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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Advanced Engineering & Research Associates,  
Inc.

**File:** B-261377.2; B-261377.3; B-261377.4

**Date:** October 3, 1995

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Jeffrey K. Kominers, Esq., John P. Young, Esq., Galland, Kharasch, Morse & Garfinkle, P.C., for the protester.

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bd Systems, Inc., an interested party.

Laura E. Arnold, Esq., and John E. Pettit, Esq., Department of the Air Force, for the  
agency.

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participated in the preparation of the decision.

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## DIGEST

1. In procurement where agency awarded two of four available contracts to one offeror, as permitted under the solicitation, protest that agency failed to evaluate awardee's ability to provide qualified personnel and resources for two contracts, as part of its evaluation of proposal risk under the technical approach factor, is denied where, consistent with the evaluation criteria, the agency properly evaluated risk under the technical factor based upon proposed solutions to sample problems and under management factor based upon proposed management plans to perform two contracts.
2. Where technical approach evaluation, including proposal risk, is based upon proposed solutions to three sample problems, agency reasonably evaluated protester's technical proposal risk as "moderate" based upon protester's "below average" score on solution to one problem, even though that problem was the least important of the three sample problems.
3. Where solicitation evaluation scheme gives greater weight to technical merit than price, award to offeror which submitted higher-priced, higher technically rated proposal is unobjectionable where agency reasonably concluded that the technical superiority of the awardee's proposal was worth the associated additional cost.

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## **DECISION**

Advanced Engineering & Research Associates, Inc. (AERA) protests the award of a small business set-aside contract to bd Systems, Inc., under request for proposals (RFP) No. F04701-93-R-0023, issued by the Department of the Air Force for Space Systems Acquisition Support (SSAS). AERA contends that the award decision is flawed because it was based upon a misevaluation of its and the awardee's proposals.

We deny the protests.

The RFP, issued November 7, 1994, contemplated the award of four time and materials, indefinite delivery indefinite quantity contracts in the following categories: a section 8(a) set-aside, a small disadvantaged business (SDB) set-aside, a small business set-aside, and an unrestricted award. The RFP permitted small business offerors, depending upon their eligibility, to compete for and receive more than one contract award. Each contract provided for predominantly technical services needed to support the acquisition of space systems for the Air Force Space and Missile Systems Center.

Proposals were required to include a technical/management volume covering the offeror's technical and management approaches. For the set-asides, technical approach was to be evaluated on proposed solutions to three sample questions, while management approach encompassed the offeror's management and organization, personnel, facilities, and resources. In addition, each proposal was to include information on relevant past and present contract performance. Offerors wishing to compete for more than one set-aside contract were required to submit a supplemental management proposal for each additional contract. The RFP did not require that offerors who were competing for multiple contracts submit additional technical approach responses.

Proposals were to be evaluated in three areas, listed in descending order of importance: technical/management, cost, and general considerations. Within the technical/management area, the technical factor was more important than the management factor. Both the technical and management factors were to be assessed on the basis of one criterion, soundness of approach. The criterion was defined to include the offeror's understanding of the sample problems, ability to provide qualified personnel and resources to support the proposed sample problem solutions, and the practicability, responsiveness, and effectiveness of the proposed approach in meeting contract requirements and sample problem solutions with appropriate personnel, resources, and facilities.

Award was to be made to the offerors whose proposals, conforming to the RFP's requirements, were considered most advantageous to the government based upon an integrated assessment by the source selection authority (SSA). The RFP provided that the government could select a technically superior offer with a higher average labor rate if it determined that the additional technical merit offered was worth the added cost associated with the proposal. Before considering an offeror for multiple awards, the agency was to review an offeror's management proposal to determine its capacity to perform the number of contracts sought.

Eleven proposals were received by the January 3, 1995, closing date for receipt of proposals. bd Systems submitted one proposal for the 8(a) set-aside and a supplemental management proposal for consideration under either the SDB or small business set-aside. AERA submitted a proposal solely for the small business set-aside. Based upon the evaluations, the proposals of both offerors were included in the competitive range. After the conduct of discussions, the agency requested best and final offers to be submitted by April 7.<sup>1</sup>

In the small business competition, under the technical factor, bd Systems's proposal was rated as "average" in all subfactors and "low" in proposal and performance risk. AERA's proposal was rated "average" for the first two subfactors and "below average" for the third, with a "moderate" rating for proposal risk and a "low" rating for performance risk. Under the management factor, bd Systems's proposal was rated "green" in management/organization and "blue" in personnel, facilities, and resources, with a "moderate" rating for proposal risk (based upon risks attendant to performance of two contracts) and a "low" rating for performance risk.<sup>2</sup> AERA's proposal was rated "green" for both management subfactors with a "low" rating for proposal and performance risk. bd Systems's evaluated labor rate was \$.95 higher than that proposed by AERA and its proposal for cost reimbursable materials was approximately \$1 million higher than AERA's. Overall, the life cycle costs for bd Systems were evaluated as being approximately 4 percent higher than AERA's.

The SSA was briefed on the evaluations and determined that bd Systems's proposal represented the best overall value to satisfy the Air Force's needs for the small business set-aside contract. On May 5, the Air Force awarded the 8(a) and small business contracts to bd Systems. AERA filed its first protest on May 16, alleging that bd Systems lacked the capacity to perform two contracts. Since our Office

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<sup>1</sup>In accordance with the evaluation criteria in the RFP, no discussions were conducted concerning offerors' solutions to sample problems.

<sup>2</sup>In the evaluation for the 8(a) competition, bd Systems proposal was rated the same as in the small business set-aside evaluation with the exception that its management proposal was rated "low" instead of "moderate" for proposal risk.

generally does not review an agency's affirmative determination of responsibility, we dismissed this protest on May 23. Based upon information it learned in a May 16 debriefing, AERA filed a second protest on May 31, and subsequently raised additional grounds. AERA's protests generally challenge the adequacy of the agency's evaluation of the proposals and its impact on the source selection.<sup>3</sup>

Where an evaluation is challenged, we will examine the evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. Mere disagreement with the agency's evaluation does not itself render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

#### EVALUATION OF bd SYSTEMS'S PROPOSAL

AERA contends that the agency's evaluation of bd Systems's proposal risk, under the technical factor, is flawed for a number of reasons. AERA's arguments center around its belief that the agency failed to properly take into account the

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<sup>3</sup>One of the supplemental grounds is AERA's contention that the agency has not complied with the mandate of the Supreme Court's ruling in Adarand Constructors, Inc. v. Peña, 115 S.Ct. 2097 (1995). In Adarand, the Supreme Court held that racial classifications must be subject to strict scrutiny, must serve a compelling government interest, and must be narrowly tailored to further that interest. AERA argues that the Air Force has not "clearly identified" its reasons for the 8(a) and SDB set-asides, nor has it "narrowly tailored" the solicitation to remedy past wrongs. The Air Force states that the RFP, which was issued prior to the Adarand decision, simply reflects the regulatory requirements of the 8(a) and SDB programs. Absent the articulation of reasons for racially based set-asides and any evidence of "narrow tailoring," AERA believes Adarand warrants a finding that these set-asides were constitutionally infirm. There must be clear judicial precedent, however, before we will consider a protest based on the asserted unconstitutionality of the procuring agency's actions. DePaul Hosp. and The Catholic Health Ass'n of the U.S., B-227160, Aug. 18, 1987, 87-2 CPD ¶ 173. Since the Court in Adarand simply announced the standard that is to be applied in determining the constitutionality of such programs and remanded the case to the lower courts for further consideration in light of that standard, Adarand did not provide that precedent. Elrich Contracting Inc.; The George Byron Co., B-262015; B-265701, Aug. 17, 1995, 95-2 CPD ¶ 71. Accordingly, consistent with our long-standing practice, we will not consider this aspect of AERA's protest.

implications of the award of two contracts to bd Systems.<sup>4</sup> In its view, had the agency properly evaluated the awardee's proposal, it would have rated it as a "moderate" risk under the technical factor, consistent with the rating under the management factor.

The RFP required the evaluation of proposal risk under both the technical and management factors. Proposal risk assesses the risk associated with the offeror's proposed effort as it relates to accomplishing the requirements of the solicitation. The protester observes that use of the soundness of approach criterion required an assessment of an offeror's ability to provide qualified personnel and resources to support the proposed sample problem solutions. From this, AERA concludes that any offeror seeking multiple awards was required to propose separate resources necessary to meet the sample contract requirements for each contract sought, and that since bd Systems did not do so, a higher risk rating should have been given to that firm's proposal under the technical factor.

Under that factor, the emphasis was on the offeror's solutions to the sample problems. Thus, as part of the solution process, the RFP required offerors to include the actual number of personnel, labor mix, and labor hours required to provide adequate support for each sample problem. However, regardless of the number of contracts sought by an offeror, the RFP called for only one technical proposal for evaluation purposes.

In its solutions to the sample problems, bd Systems included charts identifying available personnel to perform the sample problem tasks and estimated labor hours necessary to complete them. In evaluating bd Systems's proposal for the 8(a) set-aside, the evaluators rated each solution as "average," and identified more strengths than weaknesses. With regard to proposal risk, the evaluators rated the proposal as "low." The evaluators adopted this evaluation of the technical proposal for the small business set-aside.

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<sup>4</sup>In related arguments, AERA contends that the Air Force failed to accurately calculate the number of new employees the awardee would have to hire to perform two contracts and failed to quantify, consider, and apply cost risks in the evaluation of proposal risk. The Air Force provided detailed and reasonable responses regarding its evaluation of the number of new employees proposed by bd Systems and its assessment that there were no cost risks associated with a second contract award to bd Systems. AERA has failed to respond or rebut the agency's explanations. Under the circumstances, we have no basis to find the agency's evaluation unreasonable. D.E.W. Management Servs., Inc., B-246761; B-246761.2, Apr. 1, 1992, 92-1 CPD ¶ 334.

AERA's contention, that since bd Systems identified only one team for performing the sample problems the agency should have downgraded its proposal for failure to identify a separate team to perform the second contract, ignores the fact that the RFP neither required the proposal of specific individuals nor required the proposal of multiple performance teams in response to the sample technical problems.<sup>5</sup> While the RFP required inclusion of resumes and cross-referencing to a key personnel/responsibility table, this was to be part of the management proposal and not the technical proposal. Further, since the emphasis under the technical factor evaluation was on the offeror's ability to perform tasks representative of those required by the statement of work, we find nothing improper in the agency's adoption of the 8(a) subfactor and risk ratings for the small business set-aside proposal. Overall, we agree with the Air Force that regardless of the number of contracts performed, the technical proposal demonstrated that bd Systems knew how to apply an appropriate labor and skill mix to perform the contract requirements. Whether it was capable of handling more than one contract was properly evaluated under the management factor.

Under the management factor, the emphasis was on an offeror's demonstrated soundness of approach in managing and controlling the SSAS contract and how well each offeror's proposal met the evaluation standards and solicitation requirements. Thus, each management proposal included a section addressing the offeror's proposed management and organizational approach to providing an organization capable of satisfying all contract requirements. Each proposal also included a section containing information on the personnel, facilities, and resources that the offeror planned to use to accomplish contract tasks and meet contract requirements. This section was to include a key personnel table, cross-referenced to the resume annex and a table showing total personnel numbers and anticipated skill mix levels by labor category. Offerors proposing to perform multiple contracts were required to submit a supplemental management proposal for each additional contract, including information on what personnel, facilities, and other resources would be used for additional contracts, and resumes or letters of intent for personnel to be employed on additional contracts.

bd Systems submitted separate management proposals for each contract it sought. Each included all required information on management and organizational

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<sup>5</sup>To the extent AERA contends that such a requirement should have been included in the RFP, its protest is untimely. Protests of solicitation improprieties, evident on the face of the solicitation, must be raised prior to the closing time for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1995).

approaches, labor and skill mixes, and key personnel tables for each contract.<sup>6</sup> It also submitted resumes for key personnel proposed for both contracts. In evaluating bd Systems's proposal for the 8(a) set-aside, the evaluators rated the management/organization subfactor as "green" and the personnel, facilities, and resources subfactor as "blue" based upon five strengths, including the availability of a large pool of well-qualified, experienced personnel. With regard to proposal risk, the evaluators rated the management proposal as "low." For the second contract proposal, the evaluators rated the management proposal the same in both subfactors identifying the same strengths, but adding a weakness under the personnel subfactor. This weakness was based upon the significant number of new hires that would be needed to perform both contracts if awarded.

In evaluating the proposal as a "moderate" risk for the management factor, the evaluators observed that a second award would result in growth in bd Systems's personnel, which could affect the quality and consistency of products. The evaluators also observed that the growth carried the risk of financial and managerial challenges which, if unresolved, could result in financial losses, performance/schedule degradation, and increased costs to the government. The evaluators noted that bd Systems had a proven record, a strategy, good management, and management tools available to perform well on the SSAS contract, but concluded that the issue was not about company strengths and weaknesses, but only about the risks that the company had to manage.

AERA also contends that the "moderate" rating on the second contract should have been applied to the technical factor rating since the various risks identified by the evaluators would have an impact on technical performance of the contract. AERA's contention again ignores the RFP's clear evaluation scheme. The proposal risk assessment was designed to separately evaluate the risk associated with each factor. Under this scheme, whether an offeror has the capability to manage two contracts is a matter for evaluation under the management factor. This capability is unrelated to whether an offeror is capable of performing representative sample tasks. Given this arrangement, it would be improper for the agency to effectively

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<sup>6</sup>AERA has alleged discrepancies and inconsistencies between bd Systems's labor mix tables in the technical proposal and those in the management proposal. AERA contends that these discrepancies were not considered in the evaluation and could have a significant cost impact on contract performance. While there are differences in the tables, there is no merit to AERA's argument. As explained by the agency and bd Systems, the labor mixes proposed for solution of the sample problems are not related to the labor mix proposed for contract performance. Thus, it is the management proposal labor mixes which determine how the contract will be performed. In this regard, AERA's labor mixes, as reflected in its technical and management proposals, contain comparable discrepancies.

double count the "moderate" rating under the technical factor. See J.A. Jones Management Servs., Inc., B-254941.2, Mar. 16, 1994, 94-1 CPD ¶ 244. Here, the agency fully evaluated the potential risks, rated the awardee consistent with that evaluation, and provided all the information to the SSA for him to make a reasoned decision. On this record, we have no basis to object to the agency's evaluation of bd Systems's proposal to perform a second contract.

#### EVALUATION OF AERA'S PROPOSAL

The third sample problem, concerning acquisition support, was related to configuration and data management (CM/DM), management services, and office automation. In evaluating AERA's solution to this problem, the evaluators identified seven weaknesses. These weaknesses included a failure to propose a data management approach and recommendation of the Defense Data Network (DDN)/Internet for telecommunication links. As a result, the evaluators rated AERA's proposal "below average" for the acquisition support subfactor. Because these weaknesses were considered significant, in evaluating proposal risk under the technical factor the evaluators rated AERA's proposal as a "moderate" technical risk.

AERA challenges this evaluation, arguing that the assessed weaknesses are unfounded. In this regard, it contends that its proposal contains ample discussion of its data management approach and that it never proposed use of the Internet for transmission of data. We have reviewed AERA's proposal, the evaluations, and the arguments of the parties and find the agency's evaluation was reasonable.

First, with regard to its data management approach, AERA repeatedly referred to its CM/DM approach, but focused primarily on the CM processes and applicable military standards and regulations while providing little detail on DM matters. While AERA's overall discussion was lengthy, its failure to fully address the DM aspect did not meet the RFP requirement that offerors provide solutions to the sample problems including the proposed approach.

With regard to the use of the Internet, the Air Force concedes that AERA's proposal did not state it would use the Internet. However, a chart included in AERA's solution to the acquisition support sample problem identified the DDN as the communications link with two launch ranges. According to the agency, and as the protester acknowledges, the DDN does include Internet access. Access to the Internet presents a security risk to data transmission. While the protester now, in its protest submissions, explains various security measures available to ensure the security of data transmitted on the DDN, these explanations were not included in its proposal. In the absence of any explanation of AERA's specific plans concerning

the use of the DDN, the evaluators reasonably assessed the soundness of the proposed approach based upon their knowledge of the system.<sup>7</sup>

Moreover, AERA does not challenge the other identified weaknesses. These weaknesses include confusion about roles and responsibilities, too many hours proposed for development of a particular system, failure to mention some key interfaces, inadequate labor mix table, and failure to mention classified capability. We think that this combination of weaknesses can reasonably support an evaluation of "below average" for this subfactor.

AERA also contends that it was improper for the evaluators to make the lower rating on the acquisition support subfactor determinant of its proposal risk. In AERA's view, since this subfactor was the least important, and since it had scored higher on the more important subfactors, its proposal should have been rated a "low," rather than "moderate," risk. We disagree. The primary vehicle for evaluating an offeror's ability to accomplish contract requirements was the review of the offeror's solutions to the sample problems. Any weaknesses identified in those solutions would be relevant to the determination of proposal risk irrespective of the relative importance of the sample problem. In this regard, the agency explains that the weaknesses identified in AERA's solution to the problem were significant enough to outweigh the relatively lesser importance of that problem. For example, the proposal of excessive hours in one area would have resulted in wasted agency resources, and the failure adequately to discuss other issues left unclear the protester's ability to accomplish all the contract requirements. Accordingly, given the weaknesses on which the sample problem rating was based, we think the agency could reasonably conclude that AERA's technical proposal represented a "moderate" risk overall.

#### SOURCE SELECTION DECISION

Based upon its allegations of flawed proposal evaluations, AERA argues that the source selection decision was irrational. Since, as we discussed above, AERA's allegations are unfounded. Second, we otherwise have no basis to question the agency's award determination. In a negotiated procurement, the government is not required to make award to the lowest priced, technically acceptable offeror unless the RFP specifies that price will be the determinative factor for award. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Where, as here, the RFP

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<sup>7</sup>AERA notes that the SSA briefing slides and the SSA's reference to AERA's weaknesses identifies use of the Internet only and does not mention the DDN connection. Since the SSA was provided with the full evaluations of the proposals, which accurately explained this weakness, AERA was not prejudiced by the incomplete references.

makes technical considerations more important than cost considerations, award to a technically superior, higher-priced offeror is proper where the record shows that the price premium was justified in light of the proposals' technical superiority. Dynamics Research Corp., B-240809, Dec. 10, 1990, 90-2 CPD ¶ 471. Here, the SSA provided a detailed rationale for his decision. He observed that bd Systems's proposal was rated low on technical proposal risk, while AERA's technical proposal was rated a "moderate" risk based upon its below average score on the acquisition support sample problem. Further, while bd Systems's proposal was rated "moderate" in management proposal risk, the SSA found that its demonstrated past application of sound management principles should mitigate the "moderate" rating. While bd Systems's combined labor rate was higher than that proposed by AERA, the SSA concluded that the government would recoup its investment based upon bd Systems's technical performance over the life of the contract.

AERA also notes that the Air Force comments that additional government monitoring of bd Systems's performance will probably be necessary to overcome difficulties resulting from the rapid growth associated with two contract awards. AERA contends that the SSA was obligated to consider the increased government costs related to that monitoring. As the agency observes, and AERA concedes in its comments, there was no requirement to quantify such costs. While the SSA does not specifically address any perceived disadvantage to additional monitoring, the briefing documents and evaluations make plain that he was apprised of the potential for additional monitoring. Further, his belief that the award to bd Systems represents the best value notwithstanding any additional monitoring is implicit in his findings concerning the awardee's application of sound management principles to mitigate potential management risk and his conclusion that the government would recoup its investment in bd Systems's higher price.

The protest is denied.

Comptroller General  
of the United States