



Comptroller General  
of the United States

44863

Washington, D.C. 20548

## Decision

**Matter of:** The Analytic Sciences Corporation  
**File:** B-259013  
**Date:** February 28, 1995

Leon J. Glazerman, Esq., Palmer & Dodge, for the protester. Gregory H. Patkoff, Esq., and Mark J. Otto, Esq., Department of the Air Force, for the agency. Paula A. Williams, Esq., Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Agency's consideration of an offeror's subcontractor's capabilities as well as the offeror's in determining offeror capability was proper where the amended solicitation allowed for the potential prime contractor in agreement with its identified subcontractors to perform the contract services as a team and for the offeror's capability to be determined on that basis.
2. Allegation that contracting agency failed to conduct meaningful discussions is denied where the weaknesses at issue were not considered significant during evaluation of the protester's otherwise technically acceptable proposal and did not preclude the protester from having a reasonable chance of receiving the award.

### DECISION

The Analytic Sciences Corporation (TASC) protests the award of a cost-plus-fixed-fee, indefinite quantity contract to Lawrence Associates, Inc. (LAI), under request for proposals (RFP) No. F33515-94-R-1406, issued by the Department of the Air Force for research and development services in support of the Preliminary Exploration of Targeting Subsystems (PETS) program at Wright-Patterson Air Force Base, Ohio. TASC contends that the Air Force's award is inconsistent with the subcontracting restriction contained in the RFP and

that the agency failed to conduct meaningful discussions with the protester.

We deny the protest.

The RFP's PETS effort involves a research and development program to include the investigation and evaluation of technologies essential to the development of future reconnaissance and weapon delivery, radar, electro-optical, fire control, and automatic target recognition systems. The PETS contractor is to study and evaluate new technologies for various airborne targeting subsystems and attack avionics related to the emerging technologies under the PETS. The required contract tasks are specifically listed and described in the RFP's statement of work and provides for an estimated level of effort of 8 man-months over a 5-year period.

The RFP at section L-35 provides that:

"[f]or proposal purposes, the offerors are to assume that they must demonstrate a capability to address a major portion (greater than 50%) of the work through their own facilities and capabilities."

Amendment No. 0001, issued on February 14, 1994, contained 41 pre-proposal questions and agency answers concerning the terms and requirements of the RFP. Section L-35 of the RFP was amended as follows:

"Q. Request clarification of [section L-35]  
. . . Do we interpret 'offerors' to mean 'team'?"

"A. You may consider 'offerors' to be a 'team' as identified in the proposal."

The RFP states that evaluation of proposals would be conducted under the streamlined source selection procedures of Air Force Regulation (AFR) 70-30 and that award would be made to the offeror whose proposal was determined to be most advantageous to the government, considering technical

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<sup>1</sup>In its December 9 comments on the agency report, TASC abandoned two of its original protest grounds--that its proposal was technically equal to LAI and that the agency used unstated criteria in evaluating proposals.

<sup>2</sup>For example, one task is to design, develop, test, and evaluate electro-optical technologies that are capable of detecting targets which use advanced reduced signature technology.

excellence, cost, and other factors. Technical excellence would be considered more important than cost, which while not specifically rated, would be evaluated as to realism, reasonableness and completeness. The five technical evaluation factors, listed in descending order of importance, are: (1) understanding the problem; (2) soundness of approach; (3) special technical factors; (4) compliance with requirements; and (5) initial delivery order.

Five firms, including TASC and LAI, submitted proposals and all were included in the competitive range.<sup>3</sup> Written and oral discussions were conducted with all five offerors. Each offeror submitted revised proposals which were evaluated with the following technical rating and risk assessment for the relevant offerors:

	<u>LAI</u>	<u>Offeror A</u>	<u>TASC</u>
1. Understanding the problem	A+/L	E/L	A+/L
2. Soundness of approach	E/L	A/L	A/L
3. Special technical factors	E/L	E/L	A/L
4. Compliance with requirements	A/L	A/L	A/L
5. Initial delivery order	A+/L	M+/H	M+/H
Overall Rating	E-/L	E-/L	A/L

All offerors' submitted best and final offers (BAFOs) and in their BAFOs, each offeror acknowledged that its revised technical proposal was unchanged. As a result, the BAFO's technical ratings and risk assessments remained the same. All five firms' BAFOs were reviewed for cost realism and all were found acceptable.<sup>4</sup> LAI had the second highest

<sup>3</sup>Technical proposals were qualitatively evaluated in accordance with the adjectival rating and risk assessment scheme stated in AFR 70-3, as either exceptional, acceptable, marginal, or unacceptable. Within the rating categories, proposals were ranked with pluses and minuses used to identify variations within each rating category. In addition, proposal risk was assessed as either high, moderate, or low.

<sup>4</sup>TASC argues for the first time in its comments on the agency report that the Air Force did not perform a proper cost realism analysis. This allegation is apparently based on the absence from the agency report of any cost realism documentation, which was not provided because cost realism was not an issue raised by the initial protest. The agency subsequently provided documentation of its cost realism analysis.

evaluated cost at \$12,246,673; TASC had the second low evaluated cost at \$10,982,529. Award was made to LAI on September 29, 1994, based on its "exceptional(-)" technical rating which was found to offset the cost advantage of TASC, the "acceptable" third offeror. The unsuccessful offerors were notified of the award to LAI on September 30.

TASC first protests that paragraph L-35 of the solicitation limited the use of subcontractors to less than 50 percent of the total contract services and that LAI's proposal demonstrates that LAI intends to perform only 30 percent of the contract services itself and the remainder through subcontractors. The Air Force disagrees with TASC's interpretation of paragraph L-35, maintaining that amendment No. 0001 broadened the meaning of the term "offerors" to include the potential prime contractor and its subcontractors working as a team, as identified in an offeror's proposal. The agency states that its interpretation of the term "team" is consistent with Federal Acquisition Regulation (FAR) § 9.601 which defines a contractor team arrangement as either "two or more companies [which] form a partnership or joint venture to act as a potential prime contractor" or, "a potential prime contractor agree[ing] with one or more other companies to have them act as its subcontractors under a specified government contract or acquisition program."

Where a solicitation imposes requirements that an "offeror" or "contractor" must meet, but it is the agency's intention to allow those requirements to be met through subcontractors or other contractor team arrangements, the solicitation should so indicate. See 50 Comp. Gen. 163 (1970). Here, the RFP amendment made it clear that the evaluation of performance capability would take into account not only the abilities and facilities of the actual offeror but also of any members of the offeror's "team." As the contracting officer points out, "team" includes both the potential prime contractor and other companies when the potential prime contractor and those other companies have agreed that those companies will act as subcontractors. See Energy Compression Research Corp., B-243650.2, Nov. 18, 1991, 91-2 CPD ¶ 466 n.3. Accordingly, we see nothing improper with the agency's considering the capabilities of both LAI and its identified subcontractors under paragraph L-35.

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<sup>5</sup>To the extent the protester is arguing that the solicitation was misleading or defective because, instead of deleting paragraph L-35 in response to the pre-proposal question concerning this paragraph, the agency merely clarified the term "offeror" to include "team," the protester's argument, raised after the closing date for

(continued...)

TASC also argues that the agency failed to conduct meaningful discussions by not specifically identifying three weaknesses in its proposal which were included in the source selection briefing document on which the source selection authority relied in selecting the awardee. Generally, agencies are required to conduct discussions with all competitive range offerors and this mandate is satisfied only when discussions are meaningful. FAR § 15.610; The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425. However, agencies are not obligated to afford offerors all-encompassing discussions. Department of the Navy--Recon., 72 Comp. Gen. 221 (1993), 93-1 CPD ¶ 422. The content and extent of meaningful discussions in a given case is a matter of judgment primarily for the determination of the agency involved and not subject to question by our Office unless clearly arbitrary or without a reasonable basis. Where a proposal is considered to be acceptable and in the competitive range, an agency is not required to discuss every aspect of the proposal receiving less than the maximum rating. Fairchild Space and Defense Corp., B-243716; B-243716.2, Aug. 23, 1991, 91-2 CPD ¶ 190; Caldwell Consulting Assoc., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530.

In this case, the record shows that TASC's proposal was considered acceptable overall; it contained no deficiencies that would preclude the firm from performing the required services satisfactorily. The record further shows that while the evaluators identified several weaknesses in TASC's proposal, almost all were identified as insignificant.<sup>5</sup> The contracting officer conducted one round of written discussions and two rounds of oral discussions with the protester to discuss specific weaknesses identified in its

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<sup>5</sup>(...continued)

receipt of initial proposals, is untimely and will not be considered. 4 C.F.R. § 21.2(a)(1); see American Int'l Global, B-247896, July 2, 1992, 92-2 CPD ¶ 3. Moreover, we fail to see how the protester might have been prejudiced here since it does not contend that it would have changed the structure or price of its proposal in any way had it interpreted the terms of paragraph L-35 to allow consideration of identified subcontractors' capabilities and facilities.

<sup>6</sup>In response to TASC's protest, the source selection official clarified his initial source selection documentation, affirming the selection of LAI for award. For purposes of our review of this protest issue, we have reviewed and refer to both the original and the subsequent written source selection decisions, each of which we believe independently supports denying the protest contention.

initial delivery order which adversely impacted its rating under that evaluation factor. The record shows that the weaknesses in TASC's proposal which were not discussed did not cause the evaluators to assess the firm's proposal with any additional risk or reduce the firm's technical ratings. For example, one weakness which was not discussed with the protester concerns the incomplete discussion of its personnel experience or qualification in fire control under the special technical factor. Although TASC's discussion of its fire control personnel experience was incomplete, this involved only a minor consideration under the applicable technical evaluation criterion, the evaluators did not view this as significant, and the proposal was rated fully acceptable with low risk in this area. Since there is no evidence to suggest that this or any of the other weaknesses would have prevented the agency from making award to TASC, because none of these weaknesses were viewed as significant, we do not believe that the agency was required to discuss these matters with TASC. See Booz, Allen & Hamilton, Inc., B-249236.4; B-249236.5, Mar. 5, 1993, 93-1 CPD ¶ 209. Given the technical superiority of the awardee's proposal, there is no showing in the record that the noted insignificant weaknesses adversely affected the proposal's rating to preclude a reasonable chance of receiving the award. Department of the Navy--Recon., supra.

The protest is denied.

\s\ Ronald Berger  
for Robert P. Murphy  
General Counsel