

Pogany



Comptroller General  
of the United States

344207

Washington, D.C. 20548

REDACTED VERSION\*

# Decision

Matter of: Mevatec Corporation

File: B-260419

Date: May 26, 1995

Joe H. Ritch, Esq., and Fred L. Coffey, Jr., Esq., Sirote & Permutt, P.C., for the protester.  
Vera Meza, Esq., and Beth Biez, Esq., Department of the Army, for the agency.  
Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

In reviewing protests concerning the evaluation of proposals, the General Accounting Office will examine the agency's evaluation to ensure that it had a reasonable basis. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable. Further, source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation factors.

## DECISION

Mevatec Corporation protests the award of a cost-plus-fixed-fee contract to ERC, Inc. under request for proposals (RFP) No. DAAH01-94-R-R005, issued by the U.S. Army Missile Command, Redstone Arsenal, Alabama for test planning, evaluation, and documentation support services for the Army's Technical Test Center.<sup>1</sup> Mevatec principally

\*The decision issued on May 26, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

<sup>1</sup>The services required by this RFP include planning, preparation and review of test plans, test and evaluation master plans (TEMPS), review of test documentation, (continued...)

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contends that the agency miscalculated proposals and that ERC misrepresented its intention to hire the personnel it proposed and thereby engaged in "bait and switch" tactics that skewed the cost evaluation results to Mevatec's detriment.

We deny the protest.

This requirement was set aside as a competitive 8(a) procurement. The RFP was issued on January 30, 1994. The RFP stated that award would be made to the responsible offeror whose proposal represented the best value to the government based on the factors stated in the solicitation. The RFP contained the following technical and cost evaluation factors (shown with their assigned weights): technical--30 percent; management--30 percent; past performance/risk assessment--20 percent; and cost--20 percent.<sup>2</sup> Additionally, the RFP required each offeror to meet minimum personnel requirements for education, experience, and special skills for various labor categories. The RFP provided that these minimum personnel requirements would be evaluated only on a GO/NO GO basis.

The RFP advised offerors that the technical area would be comprised of one sample technical task which was to be evaluated under three equally weighted factors: understanding the problem; technical approach; and efficiency of approach. Similarly, the RFP advised offerors that the management area would be comprised of one sample management task which also was to be evaluated using three equally weighted factors: understanding of management responsibilities; management approach; and organizational structure. Concerning cost, the proposed contract was structured as a cost-plus-fixed-fee level of effort consisting of a small basic level of effort (7,920 man-hours), with options for 5 years at high man-hour ranges (up to 190,080 man-hours for an option year).

The agency received eight proposals by the March 18, 1994, closing date. The agency evaluated initial proposals, conducted discussions, and received best and final offers

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<sup>1</sup>(...continued)

including test procedures, checklists, and standard operating procedures, as well as assessment of test methodology, equipment and facility and creation and maintenance of test data bases, among many other things.

<sup>2</sup>For the technical and management areas, the agency in its evaluation used the following adjectival ratings of proposals, listed in descending order of merit: excellent, very good, good, acceptable, and unacceptable.

(BAFO) on December 7. The final technical and cost evaluation results for the top three offerors after receipt of BAFOs were as follows:

<u>Offeror</u>	<u>Technical</u>	<u>Management</u>	<u>BAFO</u> <u>Costs</u> (millions)	<u>Evaluated</u> <u>MPC</u> <sup>3</sup>
ERC	Good	Excellent	[deleted]	28.6
Offeror A	Good	Very Good	[deleted]	[deleted]
Mevatec	Good	Good	[deleted]	[deleted]

After reviewing the evaluation results, the contracting officer, who was the source selection authority, determined that "ERC's proposal represent[ed] the best value to the government, in that [it] provided the highest quality in terms of technical and management considerations [at a] probable cost which was lower than that of [its] nearest two competitors." While the contracting officer recognized that ERC's cost was not the lowest of all final offers received, he specifically found that ERC's experience, knowledge and level of detail expressed in its proposal represented a "significantly greater likelihood of high quality, timely, and efficient support." This protest followed award to ERC.

Generally, in reviewing protests concerning the evaluation of proposals, we will examine the agency's evaluation to ensure that it had a reasonable basis. RCA Serv. Co. et al., B-218191; B-218191.2, May 22, 1985, 85-1 CPD ¶ 585. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable. Logistic Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173. Further, source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation factors. Id.

Concerning the technical and management evaluation of its own proposal, Mevatec essentially argues that it should have received an adjectival rating of "very good" instead of "good" in both areas. For example, Mevatec alleges that the evaluators found that its proposal showed a "clear understanding" of requirements, which should have resulted in a rating of "very good" in the technical and management

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<sup>3</sup>MPC represents the most probable cost as evaluated by the agency.

areas. Mevatec thus essentially argues that its proposal should have received ratings essentially equivalent to ERC's adjectival ratings.

The record shows that the agency evaluated ERC's technical proposal as providing good coverage of TEMP development, knowledge of processes, and experience with Army missile systems. ERC's management proposal was found to have significant strengths, including: a "transparent agreement" with its subcontractors; a detailed, efficient approach to contract start-up; good organizational structure; proposed use of subcontractor facilities with excellent publishing and photographic capability; strong understanding of test and evaluation processes, documentation requirements and of the relationship between component/subsystem test programs.

On the other hand, Mevatec's technical proposal also showed a clear understanding of TEMP development and was well organized and contained clear descriptions with realistic and supported assumptions. The agency found that the protester's management approach was good, particularly with respect to certain testing, and that the protester proposed a good organizational structure. The only disadvantage noted was that certain positions involving environmental and safety functions were not clearly assigned to Mevatec itself, which could lead to difficulties with a subcontractor.

Based on this record, we think that both ERC and the protester generally submitted good acceptable technical and management proposals. However, given the inherently subjective nature of the technical judgments of the evaluators, we think it is best left to their discretion whether a particular proposal deserves a "good" as opposed to a "very good" rating. Stated differently, agency evaluators' judgments about the slight qualitative differences which can render a proposal "very good" as opposed to "good" are not subject to rational legal objection unless a clear showing of unreasonableness is made; we find no such showing here.<sup>4</sup>

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<sup>4</sup>In its initial protest Mevatec also alleged that ERC failed to provide fully acceptable resumes for its proposed personnel and that ERC allegedly may have submitted the names of personnel without their knowledge and consent. These allegations were shown to be factually erroneous by the agency in its report; they have not been substantively pursued by the protester in its comments on the agency report. We deem the issues abandoned. See Monfort, Inc., B-256706, July 5, 1994, 94-2 CPD ¶ 2.

Next, the protester, who is the incumbent, alleges that ERC employed "bait and switch" tactics in its BAFO. Specifically, the protester alleges that ERC, in its proposal, advised the agency that it intended to give serious consideration to hiring the incumbent personnel which the protester was proposing and who were higher-paid and more experienced employees than the personnel proposed by ERC at lower rates in its proposal.<sup>5</sup> According to the protester, ERC, while evaluated by the agency at its proposed lower-paid employees (which contributed to ERC's selection), had no intention of hiring its proposed work force but always intended to hire the protester's incumbent employees after award. Mevatec has submitted un rebutted evidence that after award, with the contracting officer's approval,<sup>6</sup> ERC hired 68.6 percent of its employees from Mevatec (at higher hourly rates) as opposed to just 14.3 percent of the employees that it actually proposed in its BAFO and which was the basis for the agency's evaluation.

While the protester is correct that the awardee did in fact substitute personnel as it proposed to do, and the impact of this substitution was not initially addressed by the agency, the agency subsequently resolved this matter in any event.<sup>7</sup> Specifically, during the course of this protest, and in response to these serious allegations, the agency completely reevaluated the cost proposals, using the higher-paid substitute incumbent employee rates for ERC's proposal, and arrived at the following determination:

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<sup>5</sup>The record shows that ERC, in its proposal, advised the agency that "upon contract award, we will meet with the COR [(contracting officer's representative)] and the incumbent to obtain the names of incumbent personnel who contribute substantially to the success of ongoing programs [and will] transition them to the ERC team. Team members [initially proposed and who will be displaced by this process] will be returned to their respective companies for reassignment."

<sup>6</sup>The RFP required that any post-award substitution of personnel had to be approved by the contracting officer.

<sup>7</sup>We also note that ERC honestly advised the agency of its intention to hire incumbent personnel after award. Therefore, despite the protester's arguments, in the absence of any showing of bad faith misrepresentation by ERC, we do not think that disqualification of the firm is warranted. See generally Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD ¶ 53. Rather, the issue presented is an allegedly faulty and unreasonable cost evaluation by the agency.

"The protester has not been prejudiced by the substitution of personnel by the awardee after contract award. [The agency] has recalculated the most probable cost of ERC utilizing the wage rates of the substituted personnel. The newly developed most probable cost of ERC is higher, by \$2,566,987, than was its original most probable cost. This increase, however, is not enough to disturb the award decision and to award to another offeror. The revised most probable cost is still less than that of the next offeror [(Offeror A)] in line to receive award. Although the new most probable cost is 6 percent higher than was the most probable cost of the protester, the contracting officer has determined, in the Supplement to the Source Selection Decision, that the combination of ERC's technical, management and cost proposals [still] provides the best value to the government."

Since the protester has not challenged this subsequent source selection decision by the contracting officer, showing that even with the higher-priced employees, ERC remained the best value, we are unable to find prejudice in the substitution of employees by ERC after award.<sup>8</sup>

The protest is denied.

Robert P. Murphy  
General Counsel

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<sup>8</sup>The protester also argues that the Chairman of the technical and management task evaluation committees was "biased" against the firm and "exercised bad faith or fraud." In order to prevail on such an allegation, the protester must show virtually irrefutable evidence that the agency's employee had a specific and malicious intent to injure the protester. We have examined the protester's evidence, and we find that it falls short of approaching such proof. See Schenker Panamericana (Panama~) S.A., B-253029, Aug. 2, 1993, 93-2 CPD ¶ 67.