



Comptroller General  
of the United States  
Washington, D.C. 20548

1-51622

# Decision

**Matter of:** Innovative Systems Consulting, Inc.  
**File:** B-257375.2  
**Date:** November 14, 1994

Joseph P. Hornyak, Esq., Sonnenschein Nath & Rosenthal, for the protester.  
Robert M. Cambridge, Esq., for Paragon Systems, Inc., an interested party.  
Gerald P. Kohns, Esq., Department of the Army, for the agency.  
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the protest.

## DIGEST

1. Protest that the agency improperly considered offerors' ability to perform required computer services at more than the two locations specified in the solicitation is denied where the record shows that the agency did not consider this factor in the evaluation.
2. Protest that the agency improperly downgraded protester's proposal because of educational deficiencies of its proposed personnel is denied where the record shows that technical evaluators awarded reasonable point credits based on the personnel's stated equivalent experience, as permitted by the solicitation.
3. Protest that the award was improperly based on consolidation of Step One and Step Two evaluation scores is denied; even if the evaluation were based solely on the Step Two technical scores--as urged by the protester--the awardee would still be the highest-ranked, lowest-priced offeror, and thus there was no prejudice to the protester as a result of the alleged evaluation error.

## DECISION

Innovative Systems Consulting, Inc. (ISC) protests the award of a contract to Paragon Systems, Inc. under request for proposals (RFP) No. DAEA08-94-R-6400, issued by the Department of the Army for secure Local Area Network (LAN) computer services at various military and government

facilities. ISC challenges the award on the ground that the agency failed to adhere to the RFP's evaluation criteria.

We deny the protest.

The RFP was issued as a total small business set-aside to 190 vendors on November 9, 1993, and contemplated the award of an indefinite quantity service contract for a base year and 4 option years; the tasks required under this contract include on-site network support, systems analysis, database development, network engineering and design, installation, training, and technical documentation.

The solicitation required offerors to submit both price and technical proposals. Because part of the required LAN services are classified as top secret, the solicitation provided for a two-step technical evaluation.<sup>1</sup> For the first step evaluation, offerors were required to submit a proposal addressing the following two evaluation factors: Factor 1--Corporate Capabilities; and Factor 2--Engineering Support and Services. After completion of the Step One evaluation, those offerors with proposals remaining in the competitive range would be given a classified statement of work (SOW) about the LAN network and asked to submit a technical proposal addressing Factor 3--Initial Delivery Orders. That is, offerors were to prepare a specific transition and engineering plan based on a model delivery order.

Of relevance to this protest, the specific language of the "Evaluation Factors for Award" provision at section M of the RFP stated:

"Factors 1 and 2 are of equal importance for the Step One evaluation. Factor 3 is the only factor for the Step [T]wo evaluation and is significantly more important than either Factors 1 or 2."

Section M further provided that with respect to contract award, technical merit was more important than price, and that award would be made to the offeror proposing the most advantageous offer to the government.

By the December 27 closing date, five proposals--including those of Paragon and ISC--were received. From January 5 until January 12, 1994, a technical evaluation board (TEB) composed of four members evaluated each proposal. Paragon's proposal was awarded the highest technical score, while ISC's was ranked lowest in technical merit. Nevertheless,

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<sup>1</sup>For this reason, our discussion of the technical evaluation is necessarily general.

because all five proposals were technically acceptable, each was given a "Pass" rating and included in the competitive range.

On February 17, the TEB issued amendment No. 0002, which set forth the classified SOW for Factor 3, along with letters to each offeror requesting "clarifications" to their Step One proposals. Of significance here, the TEB's clarifications letter to ISC advised the firm of the following "Major Deficiency" in its Step One proposal:

"Ref(erence) solicitation C.4, para(graph) C.2(b) (3) and proposal resumes. The technical support team does not appear to possess the required education requirements:

- " - Project Manager does not have the equivalent of the Master's Degree
- Senior Systems Engineer does not have the equivalent of the Master's Degree
- Systems Engineer does not have the equivalent of the Bachelor's Degree
- Computer Programmer III does not have the equivalent of the Bachelor's Degree
- Training person does not have the equivalent of the Bachelor's Degree."

The cover page of amendment No. 0002 indicated that several changes in the proposal preparation instructions and other areas of the solicitation had been made; thus, the amendment instructed offerors to:

"[r]emove solicitation pages . . . L-4 . . . and replace with attached revised pages. Changes are announced with a vertical line in the left-hand margin."

Of relevance here, page L-4 of the proposal preparation instructions incorporated the following new provision:

"Offerors' scores for Factors 1 and 2 will be adjusted, if appropriate, based on responses to clarifications. Clarifications for Factor 1 and 2 will be evaluated concurrently with the evaluation of Factor 3."

Amendment No. 0002 advised offerors that the closing date for receipt of the Step Two proposals--as well as the offerors' clarifications--was March 14. Subsequently, because of new wage rate determinations, and numerous

contractor questions about the classified SOW, the solicitation was amended three times, and the closing date was rescheduled to April 1.

On that date, each offeror submitted its response to the clarifications questions, as well as its Step Two technical proposal. In its response, ISC explained that although many of its proposed staff did not hold the requisite educational degrees, each candidate did possess equivalent practical experience, as was permitted by the solicitation. As a result of ISC's response, the TEB reevaluated the personnel portion of ISC's technical proposal, rated this portion technically acceptable, and awarded ISC a higher technical score for this aspect of its Step One proposal.

After evaluating each offeror's Step One clarifications and adjusting various Step One technical proposal scores, the TEB reviewed and evaluated each offeror's Step Two technical proposal. Under the Step Two evaluation, Paragon received the highest technical score; ISC's Step Two proposal was ranked lowest. On May 13, because Paragon had presented the lowest-priced, highest technically ranked offer, the Army awarded a contract to Paragon. On May 20, ISC filed this protest with our Office.

#### PROTESTER'S CONTENTIONS

In its May 20 protest, ISC contended that the agency had improperly considered each offeror's ability to provide the required LAN services at sites beyond the locations identified in the RFP's Factor Three SOW; as a result, ISC maintained that the Step Two evaluation was based on "additional requirements" which were not disclosed in the solicitation. ISC also contended that the agency failed to advise ISC of the deficiencies in its Step One proposal, and that the Army failed to adhere to the RFP's price evaluation criteria.

In its July 7 comments on the agency report, ISC abandoned the latter two of its three original protest grounds; however, based on its review of the agency report, ISC raised two new grounds of protest. First, ISC now maintains that the TEB improperly evaluated its Step One proposal; specifically, ISC contends that the TEB failed to count the experience of ISC's staff towards the RFP's educational requirements--resulting in an improper downgrade of ISC's technical proposal under Factor One. Second, ISC argues that the TEB improperly evaluated the offerors' Step One clarifications as part of the Step Two evaluation stage, and that the TEB improperly based the award decision on a consolidation of technical scores for the Step One and Step Two proposals.

## ANALYSIS

### Step One Proposal Evaluation

As noted above, under Step One of this procurement, offerors were required to prepare a proposal addressing two factors; Corporate Capabilities and Engineering Support. With regard to the Corporate Capabilities factor, offerors were required to demonstrate in their proposals how each of their proposed staff members met the solicitation's personnel requirements--which set forth education and experience requirements for each staff position. For example, the RFP's "Project Manager/Senior Consultant" position required the proposed individual to possess a Master's Degree--or equivalent experience--in one of eight scientific disciplines listed in the RFP, plus an additional 10 years of relevant job experience.

Initially, because most of ISC's proposed staff did not possess the required educational degrees, one of the TEB members substantially downgraded ISC's Step One proposal under the Corporate Capabilities factor. As noted above, in its clarifications request, the agency identified the educational qualifications of ISC's proposed staff as a major deficiency. ISC responded that while its proposed staff did not have the exact educational degrees, they did possess equivalent experience, as permitted by the solicitation. In this regard, paragraph C.2(b)(3) of the RFP, "Education/Experience Equivalents," provided that "[f]ormal training may be used to help satisfy individual education requirements" and further instructed offerors that "[e]xperience can be counted towards the educational requirements on a 1 for 1 basis . . . ."

After receiving ISC's response, the TEB reevaluated the personnel portion of ISC's proposal and upgraded this aspect of the protester's technical score. Consequently, even though the protester did not offer personnel with the required educational degrees, its personnel were rated as technically acceptable by each evaluator based on each individual's claimed equivalent experience.

In its protest, ISC contends that it should have received full credit for this portion of its technical proposal. Because it did not, the protester maintains that it was unfairly penalized for substituting experience for each required educational degree, even though this type of substitution was permitted by the RFP.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc.,

B-247150.2, July 13, 1992, 92-2 CPD ¶ 16. In reviewing an agency's evaluation we will not reevaluate technical proposals anew but will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367. An offeror's mere disagreement with the agency does not render the evaluation unreasonable, particularly where, as here, the procurement concerns sophisticated technical services. See Medland Controls, Inc., B-255204; B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260.

Here, we conclude that the agency had a reasonable basis for not awarding ISC full point credit with respect to the personnel qualifications portion of its Step One proposal. Although, ISC correctly notes that offerors were permitted to utilize equivalent experience to satisfy individual educational requirements for the majority of the personnel positions--as demonstrated by the solicitation's personnel specifications--the agency was seeking a balanced background of practical experience and educational expertise. Consequently, ISC's slightly lower technical score reflected the evaluators' judgment that ISC, while demonstrating a technically acceptable staff, had proposed significantly less educated and skilled personnel than had Paragon.<sup>2</sup> Because the majority of ISC's proposed staff mix was primarily comprised of nondegreed candidates, and because the solicitation clearly sought personnel with both educational and practical experience backgrounds, we find the TEB's evaluation of ISC's personnel to be reasonable. See Global Assocs., Ltd., B-256277, June 6, 1994, 94-1 CPD ¶ 347.

#### Step Two Proposal Evaluation

The classified SOW on which offerors were to base their Step Two technical proposals identified two Washington, D.C., facilities as "Primary Support Locations." In their Step Two technical proposals, offerors were to propose a transition plan and engineering plan for implementing and supporting LAN services at these two sites.

Based on its review of the agency report, ISC contends that the TEB downgraded ISC's Step Two technical proposal under Factor 3, in part, because of its concerns that ISC could not provide LAN services at sites beyond the identified Washington D.C., locations. In reaching this conclusion, ISC relies on several evaluator comments in the record. The individual technical comments provided by one TEB member

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<sup>2</sup>Paragon's proposed personnel fully complied with the solicitation's educational and experience requirements.

regarding ISC's Step Two proposal state that because of ISC's low staffing numbers, the proposal shows "little potential for supporting the expected future expansion of the [LAN] system" and that "[t]here appears to be little thought and planning toward long term support." Additionally, the "Summary Comments" of the TEB regarding the protester's Step Two technical proposal state:

"The Board expressed concern that any additional requirements outside the initial first two delivery orders would exceed the capabilities of ISC."

ISC maintains the solicitation's evaluation criteria prohibited the TEB from considering ISC's ability to provide LAN services at other sites. ISC contends that because the RFP award clause states that "Factor 3 is the only factor for the Step Two evaluation," and because Factor 3 required a proposal based only on the Washington D.C., sites; the TEB's subsequent evaluation of ISC's ability to provide LAN services at sites other than those identified in the Factor 3 SOW went beyond the scope of the intended Step Two evaluation.

The Army responds that contrary to ISC's contentions, an offeror's ability to perform the required LAN services at locations other than the two Washington D.C., sites identified in the classified SOW was never considered or evaluated. In fact, the Army reports that although the agency may anticipate some work being done elsewhere in the continental United States, the agency does not anticipate this work to be a major part of the contract.

The Army further explains that the TEB comments relied on by ISC to argue this particular ground of protest refer solely to the contractor's ability to perform delivery orders for emergency services or additional requirements at the Washington, D.C., sites--and not to performing delivery orders at other locations. To that end, paragraph 3.1.2 of the classified SOW provided:

"Emergency Requirements. The missions of the two [Washington, D.C.] organizations require that when a military situation or crisis is anticipated and during military exercises or military response to situations or crises, the two organizations operate 24 hours each day. Their normal operation is only eight hours each day for five days a week. Under the crisis circumstances the contractor must be available and capable of resolving network problems or assisting in the preparation of non-standard applications to meet the time-sensitive and critical requirements."

The Army explains that because of ISC's minimal staffing and the fact that many of ISC's proposed staff were to perform more than one LAN task--the TEB concluded that although the protester could probably meet the normal LAN services demands during routine periods, the firm would probably have difficulty during surge time with additional overtime and emergency requirements.

Our review of the protest record supports the Army's position. There is simply no evidence that the TEB ever considered any offeror's ability to perform delivery orders at other locations. Accordingly, we deny this aspect of ISC's protest.

#### Consolidation of Step One and Step Two Technical Scores

ISC contends that the agency improperly made award on the basis of a consolidation of the offerors' technical scores for the Step One and Step Two proposals. The protester argues that because of the evaluation language at section M which provided that "Factor 3 is the only factor for the Step Two evaluation," the agency was required to base contract award solely on the technical merit of the Step Two proposal--and not on a consolidation of the Step One and Step Two technical scores.<sup>3</sup>

Prejudice is an essential element of a viable protest; consequently, we will not sustain a protest against an alleged evaluation error unless the protester was somehow prejudiced. See Square 537 Assocs. Ltd. Partnership, B-249403.2, Apr. 21, 1994, 94-1 CPD ¶ 272. Here, even assuming that ISC's interpretation of the evaluation language is correct, the record shows that based on the Step

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<sup>3</sup>ISC also contends that the TEB improperly considered offerors' responses to the Step One clarifications request as part of the Step Two evaluation. This contention is untimely raised. Protests challenging alleged improprieties incorporated into a solicitation must be filed prior to the next closing time for receipt of proposals following the incorporation. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1994). In this case, amendment No. 0002 clearly advised offerors that Step One clarifications responses would be evaluated "concurrently with the evaluation of Factor 3"; thus, all offerors--including ISC--were placed on notice that any clarifications to offerors' Step Two proposals would be considered during the Step Two stage. Since ISC did not challenge the amendment prior to the April 1 Step Two closing, this aspect of its protest is untimely and will not be considered on the merits. See Mesa, Inc., B-254730, Jan. 10, 1994, 94-1 CPD ¶ 62.

Two technical scores alone, Paragon would still have received contract award since it was the highest-ranked offeror. Under these circumstances, we see no basis to conclude that ISC was prejudiced by the agency's alleged error.

The protest is denied.

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