



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

**DOCUMENT FOR PUBLIC RELEASE**

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**Matter of:** Mentor Technologies, Inc.; Science & Engineering Services, Inc.

**File:** B-281773.2; B-281773.3; B-281773.5; B-281773.6

**Date:** April 1, 1999

H. Sang Lee for Science & Engineering Services, Inc., and John Bollinger for Mentor Technologies, Inc., the protesters.

J. Patrick McMahon, Esq., McMahon, David & Brody, and Myrna E. Friedman, Esq., for QSS, Inc., an intervenor.

Vincent A. Salgado, Esq., and Gregory LaRosa, Esq., National Aeronautics & Space Administration, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## **DIGEST**

1. In probable cost determination, agency reasonably concluded that protester had significantly overstuffed response to representative (sample) task order (RTO) used in evaluating proposals, where response included significant number of electrical engineer hours to perform design work notwithstanding that RTO statement of work provided that design had already been completed, and proposed level of effort significantly exceeded that assumed in in-house estimate and by other offerors.

2. In probable cost determination, agency reasonably determined that second protester had significantly overstuffed response to representative (sample) task order (RTO) used in evaluating proposals, where response recognized that it was expanding the scope of the RTO to include hours for complying with agency program management system not specified in the RTO, and proposed level of effort significantly exceeded that assumed in in-house estimate and by other offerors.

## **DECISION**

Science & Engineering Services, Inc. (SESI) and Mentor Technologies, Inc. protest the National Aeronautics & Space Administration's (NASA) award of a contract to QSS Group, Inc. under request for proposals (RFP) No. 5-58392/237, issued as a competitive section 8(a) set-aside for multidisciplinary engineering development services (MEDS) for the Goddard Space Flight Center (GSFC) in Greenbelt, Maryland. The protesters challenge the evaluation under the technical, cost and past performance factors.

We deny the protest.

The solicitation, issued on July 17, 1998, provided for award of a 5-year indefinite-quantity, indefinite-delivery cost-plus-incentive-fee contract to

provide engineering services to [Electrical Systems Center], [Information Systems Center], systems engineering, and related organizations, as required, for the study, design, development, fabrication, integration, testing, verification, and operations of space flight and ground system hardware and software, including development and verification of new technologies to enable future science missions.

RFP Attachment A, Statement of Work (SOW), at 2. The SOW specifically provided for issuance of task assignments to perform services with respect to

components, subsystems, systems, science instruments, and spacecraft, including attached shuttle payloads, free-flying spacecraft, aircraft and balloon payloads, and Space Station payloads as well as ground support equipment, simulators, non-flight models, and prototypes; candidate, feasibility, and systems definition studies; project management; systems engineering; analysis; preliminary design; detailed design; fabrication; assembly; integration; test and verification; test instrumentation; data systems management; launch and post-launch operations; research and technology unique to system development; parts and materials; documentation; maintenance; sustaining engineering; configuration management; performance assurance; systems safety; and contamination control.

Id. Award was to be made on a best value basis to the offeror whose proposal was most beneficial to the government under three evaluation factors: (1) mission suitability (1,000 evaluation points available), with subfactors for understanding the requirement (400 points), personnel (150 points), and management plan/corporate resources (450 points); (2) past performance; and (3) cost. RFP § M.5.2, at 115. Cost was significantly less important than both the combined importance of mission suitability and past performance, and mission suitability alone, but was more important than past performance alone. Id. § M.4.3, at 111.

The evaluation under both the mission suitability and cost factors was based to some extent on an evaluation of offerors' responses to representative task orders (RTO) set forth in the solicitation. Specifically, the solicitation listed offerors' responses to the RTOs as one of two elements under the understanding the requirement subfactor of the mission suitability factor. Id. § M.5.1, at 112. In

addition, the RFP indicated that the cost evaluation would be based on offerors' responses to the RTOs, as follows:

#### M.6 Cost/Price Evaluation Factor

The proposed cost/price for the representative task orders will be assessed to determine reasonableness and cost realism. The evaluation will be conducted in accordance with [Federal Acquisition Regulation (FAR)] 15.305(a)(1) and [National Aeronautics & Space Administration FAR Supplement] 1815.305(a)(1)(B) and (C).

. . . . .

Both the proposed cost and the probable cost will be presented to the Source Selection Authority.

Id. § M.6, at 116. The solicitation further provided that "as the representative task orders . . . are for a cost reimbursement type effort, the Mission Suitability score will be adjusted based on the degree of cost realism." Id. § M.5.3, at 115. The solicitation stated that in the event the probable cost was between 6 to 10 percent higher or lower than the proposed cost, the mission suitability score for the proposal would be reduced by 50 points; from 11 to 15 percent, 100 points; from 16 to 20 percent, 150 points; from 21 to 30 percent, 200 points; and if more than 30 percent, 300 points. Id. § M.5.3, at 115-16.

NASA received five proposals, submitted by QSS, SESI, Mentor, SGT, Inc., and a fifth offeror (not relevant here). The proposals were evaluated as follows:

	<u>MISSION SUITABILITY</u>	<u>COST</u>	<u>PAST PERFORMANCE</u>
	Initial/ (Cost) Adjusted Score	Adjusted Proposed <sup>1</sup> /Probable	
QSS	885.5/885.5 Very Good	\$(DELETED)	Very Good
SGT	756.8/756.8 Very Good	\$(DELETED)	Very Good
SESI	446.9/296.9 Poor	\$(DELETED)	Very Good
Mentor	428.4/228.4 Poor	\$(DELETED)	Very Good

SESI's proposal received a very good rating under the past performance factor (the least important), based on the finding that many relevant contracts were listed in the proposal and SESI's "technical performance is consistently noted for the quality of the technical staff and technical management." Agency Report, Tab 16f, SEB [Source Evaluation Board] Initial Report, at 11. However, the proposal was evaluated as having no significant strengths and nine significant weaknesses under the mission suitability factor (the most important factor), many related to a failure to address, or inadequate discussion of, approaches to performing the SOW. In addition, NASA determined that SESI had significantly overstaffed its proposed RTO effort; the significantly lower probable staffing level calculated by the agency resulted in an approximate 18.1 percent discrepancy between the proposed and probable cost and, as a consequence, led to a 150-point reduction in SESI's mission suitability score pursuant to RFP § M.5.3, at 115-16. Likewise, although Mentor's proposal received a very good rating under the past performance factor, the proposal was evaluated as having no significant strengths and 11 significant weaknesses under the mission suitability factor, many related to a failure to address, or inadequate discussion of, approaches to performing the SOW and RTOs. Mentor also was found to have significantly overstaffed two of its proposed RTO efforts; the significantly lower probable staffing level calculated by the agency

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<sup>1</sup>The Adjusted Proposed cost number reflects the adjustment of the proposed costs to account for a common start date for the RTOs and the application of the proposed incentive fee to the RTOs.

resulted in an approximate 22.7 percent discrepancy between proposed and probable cost and, as a consequence, led to a 200-point reduction in Mentor's mission suitability score.

In contrast, the source selection authority (SSA) determined that QSS's proposal, which was evaluated as having eight significant strengths (and one significant weakness) and received the highest score under the mission suitability factor, had "significantly higher technical merit." Agency Report, Tab 22, Source Selection Statement, at 9. In addition, the SSA noted that there were no significant past performance discriminators between the proposals. Since QSS's probable cost was significantly lower than SGT's, the next highest-ranked proposal under the mission suitability factor, the SSA concluded that QSS's proposal offered the best value to the government. *Id.* Upon learning of the resulting award to QSS, and after being debriefed by NASA, Mentor and SESI filed these protests against the award.

#### MENTOR PROTEST

Mentor challenges the evaluation on several grounds. We find that the evaluation was reasonable. We discuss the primary issues below.

Mentor generally challenges NASA's determination that its proposal included inadequate discussion of approaches to performing the SOW; according to the protester, the solicitation only required that an offeror demonstrate its understanding and approach at the function level (of which the SOW listed seven), and its proposal more than met this requirement.

In reviewing protests against allegedly improper evaluations, our Office will examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP's stated evaluation criteria. Engineering and Computation, Inc., B-261658, Oct. 16, 1995, 95-2 CPD ¶ 176 at 2-3.

The RFP provided that:

In order to indicate an understanding of the requirements [of the SOW], the offeror shall provide a narrative that addresses each function of the SOW and identifies critical functions. The narrative shall address the technical approach and methodology to be utilized in performing the functions called for in the SOW. This narrative must be specific, detailed, and include the rationale behind the proposed approach.

. . . . .

It is recognized that all the technical factors cannot be detailed in advance, but the technical approach must be sufficiently detailed as to how it is proposed to comply with the SOW, including a full explanation of the techniques and procedures you propose to follow.

RFP § L.18.1, at 94. The agency's evaluation identified numerous areas of the SOW for which the discussion in Mentor's proposal did not meet this standard and was inadequate to show the technical approach and methodology to be utilized in performing the SOW. Mentor had access to this information through its counsel under the protective order issued by our Office (prior to its discharge of its counsel approximately 6 weeks after receipt of the core procurement documents, including the SEB Initial Report, Agency Report, Tab 16f). However, Mentor generally did not offer a specific rebuttal of these findings, and we find no basis to question them.

Mentor does specifically address NASA's determination that its proposal "does not demonstrate sufficient facilities to accommodate the wide variety and quantity of MEDS work, and . . . lacks substantiation that the facilities and equipment can produce flight boards." Agency Report, Tab 16f, SEB Initial Report, at 47. Mentor disputes NASA's position that QSS furnished greater detail in its proposal regarding proposed facilities and equipment.

Based on our review of the record, including the sections of its proposal cited by Mentor, we conclude that NASA reasonably determined that QSS's description of its proposed facilities and equipment was superior to Mentor's. The SOW required the contractor to provide fabrication services with respect to surface mounted printed circuit boards, that is, flight boards with electronic parts mounted on them which operate flight hardware and software. RFP Attachment A, SOW, Function 2, § E.2.f, at 13; NASA Comments, Feb. 10, 1999, at 17. Although both Mentor's and QSS's proposals generally described the proposed facilities, and Mentor's mentioned two of the electronics assembly capabilities used to fabricate flight boards, QSS's described additional electronics assembly capabilities, listed in detail available equipment, and included such details as the type of materials the facilities could coat and stake, the kind of cabling and harnessing processes available, and the kinds of parts and materials preparation available. Agency Report, Tab 14a, Mentor Technical Proposal, at 2-91 to 2-95; Agency Report, Tab 12a, QSS Technical Proposal, at 90-96; NASA Comments (Mentor), Mar. 4, 1999, at 2-6.

Mentor also challenges NASA's determination that its proposal indicated "an unexplained, high rate of job turnover for the program manager (and one other key individual), especially since 1993, leading to concerns of continuity over mission/task life cycles." Agency Report, Tab 16f, SEB Initial Report, at 46. Mentor denies that the employment changes indicated on the resume for its proposed program manager indicated a lack of commitment, and it has furnished a declaration from this individual explaining that the changes were the result of the

loss of government contracts and downsizing. Mentor also questions NASA's consideration of this factor in the evaluation.

This argument is without merit. The RFP specifically provided for evaluation of the "degree of commitment, availability" of key personnel, such as the program manager. RFP § M.5.1, at 113. Further, while Mentor has explained the project manager's resume further in connection with the protest, the fact remains that the resume indicated job changes every year since 1993, and Mentor's proposal did not explain that these were due to factors outside of the program manager's control. Agency Report, Tab 14a, Mentor Technical Proposal, § 2.2.3.3. In these circumstances, NASA could reasonably conclude that there was a lack of commitment on the part of the proposed manager that, given the critical nature of the position in question, could call into question the continuity of contract performance.

Mentor challenges NASA's determination that it overstaffed the fourth of the seven RTOs included in the RFP. The seven RTOs were for various phases in the design, development, production and testing of a spacecraft mission that will accommodate three earth-viewing instruments and place them in a 700-kilometer, near-polar, high noon, sun-synchronous, circular orbit. RTO 3 provided for the contractor to perform a study of the appropriate types of technology to use for an engineering model, field-programmable gate array/application specific integrated circuit (FPGA/ASIC) device meeting the specification of the SOW. RFP Enclosure A, Representative Task Orders, RTO 3. RTO 4 stated that "[b]ased on the study and implementation plan delivered under Representative Task Order 3, the StudySat program has proceeded with, and completed, the recommended FPGA/ASIC design." RTO 4 provided that "[t]he Contractor shall deliver" 25 FPGA/ASIC engineering model devices. *Id.* RTO 4. Mentor proposed [DELETED] hours for RTO 4, of which [DELETED] were engineer hours, including [DELETED] electrical engineer hours to perform "design work." Agency Report, Tab 14a, Mentor Technical Proposal, § 2.1.4.2.6, at 2-53 to 2-54. In view of the RFP's statement in the background for RTO 4 that a design already had been completed, NASA, in its probable cost evaluation, reduced the proposed lead electrical engineer effort by [DELETED] hours and the electrical engineer hours proposed for design work by [DELETED] hours, for a total reduction of [DELETED] hours. Agency Report, Tab 16d, Initial Evaluation Presentation to SSA, at 88; Agency Report, Tab 16g, Initial Cost Evaluation Findings, Level 2 Cost Charts.

Mentor argues that the reduction was unwarranted, and was due to NASA's misunderstanding of its proposal; Mentor explains that it was proposing hours for the test and delivery of its design rather than for "electrical engineer designing." Mentor Comments, Feb. 17, 1999, at 7. This explanation notwithstanding, however, Mentor's proposal specifically provided for it to "proceed with logic design" and "proceed with circuit design" under RTO 4, and specifically allocated [DELETED]

(of [DELETED] proposed) electrical engineer hours to "Design," distinguishing such hours from a separate allocation of [DELETED] electrical engineer hours to "Spec./Test." Agency Report, Tab 14a, Mentor Technical Proposal, § 2.1.2.4.2, at 2-51 to 2-54. Further, Mentor's proposed RTO 4 electrical engineer staffing significantly exceeded QSS's ([DELETED] electrical engineer hours) and SGT's ([DELETED] electrical engineer hours) for [DELETED] approaches. Agency Report, Tab 12a, QSS Technical Proposal, at 49; Agency Report, Tab 13a, SGT Technical Proposal, at A-58. Likewise, Mentor's overall proposed [DELETED] engineering hours significantly exceeded the in-house estimate of 2,820 hours for an [DELETED] approach. Agency Report, Tab 1a, GSFC In-House Cost Estimate, Enclosure 1. We conclude that NASA reasonably evaluated Mentor's proposal as having included design hours with respect to work specifically excluded from the RTO, and reasonably reduced the staffing for purposes of the probable cost determination.

Mentor also argues NASA improperly made award on the basis of initial proposals, without conducting discussions. However, there generally is no obligation that a contracting agency conduct discussions where, as here, the RFP specifically instructs offerors of the agency's intent to award a contract on the basis of initial proposals. Pacifica Servs., Inc., B-280921, Dec. 7, 1998, 98-2 CPD ¶ 137 at 8; Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 11. While the contracting officer's discretion in deciding not to hold discussions is not unfettered, it is quite broad and has been expanded in recent years. Id. Our Office will review the exercise of such discretion to ensure that it was reasonably based on the particular circumstances of the procurement. Id. Here, the agency received five technically acceptable proposals, including two other technically acceptable proposals (QSS's and SGT's) with significantly higher technical scores than Mentor's (or SESI's). In these circumstances, we conclude that the agency had a basis to make a reasonable source selection decision without conducting discussions.

As noted above, although the probable cost of QSS's proposal was [DELETED] percent higher than Mentor's, QSS's proposal received a significantly higher rating than Mentor's (885.5 points/very good, versus 228.4 points/poor) under the mission suitability factor, the most important evaluation consideration, and NASA determined that there was no significant difference between the proposals with respect to past performance. We conclude that there is no basis to object to the selection of QSS over Mentor.

## SESI PROTEST

SESI challenges the evaluation and award on several grounds. We find that the evaluation was reasonable. We discuss the primary issues below.

SESI challenges NASA's evaluation of its proposed staffing of RTO 1, under which the contractor was to conduct a trade study of the StudySat mission, and establish

definition-phase mission requirements, a spacecraft design concept, ground station coverage requirements, and controlling instrument and subsystem interfaces. RFP, Enclosure A, Representative Task Orders, RTO 1. In its probable cost evaluation, NASA reduced SESI's proposed staffing by [DELETED] hours, from [DELETED] to [DELETED] hours. Agency Report, Tab 16d, Initial Evaluation Presentation to SSA, at 87; Agency Report, Tab 16g, Initial Cost Evaluation Findings, Level 2 Cost Charts. (QSS proposed and was evaluated as likely to require [DELETED] hours; SGT proposed and was evaluated at [DELETED] hours; and the in-house estimate was 3,525 hours. Agency Report, Tab 16g, Initial Cost Evaluation Findings, Level 2 Cost Charts.) In its protest, SESI attributes its higher proposed effort to the alleged fact that it was the only offeror that properly recognized that the RTO StudySat mission would be required to comply with NASA Procedures and Guidelines, NPG 7120.5A, NASA Program and Management Processes and Requirements, Apr. 3, 1998.

This argument is without merit. NPG 7120.5A establishes the management system governing formulation, approval, implementation, and evaluation of agency programs and projects. NPG 7120.5A, at P.1.1. As noted by NASA, not only did the RTO 1 SOW not state that an offeror is required to comply with NPG 7120.5A, but the SOW specifically stated that "StudySat has just been approved to proceed with a study phase," and "[p]reliminary mission and instrument concept/requirement study reports have been prepared by the Government and are available." RFP, Enclosure A, Representative Task Orders, RTO 1. Thus, it appeared from the SOW that the steps necessary for formulation and approval of the mission had already occurred. See NASA Comments (SESI), Mar. 4, 1999, at 6-7. Indeed, it appears that SESI itself recognized that its proposed effort exceeded the scope of the SOW, since it stated in its proposal that the specific deliverables called for in the SOW were "only a subset of the information required for mission (project) approval. Per 7120.5A it is necessary to establish the project plan. . . . We, therefore, propose to expand the RTO 1 scope to cover those items necessary for mission approval." Agency Report, Tab 15a, SESI Technical Proposal, § A.2.2.1, at A.2-2. In these circumstances, we find no basis to object to NASA's probable cost reduction, based as it was on the agency's reasonable determination that SESI's response exceeded the scope of the RTO.

SESI also protests that the award to QSS creates an impermissible organizational conflict of interest, since a member of QSS's team, Orbital Sciences Corporation (OSC), has a multiple-award, indefinite-delivery, indefinite-quantity contract to furnish spacecraft systems to GSFC on a rapid response basis, and the MEDS contractor may be tasked with developing characteristics and specifications for a spacecraft mission. SESI appears to be arguing that QSS will be in a position to favor a member of its team when developing missions. (NASA responds that no conflict will occur because where the potential for a conflict arises, the agency could prohibit use of a spacecraft furnished by a QSS subcontractor. NASA Comments (SESI), Mar. 4, 1999, at 2-4.)

The record indicates that SESI was aware that OSC (as well as Raytheon STX) was a member of QSS's MEDS team no later than when QSS, beginning with posters distributed in December 1998 and culminating with an advertisement by QSS published in the January 3, 1999 edition of the Washington Post, announced that a QSS team including OSC (and Raytheon) had won the MEDS competition and invited engineers and technicians to an open house to discuss staffing the contract. SESI Comments, Mar. 30, 1999. Since SESI's protest in this regard was not filed until February 25, more than 10 days later, the protest is untimely and will not be considered. 4 C.F.R. § 21.2(a)(2) (1998).<sup>2</sup>

As noted above, QSS's proposal received a significantly higher rating than SESI's (885.5 points/very good, versus 296.9 points/poor) under the mission suitability factor, the most important factor; the probable cost of QSS's proposal was [DELETED] percent lower than that of SESI's; and NASA determined that there was no significant difference between the proposals with respect to past performance. We conclude that there is no basis to object to the selection of QSS over SESI.

The protests are denied.

Comptroller General  
of the United States

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<sup>2</sup>SESI, as does Mentor, also argues that NASA acted improperly in making award on the basis of initial proposals without conducting discussions. This argument is without merit for the reasons discussed above in connection with Mentor's protest. SESI also questions the evaluation of QSS's past performance, asserting that QSS lacks experience with respect to launch operations, satellite systems and microwave/millimeter wave technology. However, our Office has reviewed the evaluation of QSS's past performance in the course of denying a protest filed by SGT against award to QSS and found that the evaluation was reasonable. SGT, Inc., B-281773, B-281773.4, Apr. 1, 1999, 99-1 CPD ¶ \_\_\_ at 13.