



Comptroller General
of the United States

Washington, D.C. 20548

Decision

REDACTED VERSION*

Matter of: RJO Enterprises, Inc.

File: B-260126.2

Date: July 20, 1995

John R. Tolle, Esq., and William T. Welch, Esq., Barton, Mountain & Tolle, for the protester.

William J. Cople III, Esq., and Donald W. Fowler, Esq., Spriggs & Hollingsworth, for Veda, Inc., and Michael K. Love, Esq., for Information Systems & Networks Corporation, the interested parties.

Gregory H. Petkoff, Esq., and Lt. Col. John J. Thrasher, Department of the Air Force, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency improperly downgraded the protester's proposal for failing to meet an asserted requirement that at least one resume per labor skill level be submitted with a proposal, where the solicitation did not suggest this was a requirement and the protester proposed a total work force of qualified personnel sufficient to perform the work solicited.
2. Agency unreasonably and unequally evaluated the education and experience of the protester's proposed personnel where the agency's evaluation failed to give appropriate credit for highly relevant test pilot experience and technical degrees, and negatively evaluated the protester's personnel for having nontechnical degrees, but did not do the same for other offerors' personnel with similar nontechnical degrees.

*The decision issued on July 20, 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]."

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3. Agency's selection decision in a best value procurement based upon the application of unstated minimum requirements, as well as an unreasonable and unequal evaluation of the proposed personnel's education and experience, and which does not otherwise justify selection of higher-priced offerors for award is unreasonable and not in accord with the evaluation criteria.

DECISION

RJO Enterprises, Inc. protests the awards to Veda, Inc. and Information Systems & Networks Corporation (ISN) under request for proposals (RFP) No. F33657-94-R-2186, issued by the Department of the Air Force for acquisition management, management operations, and test and evaluation (AMMOTE) support at the Aeronautical Systems Center, Wright-Patterson Air Force Base, Ohio.

We sustain the protest because the agency unreasonably evaluated RJO's proposal by finding it deficient for failing to provide resumes of entry-level personnel that were not required to be submitted by the RFP, and by unreasonably and unequally evaluating the education and experience of other RJO proposed personnel.

The RFP, issued on July 7, 1994, contemplated the award of three indefinite delivery/indefinite quantity, time-and-materials contracts with a term of 5 years, which were set aside for one 8(a) contractor¹ and two small business concerns. The RFP stated that the minimum guaranteed contract value was \$100,000 and the contract ceiling was \$50 million. The RFP further stated that the government intended to award the contracts without discussions.

Section M of the RFP stated that awards would be made on a best value basis with the technical/management factors being more important than cost/price, although cost/price was to be "a substantial consideration in the source selection decision." The following technical/management factors were listed in section M in descending order of importance:

"4.1.1 Factor 1-Task Exercise: Proposal evaluation will consider the offeror's knowledge and understanding of the objective of each task function (*i.e.*, Acquisition Management, Management Operations, and Test and Evaluation [T & E], including identification of any potential problems and issues and recommended solutions). The evaluation will consider the offeror's overall technical understanding and approach in accomplishing each subtask, with consideration given to the proposed manpower loading.

¹The 8(a) contract is not protested here.

"4.1.2 Factor 2-Technical Capability: This factor will be used to assess education and experience of the prime contractor's and any subcontractor's personnel in relation to Section J [Attachment 4, AMMOTTE Support Labor Category Qualifications (hereafter, section J-4)], and [Statement of work] SOW paragraphs 5 through 5.4.6. The proposal will also be evaluated to determine if the offeror has demonstrated its commitment to make its qualified personnel available to support this contract.

"4.1.3 Factor 3-Management Capability: The offeror's proposal will be evaluated as to the offeror's ability to effectively manage the contractual effort. . . ."

The RFP stated that technical/management factors would be evaluated for soundness of approach and understanding/compliance with the requirements, and also for proposal and performance risks.

Section J-4, referenced under factor 2-technical capability, described the type of support to be provided under each of the three disciplines (i.e., acquisition management, T & E, and management operations). Section J-4 also listed the labor skill levels and corresponding qualification requirements under each discipline:

"1.0 Disciplines, Skills, Skill Levels. For each task, the [c]ontractor shall propose the required disciplines, skill mix, and skill level which is most effective for accomplishing the task.

"2.0 Acquisition Management and [T & E] Disciplines Explanation. The [c]ontractor shall provide support in the Acquisition Management and [T & E] areas as described below. Task orders will be written in terms of work to be performed, but may use the discipline areas to categorize the labor force necessary to perform the task order.

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"3.0 Acquisition Management and [T & E] Skill Level Explanation. The skill level an individual qualifies for is dependent upon his relevant education, experience, and capabilities. The following skill levels apply to the Acquisition Management and [T & E] disciplines.

"3.1 Level 4 Senior Professional. These individuals have full responsibility for interpreting, organizing, executing, and coordinating assignments and must be capable of supervising other [c]ontractor employees. They must be capable of planning and developing projects concerned with unique or controversial items having a major effect on the program(s). Individuals perform work involving exploration of the

subject area, definition of scope, and selection of problems for investigation. They must apply intensive and diverse knowledge to problems and make independent decisions. Individuals must have a Masters Degree and a minimum of 8 years of experience in the discipline, or a Bachelors Degree and 10 years of experience.

"3.2 Level 3 Journeyman Professional. Individuals are fully competent in all aspects of their discipline and are capable of evaluation, selection, and substantial adaptation and modification of standard techniques, procedures, and criteria. They are capable of identifying problems and recommending solutions with little or no supervision and must be able to devise new approaches to problems encountered. Individuals must have a Masters Degree and a minimum of 6 years of experience in the discipline, or a Bachelors Degree and 8 years of experience.

"3.3 Level 2 Junior Professional. These individuals must be able to perform assignments in the particular discipline when specific objectives are stated. They will be required, with minimal supervisory guidance, to work independently on tasks and to exercise reasonable judgment in the execution of tasks and selection of alternatives. They must have a Bachelors Degree and a minimum of 4 years of experience in the discipline.

"3.4 Level 1 Entry Professional. These individuals must be able to perform specific, routine tasks within a narrowly defined scope of responsibility, on a set timeline. They will be required to work independently, but will have recourse to supervisory direction for events outside the defined scope of the task. Individuals must have a Bachelors Degree and a minimum of one year experience in the discipline."

As indicated by the foregoing descriptions, higher-level professionals are clearly qualified to perform tasks that could be performed by lower-level professionals.

The RFP SOW, also referenced under factor 2, contemplated that the contractor would respond to agency delivery orders by proposing an appropriate mix of nonengineering personnel to support the Air Force in the acquisition, development, production, and sustainment of aeronautical-related systems (e.g., aircraft engines, training systems, components, etc.). The contractor is responsible for employing

qualified personnel, matching personnel skills to the work to be performed, and assigning a person as task leader whose duties include assigning the work effort to the contractor's personnel.²

The RFP SOW at paragraphs 5 through 5.4.6 stated the detailed requirements for the three discipline areas. For the T & E discipline, the SOW stated:

"5.3 [T & E] Support.

"The [c]ontractor shall utilize knowledge and experience to assist in the designing, planning, conducting, analyzing, and reporting phases of test and evaluation programs, to assess the performance of aeronautical systems as they progress through acquisition phases/milestones. The [c]ontractor shall employ personnel with expertise in a wide range of tasks, including but not limited to the following:

"5.3.1 Documentation.

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²The contract clause at section H-009 of the RFP assigned to the contractor the responsibility for selecting qualified personnel to perform the required effort, and stated that the education and experience descriptions for the labor categories were the minimum acceptable qualifications for contractor personnel to perform on this contract within each category:

"Labor Category Qualifications

"(a) The [c]ontractor shall be responsible for selecting personnel who are well qualified to perform the required efforts, supervising techniques used in their work, and for keeping them informed of all improvements, changes and methods of operations.

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"(d) The [c]ontractor shall provide the categories of personnel which meet as a minimum education and experience requirements listed in [section J-4] to perform the functions as described in this contract. The descriptions/requirements represent the minimum acceptable qualifications for [c]ontractor personnel to perform on this contract within each category. Education and experience levels required are contained in each labor category description. See Labor Category Qualifications as set forth in [section J-4]."

"5.3.2 Requirements and Objectives.

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"5.3.3 Data Requirements.

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"5.3.4 Test Planning.

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"5.3.5 Test Execution Monitoring.

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"5.3.6 Data Collection and Reduction.

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"5.3.7 Data Analysis. . . ."

Section L, paragraph 3.2.3, stated the following proposal preparation instructions relating to evaluation factor 2-technical capability:

"The offeror shall provide prime and subcontractor information delineating its capability to perform [AMMOTE] support requirements of the [SOW]. The offeror shall describe each employee's education and experience as required in the labor category descriptions found in [section J-4] of this RFP. Use Formats A through C as set forth in [attachment] 1 to Section L Part III. Formats may be oriented horizontally or vertically."³

For evaluation of the cost/price area, offerors were instructed to submit rates for each labor skill level proposed by themselves and their subcontractors. The RFP stated a formula for calculating an average weighted composite rate (hereafter, the evaluated hourly rate) for each offeror which would be the basis for evaluating

³Formats A through C were formats for resumes to be submitted. Each format was designed specifically for a corresponding support discipline area. Format B was to be used for resumes of personnel proposed for T & E support.

proposed cost/price.⁴ The RFP also stated that cost/price would be evaluated for realism, reasonableness and completeness (i.e., satisfies requirements and data is traceable), as well as for performance risk.

The Air Force received nine proposals, including RJO's, Veda's and ISN's, for the small business set-aside portion of the RFP by the due date of August 8. The Air Force's source selection plan (SSP) provided for evaluating each technical/management factor on three equally weighted bases: a color/adjectival

⁴The evaluated hourly rate was determined by first calculating the average hourly rate for each skill level for each proposal, which was derived from the rates proposed for the prime and subcontractor personnel. This average hourly rate was then multiplied by an assumed percentage rate of work to be performed by the respective skill level, as stated in the formula worksheets provided in the RFP, to produce a weighted hourly rate for each skill level. The sum of these weighted hourly rates, together with the proposed burden and G&A rates, determined the evaluated hourly rate.

rating,⁵ a proposal risk rating,⁶ and a performance risk rating. The evaluation results for the small business proposals were as follows:⁷

Offeror	Factor 1	Factor 2	Factor 3	Cost/Price
RJO	B/L/L	Y/M/L	G/M/L	\$27.00
ISN	B/L/L	G/L/L	G/L/L	\$27.43
Veda	G/L/L	G/L/L	G/L/L	\$30.23

⁵The color/adjectival ratings were as follows:

Blue/exceptional (B)—exceeds specified performance or capability in a beneficial way to the Air Force and has no significant weakness.

Green/acceptable (G)—meets evaluation standards and any weaknesses are readily corrected.

Yellow/marginal (Y)—fails to meet evaluation standards; however, any significant deficiencies are correctable.

Red/unacceptable (R)—fails to meet a minimum requirement of the RFP and the deficiency is uncorrectable without a major revision of the proposal.

⁶The proposal risk ratings were as follows:

Low (L)—has little potential to cause disruption of schedule, increase in cost, or degradation of performance.

Normal contractor effort and normal [g]overnment monitoring will probably be able to overcome difficulties.

Moderate (M)—can potentially cause some disruption of schedule, increase in cost, or degradation of performance. However, special contractor emphasis and close [g]overnment monitoring will probably be able to overcome difficulties.

High (H)—likely to cause significant serious disruption of schedule, increase in cost, or degradation of performance even with special contractor emphasis and close [g]overnment monitoring.

⁷The scores for the three technical/management factors appear as: color/proposal risk/performance risk. The cost/price is the evaluated hourly rate. All proposals were evaluated as low performance risk.

The technical/management evaluators were provided with an evaluation standard for factor 2 that stated

"The offeror demonstrates his commitment to assign qualified personnel to support the contract. The offeror's proposal satisfies the requirements of the labor categories of [section J-4] and SOW paragraphs 5.2.1 through 5.4.6 for each of the following labor categories:

Acquisition Management and [T & E]

1. Level 4 Senior Professional
2. Level 3 Journeyman Professional
3. Level 2 Junior Professional
4. Level 1 Entry Professional

Management Operations

1. Level 3 Senior
2. Level 2 Journeyman
3. Level 1 Entry."

The record shows that the evaluators applied this standard as a minimum requirement that at least one resume had to be submitted for each labor skill level. Video Transcript (VT)⁸ 9:57:45; 10:27:00; 12:07:30. Four offerors, including RJO, did not submit at least one resume for all of the 11 labor skill levels, and this was evaluated as a deficiency. The Air Force states that RJO received a yellow rating for factor 2 solely because it did not submit any resumes for T & E level 1 entry professionals.⁹ VT 9:57:45; 12:07:30; 12:39:20.

RJO also received a moderate proposal risk for factor 2 in part because it did not submit a resume for any T & E level 1 entry professionals, and also because the two T & E level 2 junior professionals which RJO proposed were found to be only minimally qualified with regard to both education and experience. VT 9:56:00; 10:51:55; 11:12:00; 11:16:00; 11:22:00-11:28:00; 11:49:00; 12:15:20. As for RJO's remaining T & E personnel, the evaluator considered the proposed level 3 and 4 personnel to be very good; he had personal knowledge of some of these people and considered them to be the type of personnel that the Air Force wanted to perform T & E tasks. VT 9:55:50. Overall, [DELETED] personnel proposed (i.e., 94 percent) exceeded the education or experience requirements, and all [DELETED] satisfied these requirements. The source selection evaluation team's (SSET) report

⁸A hearing was conducted in this case to obtain testimony concerning the evaluation and source selection.

⁹In its cost proposal, RJO proposed a rate for level 1 entry professionals.

to the source selection authority (SSA) stated RJO's strength under factor 2 to be that 94 percent of its personnel exceeded qualification requirements, and stated RJO's factor 2 weaknesses as follows:

"Does not demonstrate commitment to assign qualified personnel in some labor categories[:]

- No Level 1 [T & E] personnel proposed
- Two T & E Level [2] submitted; non-technical degrees[.]¹⁰

As to RJO's moderate proposal risk rating for factor 2, the SSET stated that the firm:

"[m]ay have to rely on higher labor category (higher cost) to satisfy early contract requirements[.]"

On November 3, the SSA stated in his source selection decision documents:

"Although the evaluation raised issues in the areas of technical/management, cost/price and associated past performance, which could have been the subject of discussions, I have determined these issues are not significant enough to necessitate opening discussions."

The SSA determined that the proposals of ISN and Veda represented the best values to the government for the two small business awards. The SSA's source selection decision included the following justification for selecting Veda:¹¹

"While all previously nonselected 8(a) and small business proposals submitted were determined to be adequate when measured against the [evaluation] criteria, Veda stood out by providing a high quality proposal in all areas of evaluation. Their analysis of the task exercise clearly illustrated a solid understanding of the functional task requirements and the acquisition process. 83 [percent]¹² of the personnel resumes submitted exceeded educational and/or experience requirements of their designated labor categories, indicating quality

¹⁰One of these T & E level 2 personnel had an M.S. in business administration, a B.S. in management/information systems, and an A.S. in computer science; the other had a B.S. in political science/military science.

¹¹We do not set forth the selection document regarding ISN, which was higher rated than Veda.

¹²[DELETED] personnel proposed.

people will be assigned to the contract. The designated program manager possesses excellent acquisition credentials. Veda possesses facility clearances which exceed the secret level. Further, Veda's past performance record indicates responsiveness to their customers, strength in management of subcontractors and significant experience in Integrated Product Development/Integrated Weapon System Management (IPD/IWSM). Veda has demonstrated good experience in all areas of the contract statement of work. I feel Veda's solid proposal response and past performance record will translate into quality support for our AMMOTTE delivery order customers.

"Although the [evaluated hourly rate] of Veda is not the lowest, the results of my best value analysis indicate the small difference in [Veda's rate] is more than offset by the high quality technical/management capabilities offered by Veda."

On December 22, contracts were awarded to ISN and Veda under the small business set-aside portion of this procurement. On January 17, 1995, RJO received a debriefing of the evaluation of its proposal and the award decision. This protest followed.

RJO alleges that the Air Force imposed an unstated minimum requirement that one resume be submitted for every labor skill level, unreasonably evaluated the experience and qualifications of its proposed T & E level 2 personnel, and made an unreasonable cost/technical tradeoff decision.

In reviewing an agency's evaluation of proposals and source selection decision, we will confine our analysis to a determination of whether the agency acted reasonably and consistent with the stated solicitation evaluation criteria. SDA Inc., B-248528.2, Apr. 14, 1993, 93-1 CPD ¶ 320. An evaluation based on unstated minimum requirements is improper. Sci-Tec Gauging, Inc.; Sarasota Measurements & Controls, Inc., B-252406; B-252406.2, June 25, 1993, 93-1 CPD ¶ 494; TMC, Inc., B-230078; B-230079, May 24, 1988, 88-1 CPD ¶ 492. In addition, an agency may not disparately evaluate offerors' proposals with respect to the same requirements. Sci-Tec Gauging, Inc.; Sarasota Measurements & Controls, Inc., supra.

Here, the Air Force downgraded RJO's proposal under factor 2 to a yellow level solely because it did not submit any resumes for the lowest T & E labor skill level. VT 9:57:45; 12:07:30; 12:39:20. Yet, there is no requirement in the RFP that resumes be submitted for every T & E skill level. Indeed, the Air Force now admits that the RFP did not specifically state that a minimum of one resume had to be submitted for each skill level stated in section J-4. VT 10:27:05; 12:10:40; 12:35:15; 15:23:40. The evaluation standard which the agency asserts reflects its minimum requirement for the submission of at least one resume per labor skill level was not provided or

otherwise disclosed to the offerors.¹³ The Air Force states that, absent this minimum requirement, RJO's proposal would receive an "acceptable" green rating for factor 2. VT 13:00:55.

Not only did the RFP not require that resumes for each skill level be supplied, but, as indicated, it contemplated that the contractor be responsible for proposing the mix of qualified personnel to perform the tasks ordered under the contract. As stated in section J-4, task orders for the acquisition management and T & E disciplines would either describe the task to be performed or categorize this work by the discipline areas. The Air Force did not contemplate writing task orders specifying particular T & E labor skill levels.¹⁴ VT 10:03:45; 10:39:35; 12:17:50. Rather, the agency expected the contractor to propose a staffing plan and any disagreements which the agency might have would be negotiated until a compromise was reached. VT 10:16:20; 12:18:20.

Nothing in the RFP prohibits a contractor from using a person with a higher labor skill level from performing work that could be done by personnel at lower skill levels (e.g., level 3 personnel could do level 2 work or level 2 personnel could do level 1 work). VT 10:19:45; 12:23:05. Moreover, the Air Force did not provide any estimated breakdown of work by labor skill level, or even a total estimate of work to be performed. Thus, the RFP placed the onus on the offeror to determine the pool of qualified personnel that would best enable the offeror to respond to the

¹³To the extent the Air Force believes its own regulations prohibit it from disclosing evaluation "standards," the agency's interpretation is contrary to law, regulation, and the fundamental principle of the competitive procurement process that a solicitation must clearly state the agency's minimum requirements so that all offerors may compete intelligently and on an equal basis. 10 U.S.C. § 2305(a)(2)(A) (1994); Federal Acquisition Regulation (FAR) § 15.605(e); Sci-Tec Gauging, Inc.; Sarasota Measurements & Controls, Inc., supra.

¹⁴Compare section J-4, paragraph 2.0:

"2.0 . . . Task orders [for the acquisition management and T & E disciplines] will be written in terms of work to be performed, but may use the discipline areas to categorize the labor force necessary to perform the task orders." [Emphasis added.]

with paragraph 4.0:

"4.0 . . . Task orders [for the management operations discipline] will be written in terms of work to be performed, but may use the skills within the discipline area to categorize the labor force necessary to perform the task order." [Emphasis added.]

unspecified level of work; the RFP did not require offerors to submit at least one resume for each skill level.

While RJO did not submit resumes for any T & E level 1 personnel, RJO proposed and submitted resumes for [DELETED] T & E personnel, all of whom meet or exceed the qualifications for T & E levels 1 and 2, and categorized them at the highest skill level for which they were qualified.¹⁵ There was no RFP requirement to do otherwise. Rather, section J-4 states that "[t]he skill level an individual qualifies for is dependent upon his relevant education, experience, and capabilities."

Moreover, under factor 1-task exercise, the most important evaluation factor, offerors' proposals were evaluated on the manpower loading proposed in response to a sample task order. This sample task order included work that could be performed by T & E level 1 personnel. RJO proposed T & E levels 2, 3, and 4 personnel to perform the sample task order, and the Air Force evaluation did not identify the absence of level 1 personnel as a weakness. The Air Force instead gave RJO a blue/exceptional rating under this factor, concluding that RJO did a good job of matching skills of personnel with work to be done. VT 13:27:20.

The Air Force alleges that, since sections L and M of the RFP specifically referenced section J-4, offerors were reasonably advised of the minimum resume requirement, or at least the provisions introduced an ambiguity apparent on the face of the RFP. However, to be ambiguous, the terms of the solicitation must have at least two reasonable interpretations. Canadian Commercial Corp./Ballard Battery Sys. Corp., B-255642, Mar. 18, 1994, 94-1 CPD ¶ 202; Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234. Here, the solicitation when read as a whole has only one reasonable interpretation and thus, the RFP is not ambiguous. Id.

The only reasonable interpretation of the RFP is that it does not require a minimum number of resumes be submitted for each labor skill level. Section J-4 describes the education and experience levels for personnel proposed, and does not state any minimum staffing level requirement. Section L, paragraph 3.2.3, requests personnel information showing the offeror's "capability to perform [AMMOTE] support requirements of the [SOW]." It also instructs offerors to describe each person's education and experience as required at section J-4. While section M, paragraph 4.1.2, references section J-4 and the SOW's detailed requirements, this was for the purpose of assessing the education and experience of proposed personnel. Section J-4 states the minimum education and experience requirements for classifying proposed personnel into 11 skill levels, and the SOW details requirements describing the work that will be required under the contract. Neither section J-4

¹⁵In comparison, Veda proposed a total of [DELETED] T & E personnel and ISN proposed [DELETED].

nor the SOW requires resumes to be submitted for, or the contract work to be performed with, a minimum of one person per skill level.

Section M, paragraph 4.1.2 does state that proposals will "be evaluated to determine if the offeror has demonstrated its commitment to make its qualified personnel available to support this contract." The agency does not challenge RJO's demonstrated commitment to make the personnel it did propose available, but, rather, alleges that RJO had not demonstrated a commitment to make level 1 T & E personnel available. However, the stated requirement is only that the offeror make its proposed personnel available and RJO did so. Although RJO has furnished no resumes for level 1 T & E personnel, there is no question that RJO can do whatever level 1 work may be required under the contract with the personnel whose resumes were submitted, and nothing in the contract prevented the performance by higher-level personnel of task orders that could be performed by lower-level personnel. None of RJO's proposed personnel failed to meet the applicable education and experience requirements stated in section J-4—indeed, since all of RJO's proposed T & E personnel met the requirements for skill levels 2, 3 or 4, all of these personnel exceeded the requirements for skill level 1.¹⁶

The Air Force also states that it orally advised prospective offerors of the agency's desired minimum resume requirement at a pre-solicitation conference, which RJO's representative attended. As a result of written questions submitted during this conference, the Air Force subsequently sent prospective offerors written copies of these questions and answers. The asserted oral statement of the desired resume requirement did not appear in this document, although the agency did state therein that it would not impose a resume requirement:

"Would you consider specifying the number of resumes you would like to see by labor category? Or at least a total minimum number to be considered credible?

"GOVERNMENT RESPONSE: NO.

¹⁶In any case, we note that RJO proposed rates for level 1 T & E personnel as requested by the RFP, which clearly commits that firm to supply those personnel in the event they are specifically ordered by the agency, even though this is not contemplated by the RFP. Also, nothing prevents RJO from, or persuasively suggests that RJO will have any significant problems in, hiring entry-level, level 1 T & E personnel during the contract to satisfy any government concerns in this regard.

"Since review of resumes is a time-consuming and critical source selection activity. Would it not be reasonable to limit total to be submitted to a representative and maximum number, e.g., 40-60--distributed . . . per bidder's judgment?

"GOVERNMENT RESPONSE: NO. THE BIDDER SHOULD USE HIS BEST JUDGMENT IN HOW MANY RESUMES TO PROPOSE. AS WAS STATED IN THE BIDDERS CONFERENCE, THE MINIMUM [NUMBER] IS THAT REQUIRED TO COVER PARA 5 SOW TASKS"¹⁷

Thus, although the agency may have orally stated that it desired at least one resume per labor skill level, its subsequent written answers to questions on this subject state that the agency had no such requirement.

More importantly, the Air Force's oral statements concerning potential RFP requirements were made prior to the issuance of the RFP. When the RFP was issued more than a month later, no minimum resume requirement was stated. An offeror did ask if the information from the pre-solicitation conference was valid, to which the agency replied in amendment 0001 to the RFP that the information was valid, but all differences in the RFP were intentional. At no time after issuing the RFP did the Air Force disclose the resume requirement that it imposed, not even after approximately one-quarter of the offerors did not propose at least one resume for each labor skill level. The Air Force may not rely on its pre-solicitation oral statement to change the terms of the subsequently issued RFP. See Biegert Aviation, Inc., B-222645, Oct. 10, 1986; 86-2 CPD ¶ 419.

In sum, we conclude that RJO's yellow rating for evaluation factor 2, based on the undisclosed requirement that at least one resume be submitted for each labor skill level, is not reasonably supported in the record. Sci-Tec Gauging, Inc.; Sarasota Measurements & Controls, Inc., supra.

¹⁷The document also contained the following question and answer:

"On page J16, Labor Categories; can the same person be used in more than one category?

"GOVERNMENT RESPONSE: YES, IF THEY ARE QUALIFIED, AND SUBMIT SEPARATE FORMATS FOR EACH CATEGORY."

Although the Air Force argues that this is a clear statement of its desired resume requirement, it also admits that it did not want separate resumes where a higher-level person will be used to do lower-level work at the higher-level labor rate (e.g., where level 2 personnel would perform both level 1 and 2 work at level 2 rates). VT 13:53:20.

We also find RJO's proposal's moderate proposal risk rating for factor 2 is not supported by the record. As indicated above, this rating resulted from RJO's failure to offer any T & E level 1 personnel resumes, and because the personnel proposed at T & E level 2, although technically acceptable, did not have "technical degrees," or experience above and beyond the stated requirements.¹⁸ VT 9:56:00; 10:51:55; 11:12:00; 11:16:00; 11:22:00-11:28:00; 11:49:00; 12:15:20. The Air Force explained that this was a problem because RJO may have to use T & E personnel at a higher skill level, and thus at a higher cost, until RJO either hired level 1 or level 2 personnel with appropriate qualifications or until its level 2 personnel acquired additional experience. VT 9:59:20; 12:19:30; 13:39:05; 15:40:00.

Besides the previously discussed problem with drawing a negative inference regarding RJO's technical compliance arising from its failure to submit any resumes for T & E level 1 personnel, we note that the RFP does not indicate that a "technical degree" was a minimum requirement or desirable for the T & E discipline professionals,¹⁹ and the contemporaneous documentation does not note as a defect the experience of RJO's T & E professionals. Nor was the "technical degree" criterion applied equally to all offerors—the record shows that personnel proposed by other offerors did not have baccalaureate or higher technical degrees, but this fact was not noted in the evaluation documentation.²⁰ VT 11:37:00-11:49:00. Also, the evaluation team captain for factor 2, the factor under which the personnel qualifications were evaluated, stated that the type of education that was most relevant to this factor was that of a military test pilot, as they are the only people he knows of that have the appropriate formal training in T & E. VT 11:33:10. Yet one of RJO's personnel found by the evaluators to have a nontechnical degree and limited relevant experience was a military test pilot who had flown over 650 test flights, and thus would seem to have highly relevant and extensive experience/education in T & E. RJO's other person evaluated as having a nontechnical degree actually had an A.S. in computer science and a B.S. in management/information systems, both of which would seem to be "technical degrees" relevant to the T & E work, and had in excess of the degree requirements an M.S. degree in a nontechnical field. Thus, based on the record, the evaluation of RJO's T & E level 2 professionals was unreasonable, and, since the evaluators did not negatively note the nontechnical degrees of personnel proposed by other

¹⁸The concurrent evaluation documentation does not mention any defect in the level 2 T & E personnel's experience, but only notes they did not have "technical degrees."

¹⁹It is not entirely clear what the Air Force means by a technical degree in this context, or why such a degree is desirable or necessary to accomplish the T & E work if an individual satisfies the stated RFP requirements and has satisfactory relevant experience. See VT 11:02:30-11:13:00.

²⁰[DELETED]

offerors, the offerors were not treated equally on this basis. See Sci-Tec Gauging, Inc.; Sarasota Measurements & Controls, Inc., supra.

Since the Air Force's technical explanation of RJO's moderate proposal risk on factor 2 is questionable inasmuch as RJO has committed to furnish highly qualified T & E personnel, it appears that the Air Force is actually concerned that higher costs may result from RJO's use of higher skill-level personnel to perform task orders than would be necessary to satisfy minimum qualification requirements. The SSA testified that he considered that there was the risk of increased costs that may result from RJO's failure to propose adequate level 1 or level 2 T & E personnel, but did not believe that such increased costs would approach the magnitude of the difference in price between that proposed by RJO and the higher-priced proposal of Veda.²¹ VT 15:53:15; 15:56:00. Indeed, our review indicates that the magnitude of the cost risk is only a fraction of the difference between the relatively close evaluated hourly rates of RJO and ISN.²²

The SSA testified that his major noncost concern, which arose from RJO's yellow and moderate proposal risk rating for evaluation factor 2, was that RJO would not have the T & E level 1 or 2 personnel available if specifically requested by a customer, which could be a "hassle" and could cause a delay if a customer insists on having a T & E level 1 or 2 person. VT 15:39:00. Any perceived "hassle" would only arise because the agency failed to state in the RFP a minimum requirement that resumes be submitted for personnel at each skill level, not because RJO could not perform the work specified in the SOW with the personnel it did propose. In any event, as indicated, the RFP did not contemplate the agency specifying skill levels, and RJO could, if necessary, either do "lower-level" work with higher-level personnel or employ "entry-level" level 1 T & E personnel during the contract.²³

²¹The SSA treated this as a subjective judgment and did not attempt to quantify the magnitude of this risk. The cost evaluation panel, if asked, could have easily quantified this risk using the same computer program it used to calculate the evaluated hourly rates. VT 14:38:40; 14:39:50.

²²That is, if RJO's level 2 T & E rates are plugged into the price evaluation matrix for RJO, instead of the level 1 rates, on the presumption that no level 1 personnel will be used on the contract for tasks that should be accomplished by such level individuals and that the level 2 personnel will perform these tasks, the increase in the evaluated rate is a fraction of the difference between ISN's and RJO's evaluated price. Even if the rates of level 3 T & E personnel were plugged into the matrix for level 1 or 2 rates, it appears that RJO's evaluated price still would not exceed even ISN's higher-priced proposal, much less Veda's significantly higher-priced proposal.

²³As noted, the risk of increased cost associated with RJO's proposal of providing higher qualified personnel for the lower skill-level tasks (at least initially) is not
(continued...)

Given RJO's ratings which reflected evaluated deficiencies, the SSA considered that there were other proposals with low risk ratings and concluded that RJO's proposal did not rise above the other proposals, which had no evaluated "deficiencies." VT 15:32:30. In this regard, while the SSA considered that RJO was rated blue/exceptional on the factor 1-task exercise, the most important factor, RJO also received the previously discussed, unreasonably based, yellow and moderate proposal risk ratings on factor 2. Moreover, as discussed above, it does not appear that the cost risk associated with RJO's proposal flowing from its evaluated "deficiencies" would result in its evaluated hourly rate exceeding those of the awardees'. In addition, although the SSA was cognizant of RJO's moderate proposal risk rating on factor 3, he did not consider this to be significant overall. VT 16:02:50.

In view of the fact that RJO's proposal was rated blue/exceptional for the most important factor—which was equal to ISN's rating and superior to Veda's rating for this factor—and that RJO's proposal should have been rated green/acceptable with low proposal risk for factor 2—the same as ISN's and Veda's ratings—and with a moderate proposal risk for lowest-weighted evaluation factor 3 that was not considered significant, the record does not provide a reasonable basis for award to the higher-priced offerors, even accounting for the risk of increased costs of RJO's proposal. See DBA Sys., Inc., B-224306, Dec. 31, 1986, 86-2 CPD ¶ 722.

Moreover, the source selection decision document justifying award did not otherwise state any real benefit to award to the 12-percent higher-priced Veda.²⁴ For example, the document stated that "[Veda's] analysis of the task exercise clearly illustrated a solid understanding of the functional task requirements and the acquisition process." Yet Veda's proposal received a green/acceptable rating on this most important factor and RJO's proposal received a blue/exceptional rating, and the SSA states that RJO's proposal was better than Veda's on this factor. VT 15:42:45. The document stated that 83 percent of the personnel (i.e., [DELETED] people) proposed by Veda exceeded the stated education and/or experience requirements. The corresponding figure for RJO's personnel exceeding qualification requirements was 94 percent (i.e., [DELETED] people), and the SSA states that RJO's proposal was better than Veda's with regard to this consideration. VT 15:44:45. The document stated that Veda's proposed program manager had

²³(...continued)

enough to offset the lower evaluated cost of RJO's proposal, as compared to the evaluated costs of the awardees' proposals.

²⁴Although the source selection document concerning the ISN award did not contain the kind of anomalies described below, the award selections were, as discussed above, based on a misvaluation of the proposals and the ISN award may not stand after revised proposals are evaluated.

excellent acquisition credentials, yet the SSA states that RJO's programs manager was equally strong in this area. VT 15:45:45. The document stated that Veda's facility clearances exceed the secret level, yet the SSA states that this was not a critical strength in his selection decision. VT 15:46:05. The document stated that Veda had a strong past performance record, including experience in IPD/IWSM, yet both Veda and RJO received low performance risk ratings. While the SSA states that Veda's references submitted positive statements about Veda and RJO's references did not appear as strong (although RJO had no record of problems and all of its references rated RJO satisfactory and higher), VT 15:46:55, the SSET noted IPD/IWSM was a significant strength for RJO under factor 1-task exercise and the SSA states that since RJO's strength in IPD/IWSM was found in RJO's specific response to the task exercise, the most important evaluation factor, RJO's strength in IPD/IWSM is at least as significant as that rated for Veda with regard to past performance. VT 15:48:30; 16:07:00. In sum, the award decision essentially cites technical/management strengths in Veda's proposal for which the Air Force evaluated RJO's proposal equal or better, particularly in the most important evaluation factor. Thus, the source selection decision does not provide sufficient basis to find a greater technical benefit in Veda's proposal in comparison to RJO's proposal.

Based on the foregoing, the record does not support the propriety or reasonableness of the awards to higher-priced offerors, but evidences that the awards were based upon the application of unstated minimum requirements, as well as an unreasonable and unequal evaluation of the proposed personnel, and that under a proper evaluation using the RFP evaluation criteria RJO would have been selected for award.

We recommend that, if the agency determines that its minimum needs in fact require the submission of resumes for each labor skill level, it amend the RFP to reflect all pertinent requirements and evaluation criteria, open discussions and solicit revised proposals, make contract awards based on the revised proposals, and terminate existing contracts if appropriate. In the alternative, if amendment of the RFP is not necessary, we recommend that the agency terminate the award to Veda and make award to RJO. RJO is also entitled to recover the reasonable costs of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1995). RJO should submit its certified claim for protest costs directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

Comptroller General
of the United States