Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: Veda Incorporated

File: B-278516.2

Date: March 19, 1998

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Theresa Chesnut, Esq., and Leonard Anthony, Department of the Navy, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably selected the awardee's lower-rated, lower-cost proposal over the protester's proposal, where the solicitation permitted award based on a cost/technical tradeoff and the source selection official, in weighing the respective merits of the two firms' proposals, reasonably determined that the proposals were close in technical merit, that the protester's technical scoring advantage reflected the protester's advantages as the incumbent contractor, and that the awardee offered a substantially lower evaluated cost, even considering the additional "learning curve" costs to the government associated with the awardee's technical weaknesses.

2. Protest that the awardee materially misrepresented the availability of 1 of its 45 proposed key personnel, who left after the proposal was submitted, is denied, where the agency was aware of the individual's unavailability and the offer of this individual had minimal impact on the agency's evaluation of proposals and source selection.

3. Protest allegation that the awardee engaged in "bait-and-switch" practices by proposing personnel that the awardee did not intend to use in contract performance is denied, where no substitution of personnel has been offered and the awardee's unrebutted explanation of its advertisement for qualified personnel in the area in which the contract is to be performed is that the awardee wished to identify a pool of talent for future use but that the awardee intended to use the personnel proposed.

DECISION

Veda Incorporated protests the award of a contract to Resource Consultants, Inc. (RCI) under request for proposals (RFP) No. N00244-97-R-5030, issued by the Fleet and Industrial Supply Center, Department of the Navy, for support services at the North Island Naval Aviation Depot (NADEP), San Diego, California. Veda challenges the Navy's cost realism and source selection decision, and asserts that RCI made material misrepresentations in its proposal concerning its proposed personnel.

We deny the protest.

The RFP provided for the award, without discussions, of an indefinite-delivery, indefinite-quantity, cost-plus-fixed-fee contract for engineering, scientific, technical, logistical, and management support services for a base period with 4 option years. The RFP statement of work (SOW) described the specific services that could be ordered under the contract to support aircraft and aircraft systems. The RFP estimated an annual level-of-effort of 186,450 staff-hours; labor categories and estimated staff-hours per labor category were provided for the performance of the contract.[1] RFP §§ B, C at 3-4, 7-8. Some of the labor categories were identified as key personnel labor categories.

The RFP provided for award on the basis of a cost/technical tradeoff and informed offerors that the technical evaluation factors combined were significantly more important than cost. The following technical evaluation factors and subfactors were identified:

1. Technical approach
    a. Stress and fatigue analysis
    b. Readiness analysis
    c. Operational flight program software (OFPS)
    d. Integrated maintenance concept plan (IMCP)
    e. Reliability and maintainability of wiring
2. Personnel qualifications[2]

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[1]The RFP provided that approximately 20 percent of the work would be performed on-site.

[2]Under the personnel qualifications factor, each of the offeror's proposed key personnel were to be evaluated for relevant experience, education, and qualifications.

3. Past performance
4. Management capability and corporate experience[3]

The technical approach factor was stated to be approximately one and a half times more important than personnel qualifications, two times more important than past performance, and two and a half times more important than management capability/corporate experience. RFP § M at 64-65.

Detailed instructions were provided for the preparation of technical and cost proposals. RFP § L at 52-63. Among other things, offerors were informed that resumes must be provided for all key personnel. Resumes were required to indicate relevant experience and to state that the proposed individual was either a current employee or a contingent hire; a letter of intent was required to be submitted for contingent hires. RFP § L at 57-58. In this regard, the RFP contained a "Substitution or Addition of Personnel" clause wherein the contractor agreed to assign to the contract those individuals whose resumes were submitted in the proposal and that no substitution of personnel would be made during the first 90 days of contract performance, except where substitution is necessitated by the individual's sudden illness, death, or termination of employment. RFP § H at 19.

The RFP also provided for a cost realism evaluation to verify the offeror's understanding of the contract requirements, to assess the degree to which the cost proposal reflects the approach offered and/or risk that the offeror will provide the services for the proposed costs, and to assess the degree to which the cost proposal accurately represents the work effort reflected in the technical proposal. RFP § M at 66. Offerors were required to provide a detailed breakdown of proposed costs, including labor rates, labor escalation rates, indirect costs, and personnel relocation costs; in computing their proposed labor costs, offerors were directed to use the RFP's estimated labor hours. RFP § L at 60-61. The RFP also warned that relocation costs that were not identified in the cost proposal would be disallowed during contract performance. RFP § L at 62.

Proposals were received from Veda[4] and RCI on April 30, 1997. The technical proposals were evaluated by a four-member technical evaluation board (TEB), which scored proposals numerically and adjectivally; the chair of the TEB did not evaluate technical proposals, but advised and managed the evaluators in their

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[3]Subfactors were also stated for the management capability/corporate experience factor.

[4]Veda was a joint venture partner of the incumbent contractor.

review of proposals. Hearing Transcript (Tr.) at 13-14.[5] Each evaluator individually scored each proposal under the RFP evaluation factors and subfactors; the TEB then met with the board chair to discuss the evaluation findings.[6] Tr. at 19-20. From this meeting, the TEB chair drafted a technical evaluation report on August 4 to reflect the views of the TEB evaluators; all the evaluators reviewed this draft report and approved it. Tr. at 42-43. Veda's and RCI's proposals were evaluated as follows:

	Veda	RCI
Technical Approach (40 points maximum)	39.3/Outstanding	34.7/Good
Personnel Qualifications (25 pts.)	20.8/Good	20.7/Good
Past Performance (20 pts.)	19.3/Outstanding	18.4/Outstanding
Mgmt. Cap./Corp. Exp. (15 pts.)	14.7/Outstanding	13.6/Outstanding
TOTAL	94.1/Outstanding	87.4/Good

Despite the difference in point scores and adjectival ratings, the report stated that there was no "appreciable risk" regarding performance or schedule requirements in either Veda's or RCI's technical proposal, and that the TEB found no material, quantifiable difference between the firms' proposals. Tr. at 25. The TEB recommended that the contracting officer make award on the basis of low evaluated cost. Tr. at 26.

The TEB report was submitted to a senior contract negotiator, who served as the contracting officer's representative for this procurement, for her review. Tr. at 423, 511-12. She rejected the report as inadequate because it did not support the report conclusions, identify evaluated proposal strengths and weaknesses under each evaluation factor, or provide a separate list of weaknesses in case discussions were

[5]A hearing was conducted to receive testimony from the TEB chair, one of the TEB evaluators, a senior contract negotiator, the contracting officer's representative, and the contracting officer, regarding the agency's technical and cost evaluations.

[6]The TEB did not have access to the firms' cost proposals. Tr. at 239.

determined necessary. Tr. at 44, 380-81, 518. The contract specialist directed the TEB chair to rewrite the report to address these concerns.[7]

The TEB members reconvened on August 18 to discuss their evaluation of Veda and RCI, and to identify the firms' strengths, weaknesses, and risks under each evaluation factor. The TEB had available at this meeting the technical proposals and evaluators' individual evaluation worksheets, the source selection plan, and RFP sections L and M. Tr. at 49. Each evaluator, in turn, described under each factor what he or she perceived to be the strengths, weaknesses, and risks for each offeror's proposal; the TEB chair recorded these accounts in handwritten notes of the meeting.[8] Tr. at 252. The TEB did not review or otherwise approve the TEB chair's handwritten notes of the August 18 meeting. Tr. at 181.

The TEB chair prepared a revised TEB report based upon the August 18 meeting. The point scoring and adjectival ratings of RCI's and Veda's proposal for each technical evaluation factor were the same as the earlier report. The revised TEB report also stated the same conclusion and recommendation--that award should be made to the offeror proposing the lower evaluated cost because the two firms' proposals were essentially technically equal--but added a section describing strengths and weaknesses in RCI's and Veda's proposals under each evaluation subfactor. The report identified more strengths for Veda and more weaknesses for RCI under the technical approach factor. Although the report indicated that some of RCI's weaknesses under the technical approach subfactors were low, moderate, or moderate to high risks, the TEB chair informed the contract negotiator that the evaluators had found that these subfactor risks were not significant. Tr. at 493, 501.

The contract negotiator again rejected the evaluation report because the report provided extraneous information, did not support the report conclusions, discussed risk at the subfactor level rather than factor level, and failed to include a separate list of evaluated weaknesses as had been requested. Tr. at 382-83. Two members

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[7]The contracting officer testified that he typically handles about 50 procurement awards at a time and that he uses contract negotiators to keep apprised of these procurements. Tr. at 512-13. The record shows that the contracting officer was aware of the development and rewriting of the TEB report here.

[8]Although this meeting and the notes thereof have been variously described as a "consensus" meeting and the "consensus" judgment of the evaluators, the hearing testimony established that there was not agreement on each of the weaknesses and associated risks identified for RCI under the technical approach subfactors. Tr. at 346. Rather, the TEB chair recorded all of the evaluators' individual judgments regarding the firms' strengths and weaknesses, which judgments in some cases did not represent the "consensus" judgment of the TEB. Tr. at 284-85.

of the TEB, and not the TEB chair, were tasked with rewriting the TEB report to address the contract specialist's concerns with the evaluation report.

The two evaluators reviewed the source selection plan, the RFP's SOW and sections L and M, the previous TEB report, and the evaluators' individual work sheets.[9] Tr. at 257-258. In rewriting the report, the two evaluators again agreed that the two proposals were technically equal. The difference in technical point scoring, the evaluators concluded, was attributable to Veda's specific experience as an incumbent contractor at the North Island NADEP; RCI had, however, "a lot of experience on other programs and other Navy depots and Air Force facilities." Tr. at 253. The two evaluators also concluded that RCI could not, nor could any other non-incumbent contractor, be expected to be as familiar with the processes and aircraft at North Island NADEP as Veda would be, and that the RFP did not require specific experience with, and knowledge of, the North Island NADEP. Tr. at 254, 260-61. Although the weaknesses identified in the prior TEB report for RCI's proposal under the technical approach subfactors were recorded in the final TEB report, risk was only reported on a factor (rather than subfactor) basis, as requested by the contract negotiator. The evaluators concluded that both RCI's and Veda's proposals were low risk under the technical approach factor.

A final TEB report was issued, which evaluated the two proposals as follows:[10]

	Veda	RCI
Technical Approach (40 points maximum)	39.50/Outstanding	34.80/Good
Personnel Qualifications (25 pts.)	20.88/Good	20.75/Good
Past Performance (20 pts.)	19.30/Outstanding	18.50/Outstanding
Mgmt. Cap./Corp. Exp. (15 pts.)	14.78/Outstanding	13.61/Outstanding
TOTAL	94.46/Outstanding	87.66/Good

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[9]These evaluators did not have or review the TEB chair's handwritten notes of the TEB's August 18 meeting. Tr. at 251.

[10]We note that the point scores for Veda and RCI were slightly different in the final TEB report and business clearance memorandum (BCM) from those reported in the first two draft TEB reports. There is no explanation in the record as to this slight difference, which is not material to our decision.

As stated in the earlier reports, both offerors were found to demonstrate an in-depth understanding of the SOW and ability to perform the contract work, provided strong personnel qualifications and experience, had outstanding past performance, and had sound management capability and corporate experience.

Regarding RCI's personnel qualifications, the TEB noted that Dr. Dan Hill, 1 of the 45 individuals for which RCI provided a resume and 1 of the 3 part-time individuals RCI proposed to fill the project manager position, left the employment of RCI's subcontractor after the submission of proposals. Based upon the advice of the TEB chair and contract negotiator, the TEB evaluated RCI's proposal as if Dr. Hill continued to be employed by the RCI team. Tr. at 74-76, 266.

The final TEB report stated:

> In [c]onclusion, the TEB's evaluation finds nearly no technical differences between the competing proposals. The differences in the proposals are insufficient to be reasonably considered material and are not economically quantifiable. . . . Neither proposal contains or otherwise reflects appreciable risk to solicitation performance and schedule requirements. Consequently, the TEB recommends to the Source Selection Authority that the selection of the apparent winner be made without discussions based on the economic best value to the government.[11]

Veda's and RCI's proposals were also evaluated for cost realism, and upward adjustments were made in each of the firms' proposed costs. In performing the cost realism evaluation, the contract negotiator reviewed the firms' proposals and obtained rate verification and other cost information from the Defense Contract Audit Agency (DCAA). Tr. at 391, 401. Among other things, the Navy upwardly adjusted [DELETED] and RCI's [DELETED], which the agency obtained from DCAA.[12] Tr. at 401.

The agency chose, however, not to include a number of other adjustments in its cost evaluation. Specifically, despite the RFP requirement to price [DELETED]; the agency, although unsure of the impact in Veda's total probable [DELETED] costs, estimated that Veda's probable cost would be approximately [DELETED] to [DELETED] higher. Also, RCI offered a contractual cap on its proposed overhead, which the agency calculated would reduce RCI's evaluated probable costs by $1.7 million; the agency, however, did not account for this contractual cap in its cost

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[11]This statement appears in nearly identical form in each of the TEB reports.

[12][DELETED]

realism analysis because, in its view, RCI had not provided sufficient information to demonstrate that it could absorb this amount over the life of the contract.

Veda's and RCI's proposed and evaluated probable costs, as documented in the Navy's BCM, were as follows:

	Veda	RCI
Proposed CPFF	[DELETED]	$37,946,520
Evaluated CPFF	$45,841,896	$43,611,476

The contracting officer, who served as the source selection official, was presented with the final TEB report and the agency's cost realism evaluation information. In addition, on September 19, he met with the two evaluators who were responsible for rewriting the TEB report and the contract negotiator to discuss their evaluation findings.[13] Tr. at 264-65, 440, 521-22, 536, 601. At this meeting the contracting officer was informed by the evaluators that the weaknesses identified for RCI under the technical approach factor were minor and were attributable to the fact that RCI did not have specific experience at the North Island NADEP. Tr. at 521. The contracting officer also testified that he was kept apprised by the contract negotiator of the evaluation progress and problems during the acquisition and had seen the earlier TEB reports. Tr. at 517, 578, 611; see also Tr. at 384.

The contracting officer accepted the TEB report's conclusion that Veda's and RCI's proposals were essentially technically equal and that Veda's slight technical point advantage reflected Veda's specific experience at the North Island NADEP. The contracting officer also accepted the evaluators' determination that RCI had significant experience at other NADEPs and at Air Force facilities, which was easily transitionable to the work at the North Island NADEP. Tr. at 528, 595-96. In the contracting officer's judgment, Veda's higher point score did not reflect real technical superiority.

Prior to making his source selection, the contracting officer requested that an analysis of the cost impact of making award to RCI be performed to assess "how much would it cost RCI to get up to speed." Tr. at 551-52. The contracting officer's representative on the prior contract was tasked with performing this evaluation

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[13]Veda complains that there is no contemporaneous documentation recording the September 19 meeting. Participants at the meeting, including one of the two TEB evaluators, the contract negotiator, and the contracting officer, testified at the hearing conducted by our Office, and we find their testimony credible, particularly since, although the witnesses were sequestered during each other's testimony, they consistently described the timing and content of this meeting.

because of his familiarity with the contract technical requirements.[14] Tr. at 552. The contracting officer's representative was provided with the final TEB report and requested to address the areas of weakness identified in RCI's technical proposal. Tr. at 418. The contracting officer's representative testified:

> I went through my files. I looked at the work that was currently in progress. I tried to recall problems we had had in start-ups, and some of the lessons learned, and some of the learning curves, and applied, more or less, a value judgment of what I thought it would take the new contractor [RCI] to be up to speed with the other one.
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> . . . . .
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> I looked at the difficulty and the things that were unique to our requirements at NADEP North Island, that RCI had not been actively involved in, even though they were capable, but these were somewhat unique. And I tried to reconstruct the things that we'd done and I just put a value judgment on it, as best I could. I went though my notes and process reviews and everything I had to work from.

Tr. at 190-91.

The contracting officer's representative concluded that the additional effort necessary to bring RCI "up to speed" would be "a minimum of [DELETED] of government effort at a cost of [DELETED] and [DELETED] of contractor effort at a cost of [DELETED]." This assessment reflected the contracting officer's representative's judgment as to the cost impact associated with the technical approach weaknesses evaluated in RCI's technical proposal. Tr. at 194-95, 220, 227; see also Tr. at 468-70 (contract negotiator's testimony that the cost impact analysis assessed the dollar impact of weaknesses and risks in RCI's technical proposal).

In making his source selection decision, the contracting officer relied upon the final TEB report (and its conclusion that the proposals were essentially technically equal), his discussions with the evaluators and the contract negotiator, the cost evaluation (which found that RCI's proposed evaluated cost was approximately $2.2 million lower than Veda's), and the contracting officer's representative's statement of the cost impact of making award to RCI. Tr. at 526-27. Based upon this information, the contracting officer determined that RCI's proposal represented the best value to the government. Award was made to RCI. Although the agency chose not to credit RCI for its offered overhead rate cap in the agency's cost

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[14]The contracting officer's representative was not previously involved with the evaluation of proposals under the RFP. Tr. at 188.

realism evaluation, the Navy accepted RCI's cost cap offer and included the cap in the contract awarded to RCI.

Veda complains that the agency's determination that Veda's and RCI's proposals were technically equivalent was unreasonable and resulted in a defective source selection decision. Veda contends that the agency ignored Veda's evaluated proposal strengths and RCI's evaluated proposal weaknesses in finding that Veda's proposal did not offer real technical superiority. This resulted, Veda argues, in the agency's failure to conduct an appropriate cost/technical tradeoff that weighed Veda's superior technical proposal against RCI's lower evaluated cost proposal.

In considering protests of an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was rational and consistent with stated evaluation criteria and applicable statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Such judgments are by their nature often subjective; nevertheless, the exercise of these judgments in the evaluation of proposals must be reasonable and must bear a rational relationship to the announced criteria upon which competing offers are to be selected. Southwestern Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10.

Here, the agency's evaluation of proposals was reasonable and consistent with the stated evaluation criteria. As indicated by the agency's point and adjectival scoring, Veda's and RCI's proposals were found to be extremely close in technical merit. The hearing testimony detailed why the TEB evaluators concluded that Veda's strengths and RCI's weaknesses under the technical approach factors were determined to be ultimately not significant.

For example, under the stress and fatigue analysis subfactor, the TEB report noted that Veda's proposal demonstrated expert knowledge with few weaknesses, while RCI's proposal demonstrated good knowledge but had not "demonstrate[d] knowledge of the difference between U.S. Navy and Air Force structural integrity design criteria/operational philosophy." The TEB evaluator, an aerospace engineer whose specialty was aircraft structures, testified that, although there is a difference between Navy and Air Force maintenance philosophies,[15] the same technical expertise is required to perform work on Navy and Air Force aircraft, that this expertise is easily transferrable, and that the qualifications of the engineers proposed both by RCI and Veda were considered outstanding. Tr. at 338-40. The Navy found, notwithstanding Veda's more specific experience, that both Veda and

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[15]Because Navy aircraft are flown in the relatively more stressful carrier-based environment, the Navy has more stringent requirements regarding airframe structures than does the Air Force. Tr. at 166-67, 275-77.

RCI would fully and equally perform the required stress and fatigue analysis on Navy aircraft at the North Island NADEP.

As another example, under the IMCP subfactor, the TEB report noted that Veda's proposal demonstrated detailed knowledge and understanding of the methods and procedures used in the IMCP processes for Navy aircraft and systems, and had few weaknesses. RCI's proposal was found to demonstrate a good overall understanding of IMCP maintenance planning, principles, and concepts; although RCI discussed its "good experience" at the Jacksonville NADEP, which the TEB found was transferrable to the IMCP work required at the North Island NADEP, RCI "presented no demonstrated knowledge of IMC[P] work at the [North Island NADEP]."[16] The TEB evaluator testified that at the time of the TEB's August 18 meeting with the TEB chair, the evaluator had concerns with RCI's lack of specific knowledge of the North Island NADEP's IMCP processes. Specifically, IMCP, which was a new Navy program, was being performed on E2 (Hawkeye) aircraft at the North Island NADEP, and the evaluator believed that "it would be a bad idea to just switch out people . . . in the middle of this program." Tr. at 299. By the time he and the other evaluator were preparing the final TEB report, he learned that the IMCP program on the E2 aircraft at the North Island NADEP was complete. This meant that either offeror would begin a new IMCP process on a different aircraft at the North Island NADEP, and therefore any risk associated with not having specific knowledge of IMCP at the North Island NADEP "went away." Tr. at 297-301.

Ultimately, the TEB concluded that weaknesses identified in RCI's proposal under the technical approach subfactors were overstated. Tr. at 272. Although Veda suggests that the TEB's report was rewritten to favor RCI by "softening" the risks identified in RCI's proposal, this is not supported by the record. The TEB report consistently stated from the first draft version that the firms' technical proposals were viewed as essentially equal in technical merit and low risk. The risks evaluated in RCI's proposal under the technical approach factor, which risks Veda's protest highlights, were identified in the second draft version of the TEB's report; this report, however, also concluded that the firms' proposals were technically equal and low risk. In addition, the testimony of the TEB chair, TEB evaluator, contract negotiator, and the contracting officer (which testimony was consistent and credible) shows that the TEB report was not redrafted to favor one firm over the other or to lessen the impact of identified weaknesses in RCI's proposal. Rather, the testimony established that revisions to the report were requested to satisfy specific concerns of the contract negotiator that the report identify evaluated strengths and weaknesses of the firms under each of the evaluation factors, to support the TEB's ultimate evaluation conclusion, and to state a list of separate proposal weaknesses for each offeror; these changes did not involve a reevaluation

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[16]In the August 18 meeting notes and the prior TEB report, this risk was identified to be moderate to high for cost, schedule, and performance.

of the firms' proposals or a modification to the evaluators' assessment of the overall technical merit of the proposals. Tr. at 44-48, 56, 83-84, 248-50, 380-83, 447-52, 463, 466-67, 493, 515-18, 584. The record simply does not support Veda's assertion that the report was edited to favor RCI.

In sum, although Veda has specific experience at, and knowledge of, the North Island NADEP, which was acquired as an incumbent contractor and which translated into a slightly higher point score, it is undisputed that RCI has extensive experience at other NADEPs and transferrable experience from Air Force facilities. In addition, both firms were found to have proposed good personnel with strong qualifications, to possess outstanding past performance records, and to offer outstanding management approaches and corporate experience under the remaining evaluation factors that in the aggregate were 60 percent of the overall technical score.

Veda disputes, however, that the two firms' proposals were essentially technically equal, arguing that the TEB report documented that Veda had more technical proposal strengths and fewer weaknesses than RCI's technical proposal. Based upon this record, we need not decide whether the firms' proposals were exactly technically equal. We agree with the agency that Veda's higher technical rating primarily reflected its incumbent advantage; we also agree with Veda that this advantage offered some benefit to the agency in terms of Veda's immediate ability to perform the contract work. Although the agency reasonably discounted Veda's higher rating and evaluated strengths for technical approach as arising primarily from Veda's incumbency,[17] see Clement Int'l Corp., B-255304.2, Apr. 5, 1994, 94-1 CPD ¶ 228 at 6 (agency reasonably discounted incumbent's specific experience in determining that the incumbent and the awardee were technically equivalent), the agency recognized that RCI "would still have to learn the nuances over at [the North Island] NADEP." Tr. at 262. The agency quantified the benefit of making award to Veda instead of RCI by assessing [DELETED] in costs of bringing RCI "up to speed," that is, the agency accounted for the additional costs associated with RCI's learning curve associated with the weaknesses noted in RCI's proposal to consider the fact that RCI will not immediately work at the same level as would Veda because of these weaknesses.[18] Tr. at 614-615. By considering this information and noting that

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[17]Contrary to some of Veda's arguments, the record shows that the majority of Veda's proposal strengths vis-à-vis RCI's proposal reflected the specific knowledge and experience Veda acquired as an incumbent.

[18]The Navy describes these costs as "transition" costs. Although we agree with the Navy that "transition costs" generally cannot be considered unless offerors are advised that such costs will be evaluated, see Cherokee Elecs. Corp., B-240659, Dec. 10, 1990, 90-2 CPD ¶ 467 at 4, the record here shows that the additional

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it did not offset RCI's proposal's cost advantage, the contracting officer essentially performed a cost/technical tradeoff analysis in determining that RCI's much lower evaluated cost proposal was the best value to the government, notwithstanding Veda's higher technical rating.

Where, as here, a negotiated procurement provides for award after cost/technical tradeoff, point scores and adjectival ratings are guides to assist contracting agencies in evaluating proposals; they do not mandate automatic selection of a particular proposal. Grey Advertising, Inc., 55 Comp. Gen. 1111, 1118-1121 (1976), 76-1 CPD ¶ 325 at 9-12. In deciding between competing proposals, cost/technical tradeoffs may be made, the propriety of which turns not on the difference in technical scores or ratings per se, but on whether the source selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP evaluation scheme. Southwestern Marine, Inc.; American Sys. Eng'g Corp., supra, at 17; DynCorp, B-245289.3, July 30, 1992, 93-1 CPD ¶ 69 at 8. Even where a source selection official does not specifically discuss the cost/technical tradeoff in the source selection decision, we will not object if the tradeoff is otherwise reasonable based upon the record before us. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 12-13.

It is true that the Navy believes, as documented in the source selection documentation, that award to RCI was on the basis that the two firms' proposals were essentially equal and that RCI offered a lower evaluated cost. As noted above, however, the contemporaneous record reflects that the contracting officer in making his selection decision considered the quantified technical difference between Veda's and RCI's proposals. See also Tr. at 526, 566-67. That is, the contracting officer recognized that the firms' technical proposals were very close in technical merit--that Veda's higher rating reflected its specific experience as the incumbent contractor and that RCI had very good, transferrable experience. The contracting officer was also informed of the considerable evaluated difference in the firms' probable costs of performance, which the agency calculated would be approximately $2.2 million. Even considering the agency's assessment of the $1.5 million of costs associated with RCI's lack of specific experience at the North Island NADEP, the contracting officer found that RCI's costs to perform the contract would still be much lower than Veda's.

Veda does not dispute the agency's calculation of the costs required to "bring RCI up to speed." Instead, Veda challenges the agency's cost realism evaluation of its proposal, arguing that the agency unreasonably adjusted its proposed [DELETED]

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[18](...continued)
contractor costs assessed for RCI in the agency's cost impact statement evaluate the estimated costs of performance associated with RCI's evaluated proposal weaknesses, rather than actual transition costs.

upward, which resulted in an additional [DELETED] being added to Veda's evaluated costs. Veda argues that overstating its evaluated costs by [DELETED] inflated RCI's cost advantage, which undermines the reasonableness of the award selection.

RCI responds that its cost advantage is actually much greater than that considered by the contracting officer because the agency erred when it did not give RCI credit for its offered overhead cost cap (which, as noted above, was included in the contract awarded to RCI) in the agency's cost realism calculation of RCI's probable costs. RCI states, as documented in the Navy's BCM, that RCI's overhead cost cap would reduce RCI's evaluated probable costs of performance by $1.7 million, increasing RCI's evaluated cost advantage over Veda's evaluated costs to nearly $4 million.[19] Veda replies that the agency properly did not consider RCI's offered cost cap because of the possible risks to RCI's performance under the contract.

We agree with RCI that the Navy should have credited RCI with its proposed overhead expenses cap in the agency's cost realism evaluation of RCI's proposed costs. An offeror that proposes a cost cap or ceiling has shifted the risk of overruns from the government, such that upward adjustments to capped costs are improper, unless the caps are ineffective or can be circumvented. Advanced Sciences, Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 12; BNF Techs., Inc., B-254953.3, Mar. 14, 1994, 94-1 CPD ¶ 274 at 5.

RCI in its cost proposal provided as follows:

> RCI hereby agrees to accept a cap on total Overhead expenses under the proposed contract at [DELETED] percent of the applicable base (direct labor plus fringe benefits). Any Overhead expenses allocable to this contract that exceed [DELETED] percent of the applicable base will be absorbed by RCI at no cost to the Navy.

RCI's proposal, including this promise, were incorporated into the contract awarded to the RCI. We find that the above offer of an overhead cost cap was unequivocal and, when accepted by the agency in its award of the contract, was effective and binding. Accordingly, RCI's overhead cost cap should not have been ignored by the Navy in its cost realism evaluation of costs.

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[19]The agency and RCI also argue that Veda failed to propose [DELETED], which would result in Veda's probable costs of performance being approximately [DELETED] higher. Veda does not rebut this assertion. Although we need not resolve this issue, we note that taking the additional cost of [DELETED] into account would likely increase RCI's cost advantage.

Nevertheless, Veda complains that acceptance of RCI's overhead cap will pose a serious technical risk that the agency did not evaluate. An agency may consider the performance risk arising from an offeror's proposed cost cap. Cubic Field Servs., Inc., B-247780, June 17, 1992, 92-1 CPD ¶ 525 at 5. The RFP here provided that the agency as a part of its cost realism evaluation would assess any risk that the offeror will be able to provide the services for the cost proposed. RFP § M at 66. Although RCI did not provide specific information in its proposal supporting the firm's ability to absorb the offered cost cap, the contract negotiator obtained information from DCAA indicating that RCI could in fact successfully absorb the cap on its overhead expenses. Tr. at 406-07, 409. The contract negotiator and contracting officer testified that they considered the risk arising from RCI's offered overhead cap and found that the risk to RCI's successfully performing the contract was minimal, given the size and financial strength of RCI. Tr. at 408-12, 496-97, 547-50, 570. While Veda disagrees with this assessment, it has not shown it to be unreasonable.[20]

In sum, the record shows that if the Navy had properly considered RCI's cost cap in its cost evaluation, RCI's evaluated cost advantage would have been substantially greater than that which the contracting officer found justified award to RCI as offering the greatest value to the government. Given this, we need not determine whether Veda's [DELETED] was properly accounted for in the Navy's evaluation because, even accepting Veda's [DELETED] calculation of the cost impact of the Navy's alleged error in determining its probable cost, this adjustment could not reasonably affect the agency's selection decision.

Veda also protests that RCI improperly failed to inform the Navy that Dr. Hill would not be available as one of its project managers as RCI had proposed. The Navy and RCI respond that Dr. Hill did not leave the employ of RCI's subcontractor until after the submission of proposals and that, because award was made without discussions, RCI had no opportunity to change its proposed personnel. The Navy notes that, in any event, it knew during the evaluation of technical proposals that Dr. Hill had changed employers and may not be available to be assigned to tasks under the contract. The Navy also says that Dr. Hill, as only 1 of 45 key personnel proposed by RCI, was not significant in the agency's evaluation of RCI's proposal under the personnel qualifications factor.

Veda acknowledges that Dr. Hill changed employers after the closing date for submission of proposal, but argues that RCI should nevertheless have informed the Navy of Dr. Hill's unavailability to perform under the contract. In this regard, Veda argues that it is immaterial whether RCI had an opportunity to revise its proposal,

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[20]Veda argues that there is no contemporaneous documentation recording this analysis. Although this is true, this alone does not demonstrate that the agency's judgment regarding RCI's ability to absorb its offered cost cap was unreasonable.

that RCI had an obligation to inform the Navy of Dr. Hill's unavailability, and that RCI's failure to do so constituted a proposal misrepresentation. Veda also argues that, in any event, RCI had an opportunity to so inform the Navy when RCI and Veda extended their offers in response to the agency's request.

Generally, an offeror's misrepresentation concerning personnel that materially influences an agency's consideration of its proposal provides a basis for proposal rejection or termination of a contract issued based upon the proposal. ManTech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326 at 5. A misrepresentation is material where an agency has relied upon the misrepresentation and that misrepresentation likely had a significant impact upon the evaluation. Id.

We conclude from the record here that RCI did not make any material misrepresentations concerning its proposed personnel. Regarding Dr. Hill's resume, there simply was no material reliance upon a proposal misrepresentation. The record establishes that the TEB and contracting officer were specifically aware of Dr. Hill's change in employment during this procurement and thus were not misled. Tr. at 60-61, 265-66, 543. In addition, the presence or absence of Dr. Hill had little impact upon the agency's evaluation of RCI's proposal under the personnel qualifications factor. Dr. Hill was only 1 of 45 key personnel proposed by RCI, and was proposed to work [DELETED] as 1 of 3 individuals filling the project manager position. The Navy reasonably found that Dr. Hill's absence would have "little or no impact to the overall evaluation of the technical competence contained in the offeror's proposal."[21] Tr. at 61.

Veda also protests that RCI engaged in "bait and switch" practices by misrepresenting its intent to use the personnel proposed for this contract. In this regard, Veda asserts that RCI has advertised for qualified aviation support personnel in the San Diego area and approached a number of incumbent personnel about performing under this contract.

In response, RCI has provided sworn declarations supporting its intention to use the personnel it proposed. Although RCI admits that it has advertised for persons who could perform tasks under the contract and has met with some Veda employees, RCI states that this was for the purpose of determining what pool of talent was available in the San Diego area for the performance of contract tasks. RCI

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[21]Veda also argues that the Navy erred in evaluating RCI's proposal considering Dr. Hill for some of the required project manager hours, where the agency knew that Dr. Hill was no longer employed by the RCI team. Based upon our review of the record, we conclude that the Navy's consideration of Dr. Hill's resume had a negligible impact on the Navy's evaluation of the offers or the selection of RCI's proposal for award.

maintains that it proposed qualified individuals whom it intends to use in the performance of the contract and denies that it engaged in "bait-and-switch" actions. In this regard, RCI notes that no Veda employees have been offered employment by RCI and that RCI has not attempted to make any substitutions of personnel.

We find no evidence of a "bait-and-switch" here. It is not unusual in government contracts for proposed personnel to change employers and/or jobs after the submission of proposals. We also find nothing unusual in RCI's investigation of available talent in the San Diego area. Rather than evidencing RCI's intention to mislead the government, we find that this simply evidences a prudent business practice that a contractor would employ to ensure that it has at all times the personnel necessary to perform its contract.[22]

The protest is denied.

Comptroller General
of the United States

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[22]Contrary to the protester's allegation, we also do not find that [DELETED] establishes RCI's intent not to use the personnel it proposed. RCI correctly notes that the RFP did not require offerors to propose [DELETED] costs and allowed offerors to make a business determination to absorb these costs.