and TRI-COR's proposal in the award selection.¹⁷ The SSAC report set forth the price difference between the proposals, but stated that RAM's "performance was anticipated to warrant the price premium." The SSAC chairman also testified that he did not consider the \$2 million price differential "a significant price premium to pay for the quality that was reflected in [RAM's] proposal." Tr. at 30. Nor can we say that RAM's price, which was only 6 percent higher than TRI-COR's, was an unreasonable premium to pay for the significant technical superiority and the documented management strengths represented in the awardee's proposal. See Henry H. Hackett & Sons, supra.

With regard to performance risk, we have no basis to question the agency's assertion that TRI-COR would not have been in line for award, even if the SSAC had reevaluated and modified TRI-COR's score to a low risk rating as it did with RAM. The SSAC report fully disclosed the circumstances surrounding RAM's original high performance risk rating and the reasons for its modification to the SSA. Thus, the perceived lack of credibility of the PRAG ratings was apparent from the record, which supports the agency's position that this rating should not and did not have a significant impact on the source selection. Although it is true that the SSAC report mentioned RAM's low performance risk as an award "discriminator," a reasonable reading of the record confirms that RAM's technical superiority was actually the predominant factor in the award selection, and that the SSAC modified RAM's performance risk rating to rectify an unreliable PRAG rating, so as to reassure the SSA and the agency that RAM's proposal represented the best

¹⁶RAM's experience in software technology is related to subfactors under both the technical and management proposals.

¹⁷In a negotiated procurement, there is no requirement that award be made on the basis of the lowest cost or price, unless the RFP so specifies. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136.

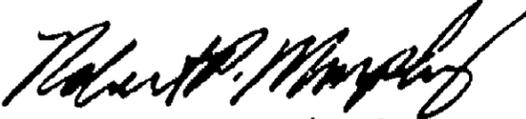
value to the government. In any event, we find that the SSAC adequately justified that RAM's high risk assessment improperly derived from an unsubstantiated, isolated incident, based upon the SSAC's review of the PRAG data and the additional references which it requisitioned during the source selection process, and that RAM was entitled to a low performance risk rating.¹⁶ In this regard, as noted by the SSAC chairman, RAM's original raters had also provided "a lot of very positive information . . . and the negative information was just a couple of comments." Tr. at 32.

The protester asserts that the agency's rationale for its source selection amounts to a departure from the stated evaluation criteria, which accords only "slightly" more weight to the technical proposal, and improperly discounts TRI-COR's management superiority and its lower price in favor of technical excellence alone. However, TRI-COR has not suggested any way in which it might have been prejudiced by this alleged enhancement in the weight of the technical factor. See Meridian Corp., B-246330.3, July 13, 1993, 93-2 CPD ¶ _____. That is, even assuming that the agency gave more than slightly greater weight to the technical factor vis-a-vis the management and past performance factors, TRI-COR does not claim that it would have modified its proposal to reflect the agency's actual emphasis. For example, TRI-COR has not alleged that it would have somehow downgraded its management proposal to emphasize its technical or past performance excellence, nor has it identified how it might have improved its technical proposal while offering the same price or a lower one. Moreover, the matters evaluated under management (such as corporate experience, total quality management, and personnel) and under past performance are not readily modifiable and TRI-COR was unlikely to have done so. Thus, we cannot say TRI-COR was prejudiced, even assuming the source selection varied from the announced evaluation scheme. See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379; Gould Inc., Ocean Servs. Div., B-229965, May 16, 1988, 88-1 CPD ¶ 457; see also Loral Fairchild Corp., B-251224.5, May 12, 1993, 93-2 CPD ¶ ____; Tektronix, Inc., B-244958; B-244958.2, Dec. 5, 1991, 91-2 CPD ¶ 516 (GAO will not sustain a protest that the agency

¹⁶Had TRI-COR's moderate risk rating been important in the selection decision, we agree that the SSAC should have confirmed the validity of its rating, since TRI-COR's moderate risk assessment appears to have been based on an unsubstantiated, isolated incident, the reason given by the SSAC for doubting RAM's original high risk assessment.

improperly relaxed the solicitation requirements, where the record does not show that the protester suffered any prejudice).

The protest is denied.


for James F. Hinchman
General Counsel