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## Decision

**Matter of:** ManTech Environmental Research Services Corporation

**File:** B-292602; B-292602.2

**Date:** October 21, 2003

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Devon E. Hewitt, Esq., John E. Jensen, Esq., and Jennifer M. De Jesus, Esq., Shaw Pittman, for the protester.

Richard L. Moorhouse, Esq., L. James D'Agostino, Esq., and Natalia W. Geren, Esq., Reed Smith, for Shaw Environmental, Inc., an intervenor.

Thomas J. Doherty, Esq., Environmental Protection Agency, for the agency.

Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Where agency performed cost/technical tradeoff, selecting awardee's higher-priced proposal on the basis of perceived technical superiority, as reflected in point scores, protest challenging that cost/technical tradeoff is sustained where agency's contemporaneous evaluation record reflects evaluation errors which the agency acknowledges "might have" resulted in improperly doubling the awardee's perceived technical point margin.

2. Where evaluation record supporting cost/technical trade-off is materially flawed, and perceived technical superiority of awardee's higher-priced proposal, as reflected by technical point scores, is dramatically reduced by correction of procurement flaws, agency's post-protest confirmation of its prior cost/technical tradeoff, conducted "in the heat of an adversarial process," does not provide credible support for the agency's assertion that protester was not prejudiced by the evaluation flaws.

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### DECISION

ManTech Environmental Research Services Corporation protests the Environmental Protection Agency's (EPA) award of a contract to Shaw Environmental, Inc. under request for proposals (RFP) No. PR-CI-02-1291/0111 to provide on-site technical

support services for EPA's Office of Research and Development. ManTech protests that the agency's evaluation of technical proposals was flawed and that the source selection decision relied on inaccurately recorded evaluation data.

We sustain the protest.

## BACKGROUND

The solicitation at issue here was published in October 2002, seeking proposals to provide various technical services to the Ground Water and Ecosystems Division of EPA's Office of Research and Development in Ada, Oklahoma.<sup>1</sup> The solicitation contemplated award of a cost-plus-fixed-fee, level-of-effort contract for a 1-year base period and four 1-year option periods, provided that technical quality would be more important than cost/price, and established the following technical evaluation factors, listed in descending order of importance: demonstrated qualifications of assigned personnel, past performance, demonstrated corporate experience, quality of proposed program management plan, and appropriateness of the proposed quality management plan.<sup>2</sup> First Agency Report, Tab B, at 174-76.

Initial proposals were submitted in March 2003 by five offerors, including Shaw and ManTech; these proposals were thereafter evaluated.<sup>3</sup> Based on the agency's evaluation of these proposals, a competitive range was established consisting of three proposals--those submitted by Shaw, ManTech, and a third offeror.<sup>4</sup>

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<sup>1</sup> The agency states that this segment of EPA is responsible for "conduct[ing] highly technical laboratory and field research that supports the development of strategies and technologies to protect and restore the quality of our nation's ground and surface waters." Agency Report, Aug. 27, 2003, (hereinafter "First Agency Report") at 1. The services to be provided under this solicitation include scientific modeling, ecological sampling, and analytical support services.

<sup>2</sup> The solicitation also identified various subfactors under the primary technical evaluation factors.

<sup>3</sup> Technical proposals were evaluated by assigning raw point scores from 1 to 5 for each technical factor and subfactor. The raw scores were then converted to weighted scores by multiplying the maximum possible score for each factor/subfactor by 100 percent if a "5" was awarded; by 80 percent if a "4" was awarded; by 60 percent if a "3" was awarded, and so forth.

<sup>4</sup> The third offeror's proposal is not relevant to the protest issues and, accordingly, is not further discussed.

Discussions were thereafter conducted with the competitive range offerors and final proposal revisions (FPRs) were submitted on May 22. The FPRs were evaluated with the following results:

|                                            | Shaw      | Mantech   |
|--------------------------------------------|-----------|-----------|
| Personnel<br>(350 max. pts.)               | [deleted] | [deleted] |
| Past Performance<br>(250 max. pts.)        | [deleted] | [deleted] |
| Corporate Experience<br>(150 max. pts.)    | [deleted] | [deleted] |
| Program Management Plan<br>(150 max. pts.) | [deleted] | [deleted] |
| Quality Management Plan<br>(100 max. pts.) | [deleted] | [deleted] |
| Total Technical Score<br>(1000 max. pts.)  | [deleted] | [deleted] |
| Evaluated Cost/Price                       | [deleted] | [deleted] |

First Agency Report, Tab U, at 2.

In short, the agency's final evaluation record indicated that Shaw's technical proposal was rated [deleted] points higher (approximately [deleted] percent) than Mantech's. Shaw's evaluated cost/price was also [deleted] higher (approximately [deleted] percent) than Mantech's. Based, in part, on consideration of the point scores displayed above,<sup>5</sup> the source selection authority (SSA) concluded that Shaw's evaluated technical superiority outweighed ManTech's cost/price advantage and selected Shaw's proposal for award. This protest followed.

## DISCUSSION

Mantech filed its initial protest on July 17, challenging various aspects of the agency's proposal evaluation and arguing that the agency erroneously selected Shaw's proposal—with its [deleted] million higher cost/price—rather than ManTech's

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<sup>5</sup> The first sentence of the source selection decision's "Analysis" section stated: "Shaw provided the highest rated technical proposal, receiving [deleted] out of a possible 1000 total points." Agency Report, Tab W, Source Selection Decision, at 3. Similarly, in the first sentence of the "Analysis" section relating to ManTech's proposal stated: ManTech received [deleted] out of a possible 1,000 total technical evaluation points, demonstrating an overall adequate proposal." *Id.* at 8. Further, the SSA's decision states that "[t]his determination is made by comparing the proposals . . . and quantifying the differences." *Id.* at 2.

proposal. The agency responded to Mantech's protest by providing the required agency evaluation record to our Office and to protester's counsel admitted to a protective order, followed by a report dated August 27, in which the agency asserted that "None of ManTech's various complaints are factually or legally sound." First Agency Report at 12.

On August 28, based on its review of the agency's evaluation record and agency report, Mantech filed a supplemental protest in which it identified various apparent errors in the evaluation record—including simple mathematical/transcription errors—that improperly increased Shaw's technical score or improperly decreased Mantech's technical score. Among other things, Mantech identified specific portions of the evaluation record affecting Shaw's ratings under the two most heavily weighted evaluation factors—personnel and past performance. As noted above, the agency's initial source selection decision was based, in part, on Shaw's proposal receiving higher point score ratings under each of these two factors.

By submission to our Office dated September 24, the agency responded to Mantech's supplemental protest, again maintaining that Mantech's various allegations were "without merit." Second Agency Report at 1. However, the agency conceded that ManTech's supplemental protest did, in fact "identif[y] clerical errors that occurred in the compilation of data for the evaluation of Shaw's past performance." Second Agency Report at 7. Specifically, the agency described the following:

The task of gathering data regarding the offerors' past performance was assigned to a TEP coordinator . . . . He gathered past performance evaluations from the offerors' contract references and recorded the information onto worksheets . . . . The worksheets identifies six separate aspects of past performance to be evaluated . . . and utilizes six separate adjectival ratings – Outstanding, Excellent, Good, Fair, Poor and N/A [not applicable]. The [TEP coordinator] recorded the references' evaluations . . . [and] then transcribed this data to a summary matrix, recording a score of "5" for each "Outstanding" rating, a score of "4" for each "Excellent" rating, etc. . . . The rating provided by two of Shaw's references . . . for "Overall Performance" were incorrectly recorded on the summary matrix as [deleted] rather than [deleted]. . . . The [TEP coordinator] then utilized these incorrect scores to arrive at an average score for Shaw's overall performance.

Second Agency Report at 8.

The agency further acknowledged that:

had the transcription error not occurred, Shaw's awarded score for past performance might have been [deleted] points, instead of [deleted] points.

This would have reduced the gap between ManTech's score [deleted] and Shaw's score [deleted] [from [deleted] points] to [deleted] points.

Id.

Finally, the agency stated:

In light of the scoring errors affecting the evaluation of past performance, the Source Selection Official re-examined her source selection decision [while the protest was ongoing]. She has again concluded that Shaw's proposal is the most advantageous to the Government.

Id.

In short, while defending against ManTech's protest, the agency maintains that the SSA reconsidered the evaluation record, including the data summarized below (with the corrections in bold and the initial ratings immediately above in brackets), and concluded that the prior source selection decision was appropriate.<sup>6</sup>

|                                       | Shaw                   | Mantech   |
|---------------------------------------|------------------------|-----------|
| Personnel<br>(350 pts.)               | [deleted] <sup>7</sup> | [deleted] |
| Past Performance<br>(250 pts.)        | [deleted]              | [deleted] |
| Corporate Experience<br>(150 pts.)    | [deleted]              | [deleted] |
| Program Management Plan<br>(150 pts.) | [deleted]              | [deleted] |
| Quality Management Plan<br>(100 pts.) | [deleted]              | [deleted] |
| Total Technical Score<br>(1000 pts.)  | [deleted]              | [deleted] |
| Evaluated Cost/Price                  | [deleted]              | [deleted] |

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<sup>6</sup> Because Mantech filed an agency-level protest prior to filing a protest with our Office, the agency was not required to suspend contract performance during our review of Mantech's protest. Accordingly, Shaw was already performing the contract at the time the SSA performed her re-evaluation activities.

<sup>7</sup> As discussed below, the record indicates that this point score may have also been improperly recorded.

Based on the SSA's reconsideration of the evaluation record (while simultaneously defending against ManTech's protest), the agency maintains that ManTech was not prejudiced by the agency's evaluation errors. We are not persuaded.

In addition to the evaluation errors discussed above--correction of which would decrease the margin of Shaw's total point score superiority from [deleted] to [deleted]--ManTech's supplemental protest identifies other apparent errors, including another apparent transcription error relating to Shaw's rating under the most heavily weighted evaluation factor, personnel. Specifically, ManTech points out that the final evaluation record incorporates an evaluator's rating of [deleted] for Shaw's proposed analytical chemist/manager,<sup>8</sup> but the contemporaneous evaluator worksheets reflect a score of either [deleted] or [deleted]. First Agency Report, Tab U, at 5; First Agency Report, Tab I, at 6; First Agency Report, Tab J, at D-60. Accordingly, ManTech maintains that Shaw's evaluated advantage with regard to proposed personnel was improperly inflated due to transcription errors in much the same way the agency acknowledges occurred with regard to Shaw's past performance rating.

In response to Shaw's supplemental protest, the agency maintains that the evaluator changed his rating of Shaw's proposed analytical chemist/manager from a [deleted] to a [deleted]. Letter from EPA to GAO (September 26, 2003). However, this assertion is not supported by the contemporaneous record. Specifically, the record shows that the evaluator initially evaluated Shaw's proposed analytical chemist/manager as a [deleted], then increased the rating to a [deleted]. First Agency Report, Tab J, at D-60. Nowhere in the evaluator's own contemporaneous evaluation record is there documentation suggesting a rating of [deleted]. That is, nothing in the contemporaneous evaluation record refutes ManTech's assertion that this is another example of a transcription error favoring Shaw, similar to the error with regard to past performance.

As discussed above, it is clear that, even considering only the past performance evaluation errors, which the agency acknowledges, the initial cost/technical tradeoff, on which the source selection decision was based, reflected consideration of a technical point score superiority for Shaw that was more than double the margin that existed following correction of the agency errors. Correction of these errors, alone, eliminates Shaw's evaluated advantage under the second most important evaluation factor--past performance--which, in part, formed the basis for the agency's conclusion that Shaw's technical superiority outweighed ManTech's [deleted] cost advantage. Further, as discussed above, the contemporaneous evaluation record

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<sup>8</sup> The solicitation identified five key personnel positions, assigning differing maximum point values to each position. The position of Analytical Chemist/Manager was weighted at 50 points, the second most heavily weighted key personnel position. Agency Report, Tab B, at 174.

regarding the most important evaluation factor—personnel—suggests that Shaw’s slightly higher point score under that factor may have been, similarly, inaccurately recorded. In short, it appears that the evaluation record supporting Shaw’s evaluated technical superiority, including the total point score ratings on which the initial source selection decision appears to significantly rely, was materially flawed.

We are further concerned with the objectivity of the agency’s post-protest activities, since those activities were performed by personnel who were simultaneously involved in defending against ManTech’s protest. Our Office has previously addressed similar situations, concluding that, when agencies re-evaluate proposals while defending against pending protests, and purport to rely on information or analysis that was not previously considered, the weight accorded such post-protest activities is properly limited because such activities “constitute reevaluations and redeterminations prepared in the heat of an adversarial process,” and may not represent “fair and considered” judgments. See Dismas Charities, Inc., B-292091, June 25, 2003, 2003 CPD ¶ 125; Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91. We reach that conclusion here and, therefore, discount the agency’s post-protest analysis and representations. Based on our consideration of the record as a whole, we conclude that the current record does not adequately support the agency’s conclusion that Shaw’s proposal, evaluated at \$[deleted] more than ManTech’s proposal, represents the best value to the government, nor does it adequately support the agency’s post-protest position that ManTech was not prejudiced by the agency’s material evaluation flaws. Accordingly, the protest is sustained.

## RECOMMENDATION

We recommend that the agency reevaluate the competitive range proposals in a manner consistent with the terms of the RFP and applicable law and regulation and, based on that evaluation, make a new source selection decision. In light of the agency’s prior reliance on the same personnel to simultaneously defend against the protest and perform a post-protest confirmation of the initial source selection decision, the agency may wish to conduct the new evaluation and source selection decision using personnel other than those that participated in the initial source selection. In any event, if an offeror other than Shaw is selected for award, none of the option periods in Shaw’s contract should be exercised; rather, a contract should be awarded to the successful offeror. We also recommend that the agency reimburse the protester its reasonable costs of filing and pursuing the protest, including attorneys’ fees. 4 C.F.R. § 21.8(d)(1) (2003). The protester should file its

claims for costs, detailing the time expended and costs incurred, with the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa  
General Counsel