



Comptroller General  
of the United States

Washington, D.C. 20548

REDACTED VERSION\*

## Decision

**Matter of:** Redstone Technical Services; Dynamic Science, Inc.

**File:** B-259222; B-259222.2; B-259224; B-259224.2

**Date:** March 17, 1995

Thomas P. Barletta, Esq., and Gerard E. Wimberly, Jr., Esq., Steptoe & Johnson, for the protesters.  
William P. Albritton, Jr., Amtec Corporation, an interested party.  
Beth Biez, Esq., and Vera Meza, Esq., Department of the Army, for the agency.  
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Contracting officer's cost/technical tradeoff decisions resulting in awards to higher technically rated (based on adjectival ratings), significantly higher evaluated cost offerors are unreasonable where the contracting officer mechanically applied the solicitations' evaluation methodology and the purported reasons for his decisions are not supported by the contemporaneous evaluation and source selection documentation.

### DECISION

Redstone Technical Services (RTS) protests the award of a contract to Amtec Corporation under request for proposals (RFP) No. DAAH01-94-R-R004 (RFP-R004), issued by the United States Army Missile Command, Department of the Army, Redstone Arsenal, Alabama, for weapons systems ordnance test and evaluation support services. Dynamic Science, Inc. (DSI) protests the award of a contract to Technical Micronics Control, Inc. under RFP No. DAAH01-94-R-R007 (RFP-R007), issued by the same activity, for environmental and nondestructive test support services. The procurements

\*The decision issued March 17, 1995, 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]."

were conducted by the same contracting officer, who also served as the source selection authority. RTS<sup>1</sup> and DSI, the low evaluated cost offerors in each procurement, essentially challenge the contracting officer's cost/technical tradeoff decisions which resulted in awards to significantly higher evaluated cost offerors.

We sustain the protests.

#### BACKGROUND

The RFPs, issued in early 1994 as total small business set-asides, contemplated awards of cost-plus-fixed-fee, level-of-effort contracts for a base period with five option periods. The RFPs provided that proposals would be evaluated in the areas of technical, management, past performance/risk assessment, total contract cost, and minimum personnel and equipment requirements. The evaluation areas for each procurement were weighted as follows:

	<u>RFP-R004</u>	<u>RFP-R007</u>
Technical	30	30
Management	30	25
Past Performance/Risk	20	20
Total Cost	20	25
Minimum Requirements	GO/NO-GO	GO/NO-GO

Under the technical area, RFP-R004 required offerors to address two equally important sample tasks and RFP-R007 required offerors to address three equally important sample tasks. The technical tasks were to be evaluated on the basis of the following equally important factors:

(1) understanding the problem; (2) technical approach; and (3) efficiency of approach. Under the management area, both RFPs required offerors to address a single sample task which was to be evaluated on the basis of the following equally important factors: (1) understanding of management responsibilities; (2) management approach; and (3) organizational structure. In both procurements, the following adjectival rating scheme was to be used to

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<sup>1</sup>RTS was formed as a limited liability company pursuant to a joint venture agreement between DSI and another entity. DSI has [deleted] and was authorized to file the protest on behalf of the joint venture.

evaluate responses to the technical and management tasks which comprised an offeror's technical and management proposals:

Excellent--clear understanding of task; exceptional response that exceeds specified factors. Numerous significant advantages, few minor disadvantages, and no deficiencies.

Very good--clear understanding of task; response exceeds specified factors. Many advantages, few disadvantages, and no deficiencies.

Good--considerable understanding of task; response meets specified factors. Some advantages, few disadvantages, and no deficiencies.

Acceptable--basic understanding of task; response generally meets specified factors. No deficiencies.

In addition, the RFPs stated that a past performance/risk assessment would be made based upon an offeror's current and past record of performance as it related to the probability of successful accomplishment of the required effort. Offerors could be rated high risk (significant doubt concerning the offeror's ability to perform based on its performance record), moderate risk (some doubt concerning the offeror's ability to perform based on its performance record), or low risk (little doubt concerning the offeror's ability to perform based on its performance record). With respect to cost, the RFPs provided that an offeror's proposed costs would be evaluated to determine the government's most probable cost (evaluated cost) of doing business with the offeror. With regard to minimum personnel requirements, the RFPs required offerors to submit resumes which addressed education, general experience, special skills, and ability of proposed personnel.

The RFPs stated that the award would be made to the responsible offeror in each procurement whose proposal represented the best value to the government based on the stated evaluation methodology. The RFPs further stated that the award decision would include an assessment of performance risk and proposal risk created by an offeror's use of unreasonably low labor rates which would suggest a risk of deficient performance and/or that the actual costs to the government would be higher than proposed.

For each procurement, three firms, including RTS and Amtec under RFP-R004, and DSI and TMC under RFP-R007, submitted initial proposals which were rated as follows:

	<u>Tech.</u>	<u>Mgmt.</u>	<u>Past Perf.</u>	<u>Min. Reqmts.</u>
<u>RFP-R004</u>				
RTS	[deleted]	[deleted]	Low Risk	GO
Amtec	[deleted]	[deleted]	Low Risk	GO

RFP-R007

DSI	[deleted]	[deleted]	Low Risk	GO
TMC	[deleted]	[deleted]	Low Risk	GO

In RFP-R004, RTS' evaluated cost was approximately [deleted] percent less than Amtec's evaluated cost, and in RFP-R007, DSI's evaluated cost was approximately [deleted] percent less than TMC's evaluated cost.

For each procurement, the initial proposals of each of the above four offerors were included in the competitive range.<sup>2</sup> Based on the evaluators' brief narrative listings of advantages and disadvantages in each offeror's initial proposal, technical, management, and cost disadvantages were discussed, in writing, with each offeror. None of the initial proposals were deemed to have any deficiencies. Since each offeror received low risk ratings for past performance/risk assessment, and each offeror was deemed to satisfy the minimum personnel and equipment requirements, these ratings were considered final and these areas were not the subject of discussions.

Following discussions in each procurement, each offeror submitted a best and final offer (BAFO). For BAFOs, while offerors addressed and corrected noted disadvantages, the adjectival ratings for each offeror for the technical and management areas did not improve, but rather remained the same. For each procurement, the contracting officer's source selection memorandum (SSM) included, separate from his cost/technical tradeoff decision, the evaluators' final comments for each offeror and a rationale for the final BAFO ratings.

In RFP-R004, concerning RTS' technical proposal, the evaluators concluded that RTS had [deleted] response that [deleted] the specified factors, demonstrating the firm's [deleted] understanding of the tasks. RTS' technical

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<sup>2</sup>The initial proposal of the third offeror in each procurement was included in the competitive range. Vis-a-vis RTS and DSI, the overall adjectival ratings for the third offerors were [deleted], and their evaluated costs were also [deleted].

proposal contained [deleted], and no deficiencies. For RTS' management proposal, the evaluators concluded that RTS had [deleted] response that [deleted] the specified factors, demonstrating the firm's [deleted] understanding of the task. RTS' management proposal contained [deleted], and no deficiencies.

For Amtec's technical and management proposals, the evaluators concluded that Amtec had [deleted] responses that [deleted] the specified factors, demonstrating the firm's [deleted] understanding of the tasks. Amtec's technical and management proposals contained [deleted], and no deficiencies.

In RFP-R007, concerning DSI's technical and management proposals, the evaluators concluded that DSI had [deleted] responses that [deleted] the specified factors, demonstrating the firm's [deleted] understanding of the technical and management tasks. DSI's technical proposal contained [deleted], and no deficiencies. DSI's management proposal contained [deleted], and no deficiencies.

For TMC's technical and management proposals, the evaluators concluded that TMC had [deleted] responses that [deleted] the specified factors, demonstrating the firm's [deleted] understanding of the technical and management tasks. TMC's technical proposal contained [deleted], and no deficiencies. TMC's management proposal had [deleted],<sup>3</sup> and no deficiencies.

For RFP-R004, the contracting officer awarded the contract to Amtec, deemed the offeror submitting the proposal representing the best value to the government, at an evaluated cost (\$[deleted]) approximately [deleted] percent higher than RTS' evaluated cost (\$[deleted]). In his SSM, the contracting officer stated that even though questions were addressed regarding the offerors' disadvantages and, as a result of discussions, some corrections were made in the offerors' technical and management proposals, the advantages and overall merits of the proposals did not change. Therefore, the offerors' adjectival ratings for the technical and management areas remained the same. The contracting officer further stated that the technical and management areas, separately and combined, were significantly more important than cost. The contracting officer continued that "[a]ll three offerors [were] considered [deleted] and were [deleted] rated in the

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<sup>3</sup>Both DSI and TMC were determined to have the same management [deleted]--[deleted]. The agency concedes in its report, however, that [deleted] was not required by the terms of the RFP.

(t)echnical and (m)anagement areas." However, the third offeror, whose overall adjectival ratings were (deleted) than Amtec's adjectival ratings, was (deleted) from consideration for award because its evaluated cost was (deleted) than Amtec's evaluated cost. Concerning RTS and Amtec, the contracting officer stated in making his cost/technical tradeoff decision that:

"Amtec's proposal received the (deleted) adjectival rating of "(deleted)" in both the (t)echnical and (m)anagement areas, while (RTS's) rating(s) in those areas were "(deleted)" and "(deleted)" respectively. The evaluation sheets prepared by the (evaluators) substantiate the adjectival ratings of the Amtec proposal, describing not only the higher (t)echnical and (m)anagement ratings received by Amtec but enumerate Amtec's (t)echnical and (m)anagement advantages. At \$(deleted), Amtec's (evaluated cost) is \$(deleted) more than the (evaluated cost) of RTS. This figure represents a (deleted) percent cost differential. However, . . . this acquisition more heavily weights the (t)echnical and (m)anagement areas. Amtec's technical proposal represents a significant monetary value to the government."

At this point, without further reference to RTS, the contracting officer explained that:

"(m)issed steps or procedures and improperly functioning or unsafe equipment can result in injury, loss of life, failed tests, or invalid or false data . . . . Amtec's proposal projects a (deleted) to the government in not meeting test objectives in a (deleted) manner (which) (deleted) the government's risk of having to repeat very expensive testing, replacing expensive hardware destroyed during test, and missing major milestone decision points in development programs."

The contracting officer continued that:

"(t)he (deleted) with which the categories were (deleted) in Amtec's proposal show them to be (deleted) and indicate that (deleted) government oversight of Amtec will be required during test procedures in order to ensure test objectives are met timely, efficiently, and accurately."

The contracting officer concluded that:

"Amtec project(ed) a (deleted) in the (deleted) of its (technical and management) proposals and (considering the combination of these areas, Amtec) represent(s) the best value to the government. Amtec's past performance/risk assessment rating was "low risk," and their proposed cost of \$(deleted) represents the best value to the government."

For RFP-R007, the contracting officer awarded the contract to TMC, deemed the offeror submitting the proposal representing the best value to the government, at an evaluated cost (\$(deleted)) approximately (deleted) percent higher than DSI's evaluated cost (\$(deleted)). In his SSM, the contracting officer stated that the overall adjectival ratings for all offerors remained the same from the initial to the final technical reviews. The contracting officer stated in his brief, single paragraph cost/technical tradeoff decision that:

"(TMC) received the (deleted) adjectival ratings of all three offerors in the (t)technical and (m)anagement areas. TMC's higher adjectival ratings in the (t)technical area, which is the most important in this procurement, and in the (m)anagement area, which is weighted equally to cost, outweigh its (deleted) higher ((deleted)%) [evaluated cost] [the reference being to the evaluated cost of the third offeror, not DSI]. In accordance with the evaluation criteria . . . , TMC's proposal represents the best value and is determined to be the most advantageous to the Government."

The contracting officer made no additional statements concerning the decision to award the contract to TMC, and he made no specific reference to DSI, the low evaluated cost offeror, as part of his cost/technical tradeoff decision.

#### ARGUMENT

RTS and DSI, the low evaluated cost offerors in each procurement, basically contend that the contracting officer's cost/technical tradeoff decisions were arbitrary, resulting in awards to significantly higher evaluated cost offerors. The agency essentially argues that the contracting officer reasonably awarded contracts to higher technically rated, based on adjectival ratings, higher evaluated cost offerors in accordance with the RFPs' stated evaluation methodology which placed greater weight on the



combination of technical and management considerations than on an offeror's evaluated cost.

#### ANALYSIS

In negotiated procurements, where an agency chooses between a higher-cost, higher-rated proposal and a lower-cost, lower-rated proposal, our review is limited to a determination of whether the cost/technical tradeoff is reasonable and consistent with the solicitation's evaluation criteria. SDA Inc., B-248528.2, Apr. 14, 1993, 93-1 CPD ¶ 320; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In the procurements at issue, we conclude that the contracting officer's tradeoff decisions do not satisfy this standard.

In both procurements, the records show that the focal point of the contracting officer's cost/technical tradeoff decisions was the awardees' higher adjectival ratings for the technical and management areas. The records show that these adjectival ratings were used by the contracting officer as the basis to justify awards to Amtec and TMC at substantial cost premiums vis-a-vis RTS and DSI, without consideration of the relative differences, weaknesses, and risks between these high and low evaluated cost offerors.

Specifically, in RFP-R004, the contracting officer stated that Amtec's proposal received the [deleted] adjectival rating of "[deleted]" for both the technical and management areas, while RTS's proposal received the adjectival rating of "[deleted]" for the technical area and "[deleted]" for the management area. Although noting the approximate [deleted]-percent cost differential between the RTS and Amtec proposals, the contracting officer simply concluded that the technical and management areas were more heavily weighted in the stated evaluation methodology and therefore, Amtec's proposal represented a significant monetary value to the government.

In RFP-R007, the contracting officer did not specifically discuss DSI and the approximate [deleted]-percent cost differential between the DSI and TMC proposals in making his cost/technical tradeoff decision. Only in the agency report filed in response to the protest did the contracting officer point to TMC's proposal's higher adjectival rating of "[deleted]" for both the technical and management areas, while DSI's proposal received the adjectival rating of "[deleted]" for both of these areas. In the agency report, the contracting officer concluded that since the technical area was the most heavily weighted evaluation consideration and the management area was weighted equal to cost, TMC's proposal represented the best value to the government.



While adjectival ratings, like point scores, are useful as guides to decision-making, they generally are not controlling because they often reflect the disparate subjective judgments of evaluators. See, e.g., DNL Properties, Inc.; Crawford/Edgewood Managers, Inc.; Pearl Properties, B-253614.2 et al., Oct. 12, 1993, 93-2 CPD ¶ 301; S&M Property Management, B-243051, June 28, 1991, 91-1 CPD ¶ 61. In determining to award to Amtec and TMC, the higher technically rated, based on adjectival ratings, significantly higher evaluated cost offerors, there is no evidence in the records that the contracting officer actually considered whether the relative differences, weaknesses, and risks in the technical and management proposals of RTS and Amtec and DSI and TMC, as reflected by the adjectival ratings, represented any meaningful qualitative differences which warranted the payment of substantial cost premiums to Amtec and TMC.

Since RTS and DSI were the low evaluated cost offerors in each procurement and, just like Amtec and TMC, were deemed low risk in terms of ability to perform based on their respective past performance records, and were determined to have proposed personnel meeting the RFPs' minimum qualifications, we think these firms were prejudiced by the contracting officer's failure to provide any meaningful basis and explanation for the awards to significantly higher evaluated cost offerors. Federal Acquisition Regulation (FAR) §§ 15.608 and 15.612(d)(2). In best value procurements like these, where the contracting officer awards to higher-cost, higher technically rated offerors instead of lower-cost, lower technically rated offerors, the award decisions must be supported by a rational explanation of why the technical superiority of the higher-cost offerors warrants the additional costs involved, even where, as in these cases, cost is weighted less heavily than the technical and management areas combined. SDA Inc., supra. We conclude that the contracting officer failed to satisfy this standard in both procurements.

In the reports filed in response to these protests, the agency proffers some reasons why RTS and DSI were determined not to represent the best values to the government, despite their significantly lower evaluated costs. However, these reasons are not supported by the record.

For example, for RFP-R004, the contracting officer explains in his SSM that Amtec's proposal presented a [deleted] of injury to personnel, loss of life, failed tests, or invalid or false data. The contracting officer also explains that [deleted] government oversight of Amtec would be required during testing. The agency asserts that RTS, which was rated "[deleted]" for the technical area, with no [deleted] deficiencies, and "[deleted]" for the management area,

[deleted] and no deficiencies, represents a safety risk compared to Amtec, and that its performance will require [deleted] government oversight than will Amtec's performance.

The evaluation record for RFP-R004 does not support the assertion that safety risk concerns and the need for [deleted] government oversight were disadvantages in RTS' proposal.<sup>4</sup> Rather, the contracting officer stated that RTS, like Amtec, was "considered [deleted] and [was] [deleted] rated in the [t]echnical and [m]anagement areas." If, however, these were concerns, the agency's failure to point out these matters to RTS during discussions deprived RTS, whose evaluated costs were low, of an opportunity to be selected for award. In our view, such a lack of meaningful discussions would have been prejudicial. Securiguard, Inc., B-249939, Dec. 21, 1992, 93-1 CPD ¶ 362.

The agency suggests in its reports for both procurements that RTS' and DSI's failure to escalate their direct labor rates in the option years presents a risk that the firms will not be able to recruit and retain personnel absent periodic salary increases. While we do not question the legitimacy of a reasonable concern about an offeror's ability to recruit and retain personnel in light of wages to be paid, the contemporaneous evaluation and source selection documentation fails to identify recruitment and retention of personnel as the basis for the agency's concern with RTS' and DSI's decisions not to include escalation in their cost proposals.

In this regard, the RFPs stated that:

"[a]ny wage escalation factors used shall be identified. The proposals shall specify the factual and judgmental elements used to develop the escalation factors and shall provide the reasons for their use. The [g]overnment's [evaluated cost] position will assess the amount

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<sup>4</sup>The final evaluation record for RFP-R004 shows that the evaluators specifically concluded for one of the technical tasks that RTS "[deleted]." The evaluators also concluded for the management task, for which RTS was rated "[deleted]," that RTS "had [deleted] approach which would lend itself [deleted]. [RTS] has [deleted]." Finally, the record shows that like Amtec, RTS received a low risk rating for its past performance (the agency considered the experience of the two entities comprising the RTS joint venture), an indicator of its ability to successfully perform this contract based on its prior performance history.

of proposed wage escalation in future years using the Data Resources Incorporated (DRI) index for salaried professional and [t]echnical workers as a guideline. Offerors should provide details of their data computations to include escalation assumptions."

In their initial proposals, neither RTS nor DSI escalated their direct labor rates for the option years since, in their views, escalation was not required by the terms of the RFPs. In any event, RTS and DSI agreed to increase wages for all personnel in accordance with any applicable wage determinations. During discussions, the agency questioned both firms as follows:

"[RTS and DSI] did not propose escalation for all categories for the option years. As stated in the RFP, in determining [evaluated cost], the government used the [DRI] index to establish escalation rates for all categories for evaluation purposes. It is anticipated that some escalation is appropriate in order for the proposed composite hourly rate to be meaningful and for budget purposes. Since the period of performance of the proposed contract will be for a period of five years, including the options, it is probable that the Department of Labor will adjust these minimum rates annually during this period, and the contract will be modified to provide the adjusted wage determinations. Please explain how your failure to apply escalation in your proposal will not pose a risk."

In their BAFOs, RTS and DSI reiterated their agreement to increase wages for all personnel based on applicable wage determinations, but they generally did not escalate their direct labor rates.<sup>5</sup> RTS and DSI also furnished planning cost estimates which incorporated a [deleted]-percent inflation factor for all proposed labor, providing the agency with an approximation of future increases and reducing the agency's risk of forecasting future cost estimates. The agency, however, was not satisfied with these responses, and applied a [deleted]-percent escalation factor to RTS' and DSI's direct labor rates for the option years.

The discussion question expressed the agency's concern as to its risk of having to incur greater costs than proposed by RTS and DSI, not a concern with the ability of these firms

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<sup>5</sup>DSI did include a [deleted]-percent annual escalation for "non-wage determined employees."

to recruit and retain personnel. In their BAFOs, RTS and DSI responded to this expressed concern, although not to the agency's satisfaction because these firms generally did not escalate their direct labor rates in the option years.<sup>6</sup> RTS and DSI clearly were on notice, based on the discussion question, that absent a satisfactory explanation, the agency could reasonably escalate their direct labor rates for the option years to reflect increases in the applicable wage determinations since these increases would directly impact cost. However, we cannot conclude, based on the discussion question, that RTS and DSI were aware of the agency's concern that failure to escalate could impact performance in terms of recruitment and retention of personnel. We point out that RTS and DSI each provided in their proposals letters of commitment from proposed personnel, [deleted]. We believe RTS and DSI, the low evaluated cost offerors, were deprived of an opportunity to be selected for award since the issue of recruitment and retention of personnel was not pointed out during discussions. We conclude that RTS and DSI were prejudiced by the agency's failure to conduct meaningful discussions on this matter. Securiguard, Inc., supra.

We sustain these protests. By letter of today to the Secretary of the Army, we are recommending that the agency reopen discussions with all firms, including RTS and DSI, whose proposals properly belong in the competitive range for each procurement, conduct appropriate discussions with those offerors, evaluate revised proposals in accordance with the RFPs' evaluation methodology, and perform and fully document proper cost/technical tradeoff decisions. If Amtec and TMC are no longer considered the offerors proposing the best value to the government, the agency should terminate their

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<sup>6</sup>RTS and DSI maintain that escalation was not required by the terms of the RFPs and because of the incorporation in the RFPs of the clause at FAR § 52.222-43, captioned "Fair Labor Standards Act and Service Contract Act--Price Adjustment," which provides for adjusting fixed-price contracts for Department of Labor wage determinations made during the term of the contract. To the extent the RFPs were not clear, we think the discussion question reasonably notified the protesters of the requirement for escalation. Further, we note that the FAR clause applies only to fixed-price contracts, see FAR § 22.1006, and since these procurements were for cost contracts, this clause was not applicable. Sabre Sys., Inc., B-255311, Feb. 22, 1994, 94-1 CPD ¶ 129. To the extent the protesters contend otherwise, their allegation involves an alleged solicitation impropriety which should have been protested prior to the closing time for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1995).

contracts for the convenience of the government and award to the offerors proposing the best value to the government. In any event, RTS and DSI are entitled to the costs of filing and pursuing these protests, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1). RTS and DSI should submit their certified claims for such costs, detailing the time expended and costs incurred, directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

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