

NAVAL POSTGRADUATE SCHOOL

Monterey, California



THESIS

**AN ANALYSIS OF PROTESTS OF CONTRACTS AWARDED
USING THE BEST VALUE TRADE-OFF PROCESS FROM
JANUARY 1998 THROUGH DECEMBER 1999**

by

Casey C. Burns

June 2000

Thesis Advisor:
Associate Advisor:

David A. Smith
J. Armstead

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DECEMBER 1999**

Casey C. Burns
Lieutenant Commander, United States Navy
B.S., Lake Superior State University, 1987

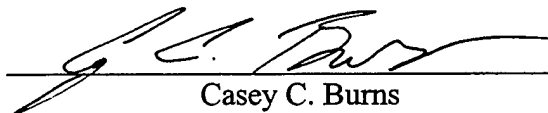
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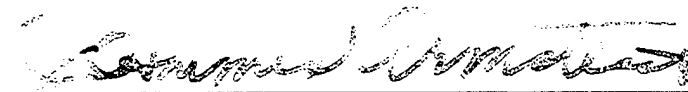
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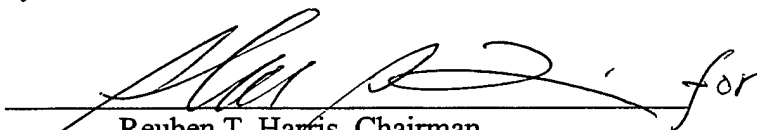
Author:


Casey C. Burns

Approved by:


David A. Smith, Thesis Advisor


J. Holmes Armstead, Associate Advisor

 for
Reuben T. Harris, Chairman
Department of Systems Management

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ABSTRACT

The purpose of this thesis is to analyze protests of contract awards brought before the Comptroller General, General Accounting Office from January 1998 through December 1999 as a means to identify areas of possible improvement among Federal contracting agencies. Specific emphasis is on the underlying causes of protest sustainment. This thesis distills eight sustaining elements from the GAO findings. Finally, this thesis offers recommendations to Federal contracting agencies in an effort to help mitigate the risk of a sustainable contract award protest.

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I. INTRODUCTION

A. DISCUSSION

Since the release of the Federal Acquisition Regulation (FAR) Part 15 rewrite, Federal contracting officers have been encouraged to obtain the best value to the Government by conducting trade-offs when making source selections. If, in the contracting officer's opinion, it is in the best interests of the Government to award a contract to other than the lowest-priced, technically acceptable offeror or to the highest technically rated offeror, then he or she may make trade-offs. One stipulation for making trade-offs is that they be properly documented and supported by a reasoned explanation.

Even assuming that a contracting officer follows this procedure, there is nothing to stop an unsuccessful offeror from filing a protest of the award with the General Accounting Office (GAO). Even though GAO's decisions are not binding on Federal agencies, they are highly influential and signal Congress's intent to ensure full and open competition in Government procurement. Protests arising from contract awards have serious potential for both adding costs to an acquisition and delaying delivery to the end user. An analysis of GAO's decisions should

reveal ways to mitigate the risk of sustainable contract award protests.

B. OBJECTIVE

This study will benefit both current and prospective Federal Government contracting officers to execute their duties. For the price of a postage stamp, disgruntled would-be contractors can bring the acquisition process to a grinding halt. This can result in increased costs to the Government and significant delays in delivering items to the end user.

Contracting officers will be better prepared to mitigate the risk of sustainable contract award protests if they are aware of: 1) the historically common reasons cited in contract protests; and 2) which categories of protests of awards using the best value trade-off process have high sustainment rates.

C. RESEARCH QUESTIONS

1. Primary Research Question

To what extent will an analysis of General Accounting Office decisions of protests of contracts awarded using the best value trade-off process provide insight into the nature of Government contract protests and suggest ways to reduce such protests in the future?

2. Secondary Research Questions

- What will an analysis of Government contract protests from January 1998 through December 1999 suggest about the nature of Government contract protests?
- Do sustained protests of contracts awarded using the best value trade-off process fall into distinct categories?
- What will an analysis of the research results suggest about weaknesses in Government contracting norms and execution practices?
- How can the results of this analysis be used to reduce the risk of protest?
- How can the results of this analysis be used to reduce the risk of a sustainable protest?

D. SCOPE

This thesis will include: 1) a review of all decisions rendered during calendar years 1998 and 1999 by the Comptroller General, General Accounting Office, in response to protests of contract award; and 2) an in-depth analysis of protests of contract awards using the best value trade-off source selection process. The thesis will conclude

with recommendations to contracting officers for mitigating the risk of sustainable protests of contract award.

E. METHODOLOGY

This study was conducted using the following methods:

- Research using LEXIS/NEXIS to identify and acquire applicable cases.
- Review and analysis of each protest brought before the Comptroller General and decided during calendar years 1998 and 1999. Estimated total: 558 cases.
- Thorough examination of all protests of contracts awarded using the best value trade-off source selection process.
- Categorization and analysis of sustained protests in order to generate recommendations and conclusions regarding sustained protests.

F. DEFINITIONS

The following definitions will allow the reader to better understand the analysis in the following chapters. In addition, Appendix A provides a listing of selected acronyms used throughout this thesis.

1. Acquisition

"Acquisition" means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government

through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins when agency needs are established and includes the following: description of requirements to satisfy agency needs; solicitation and selection of sources; award of contracts; contract financing; contract performance; contract administration; and those technical and management functions directly related to the process of fulfilling agency needs by contract. [Ref. 1: p.P-3]

2. Best Value

"Best Value" means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement for supplies or services. To obtain the greatest overall benefit in response to the requirement, one must consider the impact of every decision and action on price, quality, timeliness, risks, competition, socio-economic requirements, and compliance with ethical standards.

[Ref 1: p.P-3]

3. Contract

A contract is a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It

includes all types of commitments that obligate the Government to an expenditure of appropriated funds; these commitments are, except as otherwise authorized, in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. §6301.

[Ref. 2:2.101]

4. Interested Party

An interested party is an actual or prospective bidder or offeror with a direct economic interest in the procurement. In challenges of the evaluation of proposals and the award of contracts, this generally means an offeror that would be in line for award if the protest were sustained. [Ref. 3: p.9]

5. Offer

"Offer" means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids";

responses to requests for proposals (negotiation) are offers called "proposals"; responses to requests for quotations (negotiation) are not offers and are called "quotes." [Ref. 2: 2.1]

6. Protest

Protest means a written objection by an interested party to any of the following:

- A solicitation or other request by an agency for offers for a contract for the procurement of property or services.
- The cancellation of the solicitation or other request.
- An award or proposed award of the contract.
- Termination or cancellation of an award of the contract if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

[Ref. 2: 33.101]

7. Source Selection Authority (SSA)

The SSA is the person responsible for making the source selection decision. While the SSA may use reports and analyses prepared by others, the source selection

decision must represent the SSA's independent judgment.

[Ref. 2:15.308]

8. Source Selection Evaluation Board (SSEB)

The team that actually reviews the contractor's proposals may be known as the "Source Selection Evaluation Board (SSEB)," "Source Evaluation Board (SEB)," "Source Evaluation Team (SET)," or another similar name. These experts may be further divided into sub-teams to evaluate different aspects of each contractor's proposal (e.g., cost/price, technical, and past performance). [Ref. 4: 8.2]

9. Trade-off Process

In negotiated procurements, the most common approach to achieve a best-value selection is a trade-off process in which dollars are traded for incremental value, and cost is only one factor, not the controlling factor. A trade-off process is appropriate when it is in the Government's best interest to consider award to other than the lowest-priced offeror or other than the highest technically rated offeror. [Ref. 2: 15.101-1]

G. ORGANIZATION

Chapter I of this thesis presented the research questions used to gain insight into the nature of protests of contracts awarded using the best value trade-off process. Additionally, this chapter discussed the scope of

the thesis, the researcher's methodology, and the relevant terminology used throughout this study.

Chapter II is a review of the trade-off process used to obtain the best value for Federal Government contracts, including the origin of trade-offs, the development of the trade-off process, and the integrity of the process. The chapter also provides a brief overview of the protest process.

Chapter III is a quantitative analysis of sustained protests of contracts awarded using the best value trade-off process for calendar years 1998 and 1999, including a description of the methodology used to obtain the data.

Chapter IV will present a qualitative analysis of sustained protests of contracts awarded using the best value trade-off process for calendar years 1998 and 1999. This chapter also categorizes the recurring reasons for sustained protests and identifies common weaknesses that contributed to these protests being sustained.

Chapter V presents the conclusions and recommendations generated from this research, as well as suggested areas for further research.

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II. BACKGROUND

A. INTRODUCTION

This chapter will present an overview of the trade-off process used to obtain the best value for Federal Government contracts. The purpose of this chapter is to provide the reader with a basic understanding of the trade-off process. For a more detailed discussion, see Appendix B, which contains excerpts from "AMC pamphlet 715-3: Contracting for Best Value; A Best Practices Guide to Source Selection." Specifically, this chapter will stress the importance of maintaining integrity in the trade-off process. Finally, the chapter will provide a brief overview of the protest process.

1. Review of the Trade-off Process in Contracting

Acquisition professionals, over use the term "Best-value" as it is commonly encountered. According to one source, "Best-value" means buying on other than a price-only basis, the usual Government practices." [Ref. 5: p.3-1]

Every acquisition brokered on behalf of the Federal Government must be awarded "to the responsible source whose proposal is most advantageous to the United States, considering only cost or price and the other factors included in the solicitation."

[Ref. 3: U.S.C. §2305(b)(4)(c)]. By definition, a contract award must be determined to be in the Government's best interests. In other words, a best-value award is one that is made to the offeror proposing the lowest price or the highest technically rated offer, or some combination of the two *as long as the award is determined to be the most advantageous to the United States*. For this reason, the researcher has chosen to use the term "trade-off process" to identify contracts awarded using the trade-off decisional rule.

A trade-off process is appropriate when it is essential to evaluate and compare factors other than cost or price in order to select the proposal that is in the Government's best interest. Trade-offs sometimes mean that awards are not made to those who offer the lowest price or the highest technically rated offeror. [Ref. 2: 15.101(a)]

The following are instances in which the trade-off process may be particularly appropriate:

- Government requirements are complex or difficult to define.
- Services are not clearly defined, or highly skilled personnel are required.

- The Government is willing to pay extra for capability, skills, or reduced risk if the added benefits are worth the price premium. [App. B:p.120-121]

A best-value award using the trade-off process then falls along the continuum that includes: 1) lowest priced, technically acceptable (LPTA) and 2) highest technically rated offer. A frequently cited range of alternatives—the best-value continuum—is often used to describe this trade-off of alternatives along the spectrum of options noted above. [Ref. 2: 15.101]

For the purposes of this thesis, all contract awards discussed will be those evaluated solely using the trade-off process.

2. Integrity of the Trade-off Process

One of the fundamental concerns of Government contracting officers is maintaining the public's trust—the trust of prospective contractors as well as of the general public. Maintaining the integrity of the procurement process is not only an ethical issue, but it is also a legal one since there are both civil and criminal penalties for violations. [App. B: p.116]

One way contracting officers in negotiated procurements maintain this trust is to award contracts

solely in accordance with the stated evaluation criteria specified in each solicitation. [Ref: 2:1.102]

Specifically, all factors and significant sub-factors that will affect contract award must be stated clearly in the solicitation, along with their relative importance. Negotiated procurements can be complex, including first-level evaluators, a source selection evaluation board (SSEB), a source selection advisory council (SSAC) and, ultimately, the source selection authority (SSA). The illustration on page six of Appendix B provides an example of a complex source selection team.

Alternatively, negotiated procurements can be less complex and include only first-level evaluators and the SSA. The diagram on page seven of Appendix B illustrates a typical non-complex source selection team.

[Ref. 2:15.304(d)]

By evaluating each proposal strictly against the factors and sub-factors stated in the solicitation, and *not* by comparison to the proposals of other offerors, the first-level evaluators do their part to maintain the integrity of the source selection process. Depending on the complexity of the procurement, the first-level evaluators provide the results of their evaluation either to the SSAC or directly to the SSA. For procurements that

require a complex source selection team, the evaluators forward their evaluation to the SSAC, which will compare the various offers and make an award recommendation to the SSA. In less-complex procurements, the SSA receives the evaluations directly from the first-level evaluators and performs the tasks of both comparing offers and selecting the offer(s) for award. By adhering to this policy, the source selection team helps ensure that the public's trust is maintained.

The SSA then—as the final decision authority—must make an award decision based on a comparative assessment of proposals against all source selection criteria. The SSA must consider all available information, including reports and analyses prepared by others, in making this decision. This award decision must represent the SSA's independent judgment and must be adequately documented. The documentation should include the rationale for any business judgments and trade-offs made by the SSA, as well as the benefits associated with any price premiums accepted.

[Ref. 2:15.308]

B. PROTEST PROCESS

Any interested party in the acquisition process, either because of frustrated feelings or suspicions of unfair treatment, may file a formal protest. Such protests

may cost the Government a lot of time and administrative effort, as well as the involvement of the entire acquisition team. Additionally, with limited exceptions, a protest will suspend performance of the contract pending a decision by the agency or the Comptroller General. It is, therefore, in everyone's best interests to avoid any actions—perceived or actual—that could prompt a prospective contractor to file a formal protest.

Contractors have several avenues for attempting to resolve contract award controversies. This thesis will consider only those protests filed with the Comptroller General for calendar years 1998 and 1999. The following paragraphs will outline: 1) how a formal protest is filed; 2) an agency's action upon receiving a protest; 3) avenues open to the protestor upon receiving the agency's response; and 4) the protest hearing process and the General Accounting Office's (GAO) decision. Table 1 below presents a snapshot of the intricacies involved when a contract award is contested.

TABLE 1.
CONTRACT AWARD CONTROVERSIES

CONTRACT AWARD CONTROVERSIES				
Forum	Procuring Agency	Court of Federal Claims (COFC)	District Courts	GAO
Who May Protest	Interested parties	Persons with implied contract for good faith consideration of offer and interested parties	Persons adversely affected or aggrieved by agency action and interested parties	Interested parties
Jurisdiction	FAR 33.103	28 U.S.C. §1491(a) (1) and (b) (2)	5 U.S.C. §702, 28 U.S.C. §1346(2) and 28 U.S.C. §1491(b) (2)	31 U.S.C. §3551, with deference to actions in other forums
Time for Protest	Pre- and post award	Pre- and post award	Pre- and post award	Pre- and post award
Time of Decision	No designated time	No designated time	No designated time	100 calendar days (65 calendar days - express option)
Procedures	Various agency procedures; Informal in nature	Evidentiary trial, including discovery	Evidentiary trial, including discovery	Submission of written reports and optional hearing
Burden of Proof	Probably same as GAO	Clear and convincing evidence of violation	Preponderance of evidence	Presumption of correctness of agency action
Standards of Review	Violation of statute or regulation	No rational basis or clear violation of statute or regulation	No rational basis or clear violation of statute or regulation	Violation of statute or regulation
Interim Remedies	Agency must delay award or suspend performance unless CICA override	Discretionary temporary restraining order or preliminary injunction	Discretionary temporary restraining order or preliminary injunction	Agency must delay award or suspend performance unless CICA override
Remedies	Any appropriate actions	Injunction or declaratory judgment if consistent with national defense; bid or proposal costs	Injunction or declaratory judgment, unless inconsistent with overriding public interest, bid or proposal costs (limited to \$10,000 under §1346(2))	Recommend that agency recompetes, terminate, or award; contract costs; attorney's fees; bid or proposal costs
Appeals	If within jurisdictional time period, begin action again in either GAO, COFC, or district court	Federal Circuit	Applicable court	Indirectly through suit in the COFC or district court

[Source: Ref. [6:p796]

1. Protest Filed

The first recourse available to a prospective contractor who feels unfairly treated is to file a formal written protest to the agency that issued the solicitation. This formal protest must contain, among other things, a detailed statement of the legal and factual grounds for the protest, including a description of resulting prejudice to the protestor. [Ref.2 :33.103(d)(2)]

If the protest is based on alleged improprieties in a solicitation, and a protest is not filed prior to the closing date for receipt of proposals, such a protest will be considered "untimely filed" and will normally be denied. In all other cases, protests shall be filed no later than ten days after the basis of protest is known, or should have been known, whichever is earlier. Becoming aware of the basis for a protest normally occurs during the debriefing process. See Appendix B, pages 179-202 for a thorough understanding of the debriefing process. [Ref.2: 33.103(e)]

If the agency denies the protest, then the protestor has the option of pursuing the protest with the GAO. If the protestor decides take the protest to GAO, then he or she must file it not later than ten days after learning of

2. Agency Response

Upon receiving a protest before award, unless the acquisition fulfills an urgent and compelling need or is otherwise in the Government's best interest, the contracting officer will withhold award pending resolution of the protest.

If the protest is received within ten days after contract award, or within five days after a debriefing date offered to the protestor, the contracting officer shall suspend performance of the contract pending resolution of the protest. Here, too, the same exceptions of "urgent and compelling need" or "best interest of the Government" apply. [Ref: 2:33.103(f)].

The agency then must make every effort to resolve the agency-level protest within 35 days of receipt of the protest.

3. Protestor Rebuttal

A protestor who remains dissatisfied after resolution of his or her protest at the agency level may then file protest at GAO. From this date, the agency has 30 days to submit to GAO (with copies to the protestor and any other interested parties) a complete written report responding to the protest, including all relevant documents and an explanation of the agency's position. The protestor may

then file written comments on the agency report. Should the protestor fail to file comments, or, alternatively, request in writing that the case be decided on the existing written record, the case will be dismissed. [Ref.3:p.28-31]

4. GAO Hearings and Decision

GAO may, either at the request of a party or on its own initiative, conduct hearings in person or by telephone. Due to the increased costs and burdens they create, such hearings are held only when necessary. If GAO holds a hearing, all parties will be permitted to file written comments on the hearing.

Once GAO has all the information necessary to decide the protest, it will issue a written decision through the Comptroller General within 100 days after the protest is filed. GAO's decision will be to dismiss, deny or sustain the protest. The general criterion for GAO to sustain a protest is that the contracting agency violated procurement statutes or regulations. GAO will also recommend appropriate corrective action for those cases it sustains. Finally, GAO will recommend that the protestor be reimbursed for the costs of filing and pursuing the protest. [Ref. 3: p37-38]

GAO's decisions are not binding, but are merely recommendations to which the contracting agency is not

required to adhere. The Comptroller General does, however, require agencies to respond in writing whenever they choose not to follow GAO's recommendations. The Comptroller General, in turn, reports to Congress annually on each instance where its recommendations were not fully implemented. In this way, the GAO exercises significant influence over the actions of the contracting agencies.

[Ref. 3: p.38]

C. CONCLUSION

This chapter first provided a brief overview of the trade-off process. For a more comprehensive understanding of contracts awarded using the trade-off process, see Appendix B, which contains excerpts from the Army Material Command's pamphlet 715-3 entitled "Contracting For Best Value, A Best Practices Guide To Source Selection." This pamphlet is an excellent reference guide to the trade-off source selection process, from planning the procurement through debriefing offerors.

Next, this chapter presented highlights of the protest process as it pertains to protests filed with the General Accounting Office. *Competitive Negotiation, The Source Selection Process*, by Cibinic, Nash and O'Brien, and *Bid Protests At GAO: A Descriptive Guide*, by the Office of General Counsel, GAO both are outstanding sources for a

comprehensive discussion of contract award controversies
and the bid protest process at GAO, respectively.

III. QUANTITATIVE ANALYSIS OF PROTESTS FOR CALENDAR YEARS 1998 AND 1999

A. INTRODUCTION

This chapter provides an overview of the quantitative results of the data gathered from cases decided by the Comptroller General for calendar years 1998 and 1999. The chapter first presents the methodology used for collecting data. Then, it explains the rationale for narrowing the population to protests of contracts awarded using the trade-off process. Finally, the chapter provides statistics to give the reader an understanding of the breakdown of the sustained protests studied.

B. DATA COLLECTION METHODOLOGY

The global sample population for this study consisted of 558 protests decided by the Comptroller General between 01 January 1998 and 31 December 1999.

These cases were drawn from the LEXIS-NEXIS system by using the following queries within the Comptroller General sub-directory of the General Federal directory:

- "Protest" AND "date>12/31/97" AND "date<7/1/98"
- "Protest" AND "date>6/30/98" AND "date<1/1/99"
- "Protest" AND "date>12/31/98" AND "date<7/1/99"
- "Protest" AND "date>6/30/99" AND "date<1/1/00"

The researcher used four queries to extract the necessary data because the LEXIS-NEXIS system allows no more than 200 cases to be printed at one time. The resulting queries distributed the global population relatively evenly.

From this global population, the researcher analyzed each case to determine if a trade-off process was used in evaluating solicitations and awarding the subject contract. This process narrowed the population to 325 cases. Appendix C provides a complete listing of these cases.

Once these protests were identified, various data elements were captured for use in analyzing the cases further. In order to standardize this data collection, the researcher created a data collection form that contained the following data fields:

- GAO case number
- Case name
- Decision date
- Decision
- Award Agency
- RFP number
- Reason for protest
- Weaknesses identified

Next, the researcher selected protests that the Comptroller had either completely or partially sustained, resulting in a target population of 47 cases. Finally, the researcher eliminated five cases whose basis for protest did not meet his definition of an element of the trade-off process (e.g., competitive range determinations, small business set-aside decisions, etc.) to arrive at the final target population of 42 cases. Figure 1 below provides a graphic representation of the narrowing of the global population down to the final target population.

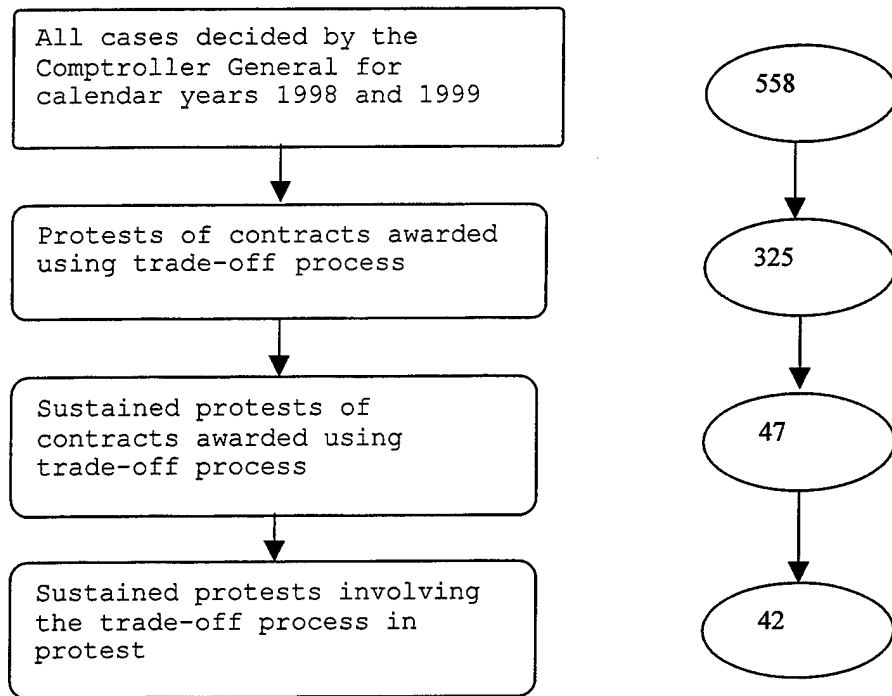


FIGURE 1. DETERMINING STUDY TARGET POPULATION
[Source: Developed by researcher.]

C. METHODOLOGY FOR SELECTING THE PROTESTS OF CONTRACTS AWARDED USING THE TRADE-OFF PROCESS

As stated above, the Comptroller General sustained 47 protests of contracts awarded using the trade-off process during the time period studied. Of these, five were protests of peripheral issues rather than of the trade-off process itself and, therefore, were eliminated. Table 2 lists the five cases that were eliminated from the target population, as well as the element protested.

TABLE 2. PROTESTS FAILING TO MEET DEFINITION
[Source: Developed by researcher.]

	Name	Reason for protest
1	Aalco Forwarding	RFP not properly set-aside for small business.
2	Hoechst Marion Russel, Inc.	Requirements stated in RFP do not realistically state the Agency's requirements.
3	Technical Support Services, Inc.	RFP did not state lowest priced, technically acceptable as award basis yet awarded as such.
4	Pemco Aeroplex, Inc.	Unduly restrictive of competition due to combining requirements.
5	Dual, Inc.	Awardee made misrepresentations in offer and agency relied upon these in its evaluation.

D. OVERALL STATISTICS

Of the 558 total protests for the calendar years 1998 and 1999, 81 were sustained. The sustainment rate for award protests in general is, then, 14 percent (14.34 percent). This compares to 325 protests of contracts awarded using the trade-off process, of which 47 were

ultimately sustained. The researcher did not include the remaining 233 protests filed because they were not protests of contracts awarded using the best value trade-off process as their source selection method. Rather, they were either awards that used sealed bidding or lowest priced/technically acceptable as their source selection method, or protests of issues not concerning the trade-off process in source selection (e.g., requests to reconsider a previous decision, requests to establish the amount to be reimbursed resulting from a previous decision, etc.). Of the 47 remaining in the target population, five did not involve the trade-off process. This gives a cumulative sustainment rate for trade-off process protests of 13 percent (12.92 percent) for calendar years 1998 and 1999.

Considering all protests of contracts awarded for calendar year 1998 independently, 328 were decided by the Comptroller General. Of these 328 protests, 48 were sustained, giving a sustainment rate of 15 percent (14.63 percent) for all protests.

By comparison, there were 196 protests of contracts awarded using the trade-off process. Of these, 168 were denied or dismissed, five were sustained, but did not involve the trade-off process, and 23 were sustained protests that challenged a trade-off process element. This

gives a sustainment rate of 12 percent (12.04 percent) for calendar year 1998.

Similarly, there were a total of 230 protests in calendar year 1999. Of these, 33 were decided in favor of the protestor (sustained), providing a sustainment rate of 14 percent (14.35 percent) for that year.

This compares to a total of 129 protests of contracts awarded using the trade-off process. Of these, 19 were sustained and met the researcher's definition of protests of contracts awarded using the trade-off process. This, then, yields a sustainment rate for calendar year 1999 of 15 percent (14.73 percent). Table 3 provides a summary of the sustainment rates for specific periods and protest classifications. Figure 2 graphically presents the information for both years studied.

TABLE 3. GENERAL AND SPECIFIC SUSTAINMENT RATES FOR PERIODS
STUDIED

[Source: Developed by researcher.]

<i>Category</i>	<i>No. Of Cases and Percentages</i>		
	<i>1998</i>	<i>1999</i>	<i>Combined</i>
Total cases	328	230	558
Total Sustained	48/15%	33/14%	81/14%
Trade-off process cases	196	129	325
Sustained trade- off process protests	23/12%	19/15%	42/13%

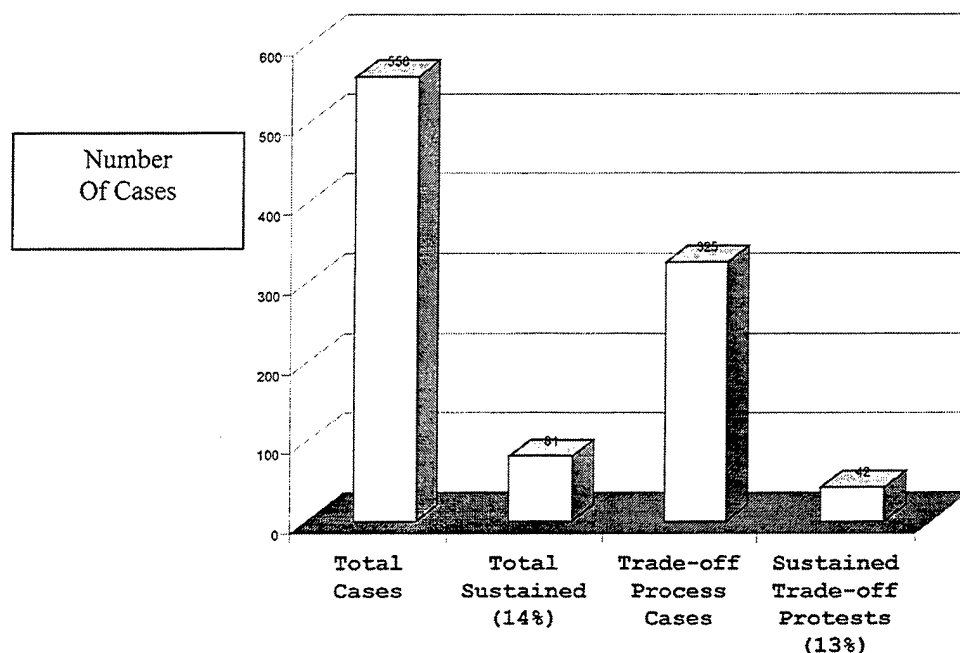


Figure 2. PROTEST DATA FOR CY98/99
[Source: Developed by researcher.]

By further analyzing only the remaining 42 sustained protests, the researcher derived the following information. Analysis of the type of Government agency that awarded the contracts resulting in sustained protests provides the following data. Exactly half of the sustained protests were for contracts awarded by an Agency within the Department of Defense (DoD). The other half of the contracts were awarded by various other Federal agencies. However, considering the number of protests of contracts awarded using the trade-off process, the DoD had a lower sustainment rate than the other Federal agencies as a whole over both years—11 percent (11.11 percent) for the DoD compared to 15

percent (15.44 percent) for all other Federal agencies. The remainder of the statistical analysis will treat these two groups—DoD and Other Federal Agencies (OFA)—as distinct segments of the target population for comparison purposes. Table 4 provides a tabular breakdown of this information.

Table 4. Breakdown of protests and sustainment rates by DoD component compared to other Federal agencies.

Source. Developed by the researcher.

	<u>1998</u>		
	Number of Protests	Number Sustained	Sustainment Rate
DoD	108	9	8.33%
Other Fed.	90	14	15.56%
Total	198	23	11.62%
	<u>1999</u>		
	Number of Protests	Number Sustained	Sustainment Rate
DoD	81	12	14.81%
Other Fed.	46	7	15.22%
Total	127	19	14.96%
	<u>Cumulative</u>		
	Number of Protests	Number Sustained	Sustainment Rate
DoD	189	21	11.11%
Other Fed.	136	21	15.44%
Total	325	42	12.92%

E. STATISTICS BY AGENCY

Analysis of the data within particular agencies provides the following results. Within the Department of Defense, the Navy accounted for nine sustained protests of trade-off awards for calendar years 1998 and 1999. As a percentage of all sustained protests of contracts awarded by the DoD using the trade-off process, the Navy awarded 43 percent (42.86 percent) of the contracts for the period studied. Among protests of Navy contracts awarded using the trade-off process, there is a sustainment rate of 15 percent (14.52 percent) for calendar years 1998 and 1999.

Similarly, of the 21 sustained protests of contracts awarded using the trade-off process by DoD agencies during this period, the Army was responsible for six, or 29 percent (28.57 percent). These numbers equate to a sustainment rate of ten percent (9.84 percent) for protests of Army contracts awarded using the trade-off process.

Still, within the Department of Defense, two other agencies contributed to the DoD total with more than one sustained protest. The Air Force and the Defense Finance and Accounting Service (DFAS) each accounted for two sustained protests. The DFAS protests occurred in calendar year 1998 and accounted for 22 percent (22.22 percent) of the DoD total of nine sustained protests that year. With a

total of two protests of DFAS contracts awarded using the trade-off process in that, this produces a 100 percent sustainment rate. In calendar year 1999, the study reveals a single protest of a DFAS trade-off award that was ultimately denied by the Comptroller General. Similarly, the Air Force logged two sustained protests in calendar year 1999, which reflected 17 percent (16.67 percent) of the DoD total of 12. Given that there were 45 protests of Air Force trade-off contracts awarded for the two years studied, this gives a sustainment rate of four percent (4.44 percent). Table 5 provides a summary of these results.

Table 5. Summary of protests and protest sustainment rates within the Department of Defense.
Source. Developed by the researcher.

	<u>1998</u>		
	Number of Protests	Number Sustained	Sustainment Rate
Air Force	26	0	0.00%
Army	37	2	5.41%
DFAS	2	2	100.00%
Navy	32	4	12.50%
Other DoD	11	1	9.09%
DoD Total	108	9	8.33%
	<u>1999</u>		
	Number of Protests	Number Sustained	Sustainment Rate
Air Force	19	2	10.53%
Army	24	4	16.67%
DFAS	1	0	0.00%
Navy	30	5	16.67%
Other DoD	7	1	14.29%
DoD Total	81	12	14.81%
	<u>CUMULATIVE</u>		
	Number of Protests	Number Sustained	Sustainment Rate
Air Force	45	2	4.44%
Army	61	6	9.84%
DFAS	3	2	66.67%
Navy	62	9	14.52%
Other DoD	18	2	11.11%
DoD Total	189	21	11.11%

Among Other Federal Agencies (OFA), only four of the 13 agencies had more than one sustained protest. These were the Department of Health and Human Services (HHS), the Department for Housing and Urban Development (HUD), the Department of Agriculture (DoA) and the General Services Administration (GSA).

The Departments of Health and Human Services and Housing and Urban Development topped the list with four

sustained protests each. This equates to 19 percent (19.05 percent) of all sustained protests within the OFA subgroup. The difference between the two agencies, in terms of sustained protests, lies in the number of protests filed against them—ten for HHS and 11 for HUD. This yields sustainment rates of 40 percent (40.00 percent) and 36 percent (36.36 percent), respectively. The next Federal agency that experienced more than a single sustained protest was the Department of Agriculture (DoA), which had three. That accounted for 14 percent (14.29 percent) of all OFA sustained protests and gave DoA a sustainment rate of 20 percent (20.00 percent), given that there were 15 protests filed against their awarded contracts for the relevant period. The only other Federal agency to receive more than a single unfavorable decision from the Comptroller General in response to a filed protest was the General Services Administration (GSA). GSA had two of the 15 protests brought against it sustained, or 13 percent (13.33 percent). As a percentage of all OFA sustained protests, GSA accounted for ten percent (9.52 percent). Table 6 depicts the number of protests, as well as the number of those sustained, among agencies other than the DoD, for the subject calendar years.

Table 6. Summary of protests and protest sustainment rates among other Federal agencies.

Source: Developed by the Researcher

	1998		
	Number of Protests	Number Sustained	Sustainment Rate
DoA	10	3	30.00%
GSA	9	0	0.00%
HHS	9	4	44.44%
HUD	7	2	28.57%
Misc. OFA	56	6	10.71%
OFA Total	90	14	15.56%

	1999		
	Number of Protests	Number Sustained	Sustainment Rate
DoA	5	0	0.00%
GSA	6	2	33.33%
HHS	1	0	0.00%
HUD	4	2	50.00%
Misc. OFA	30	3	10.00%
OFA Total	46	7	15.22%

	CUMULATIVE		
	Number of Protests	Number Sustained	Sustainment Rate
DoA	15	3	20.00%
GSA	15	2	13.33%
HHS	10	4	40.00%
HUD	11	4	36.36%
Misc. OFA	86	9	10.47%
OFA Total	136	21	15.44%

F. CONCLUSION

This chapter displays the quantitative results of the researcher's analysis. The overall sustainment rate of protests of contracts brought before the Comptroller General was 14 percent for calendar years 1998 and 1999 cumulatively. By comparison, the sustainment rate for protests of contracts awarded using a trade-off process for the same period was 13 percent. In other words, whether a

contract was awarded using the LPTA approach, sealed bids, or the trade-off process, there was virtually no difference in the rate at which protestors received a favorable decision.

IV. QUALITATIVE ANALYSIS OF PROTESTS FOR CALENDAR YEARS 1998 AND 1999

A. INTRODUCTION

This chapter will provide a qualitative analysis of the 42 cases of protests of contracts awarded using a trade-off process, which the Comptroller General decided during calendar years 1998 and 1999. First, the chapter presents summary statistics for the eight categories of sustaining elements observed among the cases examined. Then, it presents a thorough discussion of each category. Additionally, whereas Palmer [Ref.7] examined all the sustained cases for the single year studied, this researcher will limit discussion to those cases that best portray each of the sustaining element categories. As a side note, the researcher observed three instances in which one of the sustaining elements cited by the Comptroller General was not an element relevant to the trade-off process (e.g., improper agency statement of need, improper agency treatment of competing offerors, etc.). These instances will not be discussed in this chapter; nor were they included in the computation of the statistics presented in the next section.

B. SUMMARY STATISTICS

For the period studied, the Comptroller General's most frequently cited reason for sustaining protests was that either the Source Selection Evaluation Board (SSEB) or the Source Selection Authority (SSA)—or both—had not adequately documented their case files in support of the award recommendation or the award decision, respectively. This was a sustaining element in 17 of the 42 cases analyzed, or 40 percent (40.48 percent).

Considering the total number of sustaining elements—71 in all—cited by the Comptroller General for all 42 cases, this particular element was noted 24 percent (23.94 percent) of the time.

Occurring slightly less often was the judgment that the evaluation of proposals in response to a particular solicitation had not been conducted in accordance with the stated evaluation scheme of the Request For Proposals (RFP). This was a sustaining element in 14 cases, or 33 percent (33.33 percent). As a whole, this represented 20 percent (19.72 percent) of all sustaining elements passed down in Comptroller General decisions for the period studied.

The next most frequent cause of sustained protests was an improper evaluation by the awarding agency of a

proposal's cost or price. This occurred in 12 of the 42 cases studied, or 29 percent (28.57 percent). The frequency of this cause relative to all causes, according to the researcher's analysis, was 17 percent (16.90 percent).

Next, two sustaining elements occurred with equal frequency. The first was that the awarding agency improperly evaluated an offeror's past performance when conducting trade-offs; the other was that an agency failed to conduct meaningful discussions with offerors, as required by the Federal Acquisition Regulation (FAR). These sustaining elements each occurred in nine cases, or 21 percent (21.43 percent) of the cases analyzed.

Another frequently occurring sustaining element was an awarding agency's improper evaluation of the technical merit of an offeror's proposal. This was a sustaining element in seven, or 17 percent (16.67 percent), of the 42 sustained protests of contracts awarded using the trade-off process. As a function of all elements cited by the Comptroller General in sustaining the protests studied, this element accounted for ten percent (9.86 percent).

In two cases, the Comptroller General noted that an awarding agency had improperly evaluated the labor qualifications of key personnel proposed by offerors in

particular cases. This equates to five percent (4.76 percent) of the 42 cases studied and three percent (2.82 percent) of all sustaining elements cited by the Comptroller General.

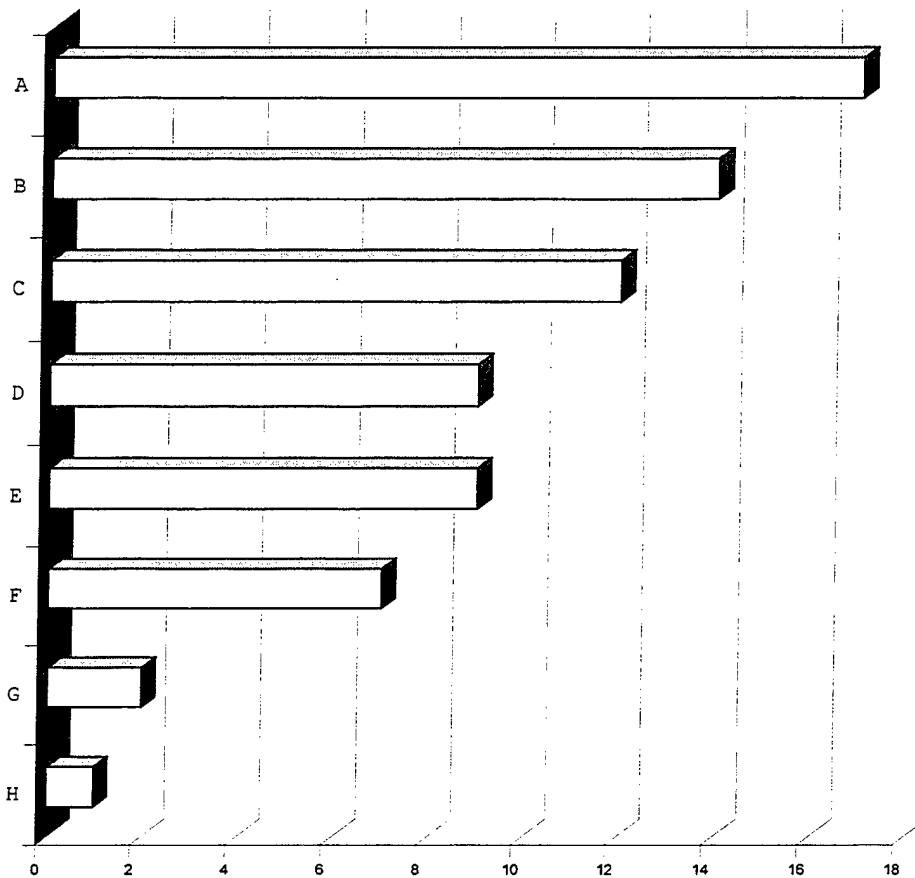
Finally, there was a single case in which the awarding agency had failed to adequately disclose the factor evaluation weights in the solicitation. This one case accounted for two percent (2.38 percent) of all relevant cases for the period studied. Additionally, the single occurrence of this particular sustaining element equates to a mere one percent (1.41 percent) of all elements cited by the GAO in the subject cases.

The eight sustaining elements, and the frequency with which each occurs, are summarized in Table 6. Figure 5 presents the same information graphically.

Table 7. Sustaining elements and frequency

Source. Developed by the researcher

Sustaining Element	Frequency	Percent of Total Cases
Selection Decision not Adequately Documented	17	40%
Evaluation of Proposals Inconsistent with RFP	14	33%
Improper Agency Evaluation of Cost/Price	12	29%
Improper Agency Evaluation of Past Performance	9	21%
Agency Improperly Failed to Conduct Meaningful Discussions	9	21%
Improper Agency Evaluation of Technical Merit	7	17%
Improper Agency Evaluation of Labor Qualifications	2	5%
Failure to Adequately Disclose Factor Evaluation Weights in Solicitation	1	2%



Legend:

- A - Selection decision not adequately documented
- B - Evaluation of proposals inconsistent with RFP
- C - Improper agency evaluation of cost/price
- D - Improper agency evaluation of cost/price
- E - Agency improperly failed to conduct meaningful discussions
- F - Improper agency evaluation of technical merit
- G - Improper agency evaluation of labor qualifications
- H - Failure to adequately disclose factor evaluation weights in solicitation

Figure 3. Sustaining elements as a percent of total cases analyzed

Source. Developed by the researcher

It is interesting to note that, in 23 cases, (54.76 percent) the protest was sustained based on a single sustaining element and that, in six cases, GAO sustained the protest citing three or more sustaining elements. In fact, the Comptroller General cited four or more sustaining elements in three decisions (7.14 percent). This is not terribly significant since it takes only one proven flaw for GAO to sustain the protest, but it does indicate that a small percentage of cases are plagued by many problems. Figure 6 graphically presents the distribution of the various combinations of sustaining elements.

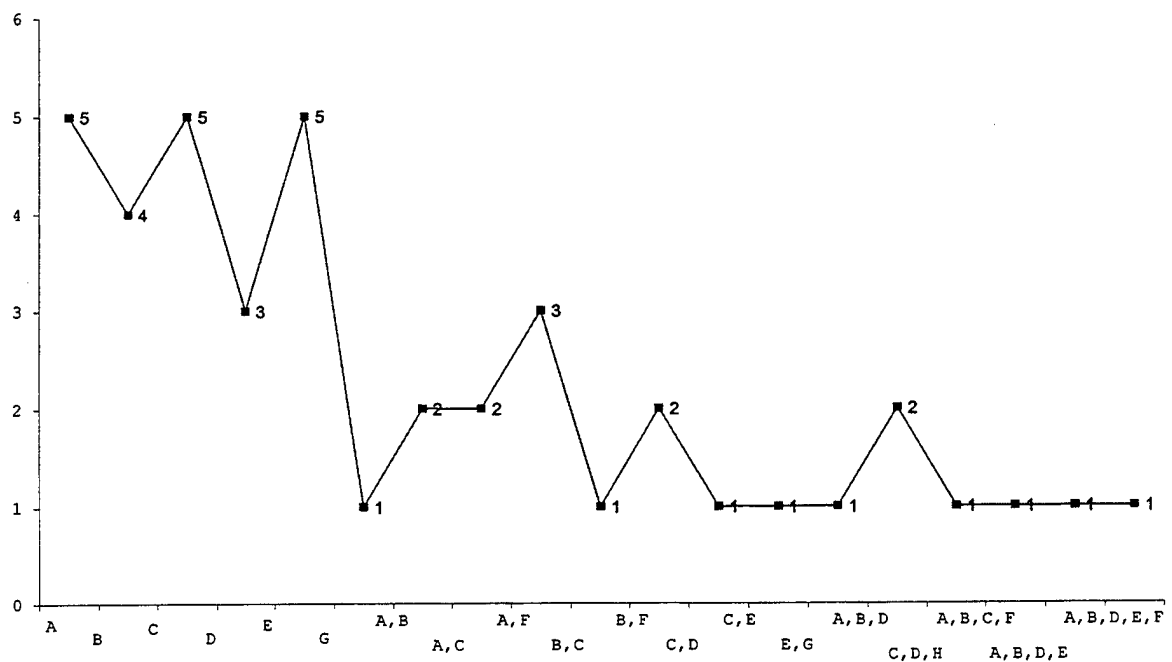


Figure 4. Sustaining Element Combination
Source. Developed by the researcher

C. SUSTAINING ELEMENT CATEGORIES

1. Selection Decision Not Adequately Documented

The following subsections will present two sustained protests of contracts awarded using a trade-off process in which the selection decision was not adequately documented. This failure to document the trade-offs made in the decision process was a fatal flaw, which ultimately led to the offeror's protest being sustained. Additionally, the researcher will make recommendations for Federal contracting officers to consider in order to mitigate the risk of suffering sustained protests due to inadequately documented selection decisions.

a. Biospherics Incorporated

Biospherics Incorporated; B-278508.4, B-278508.5, B-278508.6; Comptroller General of the United States; 6 October 1998, (Biospherics) is a protest in which agency failure to adequately document its selection decision was flawed. This flaw led GAO to conclude that it was not possible to determine the reasonableness of the agency evaluation upon which the award decision was made. Biospherics protested the Agency for Health Care Policy and Research (AHCPR), Department of Health and Human Services award of a contract to Logistics Applications, Inc, (LAI) for the operation of a publication clearing house. The

Request For Proposals (RFP) contemplated the award of a cost-plus-fixed-fee contract for the base period and four one-year option periods. The RFP required the contractor to store and distribute AHCPR publications; to maintain and manage AHCPR's automated mailing/inventory control systems; and to manage the storage and shipping of AHCPR exhibits. Award was to be made to the best advantage of the Government, cost and other factors considered.

The following technical evaluation factors were contained in the RFP: 1) understanding the problem; 2) technical approach; 3) management plan; 4) key personnel; and 5) facilities. Each offer was to be evaluated, and a recommendation concerning technical acceptability was to be made by a peer review technical committee. Offers determined to be technically acceptable would then be evaluated for past performance. The RFP stated that technical merit was a paramount consideration and that cost would become a significant factor only if two or more proposals were determined to be technically equal.

A peer review panel consisting of three individuals evaluated proposals submitted by three firms. All three firms were included in the competitive range, and the panel held discussions that focused on technical and cost issues. The offerors submitted final proposal

revisions. However, the agency made no adjustments to any of their technical scores; nor did it produce any documentation reflecting an analysis of the revised proposals. AHCPR selected LAI as the most advantageous offeror since it submitted the highest-technically-rated, lowest-proposed-cost proposal.

Biospherics protested, raising two challenges to AHCPR's evaluation of its proposal: first, that its proposal should have been rated technically superior to LAI's; and second, that the agency decided to award a contract to LAI as a technically superior offeror. For the purposes of this discussion, the two challenges will be treated as one—that Biospheric's proposal was technically superior and should have received the award.

The agency countered by stating that Biospheric's final proposal revision represented an improvement in its technical proposal, but not enough to be considered technically equal with LAI. When GAO asked the agency to point out where the record documented a comprehensive look at the final results of the technical, cost and past performance evaluations, the agency responded by asserting that the source selection memorandum represented the comprehensive assessment of those factors. The agency also stated that the source selection memorandum directly

reflected a comprehensive discussion of the relative technical strengths and weaknesses of the three proposals, although that discussion was not recorded in writing.

GAO repeatedly states in its write-up of protest decisions that it will not reevaluate proposals, but, rather, will examine the record to determine whether the agency's judgment was reasonable and in accordance with the RFP's stated evaluation criteria.

Further, it is a basic principle of GAO that, while adjectival ratings and point scores are useful as guides to decision-making, they generally are not controlling. Instead, they must be supported by reasoned documentation of the relative differences between proposals and the basis for the selection decision.

The lack of reasoned documentation was the fatal flaw in this case. There was no discussion regarding the relative strengths and weaknesses of the proposals and no post-discussion narrative supporting the agency's conclusion. Because of this lack of documentation, GAO found it could not determine the reasonableness of the agency's selection decision. The Comptroller General sustained the protest on these grounds and recommended that AHCPR reevaluate the proposals, document its evaluation and make a new selection decision. [Ref. 8]

b. Si-Nor Incorporated

Si-Nor Incorporated; B-282064, B-282064.2;

Comptroller General of the United States; 25 May 1999, (Si-Nor) is a protest in which the agency record does not establish that the trade-off decision was reasonable. Si-Nor protested the Air Force award of a fixed-price requirements contract for an eight-month base period, with four one-year options. The contract was for refuse collection and disposal services at Hickam Air Force Base, Hawaii, with award to be made on a best-value basis.

The RFP required no technical proposals; rather, each offeror was required to submit financial references and at least three past performance references for service contracts of a similar size in which it was the prime contractor. Proposals were to be evaluated based on: 1) past performance/experience; and 2) price/cost, which were approximately equal in weight. Past performance and experience were also to be approximately equal in weight, with past performance to be assessed to determine the offeror's relative reliability to perform the contract requirements. Experience was to be evaluated to assess the offeror's experience in performing work on similar types of service contracts.

Of the five offers received, the Air Force determined that the proposal from U.S. Eagle, Incorporated (Eagle) represented the best value to the Government based on its record of outstanding past performance. The Air Force believed that Eagle was worth the nearly \$900,000 price premium over Si-Nor's proposal.

Si-Nor protested on the basis that the agency failed to document why any advantage reflected in Eagle's past performance rating warranted the high price premium.

In its judgment, GAO cited its ruling in the matter of *Dyncorp; B-245289, B-245289.2; Comptroller General of the United States; December 23, 1991*, in which it determined that: Price/technical trade-offs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation criteria.

Further, in the matter of *TRW, Inc.; B-234558; Comptroller General of the United States; 21 June 1989*; GAO stated:

In deciding between competing proposals, the propriety of such a trade-off turns not only on the difference in technical scores or ratings per se, but on whether the selection officials judgment concerning the significance of that difference was reasonable and adequately justified in light of the RFP evaluation scheme.

Based on these prior rulings and the record of this particular case, GAO decided in favor of the protestor. The Comptroller General ruled that, while the record clearly states the agency's conclusion that Eagle's past performance rating was worth the price premium, it includes no documentation indicating why its past performance rating would outweigh the additional price. The Comptroller General recommended that the Air Force perform and document a proper trade-off analysis. [Ref. 9]

c. *Element Summary*

The two cases discussed above are typical of the remainder of the protests sustained during the period studied that contained this particular sustaining element.

Contracting officers must not only perform a trade-off analysis that incorporates sound business judgments, but they must also adequately support their decisions with reasoned documentation. This documentation must include the benefits associated with awarding a contract to offerors whose proposals represent a price premium with respect to other technically acceptable offers.

2. *Evaluation of Proposals Inconsistent with RFP*

The second most frequently observed sustaining element was the evaluation of proposals in a manner that deviated

from the stated evaluation scheme of the RFP. This flaw in the evaluation process creates a bias in the selection decision that, although it may be unintentional, is most certainly detrimental to the Government's reputation as an even-handed partner in its business dealings. The two cases discussed below contained this category of sustaining element, although, as in previously discussed cases, it was not the only sustaining element in the protest.

a. Marquette Medical Systems, Inc.

Marquette Medical Systems, Inc.; B-277827.5, B-277827.7; Comptroller General of the United States; 29 April 1999, (Marquette) is a protest in which the Federal agency improperly deviated from its solicitation evaluation criteria in assessing competing proposals. Marquette protested the Army's award of a contract to Hewlett-Packard Company for a Cardiology Medical Information System (CMIS) to replace the Department of Defense's (DoD) existing computerized medical information system.

The RFP anticipated the award of a fixed-price contract for a base period of one year, with options for seven additional years. The solicitation requested proposals for providing hardware, software, documentation, training, support and maintenance services relating to

storage, and retrieval and interpretation of electrocardiograms (ECG). The RFP stated that there were 950 ECG carts in the existing system and invited offers based upon either replacing or upgrading the cart inventory.

Award was to be made to the responsible offeror whose proposal, conforming to the solicitation, was determined to be the best overall value, price and other factors considered. The technical evaluation criteria, in descending order of importance (factors three and four were comparatively equal) were: 1) quality of technical approach; 2) contract management; 3) understanding of overall contract requirements; (4) past performance and relevant experience; and (5) key personnel qualifications. The Army received three proposals and ultimately determined that Hewlett-Packard offered the best value.

Marquette protested the award decision, alleging that the agency's evaluation of proposals was unreasonable and inconsistent with the RFP's evaluation scheme. A review of the record shows that the contracting officer considered the cost of purchasing new ECG carts over the potential eight-year life of the contract. The contracting officer reported that, since Hewlett-Packard proposed replacing the ECG carts while Marquette offered to upgrade

them, he "normalized" the two offers by deducting a certain amount from Hewlett-Packard's offer and adding on to the cost of Marquette's offer. The contracting officer intended this "normalization" to account for the minimal need to acquire new carts during the contract life for the Hewlett-Packard offer, as well as the additional cost of replacing carts over the contract period if Marquette's proposal were accepted.

The flaw in the contracting officer's logic, as GAO noted, was that, while the RFP indicated that a price analysis would be conducted, it gave no indication that the analysis would involve deducting the price for performing any part of the work (and especially not the price for a major component such as the ECG carts) from an offeror's total price in an attempt to "normalize" the competition. In fact, as the Comptroller General correctly noted in the matter of *Sisters of Charity of the Incarnate World; B-251799 et.al.; Comptroller General of the United States; 4 May 1993*: "where the contract is fixed price, an agency is not permitted to make adjustments for cost elements, since the fixed price is the price the awardee is obligated to perform at and the price the Government is bound to pay."

The Comptroller General sustained this protest based on the fact that once offerors are informed of the

criteria against which their proposals will be evaluated, the agency must adhere to those criteria or inform all offerors of any significant changes made in the evaluation scheme. Accordingly, GAO recommended that the Army reconsider whether the RFP's current evaluation scheme represented its needs and, if so, to reevaluate proposals. [Ref.10]

b. Opti-Lite Optical

Matter of Opti-Lite Optical; B-281693;
Comptroller General of the United States; 22 March 1999,
(Opti-Lite) is a protest in which the award determination was improperly based on a comparison of total technical and price point scores under a solicitation that did not provide for such a point-based trade-off. Opti-Lite protested the Department of Veterans Affairs (VA) award of an indefinite-delivery, indefinite-quantity requirements contract to Classical Optical Laboratories (Classical) for commercial item prescription eyeglasses and services for VA beneficiaries.

The solicitation provided for award to the responsible offeror whose conforming offer was most advantageous to the Government. The stated technical evaluation criteria consisted of: 1) methodology of

approach; 2) personnel qualifications; and 3) past performance. The solicitation further provided that technical and past performance combined were approximately equal in weight to price. Of the six proposals submitted, Classical's was selected as being most advantageous to the Government.

Opti-Lite protested the VA's decision, alleging, among other things, that the agency's decision not to allow alternate pricing proposals was a major change requiring the agency to again request final proposal revisions. The Comptroller General's discussion of this protest revolves around two issues: a mechanical application of the price/technical trade-off methodology; and the fact that the contracting officer apparently made no qualitative assessment of the proposals as required by the evaluation scheme stated in the RFP. In sustaining the protest, the Comptroller General stated that the award determination was based entirely on a comparison of total technical and price point scores under a solicitation that did not provide for such a point-based trade-off. [Ref. 11]

c. Element Summary

These sustained protests are typical of the remaining twelve that cited as a sustaining element an agency's deviation from the evaluation scheme stated in the

RFP. Where an agency has been unwilling or unable to adhere to the prescribed method, the Comptroller General has sided with the protestor in every instance. The lesson for contracting officers is that they must abide by the stated evaluation criteria of an RFP, or, at the very least, advise all offerors of a required deviation in order to allow them to revise their proposals. The clear and convincing penalty for doing otherwise is to invite the risk of a sustained protest.

3. Improper Agency Evaluation of Cost/Price

This subsection presents two cases in which an agency's improper evaluation of cost/price resulted in protest sustainment. Contracting officers must determine not only that a proposal's cost is fair and reasonable, but also what a contract should cost, assuming reasonable economy and efficiency.

a. Tidewater Construction Corporation

Tidewater Construction Corporation; B-278360; Comptroller General of the United States; 20 January 1998, (Tidewater) is a protest in which the agency failed to perform a proper cost realism analysis. Its only evaluation of the offerors' proposals was a comparison between the proposed costs for various work items and the government estimate. Tidewater protested the U.S. Navy

award of a cost-plus-award-fee contract for the construction of a crane rail interconnect system to Pizzagalli Construction Company.

The RFP evaluation scheme provided for award on a best-value basis in which the technical factors combined were to be more important than cost. Proposals were to be based on a 60-percent design of the project. The RFP did not request detailed cost data, but did advise offerors that supporting documentation for large elements of cost would be requested during discussions.

The Navy hired an architect/engineer to prepare cost estimates tracking 35-percent, 60-percent, and 100-percent design of the project in order to assist in the cost evaluation. All proposals received were included in the competitive range. Following discussions, offerors submitted final proposal revisions incorporating, among other things, the 100-percent design of the project. The Navy's cost realism evaluation consisted solely of comparing each offeror's target cost to the government estimate.

Tidewater protested the Navy's evaluation of cost realism and alleged that the government estimate was defective. Defense Federal Acquisition Regulation Supplement sections 215.801 and 215.805-70 require that,

whenever a cost reimbursement contract is anticipated, a cost realism analysis be performed to determine if the overall costs in an offeror's proposal: 1) are realistic for the work to be performed; 2) reflect a clear understanding of the requirements; and 3) are consistent with the various elements of the offeror's technical proposal. In considering this protest, GAO noted that its review of an agency's cost evaluation is limited to determining whether the evaluation was reasonably based and was not arbitrary.

In sustaining this protest, the Comptroller General found that the Navy, by determining cost realism based solely on a comparison between the offeror's target costs and the government estimate, acted improperly. GAO further stated that the agency's evaluation was a price analysis intended only to ensure a fair and reasonable price and could not reasonably be used to ascertain the cost realism of a cost reimbursement proposal. The reason for this is that the Government will be liable for the contractor's allowable and allocable costs, not the proposed costs. A cost realism analysis allows the Government to determine what the contract should cost, assuming reasonable economy and efficiency. GAO recommended that the Navy obtain cost data sufficient to

perform a proper cost realism analysis and make a new source selection. [Ref. 12]

b. E.L. Hamm & Associates, Inc.

E.L. Hamm & Associates, Inc.; B-280766.3; Comptroller General of the United States; 12 April 1999, (Hamm) is a protest where the agency did not perform a proper cost realism evaluation. Hamm protested the U.S. Army award of a cost-plus-award-fee contract, for a base period with four option years, for storage and warehouse services at the Army Training Support Center (ATSC), Fort Eustis, Virginia.

The RFP requested that offerors submit separate technical/management and cost proposals corresponding to four evaluation factors: 1) technical; 2) management; 3) past performance; and 4) cost. The Army determined that the proposal submitted by Communication Technologies, Inc. (Comtek) represented the best overall value to the Government.

Of the proposals received, six were included in the competitive range. Discussions were conducted and final proposal revisions requested from all six offerors. The evaluators concluded that the added benefits offered by the technically superior, highest-ranked proposal were not worth the cost premium and, therefore, recommended award to

Comtek as the offeror with the next highest-ranked, technically superior offer with the lowest evaluated cost. Hamm filed a protest alleging that the agency's cost realism evaluation was flawed, partly because Comtek's proposed overhead rates were unrealistically low.

The record does not justify the agency's determination that Comtek's proposed overhead rate was realistic. The contracting officer's rationale for accepting this rate, which is significantly lower than the one approved by the Defense Contract Audit Agency, is unfounded. Indeed, the contracting officer stated that the agency accepted Comtek's proposed rate without any cost realism evaluation. For these reasons, the Comptroller General found that the agency's actions prejudiced Hamm and, therefore, sustained the protest. Among its recommendations, the GAO stated that the agency must perform a proper cost evaluation, including a cost realism analysis. [Ref. 13]

c. Element Summary

These findings by the Comptroller General point to the importance of a proper cost/price evaluation. The Federal Acquisition Regulation section 15.305 states that, when contracting on a fixed-price type basis, adequate competition will usually establish price reasonableness.

For cost reimbursement contracts, evaluation must include a cost realism analysis to determine not only the cost realism of the offeror's proposal, but also the cost the Government should realistically expect to pay, assuming reasonable economy and efficiency. [Ref. 2:15.305(1)]

Not only must contracting officers determine cost/price reasonableness—through either competition or a cost realism analysis—but they must also document this determination. This goes back to the researcher's most commonly observed sustaining element—that is, performing a cost realism analysis without documenting the results is effectively the same as not performing the analysis in the first place.

4. Improper Agency Evaluation of Past Performance

The two cases discussed below involve protests that were sustained solely because the contracting agency improperly evaluated the offeror's past performance. Aside from the two cases presented, this sustaining element was cited by the Comptroller General in seven other cases among the 42 studied.

a. U.S. Property Management Service Corporation

U.S. Property Management Service Corporation; B-278727; Comptroller General of the United States; 6 March 1998, (U.S. Property) is a protest in which improper agency

evaluation of past performance was the basis for a sustained argument. U.S. Property protested the Department of Housing and Urban Development (HUD) award of a small business set-aside contract for real estate asset management services for single family properties owned by HUD in its District of Columbia office jurisdiction. HUD determined that a proposal by Ernie Stefkovic Associates, Inc. (ESA) represented the best value to the Government.

The RFP provided for a cost/technical trade-off and stated that the combined weight of the technical evaluation factors was more significant than price. The RFP listed the technical evaluation factors, with their relative weights, to be scored on a 100-point scale, as follows:

- Prior management experience 30 points
- Past performance 25 points
- Management capability 25 points
- Office location(s) 20 points

Offerors were required to supply references for recent, relevant contract work under the prior management experience and past performance factors. The incumbent contractor did not submit a proposal since it was not a small business. The presidents of U.S. Property and ESA were former managers of the incumbent who formed their own

property management company in 1994. Due to a dispute between the principals, these two individuals broke away from this company. The president formed ESA, while the vice president formed U.S. Property, for the purpose of submitting independent proposals in response to HUD's RFP.

Since the corporations were newly formed, the presidents of both ESA and U.S. Property drew upon their shared experience with the incumbent contractor to establish their qualifications under the prior management experience and past performance factors.

HUD included 12 proposals in its competitive range, including ESA's and U.S. Property's. After written discussions, it further narrowed the field to five proposals, still including ESA's and U.S. Property's. The record shows that ESA's proposal was rated higher than U.S. Property's, primarily due to the prior management experience factor. The Technical Evaluation Panel (TEP) downgraded U.S. Property's proposal because it was a newly formed corporation that lacked independent corporate experience. The TEP did not similarly question ESA's lack of independent corporate experience.

In its revised proposal, U.S. Property provided evidence that it had recently acquired independent corporate experience, having been awarded two contracts for

property management services. The TEP subsequently increased the protestor's prior management experience score slightly. Ultimately, the TEP awarded significantly higher scores for prior management experience and past performance to ESA than it did to U.S. Property.

Based on the TEP's recommendation and the source selection authority's belief that ESA possessed more corporate experience than U.S. property, HUD awarded the contract to ESA. U.S. Property protested on the grounds that the agency had conducted an unequal evaluation with respect to prior corporate experience.

The Comptroller General's review of the record confirmed that HUD did not evaluate proposals equally under either the prior corporate experience or the past performance factor. The TEP consistently downgraded the protestor's proposal in these two areas, yet could demonstrate nothing in the record to explain why the same judgment did not apply to ESA, especially since ESA's proposal reflected no corporate experience beyond its principal's shared experience with the president of U.S. Property.

Finally, the Comptroller General judged that ESA's high scores stemmed from the agency's evaluation of its incumbent personnel, not from its corporate experience,

which was the standard by which it had evaluated all other proposals.

Based on these findings, the Comptroller General sustained the protest and recommended that the agency reevaluate the final proposal revisions. [Ref. 14]

b. Nova Group, Inc.

Nova Group, Inc.; B-282947; Comptroller General of the United States; 15 September 1999, (Nova) is a protest in which the agency improperly downgraded an offeror's past performance based merely on that offeror's history of contract claims. Nova protested the U.S. Navy's award of a fixed-price construction contract for two projects, with options for eight additional projects, at the Naval Station, Pearl Harbor, Hawaii. The Navy awarded to Healy Tibbitts Building, Inc. as the offeror submitting the best value proposal.

The solicitation stated that its trade-off evaluation plan gave equal weight to technical evaluation and price. The RFP listed the technical evaluation factors, in descending order of importance, as follows:

- Construction management plan
- Experience/past performance
- Experience of key personnel
- Small business subcontracting plan

With regard to the experience/past performance factor, Nova's proposal was rated satisfactory, rather than outstanding, because its proposal had not clearly addressed the disposition of a number of contract claims. The Technical Evaluation Board (TEB) determined that Nova's claims record did not demonstrate a general trend for outstanding past performance in terms of customer satisfaction. Nova protested the evaluation of its proposal under the first two evaluation factors. Discussion of this protest will be limited to the evaluation of Nova's experience/past performance since the Comptroller General denied the first protest issue. The protestor alleged that the Navy improperly considered Nova's contract claims as the basis for downgrading its rating.

GAO notes that, absent some evidence of abuse of the contract dispute process, contracting agencies should not downgrade an offeror's proposal simply because it has filed claims. GAO continues by noting the matter of *Amclyde Engineered Products Co., Inc.*; B-282271, B-282271.2; *Comptroller General of the United States*; 21 June 1999, in which it found that contract claims constitute remedies established by statute and that firms should not be

prejudiced because of their reasonable pursuit of such remedies in the past.

Since Nova's actual past performance had been rated "average to outstanding" by previous contracting agencies, the Navy's only basis for downgrading Nova's proposal was the existence of nine previous contract claims. The Comptroller General ruled that the Navy's evaluation penalized Nova simply for using the contract dispute process and, therefore, sustained the protest. Consequently, the Comptroller General recommended that the Navy reopen discussions, evaluate proposals consistent with its decision, and make a new source selection decision.

[Ref. 15]

c. *Element Summary*

As the above two cases illustrate, contracting officers have an obligation to equitably and fairly evaluate past performance as an indicator of an offeror's ability to perform a contract successfully, if the solicitation calls for such an evaluation. The solicitation must also explain how offeror's proposals without relevant past performance will be evaluated. The FAR specifically states that offerors without a record of past performance will not be evaluated favorably or unfavorably on past performance. [Ref. 2:15.305(2)]

5. Agency Improperly Failed to Conduct Meaningful Discussions

Biospherics, Inc. and Mechanical Contractors, S.A. are just two of nine cases that were sustained due to an agency's failure to properly conduct meaningful discussions. As the researcher will show, if an agency conducts discussions with offerors, such discussions must be meaningful and must inform offerors of the areas their proposals that require amplification or correction. To do otherwise increases the risk of a sustainable protest.

a. *Biospherics, Inc.*

Biospherics, Inc.; B-278278; Comptroller General of the United States; 14 January 1998, (Biospherics) is a protest in which the agency conducted prejudicially inadequate and misleading discussions. *Biospherics* protested the U.S. Forest Service's award of a fixed-price, requirements contract for the development, implementation, and operation of the National Recreation Reservation Service. The RFP advised offerors that award would be based on a cost/technical trade-off and that technical evaluation factors were more important than price. The contract was to be for a 9.5 year period. The Forest Service found that *Park.net, Inc.'s (Park.Net)* proposal best represented overall value to the Government.

The Forest Service held written and oral discussions with three offerors in the competitive range. Since all three proposals contained unit pricing that was higher than the independent Government estimate, the agency advised them to review their cost information to determine the best pricing scheme they could offer. After more discussions and upon reviewing the final proposals of all offerors in the competitive range, the agency made award to Park.Net, citing Biospherics' proposed prices as unrealistically low. Biospherics alleged that the agency's discussions regarding Biospherics' proposal prices were inadequate and misleading. Specifically, Biospherics alleged that the agency not only failed to inform them that it viewed Biospherics pricing as unrealistically low, but also, following the first round of discussions, stated that the firm should review its proposal "for any additional savings." The agency countered by stating that it found Biospherics' prices unrealistically low only after reviewing the final proposal revisions. The agency admitted, however, that it had not conducted complete cost realism analyses on the interim proposals.

In this case, the Comptroller General found that the agency did not inform Biospherics during discussions that it considered its pricing to be unrealistically low,

but instead encouraged Biospherics to reduce its pricing to a level that the agency ultimately found unrealistic. The Comptroller General ruled that the Forest Service had conducted inadequate and misleading discussions and recommended that it reopen discussions with Biospherics and Park.Net, request new final proposal revisions, and reevaluate proposals. [Ref. 16]

b. Mechanical Contractors, S.A.

Mechanical Contractors, S.A.; B-277916.2;
Comptroller General of the United States' 4 March 1998,
(MCSA) is a protest in which the agency did not conduct meaningful discussions. MCSA protested the award of a firm, fixed-price contract by the Panama Canal Commission (PCC) for cleaning and painting four miter gate leaves in the Panama Canal. This protest followed the reevaluation of proposals subsequent to a prior sustained protest filed by the same protester in regard to the same solicitation. The PCC determined that the proposal submitted by Formal Management Systems, Inc. represented the best value to the Government.

The RFP specified that offerors were to submit technical proposals and price schedules and that technical proposals were to be evaluated on the basis of two equally

weighted technical factors: 1) technical approach; and 2) performance capability.

The evaluation board in the original source selection had evaluated MCSA as excellent or better in three technical subfactors and had, therefore, not held discussions with MCSA on those particular areas. The evaluation board in this case had severely downgraded MCSA's scores in the same technical subfactors, but did not hold discussions with MCSA regarding the newly discovered deficiencies.

MCSA argued that the PCC should have discussed these perceived deficiencies with the company because the reevaluation went beyond the scope of the original protest. The Comptroller General agreed and found that MCSA was prejudiced by the agency's failure to hold discussions on the deficiencies identified in the reevaluation. The contracting officer specifically cited these deficiencies as the basis for his conclusion that the contract schedule would be at risk if the contract were awarded to MCSA. GAO sustained the protest, but since performance of the contract had already begun, its only recommendation was that MCSA be reimbursed for its proposal preparation costs and the reasonable costs of filing this protest. [Ref. 17]

c. Element Summary

In order to perform fair evaluations with equal treatment to all offerors, contracting officers are required to perform meaningful discussions in negotiated procurements unless the solicitation specifically states that award may be made without discussions. Meaningful discussions, as defined by the FAR, are those exchanges that seek to identify the significant weaknesses, deficiencies, or other aspects of the offeror's proposal that could be altered or explained to materially enhance the proposal's potential for award. [Ref. 2:15.306(d)(3)]

6. Improper Agency Evaluation of Technical Merit

The two cases in the following subsections discuss protests that were sustained partly due to improper agency evaluation of technical merit. This particular sustaining element occurred in 17 percent (16.67 percent) of the cases analyzed.

a. ENMAX Corporation

ENMAX Corporation; B-281965; Comptroller General of the United States; 12 May 1999, (ENMAX) is a protest in which the agency improperly evaluated a proposal's technical merit. ENMAX protested the U.S. Air Force award of a fixed-price labor contract to Carlisle Research, Inc. (Carlisle) for engineering services at Hill Air Force Base,

Utah. The RFP's evaluation scheme stated that award would be made using a performance/price trade-off, which permitted trade-off between price and the past performance evaluation for technically acceptable proposals. Past performance and price were equally important. The Air Force selected Carlisle as the offeror whose proposal presented the best combination of performance risk and evaluated price.

ENMAX alleged that Carlisle's proposal did not meet the minimum technical requirements set forth in the RFP, and that the Air Force improperly concluded that the proposal was technically acceptable. Specifically, the RFP stated that proposals shall address each and every area of each factor. Since the technical area is rated as pass/fail, failure to address even a single factor may result in failure of the technical proposal.

Carlisle's technical proposal did not address each and every factor of the technical area, yet the Air Force evaluators gave the proposal a rating of "pass" in the "demonstrated experience (2 plus years) in client/server development in ORACLE, UNIX, NT and Powerbuilder environments."

GAO notes that it is not the internal source selection plan, but, rather, the specific language in the

RFP that determines whether offerors have been treated fairly in an evaluation. In this case, GAO stated that the RFP did not specify that failure to meet any one of the technical areas would result in a finding of technical unacceptability under the factor overall. Further, the RFP required offerors to address each and every area within each factor, but did not state that failure to do so would automatically result in failure of the proposal. So, even though the RFP did not mandate failure of this proposal given the language of the solicitation itself, GAO concluded that it clearly could have affected the evaluator's conclusion that Carlisle was technically acceptable. Finally, GAO concluded that the evaluators had to consider whether Carlisle's failure to demonstrate the required experience made it technically unacceptable under this evaluation factor. GAO sustained the protest on that basis. The Comptroller General recommended that the agency reevaluate Carlisle's technical proposal, taking into account whether the proposal should be considered acceptable overall given Carlisle's failure to show experience in the stated computing environments. [Ref. 18]

b. ATA Defense Industries, Inc.

ATA Defense Industries, Inc.; B-282511, B-282511.2; Comptroller General of the United States; 21 July

1999, (ATA) is a protest that was sustained because of improper technical evaluation by a Federal Agency. ATA protested the award of a fixed-price contract by the U.S. Army for the Intermediate New Generation Army Targetry System. The Army selected Caswell International Corporation (Caswell) as the offeror whose proposal represented the best value to the agency.

The RFP identified four evaluation elements: 1) technical; 2) performance risk; 3) small business utilization; and 4) price. Of these, technical was the most important and included the five technical subfactors listed below in descending order of importance:

- Hit detection
- Overall design and stability of the design
- Battle effects simulator
- Radio frequency band width
- Training/manual

Of the subfactors, the first two were significantly more important than all the others combined. ATA's contention was that Caswell's proposal was improperly given an excellent rating for hit detection, in violation of the Army's evaluation scheme. The Comptroller General made extensive inquiries into the technical aspects of the

hit detection subfactor and concluded that the Army had indeed violated its stated evaluation scheme as delineated in the solicitation. The Comptroller General sustained the protest and recommended that the Army reopen the procurement and reevaluate proposals in accordance with the stated evaluation scheme. [Ref. 19]

c. Element Summary

The cases discussed above represent another problem that occurs when Federal contracting officers fail to evaluate proposals in a manner consistent with the evaluation scheme stated in the solicitation. Whenever an evaluation team or source selection authority deviates from the selection criteria stated in an RFP, the Government is, in essence, inviting a protest. In order to maintain the perception of a level playing field for all prospective contractors, contracting officers must adhere to the stated evaluation scheme and treat all offerors equally.

7. Improper Agency Evaluation of Labor Qualifications

The following two subsections discuss sustained protests in which the agency improperly evaluated the labor qualifications of personnel proposed by the prospective contractors. In both cases, the protests were sustained because the agencies failed to strictly adhere to the RFP's

evaluation scheme in assessing the qualifications of an offeror's proposed personnel.

a. *Aerospace Design & Fabrication, Inc.*

Aerospace Design & Fabrication, Inc.; B-278896.2, B-278896.3, B-278896.4, B-278896.5; 4 May 1998, (ADF) is a protest in which improper agency evaluation of labor qualifications resulted in sustainment. ADF protested the National Aeronautics and Space Administration (NASA) award of a contract to Dynacs Engineering Co., Inc. (Dynacs) for scientific, engineering, technical and administrative services for NASA's Lewis Research Center. The RFP anticipated a competitive procurement limited to small, disadvantaged businesses and leading to a hybrid contract containing approximately ten percent fixed-price and 90 percent cost reimbursement task orders. The solicitation set forth three evaluation factors of equal importance: 1) mission suitability; 2) cost; and 3) relevant experience and past performance. The relevant subfactor under mission suitability was key personnel and was worth one-quarter of the total points assigned to the factor.

ADF argued that Dynacs misrepresented the level of commitment from three of its proposed key personnel, leading the agency to improperly award Dynacs more credit in this evaluation factor than its proposal merited.

In reaching its decision, GAO cited previous findings of similar circumstances and stated that an agreement to work for an offeror, if it wins the competition, is nothing more than a promise to negotiate for employment and not a binding commitment. GAO went on to state that if an offeror falsely states in its proposal that certain key personnel have committed to work for them, and the agency relies on this misrepresentation in its evaluation, then the selection decision is improper. For this reason, the Comptroller General found that ADF was prejudiced in the award decision and sustained the protest. [Ref. 20]

b. Possehn Consulting

Possehn Consulting; B-278579.2; Comptroller General of the United States; 29 July 1998, (Possehn) is a protest in which an agency's evaluation ignored evidence of required experience, and this resulted in protest sustainment. Possehn protested the award of a fixed-price contract by the U.S. Forest Service for the location and installation of permanent forest inventory plots at various national forests. Award was made to Steve Holmes Forestry as the offeror whose proposal represented the best value to the Government. This protest was the result of a

reevaluation of proposals subsequent to a prior sustained protest also brought before GAO by Possehn.

The RFP identified four technical factors in descending order of importance:

- Offeror's experience establishing permanent forest and/or vegetation inventory plots
- Past performance on similar contracts during the previous three years.
- Experience of key management personnel.
- Qualifications of offered field personnel.

The relevant factor for purposes of this discussion is the final one—qualifications of offered field personnel. The agency's record of its evaluation of this factor regarding Possehn's proposal incorrectly stated that field crew members did not have experience establishing permanent plot inventory systems. However, Possehn's final proposal revision clearly identified personnel with such experience and indicated that they had acquired the experience by establishing such plots for the Forest Service.

In its decision, GAO concluded that the agency had improperly overlooked the experience of Possehn's proposed field crew and, therefore, it sustained the protest. The Comptroller General recommended that the

agency reevaluate Possehn's final proposal revision and make an appropriate judgment about the value of the experience of the personnel offered. [Ref. 21]

c. *Element Summary*

The two cases discussed are examples in which the contracting agency improperly evaluated the labor qualifications of prospective contractors. In the first case, the agency relied on factual misrepresentations in the offerors proposal. It may seem reasonable to believe that the agency could have done nothing to prevent the offeror from misrepresenting itself. However, the agency could have significantly reduced the likelihood of relying on a misrepresentation had it required signed commitment letters from key proposed personnel who were not yet on the offeror's payroll.

In the second case, the agency blatantly erred when it reviewed the offeror's final proposal revision, overlooking the precise qualifications it desired of field personnel. Here, the agency's attention to detail would have drastically reduced the possibility of a protest—specifically a follow-on protest.

8. Failure to Adequately Disclose Factor Evaluation Weights in Solicitation

The single case presented below was the only protest among those studied that contained this particular sustaining element. The failure to adequately disclose the factor evaluation weights in the solicitation was one of three sustaining elements noted in the Comptroller General's decision for this particular case.

a. Foundation Health Federal Services, Inc.

Foundation Health Federal Services, Inc; Humana Military Healthcare Services, Inc.; B-278189.3, B-278189.4; Comptroller General of the United States; 4 February 1998, (Foundation/Humana) is a protest in which the agency failed to disclose the relative importance of the significant evaluation factors. Foundation and Humana protested the TRICARE Support Office's (TSO) award of a fixed-price contract to Anthem Alliance for Health, Inc. to provide health care and associated administrative services for Military Health Services System beneficiaries.

The RFP stated that the agency intended to make award to the offeror whose proposal was most advantageous to the Government, price and other factors considered. The Government intended to award the contract for a base period with five one-year options. The weighting ratio of

technical area to cost was to be 60 percent/40 percent. Within the technical area, the proposal identified seven major factors that included 11 technical tasks. Offerors were required to respond satisfactorily to all factors and subfactors; however, the proposal did not present specific weights for each factor and subfactor.

Foundation and Humana alleged that the solicitation did not advise offerors of the evaluation criteria TSO actually used and the relative weights it assigned to the factors and subfactors. In its discussion, GAO referred to Section 2305 of Title 10 of the United States Code that requires solicitations to include at a minimum "a statement of -(i) all significant factors and significant sub factors which the head of the agency reasonably expects to consider . . .; [and] (ii) the relative importance assigned to each of those factors and sub factors . . ." GAO reasoned that, where an agency fails to advise offerors of the relative weights of the evaluation factors, there is no assurance that in selecting an offer for award it is obtaining the best value for the Government. Finally, the Comptroller General concluded that, where the solicitation is silent as to the relative importance of the subfactors, offerors can assume that the subfactors are weighted approximately equally. In

sustaining this protest, the Comptroller General stated that TSO improperly failed to adequately disclose the weights of the significant evaluation factors and subfactors applied in the evaluation. [Ref. 22]

b. Element Summary

The preceding discussion represents the single instance of an agency's failure to adequately disclose factor evaluation weights in a solicitation for the period studied. This does not diminish its importance, however. As GAO pointed out, without factor evaluation weights specified in the solicitation, there is no assurance that the Government is obtaining the best value for its money.

D. INTEGRATED ANALYSIS

The purpose of this analysis is to provide Federal contracting officers with the recommendations designed to address the underlying causes of sustained protests discussed above.

**1. Adequately Support the Selection
Decision with Reasoned Documentation**

In case after case, whether or not it is cited as a sustaining element in the decision, GAO notes that personnel are failing to adequately document their decisions. This happens at all levels within the source selection team. Yet, this particular deficiency is,

intuitively, the easiest to correct, particularly since GAO presumes the actions of agencies correct unless proven otherwise. In this respect, agencies are given great leeway in their decision. However, with this latitude comes the responsibility to demonstrate that all decisions are reasonable and not arbitrary.

The primary way to ensure proper documentation is through adequate training. By ensuring that personnel understand the importance of documenting the basis of business decisions, contracting agencies can reduce the risk of sustainable protests. Training can be incorporated into the source selection plan or conducted on a just-in-time, as-needed basis. Such training should stress not only the importance of documentation, but also the tools necessary to accomplish the task. These tools might include word processing training as a foundation upon which to build and can be tailored to the individual demands of the agency.

Another way to accomplish adequate documentation might be the use of standardized evaluation forms by all personnel involved with evaluating proposals. In addition, a specific form could be developed for personnel who may have to make trade-off decisions. Such a form could specify the aspect of the proposal being considered for a

trade-off, the benefits or risk expected, and any impact on risk that may result.

Adequate staffing could also reduce the risk of a sustained protest due to inadequate supporting documentation. In the current atmosphere of fiscal restraint, agencies may have insufficient funds for training personnel properly. Drawing upon personnel who already possess sufficient skills in evaluating and documenting source selections is one means of overcoming such financial obstacles. Unfortunately, smaller organizations may not have the luxury of a large pool of personnel from which to draw experienced team members.

Next, using management more aggressively can help reduce the risk of a sustainable protest. By carefully reviewing the documentation of source selection team members, managers can verify that the supporting rationale for decisions is both present and appropriate. Admittedly, this requires an investment of the manager's time, but as the cases analyzed in this thesis have shown, it would be a worthwhile investment.

Biospherics demonstrated that if it were possible to rely solely on the documents prepared in response to protest contentions, an agency's selection decision might seldom be found inadequate. However, the Comptroller

General has repeatedly stated that, although the entire record will be considered in protest resolutions, greater weight will be given to the contemporaneous source selection materials. If there had been any notation to support the relative strengths and weaknesses that evaluators observed in the reviewed proposals, the case would undoubtedly have turned out differently.

[Ref.5:p.739]

Finally, the controlling element of the source selection process requires adequate supporting documentation. FAR part 15.608(a)(3) requires documentation to support the evaluation of proposals, including: the basis for evaluation and analysis of the technically acceptable and unacceptable proposals; an assessment of each offeror's ability to accomplish the technical requirement; and a summary of findings. The FAR goes on to state that the basis for the source selection decision and the relative differences among proposals must be documented. In this selection decision documentation, an agency must describe the strengths, weaknesses and risks of the various proposals in terms of stated evaluation criteria. [Ref. 2:15.608(a)(3)]

2. Evaluate Proposals in a Manner Consistent with the Solicitation

Prospective contractors have a right to expect that their proposals will be evaluated in accordance with the stated evaluation scheme of the solicitation. Unless the solicitation has been amended, the entire evaluation must be based on the stated factors throughout the competitive negotiation process. [Ref.5: p.543]

Contracting agencies can ensure that proposals are evaluated consistently in a number of ways. First, the source selection plan describes the evaluation factors and subfactors, their relative importance, and the methodology used to evaluate proposals. This plan also serves as a guide for the entire source selection team on the roles of the members and the conduct of the source selection from proposal evaluation, through the cost/technical trade-off, to award decision and debriefing. [Ref.5: p.210]

In *Marquette*, the solicitation invited offers to either replace or upgrade existing equipment. The solicitation did not provide for any method of "normalizing" the two distinct approaches. Yet, this is exactly what the source selection authority did as part of the price analysis it conducted. Since this procedure for comparing proposals was not specified in the solicitation,

GAO decided in favor of the protestor. By specifying in the solicitation the procedure for comparing the two different approaches, the source selection authority could reasonably have applied this normalization technique and significantly mitigated the risk of a sustained protest.

Second, it is essential that selection personnel have both experience in evaluating proposals and technical expertise in the area they are assigned to evaluate. Again, in *Marquette*, not only did the source selection authority apply a comparative technique not specified in the solicitation, but it also applied the technique incorrectly. The official apparently lacked the technical expertise to recognize the double-counting mistake made.

The next risk-reduction approach for source selection teams is in the area of management. As discussed in the previous recommendation, by effectively directing the members of the source selection team in properly evaluating proposals and then verifying the results, senior personnel can help ensure consistent evaluations.

Finally, there are statutes and regulations dictating that evaluations shall be based solely on the factors specified in the solicitation. By adhering to these principles, contracting agencies can further mitigate the risk of sustainable protests. [Ref.5:p.542]

3. Thoroughly Conduct Cost/Price Realism Analyses when Required, and Always Evaluate the Total Cost/Price

Improper agency evaluation of cost/price was a factor in nearly one-third of all sustained protests for the period studied. In *Tidewater*, the Navy's cost realism evaluation consisted solely of comparing each offeror's target cost with the Government estimate. Since this was a cost-reimbursement contract, a cost realism analysis was required to determine if the overall costs were realistic for the work to be performed and reflected a clear understanding of the agency's requirements. In the planning stage of the acquisition, the agency could have considered the risk associated with not conducting a cost realism analysis and made allowances in its source selection plan. Specifically, the agency could have engaged the services of the Defense Contract Audit Agency (DCAA) to perform a pre-award survey. Such forethought by the source selection team involved in *Hamm* could have averted that unfavorable decision. In that case, the contracting officer accepted a proposed overhead rate that was significantly lower than DCAA's approved rate. This fatal flaw could have been avoided if the agency had planned to have DCAA evaluate proposed overhead rates.

Effective market research can also aid in determining price realism. By identifying adequate competition through market research and promulgating the solicitation to numerous qualified and capable contractors, the FAR has stated that such competition will usually establish price reasonableness. [Ref. 2:15.305]

4. Equitably and Consistently Evaluate Past Performance

Agencies improperly or unfairly evaluated a contractor's past performance in 20 percent of the sustained protests analyzed. More importantly, it is one of the most significant evaluation factors because it is a mandatory consideration on all procurements over \$1 million. [Ref.5: p.594]

U.S. Property is a classic example of unfairly evaluating a contractor's past performance. In essence, two newly formed companies—whose presidents had both previously worked for the incumbent contractor—each claimed virtually the same experience in their respective proposals. One was evaluated as having acceptable prior experience, while the other's experience was rated as only marginal. As in the last section, more thorough market research may have eliminated the risk of a sustained protest. If the past performance stated in each proposal

had not obviously shown that both companies' senior leadership shared the same prior work experience, then effective market research might have brought this information into plainer view. Comprehensive discussions on this subject should have made the inequity apparent to evaluators. Instead of relying on evaluators to sift through reams of proposal paperwork to find the pertinent information, adequately structured and fairly conducted discussions could have assisted in leveling the playing field as far as past performance was concerned.

In Nova, the company's actual past performance had been rated "average to outstanding" by previous contracting agencies. Evaluators who, instead, focused on the fact that Nova had numerous unresolved contract claims apparently overlooked this. Had these same evaluators delved deeper into the issue, they would likely have reached the same conclusions as GAO. After examining the claims closely, there was no evidence that these claims indicated problems in management effectiveness, responsiveness or cooperation. [Ref.13].

Finally, personnel must be instructed on how to evaluate a lack of past performance. The FAR Part 15 states that, in the case of an offeror without a record of relevant past performance or when past performance

information is not available, the offeror may not be evaluated favorably or unfavorably on past performance [Ref. 2:15.305(a)(2)(iv)]

This presents both a training challenge and a management concern. The challenge is to teach source selection team members about the regulation, as well as how to apply the regulation when evaluating proposals. The management concern is attempting to ensure that an offeror's lack of past performance information does not subliminally taint the evaluator's proposal rating. It is one thing to train the individual regarding the regulations, but it is another matter entirely when an individual's perceptions creep into the evaluation of other factors, such as technical ability to perform the contract. Only through strict adherence to the specific evaluation criteria can managers ensure that source selection personnel have not inadvertently prejudiced a prospective contractor.

5. Conduct Meaningful Discussions that Draw Offerors into Areas of their Proposal that Require Amplification or Correction

By failing to conduct meaningful discussions with offerors, contracting agencies were responsible for just over 20 percent of all sustained protests in calendar years 1998 and 1999. The purpose of discussions is to point

offerors toward areas of their proposals that are unclear or in error, and to then allow them to revise their offer. It can also be a signal that the solicitation itself did not clearly describe the agency's requirement. If that is the case, contracting officers should cancel the solicitation, revise it and then resolicit the requirement, or amend the current solicitation so that all offerors are proposing based on the same requirements. Aside from the requirement to hold meaningful discussions with offerors in the competitive range, there is also a requirement to give offerors an opportunity to address any adverse past performance information on which they have not previously had an opportunity to comment.

Biospherics goes one step beyond failing to conduct meaningful discussions. In this case, the agency suggested that the contractor review its proposal for any possible further savings when, in fact, the agency ultimately decided the offeror's price was unrealistically low. Such misleading communications undermine the contractor's confidence in Government as a fair business partner and further promote the "Us versus Them" mentality that contracting agencies must constantly battle. This is another element of the source selection process that can be improved through training. Effective training can not only

increase the knowledge level of source selection team members, but also improve their interpersonal communication skills. Both of these benefits to training will improve the value of contract discussions.

Mechanical is a protest that follows the reevaluation of proposals as the result of a prior sustained protest involving the same solicitation. GAO sustained the initial protest noting that the agency had not adequately supported its proposal evaluations and because the evaluations lacked reasonable bases. The evaluation board in the original source selection had evaluated *Mechanical* as excellent or better in three technical sub factors and had therefore not held discussions regarding those sub factors. In the follow on review, the evaluation board severely downgraded the offeror in those same sub factors but did not hold discussions regarding the newly discovered deficiencies. GAO found that since these deficiencies had not been addressed in previous discussions they could not form the basis for the contracting officer's decision to eliminate the offeror from consideration. The lesson that contracting agencies should derive from *Mechanical* is that discussions must be tailored to the specifics of the solicitation and the unique offer in order to be meaningful. As mentioned previously, meaningful

discussions 1) should lead offerors to areas of their proposal that require amplification or correction, 2) must address adverse past performance information which the offeror has previously not had the opportunity to comment on, and 3) should seek to level the playing field of all offerors without resorting to technical leveling or technical transfusion.

6. Craft a Complete Solicitation that Addresses the Agency's True Requirements and Clearly Instructs Offerors in Proposal Preparation and Evaluation

Requirements generation and acquisition management represent two of the three key management processes, discussed in DoD Directive 5000.1, 15 March 1996, that must dovetail effectively to ensure success. The third process is the planning, programming and budgeting system. This philosophy is reflected in the FAR which states that a request for proposal must contain at a minimum 1) Government's requirements, 2) anticipated terms and conditions that will apply to the contract, 3) information required to be in the offers, and 4) factors and sub factors that will be used to evaluate the proposal and their relative importance. [Ref. 2:15.203(a)]

Once again the primary deterrent of sustained protests is an investment of time. By applying significant effort in the planning stage of an acquisition, contracting agencies can help ensure that contract performance is on time, within budget and meets the needs of the end user.

Contracting agencies are afforded broad discretion in the evaluation process. Provided that proposals are evaluated reasonably and that award is made in accordance with the evaluation scheme described in the RFP, GAO will decide for the Government.

Another planning tool contracting agencies can use in an effort to reduce the risk of a sustained protest is to involve prospective contractors early in the process. Early supplier involvement helps ensure that the user's requirements 1) are technically capable of being met, 2) can be met within a specified timeframe, and 3) can be accomplished at an affordable price. Involving industry at the start of the acquisition process also allows for innovative technologies to be proposed and helps foster a sound business relationship for future efforts.

E. CONCLUSION

This chapter provided a qualitative analysis of the 42 cases of sustained protests of contracts awarded using a

trade-off process. First, the chapter presented statistics to provide a better understanding of the types and frequency of sustained elements observed by the researcher.

The eight sustaining elements observed among the cases studied were, in descending order of frequency:

- Selection Decision not Adequately Documented
- Evaluation of Proposals Inconsistent with RFP
- Improper Agency Evaluation of Cost/Price
- Improper Agency Evaluation of Past Performance
- Agency Improperly Failed to Conduct Meaningful Discussions
- Improper Agency Evaluation of Technical Merit
- Improper Agency Evaluation of Labor Qualifications
- Failure to Adequately Disclose Factor Evaluation Weights in Solicitation

In the researcher's opinion, these eight common sustaining elements can be further reduced to three guiding principles that Federal agency contracting officers can follow in order to mitigate the risk of sustainable protests. They are:

- Treat each offeror fairly, ethically and equitably, both in relation to other offerors and

as a prospective contractor seeking to engage in business dealings with the Government.

- Evaluate each and every proposal strictly in accordance with the stated evaluation scheme set forth in the solicitation.
- Thoroughly evaluate the full merits of every proposal that is submitted, and completely document, with reasoned explanation, every business decision made on behalf of the Government.

Clearly it is not possible to completely avoid protests by prospective contractors, but through reasoned and even-handed practices, it is possible to mitigate the risk of sustainable protests.

V. CONCLUSIONS AND RECOMMENDATIONS

A. INTRODUCTION

This chapter first provides answers to the primary and secondary research questions, which were the foundation of this thesis. It then presents conclusions and recommendations drawn from the qualitative analysis in Chapter IV. Finally, the chapter recommends areas for further research regarding protests of contracts awarded using a trade-off process.

B. RESEARCH QUESTIONS

In order to accomplish the objectives of this thesis, fundamental research questions were formulated. The responses to the primary and secondary research questions are provided in this section.

1. Primary Research Question

To what extent will an analysis of General Accounting Office decisions of protests of contracts awarded using the best value trade-off process, provide insight into the nature of Government contract protests and suggest ways to reduce such protests in the future?

Analyzing sustained protests of contracts awarded using a best value trade-off process provided a significant understanding of the basis for GAO's decisions. The following are selected general observations:

- Protests were sustained most frequently because of an agency's failure to evaluate proposals in accordance with the evaluation scheme and because business trade-offs made in the selection decision were not adequately supported by reasoned documentation.
- An agency's inability to properly evaluate all aspects of an offeror's proposal—cost/price, past performance, technical merit and labor qualifications—was a common fatal flaw among sustained protests.
- The fact that a Federal agency elects to use a trade-off source selection process does not increase the sustainment rate of protests compared to all protests of contracts awarded.
- Many protests reflect ineffective communications between offerors and contracting agencies during the evaluation process.

The following are suggestions for mitigating the risk of sustained protests of contracts awarded using the trade-off process:

- Document all business decisions and trade-offs made in evaluating offerors' proposals.
- Evaluate proposals strictly in accordance with the evaluation scheme stated in the solicitations.
- Conduct thorough and adequate evaluations of all aspects of an offeror's proposal.
- Conduct meaningful discussions.
- Structure solicitations to adequately reflect the factor evaluation weights to be applied in proposal evaluation.

2. Secondary Research Questions

- a. *What will an analysis of Government contract protests from January 1998 through December 1999 suggest about the nature of Government contract protests?*

Based on an analysis of 325 protests of contracts awarded using the trade-off process, the researcher observed the following general trends:

- Government tends to win seven out of every eight protests.
 - The number of protests filed against DoD awards was nearly two-fifths greater than for all other Federal agencies combined.
 - The sustainment rate was slightly lower for protests of DoD awards compared to all other Federal agencies as a group.
 - One in eight protests had previously been brought before the Comptroller General (i.e., same contract award).
 - The most common sustaining element was failure to adequately document the source selection decision.
 - Defense Finance Accounting Service had the highest sustainment rate among DoD activities, with 67 percent.
 - The Department of Health and Human Services had a sustainment rate of 40 percent, the highest among other Federal agencies.
 - DoD accounted for exactly half of the sustained protests.
- b. *Do sustained protests of awards using the best value trade-off process fall into distinct categories?*

The results of the researcher's analysis show that sustained protests of contracts awarded using the trade-off process fall into one or more of the following categories:

- Selection Decision Not Adequately Documented
- Evaluation of Proposals Inconsistent with RFP
- Improper Agency Evaluation of Cost/Price
- Improper Agency Evaluation of Past Performance
- Agency Improperly Failed to Conduct Meaningful Discussions
- Improper Agency Evaluation of Technical Merit
- Improper Agency Evaluation of Labor Qualifications
- Failure to Adequately Disclose Factor Evaluation Weights in Solicitation

c. What will an analysis of the research results suggest about weaknesses in Government contracting norms and execution practices?

The research revealed eight categories of sustaining elements in which the Government exhibited weaknesses in its source selection norms and execution practices. An analysis of these elements indicates that the primary weakness is the failure of those involved in the source selection process to adequately support the trade-off decision with reasoned documentation. The second most frequent weakness observed also involved various

members of the source selection process. Failure to adhere to the evaluation scheme set forth in the solicitation constituted one-third of all source selection weaknesses. The research indicated that there is a need for on-going training among all members of the source selection team and that the focus of such training should be in the proper methods for proposal evaluation, conduct of discussions and source selection documentation.

d. *How can the results of this analysis be used to reduce the risk of protest?*

There is very little that Federal contracting agencies can do to reduce the risk of a contract protest. After all, prospective contractors have little to lose; for the price of a stamp, they can file a protest with the Comptroller General. Frivolous protests, however, will be summarily dismissed. This leaves the question: "How can the number of legitimate protests be reduced?" The answer can be found in the following two steps:

- Ensure the integrity of the source selection process, as described in Chapter II.
- Adequately inform unsuccessful offerors, during the debriefing process, of the reasons their proposal was not selected.

By following these steps, Federal contracting agencies can reduce the risk of protest.

e. How can the results of this analysis be used to reduce the risk of sustainable protest?

This research revealed that, with one exception, the basis for sustainment occurred during the evaluation of proposals and resulted in the Comptroller General ruling that a particular aspect of the source selection process was unreasonable, improper or unsupported. In order to effectively mitigate the risk of a sustainable protest, contracting agencies must first ensure that proposals are properly evaluated in accordance with governing regulations and the specifics of the solicitation. Second, contracting agencies must adequately document the rationale for their trade-off decisions. Performing this second step not only helps protect against successful protests by demonstrating that the decision is neither arbitrary nor capricious, but also provides a framework on which to base the debriefing of unsuccessful offerors. By thoroughly understanding the reason for the agency's trade-off decision, unsuccessful offerors begin to perceive the selection process as equitable and logical.

C. CONCLUSIONS

The answers to the research questions have led the researcher the following conclusions:

- Prospective contractors' protests are usually denied unless they can show that a selection

decision is unreasonable or conflicts with the stated evaluation criteria for award.

- Contracting agencies would benefit from training in the areas of source selection and decision documentation.
- Communication between offerors and the Government appears to be problematic with respect to discussions.
- Contracts of all types and sizes are subject to considerable delay due to protests. This was reflected in the five cases that had been brought before the Comptroller General a second time and that resulted in an average period of 19 months from release of RFP until ultimate sustainment by GAO. This does not even indicate the extent of the delay until actual contract performance begins.

D. RECOMMENDATIONS

This research suggests the following recommendations for mitigating the risk of sustainable protests:

- Adequately support the selection decision with reasoned documentation.
- Evaluate proposals in a manner consistent with the solicitation.
- Thoroughly conduct cost/price realism analyses when required, and always evaluate the total cost/price.
- Equitably and consistently evaluate past performance.
- Conduct meaningful discussions that draw offerors into areas of their proposal that require amplification or correction.

E. AREAS FOR FURTHER RESEARCH

The scope of this research was limited to protests of contracts awarded using the trade-off process for calendar

years 1998 and 1999, with attention focused on protests that were sustained and the reasons for sustainment.

Specific areas that merit further research include:

- Comparison of GAO decisions with those of the U.S. Court of Federal Claims.
- Analysis of U.S. Court of Federal Claims decisions for a similar period.
- Analysis of those contracting agencies with the highest protest sustainment rates, focusing on why these agencies have higher sustainment rates than other agencies.
- Continuation of this thesis, focusing on types of products or services being solicited.
- Development of a center of excellence training program for training source selection teams that will be awarding contracts using the trade-off process.
- A study determining if early supplier involvement and teaming with industry practices have affected the level of protests of contracts awarded using the trade-off process.

APPENDIX A. SELECTED ACRONYMS

Army CoE	Army, Corps of Engineers
BAFO	Best and Final Offer (see FPR)
CO	Contracting Officer
COFD	Contracting Officer's Final Decision
CPAF	Cost-Plus-Award-Fee
CPFF	Cost-Plus-Fixed-Fee
DCA	Defense Commissary Agency
DFARS	Defense Federal Acquisition Regulation Supplement
DFAS	Defense Finance and Accounting Service
DISA	Defense Information Systems Agency
DLA	Defense Logistics Agency
DoA	Department of Agriculture
DoC	Department of Commerce
DoD	Department of Defense
DoE	Department of Energy
DoJ	Department of Justice
DoN	Department of Navy

DoT	Department of Transportation
DSCP	Defense Supply Center Philidelphia
DSCR	Defense Supply Center Richmond
EPA	Environmental Protection Agency
FAR	Federal Acquisition Regulation
FFP	Firm Fixed-Price
FHA	Federal Highway Administration
FPAF	Fixed-Price Award Fee
FPIF	Fixed-Price-Incentive-Firm
GAO	General Accounting Office
GSA	General Services Administration
HHS	Health & Human Services (Department of)
HUD	Housing & Urban Development (Department of)
IDIQ	Indefinite Delivery, Indefinite Quantity
JFK-CPA	J.F. Kennedy, Center for the Performing Arts
LPTA	Lowest Priced, Technically Acceptable

NASA	National Aeronautical & Space Administration
NIEHS	National Institute of Environmental Health Service
PCC	Panama Canal Commission
RFP	Request for Proposal
RFQ	Request for Quotation
SSA	Source Selection Authority
SSAC	Source Selection Advisory Council
SSEB	Source Selection Evaluation Board
SSP	Source Selection Plan
SS Admin	Social Security Administration
TSO	TRICARE Support Office
USAID	U.S. Agency for International Development
USMS	U.S. Marshal Service
USGS	U.S. Geological Survey
VA	Veteran's Affairs (Department of)

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AMC Pamphlet 715-3

**Contracting for Best Value
A Best Practices Guide to Source Selection**

1 January 1998

**Department of the Army
Headquarters, United States Army Materiel Command
5001 Eisenhower Avenue, Alexandria, VA 22333-0001**

Foreword

This guide provides techniques and practices for obtaining best value products and services through source selection. Consistent with the spirit of acquisition reform, it introduces new and innovative techniques to simplify the source selection process and produce better value. Its purpose is to provide you with a practical reference tool that will help you implement a new way of doing business that promotes flexibility, streamlining, and simplified procedures.

This guide is designed for use by the entire acquisition workforce to promote a consistent understanding of best value and the various processes and techniques that can be used to achieve it. It explains best practices for planning your source selection, teaming, exchanging information with industry, and conducting efficient and effective source selections.

I encourage you to read and use this guide in your efforts to get the best value for your customers.

Johnnie E. Wilson
General, USA
Commanding
U.S. Army Materiel Command

Acknowledgments

We are issuing this guide to help the acquisition community and its customers conduct efficient and effective source selections that produce better value. It should be used in conjunction with existing regulations.

This guide was a team effort. Shelley Scott, Jim Bozzard, Ann Budd, and Sally George consolidated, revised, and updated the guide to reflect the latest acquisition reform initiatives. We thank Diane Travers of the AMC Office of Command Counsel for her assistance and special

contributions. We also extend our thanks to Curtis Stevenson from the Army staff for his support and advice. Finally, we acknowledge and thank all of the Source Selection Improvement Integrated Product Team members and the individuals within their networks across the Army who reviewed the drafts, contributed invaluable comments and recommendations, and so graciously shared their knowledge and experience.

We encourage you to share this guidance with those who may benefit.

We are distributing only a limited number of hard copies since we have made the guide electronically accessible as follows:

You may view, download and provide feedback on this guide via the Internet through the AMC Source Selection Resource Center at http://www.army-acquisition.net/amcweb/fr_ssl.htm.

This guide is also included within the DOD Acquisition Deskbook, accessible via the Internet at <http://web.deskbook.osd.mil> or on CD-ROM.

The Source Selection "© *Blueprints*" referenced throughout the guide are designed to be living models for commonly used source selection documents. While they are not available with this hard copy, they may be accessed electronically*.

This pamphlet does not create any substantive or procedural right in third parties or impose any specific legal duty or obligation upon any government organization or employee.

This guide consolidates and updates all AMC source selection guides into a single document that includes separate appendices on past performance, oral presentations, and debriefings. It should be used to promote best value in source selection.

* ***This pamphlet supersedes AMC-P 715-3 Vol. 1, 8 Jan 87; AMC-P 715-3 Vol. 2, 9 Oct 87; AMC-P 715-3 Vol. 3, 18 Mar 87; AMC-P 715-3 Vol. 4, 15 Sep 93; AMC-P 715-3 Vol. 5, 16 Aug 94; and AMC-P 715-3 Vol. 6, 24 Jan 95.***

Overview

Source selection is the process used in competitive, negotiated contracting to select the proposal expected to result in the best value to the Government. The source selection approach must be tailored to the acquisition. You have to consider your evaluation needs; i.e., don't make source selection more complicated and expensive than necessary.

What is Best Value?

In the broadest sense, best value is the outcome of any acquisition that ensures we meet the customer's needs in the most effective, economical, and timely manner. It's the result of the unique circumstances of each acquisition, the acquisition strategy, choice of contracting method, and award decision. Under this concept, best value is the goal of sealed bidding, simplified acquisition, commercial item acquisition, negotiated acquisition, and any other specialized acquisition methods or combination of methods you choose to use.

**Best Value is the goal
of every acquisition**

Purpose of This Guide

This guide provides information on the various processes and techniques that can be used to conduct efficient and effective source selections. We are presenting some of the best and most innovative practices being used. The principles in this guide apply to all source selections, both those that are complex and the majority where the contracting officer is the selection official. During acquisition planning, select the methodology that is most appropriate to the unique circumstances of the acquisition and expected to result in the best value.

Unless you use a lowest price technically acceptable evaluation approach, your source selection will involve some form of tradeoff. This guide's focus is on the tradeoff process and will provide some hints and ideas that will be useful in doing a tradeoff between cost or price and other important factors.

There are two important points to keep in mind as you do your planning and select your evaluation and source selection process:

- Tailor your process to fit your circumstances. There is no magic checklist in this arena. Consider the complexity of the acquisition and resources available. Use a combination of techniques if it will work best for you and if it is fair.
- The same principles apply in selecting and executing a source selection process or technique, whether you are using a formally structured organization for a complex acquisition or a more streamlined process typical for the majority of source selections.

The Federal Acquisition Regulation (FAR) prescribes the general policies governing source selection.

Appendix A of this guide contains definitions of certain words and terms associated with source selection.

Appendix B contains references along with their Internet addresses to assist you further in contracting for best value and conducting a source selection.

The Source Selection “©*Blueprints*” referenced throughout this guide are models for commonly used source selection documents and procedures and should be tailored to each individual acquisition. They may be accessed only on electronic versions, e.g., http://www.army-acquisition.net/amcweb/fr_ssl.htm.

Importance of the Source Selection Authority

The consequences of the selection decision can be far-reaching. In most cases the contracting officer is the selection official. In some acquisitions, or class of acquisitions, the agency head or other official may be the selection official, or will appoint someone else to make the selection. The source selection authority must be at a level that is fully accountable for the results of the decision and knowledgeable of the factors necessary to determine the best value. In addition, successful execution of an acquisition using the tradeoff process requires early involvement of the source selection authority so that person is prepared to make a rational selection decision consistent with the solicitation. The amount of time and effort required obviously needs to be considered when making the appointment.

In a complex source selection, it may be useful to provide a number of briefings to the source selection authority early in the acquisition process and at critical steps throughout the process. This approach will ensure that the source selection authority knows the program and the acquisition process constraints. It also allows the source selection authority to readily express concerns and ideas that are likely to influence the final selection decision.

Examples of where source selection authority involvement is essential include approval of the source selection/evaluation plan and the solicitation.

Importance of Procurement Integrity

There are stringent requirements for maintaining the integrity of the procurement process that ***Must*** be adhered to by all participants involved in the source selection process. This includes both technical and contracting personnel. ***Procurement integrity rules provide for both civil and criminal penalties for violations (see FAR 3.104).*** The guiding principle behind these requirements is that all offerors are treated fairly and no one obtains an unfair advantage.

Planning For Source Selection

Designing an Acquisition Strategy

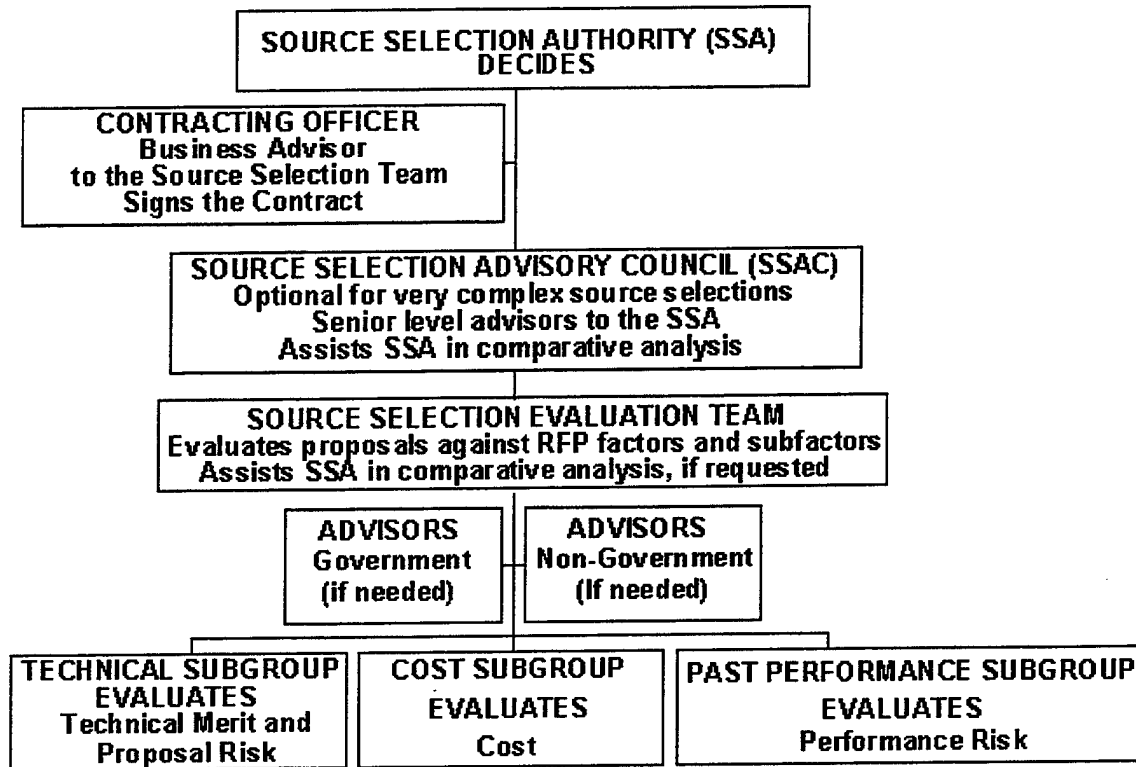
As soon as possible after a need to acquire products or services has been identified, an acquisition strategy meeting should be held. The attendees should include the person responsible for managing the program or project, acquisition and legal representatives, potential evaluation team members, and others as needed.

The strategy meeting should be used to determine the acquisition approach including the source selection process and techniques that will be most appropriate. The group should use the meeting to discuss the results of market research, potential evaluation factors, information that may be needed from offerors to support those factors, and other appropriate planning issues such as the timetables for the acquisition and who should be members of the evaluation team. The group should design a strategy that best reflects the specific requirement, the results of market research, and the risks associated with the acquisition. The information obtained in the strategy meeting will be used as a basis for developing the source selection/evaluation plan.

**Source selection
is a team effort**

Forming a Team

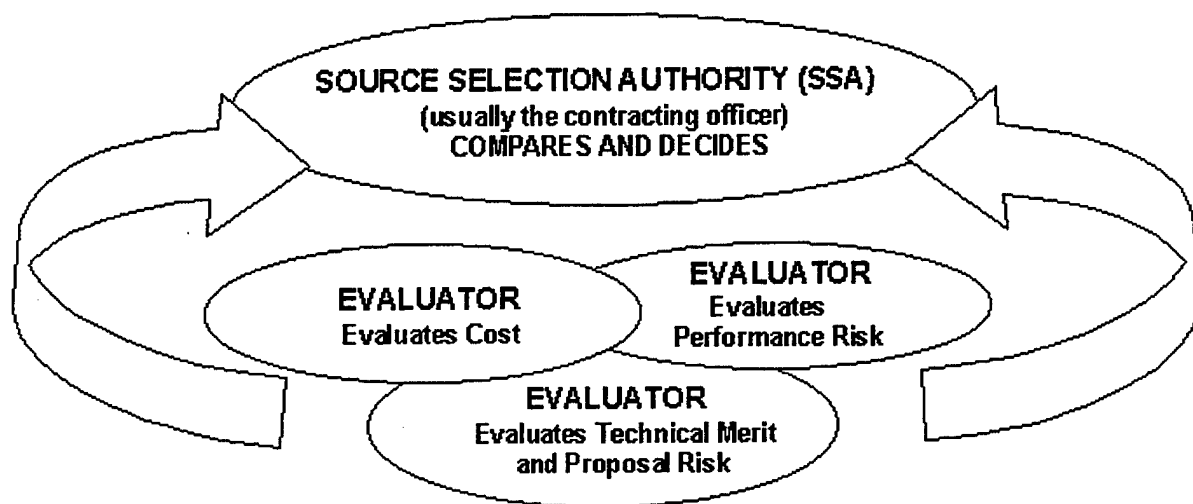
Source Selection "Blueprint" Typical Complex Source Selection Team



Blueprint: Typical Complex Team

Source Selection "Blueprint"

Typical Non-Complex Source Selection Team



Evaluators evaluate proposals against RFP factors and subfactors. Assist the SSA in comparative analysis, if requested

Blueprint: Typical Non-Complex Team

Source selection should be a multidisciplined team effort from the earliest planning stages.

The size and composition of the team should be tailored specifically to the acquisition. In complex source selections you may have a larger team (e.g., 8 to 10 people) from various functional disciplines. In streamlined source selections, however, the team may consist of one or more technical evaluators and the contracting officer, who is also the source selection authority. Whether the team is large or small, it should be established to ensure continuity and active ongoing involvement of appropriate contracting, technical, logistics, legal, user, contract administrators, and other experts to ensure a comprehensive evaluation of each proposal.

Researching the Market

Market research is the first step in any acquisition and an essential part of designing every acquisition strategy. The acquisition team uses market research to obtain information on products and services available in the commercial marketplace. Market research is key in determining whether a need can be met by a commercial item or nondevelopmental item and in identifying commercial practices associated with such items or services. It also has a key impact on your choice of appropriate evaluation factors, contracting method, and the amount and type of information to be included in proposals.

A thorough research of the market should be done as soon as needs are forecast and as part of acquisition planning. Sometimes it might be a one-person effort. Other times a team effort. A variety of techniques may be used to conduct market research and may include:

- Contacting knowledgeable individuals regarding market capabilities;
- Reviewing the results of recent market research;
- Querying government or commercial data bases;
- Participating in interactive, on-line communication;
- Reviewing catalogs and product literature.

Determining the Source Selection Approach

One of the first steps in designing an acquisition strategy is to determine the source selection approach or combination of approaches that you will use to obtain the best value. At either end of the best value continuum, are the tradeoff process and the lowest price technically acceptable process.

Other source selection processes can be designed to fit particular circumstances. You could tailor the process to combine elements of these two approaches. You could also use oral presentations as part of the proposal submission. The point is that the source selection processes or techniques must be appropriate to the acquisition.

The Tradeoff Process

Cost or price is always an evaluation factor in any source selection. However, many times you may have other factors that you also want to consider. You may need technical capabilities, qualifications, or experience that a low cost/price offeror may not possess. These factors may or may not be more important than cost/price, but they do have a strong bearing on the source selection decision. The source selection authority needs flexibility to select the best value that may not be the lowest price or the highest technically rated offeror. The decision will involve a comparison of the combination of noncost strengths, weaknesses, and risks and cost/price offered in each proposal and judgment as to which provides the best combination. The source selection authority will have to document the decision and why the selected source represents the best value to the government. This is the essence of the tradeoff process.

When to Use the Tradeoff Process: Strengths and Potential Pitfalls

Use the tradeoff process when it is essential to evaluate and compare factors in addition to cost or price in order to select the most advantageous proposal and obtain the best value.

The tradeoff process is particularly appropriate if:

- The Government's requirements are difficult to define, complex, or historically troublesome;

- You expect measurable differences in the design, performance, quality, reliability, or supportability;
- Services are not clearly defined or highly skilled personnel are required;
- You are willing to pay extra for capability, skills, reduced risk, or other noncost factors, if the added benefits are worth the premium;

Always consider the strengths and potential pitfalls of using a tradeoff process to ensure that it is consistent with your overall acquisition strategy.

Strengths

- Allows greater flexibility to subjectively compare technical and cost factors to determine the value of the relative strengths, weaknesses, and risks of the proposals.
- Enables selection of the best approach among a range of solutions and increases the likelihood of selecting suppliers who are most likely to provide quality products and services, on time, and at reasonable cost/price.
- Takes advantage of the experience and independent judgment of the source selection official.

Potential Pitfalls

- Using evaluation factors and subfactors that are not derived from the market place and do not accurately reflect the Government's requirements. This may result in award to an offeror that may not be the best value.
- Using too many evaluation factors and subfactors. A large number of factors and subfactors dilutes consideration of those which are truly important.
- Failure to make the appropriate investment in resources needed for a competent and defensible value analysis.
- An inherently subjective process, and thus more difficult to evaluate and document.

Major Steps in the Tradeoff Process

The tradeoff process generally consists of the following steps:

- Designing a strategy that best reflects the results of market research and the specific circumstances of the acquisition.
- Establishing and documenting a source selection or technical evaluation plan. This plan includes the acquisition goals and objectives, identification and relative importance of evaluation factors and subfactors, the evaluation standards, and the selection process.

- Structuring the solicitation to effectively communicate the Government's requirements, mission objectives, the factors and subfactors, their relative importance, the information offerors must submit for evaluation against the stated factors and subfactors and the methodology for evaluating the proposals.
- Evaluating the offers on the basis of the source selection plan and the evaluation factors and subfactors in the solicitation and having discussions as needed.
- Comparing the strengths, weaknesses, risks, and cost/price or most probable costs of the proposals and deciding which combination, in accordance with the solicitation factors and subfactors, represents the best value.
- Documenting the source selection decision including the tradeoffs and rationale used.
- Awarding the contract, notifying offerors and debriefing them upon their request.
- Documenting the lessons learned that may benefit future source selections.

The Lowest Price Technically Acceptable Process

In some situations, simply comparing the cost or price of proposals meeting or exceeding the solicitation's requirements for acceptability can be expected to result in the best value. In such cases, cost/price is the overriding consideration. While there may be a need for discussions there is no need to make tradeoffs.

The lowest price technically acceptable process is similar to a sealed bid approach in that award is made to the acceptable offeror with the lowest evaluated cost or price. The major difference is that discussions can be held with offerors prior to source selection to ensure offerors understand the requirements and to determine acceptability. Tradeoffs are not permitted and no additional credit is given for exceeding acceptability. However, proposals are evaluated to determine whether they meet the acceptability levels established in the solicitation for each noncost evaluation factor and subfactor.

The lowest price technically acceptable process may be appropriate where the requirement is not complex and the technical and performance risks are minimal, such as acquisitions where service, supply, or equipment requirements are well defined but where discussions may be necessary.

Major Steps in the Lowest Price Technically Acceptable Process

The lowest price technically acceptable process generally consists of the following steps:

- Designing a strategy that best reflects the results of market research and the specific circumstances of the acquisition.
- Establishing and documenting a source selection or technical evaluation plan. This plan includes the acquisition goals and objectives, identification of acceptability

requirements for each noncost evaluation factor and subfactor, and procedures for evaluating proposals and making award.

- Structuring the solicitation to effectively communicate the Government's requirements, the factors and subfactors with associated acceptability standards, the information offerors must submit for evaluation of acceptability against the stated factors and subfactors, and the basis for award (i.e., the lowest priced proposal meeting or exceeding the standards.)
- Evaluating and rating proposals on a pass/fail basis against the acceptability requirements in the solicitation.
- Conducting discussions or other exchanges as needed. Comparing the cost or prices of acceptable proposals and awarding the contract to the offeror with the lowest evaluated price meeting the acceptability requirements.

Past Performance and the Lowest Price Technically Acceptable Process

- If you determine that past performance is a discriminator under this approach, then you must state in the solicitation the criteria that you will use to evaluate it on a pass/fail basis. For small businesses, an unacceptable rating in this area is a matter of responsibility. Therefore, in your acquisition planning, you should anticipate a possible need to obtain a Certificate of Competency from the Small Business Administration if a small business otherwise eligible for award has unacceptable past performance.
- A Certificate of Competency determination is not required however, if you select a hybrid strategy that combines the lowest price technically acceptable and tradeoff processes. Under such a strategy, you could still evaluate technical proposals on a pass/fail basis while basing the final selection decision on a tradeoff between past performance and price.

Conducting a Presolicitation Dialogue with Industry

Foster a presolicitation dialogue with industry to:

- ***Ensure a mutual understanding of the government's need and industry's capabilities***
- ***Minimize inclusion of non-value added requirements, and***
- ***Promote a more effective source selection.***
- An effective dialogue with industry even before a solicitation is written or released can pay dividends during later phases of the process. The earlier and more effective you are in keeping up to date on the market and new technology, and ensuring the market knows what your requirements are, the better for both parties. The growing trend is to provide more information, not less, to potential offerors. With more

information, they can make informed decisions about whether to compete, they can offer better proposals, the evaluation and selection process will be quicker and smoother, and there is less chance of miscommunication and a protest. There are a variety of mechanisms to maintain contact with potential offerors including the following:

- Advanced Planning Briefings for Industry to provide a forecast of future direction and requirements;
- Market research to stay abreast of innovation, advances, and capabilities;
- Information centers to provide access information to documents relevant to the acquisition;
- Requests for Information and Draft Requests for Proposals to obtain information from industry on such things as price and availability and comments on the proposed solicitation;
- Meetings and conferences, including one-on-one meetings with potential offerors and Presolicitation Conferences.
- In conducting a presolicitation dialogue with industry, always make sure that you:
- Release information to all potential offerors on a fair and equitable basis consistent with regulatory and legal restrictions.
- Establish clear ground rules for the conduct timing, and documentation of any one-on-one meetings to ensure potential offerors are given equal access to information needed to prepare proposals.
- Protect any proprietary information that you are given access to during this process.
- Request contracting and legal counsel advice if any questions arise about presolicitation exchanges.

Drafting a Source Selection/Evaluation Plan

A thoroughly contemplated plan for selecting a best value source is vital to any source selection process. In all source selections, the plan is tailored to reflect the complexity of the acquisition. In more complex source selections, this plan is called the Source Selection Plan and should be prepared for the source selection authority's approval. In less complex acquisitions the plan is often referred to as the Technical Evaluation Plan. The plan is developed prior to or concurrently with preparation of the solicitation. It states your intentions for organizing and conducting the evaluation and analysis of proposals and the source selection. It contains acquisition sensitive information and is not released outside the contracting activity's source selection organization.

Acquisitions using a tradeoff process are often subject to dynamic internal and external influences. Examples of such influences include:

- The differing missions or functions to be supported. Such situations influence how the agency specifies its requirements, which in turn influence offerors' solutions.
- The rate at which technology and market factors are changing. Between the time the agency identifies a requirement and the offerors submit proposals, technology may have developed efficiency and productivity benefits unanticipated by the agency. Accordingly, you should structure the selection plan and the solicitation to consider these influences and assure that the proposal selected provides the best value to the government.

Purpose of the Source Selection Plan

The source selection plan serves several purposes, including --

- Defining a specific approach for soliciting and evaluating proposals.
- Describing the evaluation factors and subfactors, their relative importance, and the methodology used to evaluate proposals.
- Providing essential guidance to the solicitation developers, especially for putting together the solicitation sections dealing with proposal preparation and evaluation.
- Serving as a charter and guide for the source selection team on the roles of the members and the conduct of the entire source selection from proposal evaluation, through the cost/price/technical tradeoff, award decision, and debriefing.

Guidelines for a Source Selection Plan

Source Selection/Evaluation Plan

Section I. Summary Description

A. Item/Service to be Acquired

B. Proposed Contract Type (*Choose one*)

- ☐ FFP
- ☐ FP with Incentives
- ☐ Cost
- ☐ Cost with Incentives
- ☐ Hybrid (Explain)

C. Source Selection Process (*Choose one*)

- ☐ Tradeoff

- ☐ Low Price Technically Acceptable
- ☐ Hybrid (explain)

D. Special Evaluation Techniques (explain, if applicable)
e.g. oral presentations, multi-step techniques

Section II. Source Selection Team

A. **Members.** List the evaluation team members by name and functional area (including advisors, if applicable).

B. **Team Member Certifications:** Verify/attach by reference certificates from each team member protecting unauthorized release of source selection or proprietary information.

Section III. Evaluation Factors and Subfactors

A. **Proposal Evaluation Information.** State all factors, subfactors and their relative order of importance exactly as they will appear in the solicitation. If you elect to include desirable objectives or features you would be willing to pay extra for, include an explanation of how they will be evaluated and whether or not credit will be given for exceeding such desirables.

B. **Proposal Submission Information.** State the instructions to offerors for preparing and submitting proposals exactly as they will appear in the solicitation.

Section IV. Description of Evaluation Procedures

A. **Rating System.** Describe the evaluation technique (ratings and their definitions) that will be used to rate the proposals.

B. **Evaluation Standards.** Describe the standards or target levels you will use to measure how well a proposal addresses each evaluation factor and subfactor.

C. **Procedures for Recording the Evaluation**
e.g. Worksheet(s) for recording evaluator ratings with supporting narrative

D. **Schedule.** Identify the schedule for key source selection activities.

Section V. Rationale for the Evaluation Scheme

A. **Factors and Subfactors.** Explain how the selected factors and subfactors reflect the circumstances of your particular acquisition and the results of market research and other presolicitation exchanges with industry.

B. **Weights.** Explain how the relative importance of the factors and subfactors reflect the acquisition's primary objective. Explain why the most heavily weighted factors are the "drivers"

of the source selection.

Blueprint: Typical Evaluation Plan

Although there isn't a specific format for the source selection plan, its size and detail should reflect the complexity of the acquisition. You should include, at a minimum, a discussion of the following:

- A description of what you are buying. This description should be stated in functional terms to the maximum extent possible and use a minimum of technical language.
- A description of the evaluation organization structure. It may be helpful to include --
 - An organization chart, showing the evaluation team's structure, or a brief description of how the team is organized.
 - The duties and responsibilities of each element of the source selection team.
 - The evaluation team's agenda and schedule.
 - Information on the need for preparation and training of the evaluation team.
 - Security procedures to be used by the evaluation team to protect classified, proprietary, or source selection information.

CERTIFICATE FOR PERSONNEL PARTICIPATING IN SOURCE SELECTION CONCERNING NONDISCLOSURE, CONFLICTS OF INTEREST, AND RULES OF CONDUCT

Name: _____ Organization: _____

Title: _____ Source Selection: _____

1. I acknowledge that I have been selected to participate in the source selection identified above. I certify that I will not knowingly disclose any contractor bid or proposal or source selection information directly or indirectly to any person other than a person authorized by the head of the agency or the contracting officer to receive such information. I understand that unauthorized disclosure of such information may subject me to substantial administrative, civil and criminal penalties, including fines, imprisonment, and loss of employment under the Procurement Integrity Law or other applicable laws and regulations.

2. To the best of my knowledge, I certify that neither I nor my spouse nor my dependent children, nor members of my household, nor personnel with whom I am seeking employment have any direct or indirect financial interest in any of the firms submitting proposals, or their proposed subcontractors or have any other beneficial interest in such firm except as fully

disclosed on an attachment to this certification.

3. I certify that I will observe the following rules of conduct:

- a. I will not solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing contractor.
- b. I will not ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing offeror for this acquisition. I will advise my family that the acceptance of any such gratuity may be imputed to me as a violation, and must therefore be avoided.
- c. I will not discuss evaluation of source selection matters with any unauthorized individuals (including Government personnel), even after contract award, without specific prior approval from proper authority.
- d. I understand that my obligations under this certification are of a continuing nature. If at any time during the source selection process, I receive a contract from a competing contractor concerning employment or other business opportunity, the offer of a gift from a competing contractor, or I encounter circumstances where my participation might result in a real, apparent, or potential conflict of interest, I will immediately seek the advice of an Ethics Counselor and report the circumstances to the Source Selection Authority.

I understand that making a false, fictitious, or fraudulent certification may subject me to prosecution under Title 18, United States Code, Section 1001.

Signature: _____

Date: _____

Blueprint: Certifications

- Plans for presolicitation activities such as issuing a draft solicitation and holding a presolicitation and/or preproposal conference or Advance Planning Briefing for Industry.
- An acquisition strategy summary that includes an explanation of the contract type to be used (e.g., firm fixed price).
- The proposed evaluation factors and subfactors, their relative importance, and associated evaluation standards.
- A description of the evaluation process you are using (i.e., lowest price technically acceptable, tradeoff, or hybrid) and any innovative techniques such as multiple

phases or oral presentations, or tailoring. See Appendix E for details on oral presentations. Include a description of the rating system you are using.

- A schedule of significant milestones that should cover, at a minimum, the period beginning with the designation of the source selection authority and continuing through the period from receipt of proposals through the signing of the contract, during which evaluation, negotiation, and selection take place.

Selecting Evaluation Factors and Subfactors

You must clearly state in the solicitation and source selection plan all the evaluation factors and subfactors that you will consider in making the source selection and their relative importance. These factors and subfactors inform offerors of all the significant considerations in selecting the best value source and the relative importance the Government attaches to each of these considerations. Offerors should understand the basis upon which their proposals will be evaluated and how they can best prepare their proposals.

Evaluation factors help offerors understand the evaluation process

Structure evaluation factors and subfactors and their relative order of importance to clearly reflect the Government's need and facilitate preparation of proposals that best satisfy that need.

A multidisciplinary team chooses the evaluation factors and subfactors based on user requirements, acquisition objectives, perceived risks, and thorough market research. Thorough research of the market helps the team identify the capabilities of different industry sectors and where those capabilities are most likely to differ among potential offerors. The team then selects only those factors that will help differentiate among offerors and surface the most advantageous proposal.

Limit evaluation factors and subfactors to those areas that will reveal substantive differences or risk levels among competing proposals.

Limit evaluation factors to true discriminators

Cost Factors

The Competition in Contracting Act (CICA), as implemented in the FAR, requires that price or cost to the Government be included as an evaluation factor in every source selection. This is because affordability must always be a consideration when spending taxpayer dollars.

**Always include cost or price
as an evaluation factor**

The relative importance between cost or price and the noncost factors must also be reflected in both the solicitation and the weights or priority statements in the source selection plan. However, cost/price is not numerically scored in the evaluation of proposals, because of possible distortions that can result when arbitrary methods are used to convert cost/price into scores.

Cost-related factors and considerations will vary depending on the type of contract. Regardless of contract type, reasonableness must always be a consideration, as the FAR requires that contracts be awarded only at prices or costs that are fair and reasonable.

Cost realism plays an important role in many source selections. A cost realism analysis is an independent review of each offeror's cost proposal to determine if specific estimated

proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials in the offeror's technical proposal.

Cost realism must be considered when a cost reimbursement contract is anticipated. Under a cost type contract, the proposed cost estimates may not be valid indicators of final actual costs that the Government will be obligated to pay. For this type of contract, a cost realism analysis is performed and used to determine the probable cost of performance for each offeror. Selection decisions should be based on these probable cost estimates. Significant differences between proposed and most probable costs may signal increased performance risks.

Cost realism may also be considered for fixed price incentive contracts or, in exceptional cases, for other fixed price type contracts especially when there are concerns that offerors may try to "buy in" or where other complexities of the acquisition could result in misunderstanding the requirements. In such cases, a cost realism analysis may be useful for determining if there is a significant risk of future performance because of unrealistically high or low prices. However, proposed fixed prices are not adjusted for cost realism during the evaluation.

The solicitation must clearly state what costs will be evaluated. These costs may include costs for the basic effort only, basic plus all options, or costs incurred as a result of acquiring or owning an item (e.g., transportation, life cycle costs). The solicitation should also clearly indicate to offerors how the cost factor will be assessed for that acquisition.

Past Performance

The caliber of a contractor's performance on previous contracts shall be included as an evaluation factor in competitively negotiated acquisitions unless the contracting officer documents why it would not be appropriate for the specific circumstances of the acquisition. A thorough evaluation of past performance, to include information that is outside of the offerors' proposals, serves to ensure that awards are made to good performers rather than to just good proposal writers. See Appendix D for details on evaluating past performance.

Technical Factors

Technical evaluation factors address the proposal's technical and performance efficiency. These factors may include such considerations as technical approach and capabilities, management approach and capabilities, experience and personnel qualifications relative to satisfying critical aspects of the government's requirements. Technical factors must be developed specifically for each acquisition, taking into consideration the particular objectives and requirements of the acquisition. These factors should be those discriminators that are determined after thorough market research as most likely to reveal substantive differences in technical approaches or risk levels among competing proposals.

The source selection team has broad discretion in determining the technical evaluation factors and subfactors, their relative importance, and the way in which they will be applied.

However, too many factors and subfactors can lead to a leveling of ratings, in which the final result may be a number of closely rated proposals with little discrimination among competitors.

It is not the number of noncost factors that is critical, but having the right factors.

Basic requirements for noncost evaluation factors are:

- A reasonable expectation of variance among proposals in that area.
- A variance that you can measure either quantitatively or qualitatively.
- The factor must be a true discriminator.

An evaluation factor should be chosen only if your requirements warrant a comparative evaluation of that area. The simplest way to assess a potential evaluation factor is to ask: "Will superiority in this factor provide value to the Government and is the Government willing to pay more for that superiority?"

Best Practices

Selecting the right evaluation factors is one of the most important decisions you will make in designing your evaluation process. We are often faced with the triple problems of less time, less funds, and fewer available personnel to devote to source selections. If you don't concentrate on what's important in selecting the best value offeror you could end up with the evaluation team wasting a lot of time and effort looking at issues that don't differentiate between offerors. This can also result in a weak evaluation that doesn't give the source selection authority the information needed to make a good selection.

There are certain factors that you must consider in any competitive source selection. Price/cost is an automatic factor that you always have to consider. You also have to consider past performance in your evaluation process unless the contracting officer documents why it is not appropriate for the specific circumstances of the acquisition. In addition, you may have to add factors that are required by regulation for specific acquisitions, such as any applicable preferences for small entities. From here, you add other factors and subfactors that are important to deciding which is the most advantageous proposal. Remember, not everything that the offeror

has to do under the contract is really a discriminator that will help you decide which proposal will result in the best value. Consider what you are buying and what will really discriminate.

How to select the additional factors/subfactors? Consider the following methodology:

- Research the market for what you are buying and your probable universe of offerors.
- Form an Integrated Product Team (IPT) and brainstorm critical factors and subfactors.
- Select only those factors and subfactors likely to surface the most advantageous proposals.
- Define the key discriminators and prioritize the list.
- Get source selection authority approval of the list of factors/subfactors.
- Clearly and concisely tell offerors in the solicitation what the factors/subfactors are and their relative importance.
- Listen carefully to industry feedback from presolicitation exchanges to see if your choices are right. If necessary, change the factors/subfactors before solicitation.

Weighting the Factors and Subfactors

After determining the evaluation factors and subfactors, their relative importance to each

other must be established. The relative importance of factors and subfactors must be consistent with the stated solicitation requirements. If their relative importance does not accurately reflect the Government's requirements and objectives, the source selection authority may later award to an offeror whose proposal may not be the best value. As a general rule, the higher the technical or performance risk, the greater the emphasis on noncost factors. The relative importance between all noncost factors combined and cost or price must also be described using the terms, "significantly more important," "approximately equal," or "significantly less important." This relative ranking must be reflected in both the solicitation and the weights or priority statements in the source selection plan.

The relative importance of evaluation factors and subfactors is usually established by priority statements, numerical weighting, or a combination of these.

- Priority or tradeoff statements, numerical weighting, or a combination of these usually establishes the relative importance of evaluation factors and subfactors.
- Priority or tradeoff statements would relate one factor to others. For example, in a priority statement, the cost/price factor may be said to be slightly more important than a noncost factor called "performance risk" but slightly less important than a noncost factor called "technical merit."

- Numerical weighting would involve assigning relative importance to the factors and subfactors using points or percentages. Although numerical weights may be used in making the tradeoff analysis and decision, the weights themselves may, but need not be disclosed in the solicitation. If you don't disclose the numerical weights themselves in the solicitation, they must be described in terms of priority or tradeoff statements.

Cost/price as an evaluation factor is never scored or rated as part of the evaluation. But, just like all the other factors and subfactors, cost/price has to be weighted to indicate its importance relative to the other evaluation factors and subfactors and the overall evaluation. The weight given to cost/price reflects its relative importance in selecting the best proposal for award. The circumstances of your particular acquisition will indicate how important cost/price is in satisfying your requirement.

Developing Evaluation Standards

Evaluators must be able to determine the relative merit of each proposal with respect to the evaluation factors. Evaluation standards provide guides to help evaluators measure how well a proposal addresses each factor and subfactor identified in the solicitation. Standards permit the evaluation of proposals against a uniform objective baseline rather than against each other. The use of evaluation standards minimizes bias that can result from an initial direct comparison of proposals. Standards also promote consistency in the evaluation by ensuring that the evaluators evaluate each proposal against the same baseline. In developing standards for each evaluation factor and subfactor, you should consider the following:

- As you develop your evaluation factors, concurrently draft a standard for each factor and subfactor.
- Define the standard by a narrative description that specifies a target performance level that the proposal must achieve in order to meet the standard for the factor or subfactor consistent with the requirements of the solicitation.
- Describe guidelines for higher or lower ratings compared to the standard "target."
- Overly general standards should be avoided because they make consensus among evaluators more difficult to obtain and may obscure the differences between proposals. A standard should be worded so that mere inclusion of a topic in an offeror's proposal will not result in a determination that the proposal meets the standard. (An example is shown at Appendix C.)
- While it is sometimes easier to develop quantitative standards because of their definitive nature, qualitative standards are commonly used in source selections. Standards, as part of the source selection methodology, should be included in the source selection plan.

Establishing a Rating Method

Typical Ratings and Descriptors

Each rating must have a definition.

TECHNICAL MERIT ratings reflect the government's confidence in each offeror's ability, as demonstrated in its proposal, to perform the requirements stated in the RFP. Choose one method (e.g., numerical, adjectival, or color) to evaluate technical merit.

<u>NUMERICAL</u>	<u>ADJECTIVAL</u>	<u>COLOR</u>	<u>DEFINITION</u>
90-100	Excellent	Blue	Proposal demonstrates excellent understanding of requirements and approach that significantly exceeds performance or capability standards. Has exceptional strengths that will significantly benefit the Government.
80-89	Good	Green	Proposal demonstrates good understanding of requirements and approach that exceeds performance or capability standards. Has one or more strengths that will benefit the Government.
70-79	Satisfactory	Yellow	Proposal demonstrates acceptable understanding of requirements and approach that meets performance or capability standards. Acceptable solution. Few or no strengths.
60-69	Marginal	Amber	Proposal demonstrates shallow understanding of requirements and approach that only marginally meets performance or capability standards necessary for minimal but acceptable contract performance.
<60	Unsatisfactory	Red	Fails to meet performance or capability standards. Requirements can only be met with major changes to the proposal.

PROPOSAL RISK ratings assess the risks and weaknesses associated with each offeror's proposed approach to performing the requirements stated in the RFP. It is an overall assessment derived from the technical evaluation and is driven by each of the subfactors within the technical factor.

<u>ADJECTIVE</u>	<u>DESCRIPTION</u>
Low Risk	Any proposal weaknesses have little potential to cause disruption of schedule, increase in cost, or degradation of performance. Normal contractor effort and normal Government monitoring will probably minimize any difficulties.

Moderate Risk	Approach has weaknesses that can potentially cause some disruption of schedule, increase in cost, or degradation of performance. However, special contractor emphasis and close Government monitoring will probably minimize difficulties.
High Risk	Approach has weaknesses that have the potential to cause serious disruption of schedule, increase in cost, or degradation of performance even with special contractor emphasis and close Government monitoring.
<u>PERFORMANCE RISK</u> (Past Performance) ratings assess the risks associated with each offeror's likelihood of success in performing the requirements stated in the RFP <u>based on that offeror's demonstrated performance on recent, relevant contracts.</u>	
<u>ADJECTIVE</u>	<u>DESCRIPTION</u>
Very Low Risk	Offeror's past performance record provides essentially no doubt that the offeror will successfully perform the required effort.
Low Risk	Offeror's past performance record provides little doubt that the offeror will successfully perform the required effort.
Moderate Risk	Offeror's past performance record provides some doubt that the offeror will successfully perform the required effort.
High Risk	Offeror's past performance record provides substantial doubt that the offeror will successfully perform the required effort.
Very High Risk	Offeror's past performance record provides extreme doubt that the offeror will successfully perform the required effort.
Unknown Risk	The offeror has no relevant performance record. A thorough search was unable to identify any past performance information.
COST - NOT "RATED." Reflects the evaluated cost. RFP must describe method by which cost will be evaluated (e.g., how probable cost or life cycle cost will be evaluated.)	

Blueprint: Typical Ratings and Descriptors

A rating system uses a scale of words, colors, numbers or other indicators to denote the degree to which proposals meet the standards for the noncost evaluation factors. Thus, a rating system helps evaluators assess a proposal's merit with respect to the evaluation factors and subfactors in the solicitation. Some commonly used rating systems are adjectival, color coding, and numerical.

Rating systems which use adjectives or colors are usually the most successful because they allow maximum flexibility in making the tradeoffs among the evaluation factors. A narrative

definition must accompany each rating in the system so that evaluators have a common understanding of how to apply the rating. For example, a rating of excellent (or blue or 90-100) could be defined as meaning an outstanding approach to specified performance with a high probability of satisfying the requirement. What is key in using a rating system in proposal evaluations, is not the method or combination of methods used, but rather the consistency with which the selected method is applied to all competing proposals and the adequacy of the narrative used to support the rating.

Adjectival

Adjectives (such as excellent, good, satisfactory, marginal, and unsatisfactory) are used to indicate the degree to which the offeror's proposal has met the standard for each factor evaluated. Adjectival systems may be employed independently or in connection with other rating systems.

Color Coding

This system uses colors to indicate the degree to which the offeror's proposal has met the standard for each factor evaluated. For instance, the colors blue, green, yellow, amber, and red may indicate excellent, good, satisfactory, marginal, or unsatisfactory degrees of merit, respectively.

Numerical

This system assigns point scores (such as 0-10 or 0-100) to rate proposals. This rating system generally allows for more rating levels and thus may appear to give more precise distinctions of merit. However, numerical systems can have drawbacks as their apparent precision may obscure the strengths, weaknesses, and risks that support the numbers. Therefore, some organizations do not permit the use of numerical rating systems.

Narrative

Narrative is used in conjunction with a rating system to indicate a proposal's strengths, weaknesses, and risks. Adjectival, color, and numerical ratings must be supported with narrative statements. Narrative statements can describe the proposals' relative strengths, weaknesses, and risks to the source selection authority in a way that adjectives, colors, and numbers alone cannot. A narrative is required when evaluation standards are being applied, when a comparison of proposals is being made, and when a cost/technical tradeoff is conducted. The narrative provides a reasonable and rational basis for the selection decision.

The Solicitation

Ensure consistency among the objectives of the acquisition, the contracting strategy, the evaluation plan, the solicitation, the evaluation and selection.

All the parts of the solicitation work together to communicate government requirements to potential offerors. The solicitation provides all the information the offeror needs to understand what you are buying, how you are buying it, and how you will select who to buy it from. This information includes: the work requirements; the terms and conditions; evaluation factors and significant subfactors; the relative importance of the factors and subfactors; instructions to offerors, including whether award might be made without discussions; and other exhibits and attachments. When read as a whole, the solicitation should convey to the offerors a clear understanding of what you are buying and the areas where technical and cost tradeoffs can be made in their proposals to best satisfy the Government requirements.

Industry frequently complains that solicitations have major conflicts. Particularly troublesome are conflicts among the descriptions of what we're buying, instructions on how to prepare a proposal, and guidance on important factors/subfactors and the ground rules for the evaluation. An inconsistent solicitation may result when different groups of people develop the different sections without proper coordination. Such a solicitation can defeat our objectives, cause unnecessary delays, or lead to litigation.

Coordination within a multidisciplinary acquisition team, whose members are stakeholders in the acquisition and have a commitment to work together, is the best way to ensure consistency. You may also find it beneficial to develop a matrix that correlates the solicitation sections and content to ensure solicitation consistency. You may want to provide industry with a copy of the matrix as a reference tool to aid in proposal preparation. This approach promotes understanding of the linkage within the solicitation and explains how all parts of the proposal will be used in the evaluation process.

Appendix C illustrates how the key solicitation documents and evaluation standards track to one another and shows the recommended sequencing for document preparation.

Another way to promote understanding of the solicitation is to foster a presolicitation dialogue with industry.

This can be accomplished through use of various communication forums such as Commerce Business Daily notices, Advance Planning Briefings for Industry, draft solicitations, and/or presolicitation/preproposal conferences.

Performance Requirements -- (Specifications, Work Statement, or Equivalent)

The way you present the Government's requirements in the solicitation can have a significant impact upon a source selection using the tradeoff approach. For example, use of a work breakdown structure (WBS) in the work statement for the most complex cost type contracts can

help ensure offerors' pricing breakdowns are consistent and comparable. Some additional areas to consider when preparing the work requirements for the solicitation include:

Functional or Performance Requirements

Use functional or performance requirements to the maximum extent possible. In some cases, it may be more difficult to develop evaluation standards and conduct the evaluation process itself; however, there are benefits to using functional or performance requirements. These benefits include:

- Increased competition.
- Access to the best commercial technology.
- Better technical solutions for better prices as a result of offeror innovation.
- Functional or performance requirements can usually be developed faster than design requirements.
- Fewer situations may exist for protests.

Using performance requirements can lead to offeror innovation

Design Requirements

You should limit the number of design requirements to those essential to meet mission needs. Design requirements may:

- Limit competition.
- Limit situations where potential offerors can propose innovative solutions.
- Slow the specification development process.
- Provide more situations for an offeror to protest (e.g., because of the belief that the winning proposal did not meet all the minimum requirements or that the requirements were unnecessarily restrictive of competition).

Proposal Submission Information

The instructions for preparing and submitting proposals are critical to an acquisition using the tradeoff approach. There has to be a linkage between solicitation requirements, each evaluation factor and subfactor and the proposal preparation instructions.

**Each evaluation factor and subfactor
must correlate directly with the
proposal preparation instructions**

If you cannot cross-walk the solicitation requirements, factors/subfactors and the proposal instructions, you have a conflict that you need to correct.

***Request only the information needed to evaluate proposals
against the evaluation factors and subfactors. Never ask
for information you do not intend to evaluate.***

The information requested from offerors must correlate with the evaluation factors and subfactors. However, instructions that require voluminous information can cause potential offerors to forego responding to the solicitation in favor of a less costly business opportunity. Furthermore, excessive size of proposals may increase the Government's costs to perform the evaluation and length of the evaluation period. In order to simplify the preparation of proposals and to make the evaluation easier, you may wish to consider imposing a realistic limit on the number of pages and foldouts to be submitted.

The instructions on the preparation and submission of proposals must:

- Be clearly and precisely stated.
- Be keyed to the evaluation factors and subfactors.
- Describe the type, scope, content, and format of the information to be submitted.
- Describe the order in which proposal responses and materials are to appear.
- Be limited to the information needed to do the evaluation.
- Properly written proposal preparation instructions simplify the evaluators' job. That is, evaluators do not have to learn a new format for each proposal; they can evaluate the same requirements in each proposal in the same way. With a sufficient degree of structure in the proposal preparation requirements, you may be able to accept proposals in electronic form and use some automation in the evaluation process.

Proposal Evaluation Information

***Clearly state in the solicitation the basis upon which the
Government will make the source selection decision.***

The information from the Source Selection/Evaluation Plan that you provide in the solicitation on evaluation factors and subfactors and their relative importance forms the basis for evaluating offerors' proposals and making the cost/technical tradeoff. The solicitation is the official vehicle

for you to communicate to offerors which factors and subfactors or ground rules the Government will use to select the most advantageous proposal for award.

Consider the following points in designing the solicitation:

- Provide the evaluation factors and subfactors verbatim from the source selection plan.
- Provide the actual numerical weights at the factor level.
- Provide an estimate of what you've identified as an affordable target price range for the acquisition, based on your market research or other reviews.

This information can help offerors to better focus on those aspects of the mission objectives where additional value can be important and to better respond to the Government's needs by giving emphasis to those things most important to the Government. To reap the benefits of better proposals you need to include and adequately describe all the factors and subfactors (as reflected in the source selection plan) that will be considered in making the selection.

The solicitation must also inform offerors of any minimum requirements that apply to particular evaluation factors and subfactors that have to be met. You need to distinguish between minimum acceptable requirements and desirable objectives or features that you would be willing to pay extra for. If you elect to include desirable objectives or features in addition to minimum requirements, the solicitation must clearly explain how you will evaluate them and whether or not credit will be given in the evaluation for exceeding such desirables.

Evaluation Considerations

Overview

The source selection evaluation process includes examining each proposal in detail against the evaluation factors and subfactors and the requirements set forth in the solicitation, and assigning a rating, with a supporting narrative. The proposal evaluation process assesses the proposal and the offeror's ability to perform. At this stage, it does not analyze proposals against each other and it must be conducted in a fair, comprehensive, and impartial manner.

Evaluations must be fair, thorough, and impartial

The evaluation process can be complicated no matter how much planning and tailoring you do. You might find through your market research that you are going to receive many proposals -- good for competition but a situation that could drag out evaluation. You might explore the world of automated source selection tools that can increase your efficiency. There are commercial packages available and some activities have developed packages in house that you could use. Evaluators still have to evaluate each proposal, but these tools might ease the administrative burden that comes with a great number of proposals.

Reasons for the Evaluation Process

The principal purposes of the process are to:

- Determine which proposals are acceptable and/or within the competitive range.
- Provide a sound basis for the source selection authority to make an informed and reasoned selection by:
 - Presenting a clear picture of the issues considered during evaluation by identifying areas of uncertainty as well as those which provide substantial assurance of a successful outcome.
 - Listing the strengths, weaknesses, and risks of the proposed approaches.

Evaluation Process Tasks

Evaluation tasks will vary in number and content with each source selection. However, several especially important tasks are discussed below.

Familiarization

Prior to receipt of proposals, each evaluator should become familiar with the solicitation's requirements, the source selection plan, and the rating system. You should, especially for those evaluators with no prior source selection evaluation experience, conduct training that includes an overview of the solicitation and of the work expected throughout the source selection process. The training should include how to properly document each proposal's strengths, weaknesses, and risks.

Cost Evaluations

Cost or price must be an evaluation factor in all acquisitions. The cost evaluation will vary depending on the specific circumstances of each acquisition.

For fixed price contracts, the evaluation normally should be as simple as a comparison of the offered prices to ensure the contract price is fair and reasonable. Other techniques of price analysis may also be used. Do not perform a cost analysis unless there is no other way to determine if the price of the otherwise successful offeror is reasonable.

For cost-reimbursement contracts, you must analyze costs for both realism and reasonableness. The cost realism analysis enables you to determine the probable cost of performance for each offeror. This precludes an award decision based on overly optimistic offeror's cost estimates where risks of an overrun may be significant.

A cost realism analysis requires an independent review of specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements for contract resources (e.g., labor and material) are realistic, show understanding of the work, and are consistent with the demands of the work which will actually be required, given each offeror's unique methods of performance and materials described in their technical proposal.

The probable cost should reflect the Government's best estimate of the cost of any contract, which is most likely to result from the offeror's proposal. This estimate is determined by adjusting each offeror's proposed cost, and fee when appropriate, upwards or downwards to reflect any additions or reductions in personnel, equipment, or materials resulting from the cost realism assessment.

For the cost realism evaluation of an offeror's proposal, you have to decide what information you need. The amount and type of information will vary depending on the circumstances of your acquisition. You may have to get more after you start evaluating the proposals. However, like other proposal requirements, you should only request the minimum amount of information that is necessary. Also, remember that any information you use only for the cost realism analysis is not considered cost or pricing data.

To the extent that differences between proposed costs and probable costs reflect significant risks of future performance or lack of understanding, that risk or lack of understanding should be reflected in the noncost evaluation. In such cases, you should also seriously consider whether or not the proposed cost and fee or price can be determined fair and reasonable to both parties.

The probable cost estimates developed for each offeror are used to evaluate and compare proposals and ultimately to select the proposal expected to result in the best value.

Past Performance Evaluations

Unless you are using a lowest price technically acceptable approach, the past performance evaluation involves a comparative assessment of performance risk associated with each proposal. It describes the degree of confidence the government has in the offeror's ability to perform based on that offeror's demonstrated record of past and present work similar to the work to be performed. If properly conducted, the past performance evaluation and the preaward survey will complement each other and provide a more complete picture of an offeror than either one could by itself.

Appendix D contains procedures for evaluating past performance in source selections, including those acquisitions where selection is based solely on cost/price and past performance.

Technical Evaluations

PROPOSAL EVALUATION WORKSHEET		
RFP No:		
<u>EVALUATOR'S NAME:</u>	<u>OFFEROR:</u>	
<u>RFP REFERENCES:</u>	<u>PROPOSAL REFERENCES:</u>	
<u>FACTOR:</u>	<u>VOLUME/PARAGRAPH:</u>	
<u>SUBFACTOR:</u>	<u>PAGE NUMBER:</u>	
Merit Ratings: (Refer to your rating definitions, e.g., Excellent (E), Good (G), Satisfactory (S), Marginal (M), Unsatisfactory (U))		
Proposal Risk Ratings: (Refer to your risk definitions, e.g., ☐ Low ☐ Moderate ☐ High)		
Evaluator's Rating: (Merit/Risk)		
Initial Rating: (e.g., G/M)	Evaluator Initials/ Date:	Team Leader Initials/Date:
Discussions:	Evaluator Initials/ Date:	Team Leader Initials/Date:
Final Rating:	Evaluator Initials/ Date:	Team Leader Initials/Date:
RATIONALE: Include supporting rationale for the ratings. Using the evaluation standards and rating definitions, state the evaluation results in terms of strengths; weaknesses/significant		

weaknesses/deficiencies; and risks. Include questions that address ambiguities or other concerns (e.g., perceived deficiencies, weaknesses, omissions, mistakes). Identify all comments and questions below with the rating: (e.g., Initial Rating (IR), Result of Discussions (RD) or Final Rating (FR). Use continuation sheets or a database as needed and a separate sheet for every factor and subfactor.
STRENGTHS:
WEAKNESSES/SIGNIFICANT WEAKNESSES/DEFICIENCIES: (Precede comment with an [S] if it identifies a <u>s</u> ignificant weakness or a [D] if a <u>d</u> eficiency.)
RISKS:
QUESTIONS:

Blueprint: Typical Evaluation Worksheet

Evaluators must examine each proposal individually in detail to measure it against the evaluation factors and subfactors in the solicitation. Evaluators ask questions such as, "How much?" or "How well?" assign a rating and document the basis for the rating. This is the core of the evaluation process.

Normally, technical evaluations should be conducted independent of the cost/price evaluations so that technical findings and conclusions will not be influenced by knowledge of the offered costs. However, in some instances, it may be appropriate to give the entire evaluation team access to price/cost information to ensure the best possible overall evaluation and enhance the evaluation of cost realism. Such a review can help verify perceived technical strengths, weaknesses or risks and/or ensure consistency between the cost/price and technical segments of the proposals.

All evaluators must have the required functional expertise and training to evaluate the particular area of the proposal to which they are assigned. They should also be thoroughly familiar with the solicitation and the source selection plan.

Identifying Proposal Ambiguities and Inadequate Substantiation

Evaluators should first document problems in evaluating a proposal because its language is ambiguous, its meaning is unclear, or it has failed to respond to the solicitation instructions. Evaluators should also identify, in writing, instances in which an offeror has not provided enough information to evaluate the feasibility and merit of its proposed approach. The Contracting Officer can then seek amplification and additional information to address such issues.

Identifying Strengths, Deficiencies, Significant Weaknesses, and Risks

Evaluators must identify and document the strengths, deficiencies, significant weaknesses, and the accompanying risks of the competing proposals. Proposals that materially fail to meet a Government requirement or that contain a combination of significant weaknesses that increase the risk of unsuccessful performance are considered to be deficient.

Narrative statements must be used to establish a written record. Numerical scores and other rating techniques are not conclusive data to make the source selection decision. Only evaluations and ratings substantiated by specific strengths, weaknesses, and risks can be credible and justifiable. General terms such as "weak," "poor," or "excellent" must be supported with specific reasons as to why the proposal is "weak," "poor," or "excellent" in relation to the standard for the specific factor and subfactor being evaluated.

The strengths, weaknesses, and risks of each proposal form a large part of the basis for the source selection decision.

Documenting proposal strengths, weaknesses, and risks is critical

Generally, the fact that a proposal is deficient as submitted does not necessarily mean that it is excluded from further consideration. The identification of these vital items provides:

- An element for the contracting officer to consider in determining the competitive range.
- The framework for any necessary discussions between the Government and the offeror.
- Specific information on the relative strengths and weaknesses of competing proposals. This is critical to the successful completion of an acquisition using the tradeoff approach because it is an essential element of the evaluation report provided to the source selection authority.
- The basis for tradeoff analysis ultimately performed by the source selection authority to determine if differences in merit between proposals justify any cost/price differential.
- The framework for offeror debriefings.

A separate evaluation finding, regardless of the offered cost or price, can be a determination that a proposal is technically unacceptable. This finding is based on failure to meet requirements, or even the basic intent of the acquisition, and that a complete revision of the proposal would be required. In this case, you would be put in the position of leading the offeror to a solution or approach, which is unfair to the other offerors.

Consensus

The final rating of each proposal should be assigned by consensus of the evaluators. Simple averaging of individual evaluation results does not constitute consensus. Consensus requires a meeting of the minds on classifications, deficiencies, strengths, weaknesses, and risks. In exceptional cases where the evaluators are unable to reach agreement without unreasonably delaying the acquisition process, the evaluation report may include the majority conclusion and the dissenting view(s), each with a supporting rationale.

Exchanging Information with Offerors

Dialogue with offerors after receipt of proposals allows us to get information we need to better understand proposals and make best value decisions. While all such dialogue must be conducted in a fair and impartial manner, its nature and extent will vary depending upon when it occurs after receipt of proposals.

Who is in Charge?

The contracting officer remains the focal point for all information exchanges with prospective contractors from release of a solicitation through contract award. Once proposals are received, the contracting officer also controls all exchanges with offerors.

Establishing the Ground Rules

Before exchanging any information with offerors, the contracting officer should ensure that team members who may participate in such exchanges receive instructions not to:

- Favor one offeror over another (i.e., provide the offeror with suggested ways to correct its proposal relative to other offerors);
- Reveal an offeror's solution, technology, or intellectual property to another offeror;
- Reveal an offeror's price without that offeror's permission;
- Reveal the name of individuals providing past performance information; or
- Knowingly furnish source selection information.

Award Without Discussions

Before issuing the solicitation, you must decide whether or not you intend to award without discussions and communicate your intent in the solicitation. In making this decision, consider

whether or not you are likely to obtain best value without discussions. An award without discussions is most likely to result in best value when requirements are clear, commodities are known or stable, and the marketplace is extremely competitive.

If your solicitation advised offerors of intent to award without discussions, you may still hold discussions, if appropriate, provided you document the file as to why discussions are necessary.

If, after proposal evaluation, it is clear that the cost of conducting discussions would more than offset the potentially lower prices or increased functionality resulting from discussions, then it may be appropriate to award on initial proposals.

Requesting Clarifications When Awarding Without Discussions

The most limited exchanges are clarifications that occur if award will be made without discussions. Under these circumstances, we may give offerors the opportunity to clarify certain aspects of their proposals such as questions about the relevancy of their past performance or adverse past performance information on which an offeror hasn't yet had an opportunity to comment. These exchanges may be used to resolve minor irregularities, informalities, or clerical errors. Such clarifications provide minor explanations but do not revise or modify the proposal, except to the extent that correction of apparent clerical mistakes results in a modification.

Holding Communications

Before making a competitive range decision, you may need to hold communications with some offerors to determine whether or not to include a proposal in the competitive range. This is like fact-finding. The objective of these precompetitive range exchanges is to help evaluators understand and evaluate the proposal.

Communications may be held to help evaluators understand gray areas in the proposal

Communications must be held with any offeror who will be excluded from the competitive range because of their adverse past performance information. Otherwise, you may hold communications only with those offerors who are neither clearly in nor clearly out of the competitive range. If you know that you will include an offeror in the competitive range, then wait until you open discussions to address your concerns.

Offerors should ensure that initial proposals are as clear and complete as possible. When holding communications, ask only those questions necessary to understand the proposal and make the competitive range determination. You may use communications to solicit information that will clear up gray areas, such as perceived deficiencies, omissions, and errors, or questions about an offeror's capability or preaward survey. During communications, you must give offerors an opportunity to address any adverse past performance information to which the offeror has not previously had an opportunity to comment. This ensures that offerors are not excluded from the

competitive range on the basis of incorrect past performance information that they had not had a prior opportunity to address.

Information obtained during communications, however, may not be used to revise a proposal, correct any deficiencies or material omissions, or change any technical or cost elements of a proposal, except for correction of mistakes.

**Communications do not
permit proposal revisions**

Once you have enough information to decide how the proposal should be rated, (e.g., decided whether a potential deficiency is, indeed, a deficiency), then STOP. Never accept a revision before opening discussions.

Establishing the Competitive Range

The competitive range consists of all the most highly rated proposals, unless it is further reduced for efficiency. Establishing the competitive range results in greater efficiency by limiting the number of offerors with whom the Government must hold discussions to the finalists or leading contenders for contract award. However, failure to properly establish a competitive range can result in higher costs because of protests or eliminating potentially competitive offerors. When establishing the competitive range, consider the following points:

- Determine the competitive range only after an initial evaluation of each proposal in accordance with all cost and noncost factors in the solicitation.
- Limit the competitive range to all of the most highly rated proposals, considering the initial evaluation of both cost and noncost factors. Predetermined "cut-off" ratings cannot be used to exclude a proposal from the competitive range.
- If there are very few highly rated proposals, you may want to include all of them in the competitive range.
- If there are too many highly rated proposals to evaluate efficiently, you may limit the competitive range further, provided you notified offerors of your intent to do so in the solicitation.
- It may not always be necessary or even advisable to further narrow the competitive range for efficiency. You must determine what constitutes an efficient competitive range for each acquisition. When faced with the need to restrict the size of the competitive range, you should consider factors such as the expected dollar value of the award; the complexity of the acquisition and solutions proposed; or the extent of available resources and other relevant matters consistent with the need to obtain the best value.

- When further reducing the competitive range for efficiency, select from among the most highly rated proposals, the largest number that will still permit an efficient competition.
- The contracting officer determines the competitive range. In the case of more complex source selections, the determination is made with the approval of the source selection authority.
- Document the competitive range determination and the supporting rationale in the contract file.
- Maintain an efficient competitive range that doesn't waste resources for either side. The competitive range should be continually reassessed as discussions and evaluations continue. The contracting officer should remove from the competitive range any proposal that, during or after discussions, is no longer considered to be a leading contender for award. This allows offerors who are not likely to be selected for award to shift their bid and proposal costs to competitions where they have a better chance for success. The objective is an efficient competitive range that doesn't string offerors along wasting their time and money and your resources.

**Maintain an efficient competitive
range that doesn't waste resources**

- For proposals excluded from the competitive range, the contracting officer shall promptly notify unsuccessful offerors, in writing, of their exclusion. Upon request, you will also have to provide a debriefing that explains the basis for your decision. See Appendix F for more information on debriefings.

Conducting Discussions

The most detailed and extensive exchanges are negotiations that are held after establishment of the competitive range. These exchanges are known as discussions. Unless the solicitation informs offerors that award may be made without discussions, you must hold meaningful discussions with each offeror in the competitive range.

The primary purpose of discussions is to maximize our ability to get the best value.

**Discussions maximize our
ability to get the best value**

During discussions, our objective should be to reach complete agreement between and understanding by the Government and the offeror regarding all the basic requirements in the solicitation. In essence, obtaining a contract that demonstrates the greatest promise of meeting the solicitation's requirements and no surprises after award is the goal of both the Government

and the offeror. While the content of discussions is a matter primarily within the discretion of the contracting officer, discussions must meet fundamental requirements to be meaningful and fair.

Discussions must be meaningful and fair

Ensure discussions are meaningful by identifying to the offeror all evaluated deficiencies, significant weaknesses, and other proposal aspects that could be altered or explained to enhance materially an offeror's award potential.

Confine and tailor your discussions exclusively to each offeror's proposal relative to the solicitation requirements and evaluation factors and subfactors. Identify those things in the proposal that could clearly limit an offeror's award potential. Seeking the advice of legal counsel during the discussion process may help avoid protests.

You can facilitate meaningful discussions by addressing the following as a minimum:

- ***Deficiencies*** -- A material failure to meet a requirement. It is a deficiency whenever the offeror specifically says a requirement cannot or will not be met, offers an approach that clearly doesn't meet a requirement, or submits a proposal that contains a combination of significant weaknesses.
- ***Significant Weaknesses*** -- Include noncost and cost weaknesses that appreciably increase the risk of unsuccessful contract performance. It is a weakness whenever the proposal has a flaw important enough to cause a factor to be rated marginal or poor, or the probability of meeting a requirement to be high risk or moderate to high risk. This includes even relatively minor weaknesses if their cumulative impact is significant. For example, if an approach affects several areas of the evaluation, but makes no individual factor rating marginal or poor, you should include it in discussions if the cumulative impact is significant enough to impact the overall rating.
- ***Past Performance Information*** -- Include any concern about an offeror's past performance, including relevancy and any adverse past performance information on which the offeror has not previously had an opportunity to comment.
- ***Uncertainties or apparent mistakes*** -- Include any suspected errors, any significant omissions, and any uncertainties necessary to understand what is being offered. However, perfect knowledge isn't necessary. We tend to spend too much of our time and effort and that of the offeror, chasing information that has no real bearing on the evaluation. If we need it to draw a conclusion, then we should ask for it.

Identify deficiencies and significant weaknesses in terms of a clear declarative statement. Advising offerors of strengths in their proposals can also give offerors insight into areas to consider in making tradeoffs to correct deficiencies or weaknesses.

Obtaining Proposal Revisions

Confirm all information obtained through discussions by requesting or allowing proposal revisions, as appropriate, from all offerors in the competitive range still eligible for selection. Proposals are rarely alike, nor are the depth and range of discussions, therefore, tailor the number and content of revisions to each offeror's proposal. Ask offerors to submit written changes to their proposals resulting from discussions before requesting final proposal revisions, particularly if a number of significant issues need resolution. This allows further discussions, if necessary before the final cutoff date.

Tailor the number and content of revisions to each offeror's proposal

After you have received responses to all issues raised to the offerors during discussions, you must reevaluate the proposals. Any factor impacted by the responses must be rated again in the same manner as in the initial evaluation. Ensure that all issues are resolved or understood by each offeror and the government prior to concluding discussions.

At the conclusion of discussions, you must give all offerors remaining in the competitive range an opportunity to improve their proposal by submitting a final proposal revision within a common cutoff date and time. If, after receipt of final revised proposals it becomes necessary to subsequently clarify minor irregularities, you can, without any additional request for final proposal revisions from all offerors. However, if you need to negotiate further, a second final revision opportunity must be extended to all offerors.

Selection Decision

Ensure the selection decision:

- ***Is based on a comparative analysis of the proposals;***
- ***Is consistent with stated evaluation factors and subfactors; and***
- ***When tradeoffs are permitted, consider whether or not perceived benefits are worth any price premium.***
- ***Make the decision on a rational basis and set it forth in an independent, stand-alone defensible document.***

Consistent with the solicitation, after the team has completed the evaluation of the individual proposals, the source selection authority compares competing proposals to each other.

When using the lowest price technically acceptable process, the source selection authority compares proposals on the basis of cost or price alone and selects the offeror with the lowest evaluated cost/price meeting the acceptability requirements for all factors and subfactors.

When using the tradeoff process, the source selection authority compares proposals on the basis of cost/price, technical or other noncost ratings, and how its strengths, weaknesses, and risks will impact the specific objectives of the acquisition. The source selection authority may request the evaluators to conduct comparative analyses of proposals and make a recommendation concerning the source selection. The source selection authority will use all the information on the proposals and evaluation to make an independent judgement of the best value.

Consistent with the solicitation, the possible outcomes of this comparison are:

- The proposal with the superior noncost merit is the lowest cost/price proposal. In this case award should be made to the offeror submitting the proposal with the lowest evaluated price or cost.
- The proposals may be determined to be essentially equal in terms of noncost factors. In this case also, award should be made to the offeror submitting the proposal with the lowest evaluated price or cost.
- When the proposal with the lowest evaluated price or cost is other than the proposal(s) with higher noncost merit, the source selection authority must perform a cost/technical tradeoff analysis to decide whether the technical superiority of the other proposal(s) warrants payment of the additional price or cost.

Making the Cost/Technical Tradeoff Analysis

Ratings are merely guides for decision making. The source selection authority is responsible for independently determining whether noncost advantages are worth the cost/price that might be associated with a higher rated proposal. The decisive element is not the difference in ratings, but

the source selection authority's rational judgement of the significance of that difference, based on an integrated comparative assessment of proposals.

**There is no magic formula for
making the cost/technical tradeoff**

When making the cost/technical tradeoff leading to the selection decision, there is no "magic" formula. The cost/technical tradeoff and the source selection decision, which must be consistent with the solicitation, require that the source selection authority exercise reasonable business judgment in selecting the offeror for contract award. The information considered should include an analysis of the following:

- The proposals' total evaluated price or cost.
- The significance of the differences in the noncost ratings as indicated by each proposal's strengths, weaknesses, and risks. The strengths, weaknesses, and risks for each factor must be considered in light of the relative importance of each factor stated in the solicitation.

In performing a tradeoff, consider following steps such as these to arrive at a rationale decision that can be well documented:

- Compare the proposal differences that surfaced during your evaluations;
- Define these differences and analyze their impact on performance objectives;
- Make paired comparisons, comparing each proposal to each of the others;
- Assess the best mix of cost and noncost benefits and determine whether the strengths of higher rated proposals are worth the price premium.

**A price premium must be justified
regardless of the superiority of the rating**

It is essential to document cost/technical tradeoff judgments with detailed narrative explaining the relevant facts and supporting rationale. Mere statements of conclusion based on ratings or scores alone are not acceptable. The cost/technical tradeoff documentation must explicitly justify a price premium regardless of the superiority of the selected proposal's technical or noncost rating. This justification is required even when the solicitation indicates that noncost factors are more important than cost/price. The justification must clearly state what benefits or advantages the Government is getting for the added cost/price and why it is in the Government's interest to expend the additional funds.

Where it is determined that the noncost benefits offered by the higher priced, technically superior offeror are not worth the price premium, an explicit justification is also necessary. In this case, the documentation must clearly show why it is reasonable in light of the significance of the differences to pay less money for a proposal of lesser technical merit.

To determine which proposal provides the best value, the source selection authority must analyze the differences between competing proposals. This analysis must be based on the facts and circumstances of each acquisition and must be consistent with the solicitation.

This analysis ensures a disciplined and documented process for an integrated comparison of proposals and a rational basis for the source selection authority's ultimate decision.

Documenting the Proposal Comparison

Documentation explaining the final results of the evaluation should be prepared for the source selection authority to use in making the selection decision. This documentation should include the technical and/or past performance evaluation results, the cost/price evaluation, and the comparative value analysis, if applicable, for each proposal in the competitive range. The documentation should also include other considerations such as the results of negotiations.

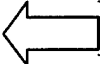
For more complex source selections, this is accomplished by means of a formal report that is provided to the source selection authority. For less complex source selections, the documentation may be included as part of the Price Negotiation Memorandum. It should be simple but concise and should cross-reference rather than repeat information in existing documents as much as possible (e.g., the source selection plan, evaluation team consensus report). The analysis and comparisons in this documentation should be used as an aid to the source selection authority's judgment -- not as a substitute for judgment.

The documentation may contain:

- Introductory information such as:
- Data about the source selection plan.
- The basis for award and evaluation factors and subfactors.
- Participants in the evaluation process.
- Solicitation requirements.
- The number of offerors solicited.
- The offerors who responded and those in the competitive range.
- A summary of each proposal within the competitive range

Summary matrix shows how evaluation results for each offeror are <u>integrated</u> at the factor level for use in documenting the proposal comparison. All ratings must be supported with narrative that describes the proposal's strengths, weaknesses, and risks.

FACTORS

<u>TECHNICAL MERIT</u> Summarizes assessment of the offeror's proposal as measured against the technical subfactors Example: "Good"	 Technical Subfactor 1 Technical Subfactor 2 Technical Subfactor 3 Technical Subfactor 4
<u>PROPOSAL RISK</u> Summarizes assessment of the weaknesses and risks associated with the offeror's proposed approach derived from the technical evaluation Example: Low Risk	
<u>PERFORMANCE RISK</u> Summarizes assessment of the offeror's demonstrated performance on recent, relevant contracts relative to the past performance subfactors. Example: Moderate Risk	 Past Performance Subfactor 1 Past Performance Subfactor 2 Past Performance Subfactor 3 Past Performance Subfactor 4
<u>COST/PRICE</u> Reflects the total proposed cost or price. Where cost realism is evaluated, the cost also reflects the probable cost resulting from any adjustments made for cost realism. Example: Proposed Cost \$XXX Most P Most Probable Cost \$XXX	

Blueprint: Individual Offeror Evaluation Results

- Comparative analyses of both cost and noncost factors of the proposals within the competitive range. The factors and subfactors evaluated should be discussed, first individually and then comparatively. The comparative cost analysis should explain the reasonableness, realism, and rationale of each offeror's price or cost proposal. Each proposal's major strengths, weaknesses, risks, as well as the details and results of the tradeoff analysis should be included.

Matrix shows summary comparative evaluation results for all offerors within the competitive range. The supporting comparative analysis must document the integrated assessment of the technical (merit and risk), performance risk, and evaluated cost of the proposals relative to the factors and subfactors and to each other.

TECHNICAL

PERFORMANCE

EVALUATED COST

<u>OFFEROR</u>	<u>TECHNICAL MERIT</u>	<u>PROPOSAL RISK</u>	<u>RISK</u>	<u>(Most Probable Cost)</u>
A	Excellent	Low	Low	\$171,503,971
B	Excellent	Moderate	Moderate	\$134,983,305
C	Good	Low	Moderate	\$120,976,836
D	Excellent	High	Moderate	\$150,840,308
E	Satisfactory	Moderate	Low	\$115,751,933

Blueprint: Summary Comparison Matrix

- A discussion of the overall impact of significant risks associated with each proposal within the competitive range. This discussion may address, for example:
- Technical risks inherent in the offeror's proposed approach.
- Degree of confidence in the realism of the offeror's cost or price proposal taking into consideration technical and schedule risk.
- Production risks relating to new technologies and overall production competence.
- Performance risks relative to the offeror's record of recent and relevant past performance.
- A summary of the comparative analyses, expressed in brief statements, of the issues considered significant to the source selection authority's decision. If requested by the source selection authority, a selection recommendation would be included.

Documenting the Selection Decision and Awarding the Contract

Source Selection Decision Document for (specify product/service & RFP #)

1. Decision Statement.

Example: As Source Selection Authority for this acquisition, I have determined that the XYZ product/service proposed by Offeror C provides the best overall value to satisfy Army needs. This selection was made based upon the factors and subfactors established in the solicitation and my integrated assessment and comparison of the strengths, weaknesses, and risks of the proposals submitted in response to the solicitation. This memorandum documents the basis for my decision.

2. Brief description of the product/service called for in the solicitation.

3. Brief description of the Basis for Award including the major factors against which

proposals were measured and their relative order of importance.

4. A list of offerors in the competitive range.

5. Rationale for business judgments and tradeoffs. Include the following:

- Succinctly compare each proposal to each of the others, focusing on key proposal differences (strengths, weaknesses, and risks) that surfaced in the evaluation and their impact on the acquisition objectives.
- Clearly explain specific tradeoffs that led to the decision.
- Clearly explain the specific benefits of technically superior offeror(s) and why they are or are not significant enough to warrant any additional cost.

6. Summary.

Example: In summary, based on my integrated assessment of all proposals in accordance with the specified evaluation factors and subfactors, it is my decision that Offeror C's proposal offers the best overall value.

Signature

Source Selection Authority

Blueprint: Typical Source Selection Decision Document

Documentation setting forth the decision rationale must be prepared to support the source selection authority's decision. The selection statement must be a stand-alone document that succinctly and accurately provides rationale for the selection. It should explain how the successful proposal measured up against other offerors based on the evaluation factors and subfactors in the solicitation. It should also explain the tradeoff judgments, including benefits associated with additional cost.

This document becomes part of the official contract file and can even be released, provided that any information exempt under the Freedom of Information Act (FOIA) is not released. This can ease the debriefing process by showing offerors who request a debriefing the rationale and logic used by the source selection authority. After the source selection authority has signed the selection decision document, the contracting officer may execute and distribute the contract.

Notification and Debriefing of Unsuccessful Offerors

When a contract is awarded as the result of a source selection, unsuccessful offerors must be debriefed and furnished the basis for the selection decision and contract award upon their written request. In addition, offerors excluded from the competitive range or otherwise excluded from the competition before award may request either a preaward or postaward debriefing. A debriefing may also be provided to the successful offeror.

Debrief offerors promptly, at their request, as to the basis for the selection decision. Candidly explain the results of the Government's evaluation of their proposal without making any point-by-point comparisons with the content of other proposals.

It is extremely important to promptly notify and debrief an offeror. Since each offeror puts considerable resources into preparing and submitting a proposal, fairness dictates that you explain why a proposal was unsuccessful. Early notification will also permit unsuccessful offerors to release the resources that would have been devoted to the contract effort so they can be used on other work. It is also in the Government's best interest to fully inform the offeror of the proposal's shortcomings so that the same mistakes are not repeated in future acquisitions. These actions reduce the cost of the competitive process and encourage the offeror to view the Government marketplace as a worthwhile area to invest its resources, thereby increasing competition. See Appendix F for guidelines on conducting debriefings.

Top Ten Messages

1. *Use a source selection approach commensurate with the acquisition's evaluation needs.*
 - *Don't make source selection more complicated and expensive than necessary.*
2. *Invest in command or program resources needed for a competent and well documented best value source selection.*
 - *Include the source selection authority as an active participant -- this is not a "figure head" position.*
 - *Train evaluators in best practices.*
3. *Understand the importance of planning.*
 - *Think through the entire process.*
 - *Prepare a source selection plan before the solicitation.*
4. *Structure the solicitation to communicate effectively to potential offerors:*
 - *Government requirements and mission objectives.*
 - *The information needed to evaluate the proposal.*
 - *The ground rules the government will use to select the best value proposal.*
 - *Evaluation factors and subfactors and their relative importance.*
5. *State requirements functionally to the maximum extent possible.*
 - *Limit use of design requirements.*
6. *Document strengths, weaknesses, risks and associated value of proposals to support the cost/technical tradeoff.*
 - *Recognize that numerical rating systems can imply false precision and limit flexibility in the decision making process.*
7. *Justify a price premium with cost/technical tradeoff documentation regardless of the selected proposal's technical superiority.*
8. *Ensure that the source selection decision is consistent with the solicitation.*
9. *Do a proper and timely debriefing.*
10. *Document lessons learned.*

The proponent of this pamphlet is the United States Army Materiel Command (AMC). Please send comments and

*suggested improvements to U.S. Army Materiel Command,
Attn: AMCRDA-AP, 5001 Eisenhower Avenue, Alexandria,
VA 22333-0001 or submit your comments via the Internet
at the following address: [http://www.army-
acquisition.net/amcweb/fr_ssl.htm](http://www.army-acquisition.net/amcweb/fr_ssl.htm).*

For the Commander:

Official:

James M. Link
Major General USA
Chief of Staff

Leroy Tillery
Chief, Printing and Publications Branch

Definitions

Competitive Range. All proposals that the contracting officer determines to be the most highly rated based on the cost and noncost evaluation factors stated in the solicitation.

Design Specification. A specification that establishes precise measurement, tolerances, materials, in process and finished product tests, quality control, inspection requirements, and other specific details of the deliverable.

Evaluation Factors and Subfactors. Descriptions of those aspects of a proposal that will be evaluated quantitatively or qualitatively to assess which proposal can best meet the Government's requirements as described in the solicitation.

Evaluation Standards. A baseline level of merit or acceptability used for measuring how well or whether an offeror's response meets the solicitation's requirements with respect to an evaluation factor or subfactor.

Functional Specification. A specification that describes the deliverable in terms of form, fit, and function and performance characteristics to satisfy the intended use.

Performance Specification. A specification that states requirements in terms of the required results and provides criteria for verifying compliance, without stating methods for achieving results. It defines the functional requirements, the operational environment, and the interface and interchangeability requirements.

Rating. The application of a scale of words, colors, or numbers, used in conjunction with narrative, to denote the degree to which the proposal has met the standard for a noncost factor.

Source Selection/Evaluation Plan. The document that explains how proposals are to be solicited and evaluated to make the selection decision. It is the Government's plan for how it intends to acquire its needs.

Source Selection Process. The process of soliciting and evaluating proposals for award in a competitively negotiated environment.

Specification. A description of the technical requirements for a material, product, or service to be provided under a contract that includes the criteria for determining whether the requirements are met.

Statement of Work (SOW). The complete description of work to be performed under the contract, encompassing all specifications and standards established or referenced in the contract.

Work Breakdown Structure. A basic framework, similar to a table of contents, which outlines, divides, and subdivides to successively lower levels, the government's requirements as set

forth in the SOW. Permits a logical arrangement of the elements of the SOW and a tracing of work effort and costs proposed by each offeror under each of the elements.

Guidelines for Evaluating Past Performance in Source Selection

Overview

This appendix is designed to help you participate in the evaluation of past performance when using the tradeoff process in source selection. It should always be used in conjunction with the basic best value guide.

Introduction

An offeror's performance record is an important consideration in government source selections. In our private lives, we make source selections every day. This can be as mundane as selecting the brand of toothpaste we use or one that represents a much greater portion of our earnings such as a new car. If we can consider how a product worked (or didn't work) for us in the past, get advice from our friends, read Consumer Reports, and check the contractor out with the Better Business Bureau, wouldn't it make sense to give the same credence to past performance when spending taxpayer dollars?

Using the contractor's past performance as a significant evaluation factor that will be traded off with cost/price and other noncost factors will benefit us in at least two ways.

First, it is virtually impossible for an offeror to convey, in the proposal, how it will actually perform the requirement and what the actual costs will be (not just the instant contract costs, but the total life cycle costs associated with obtaining the system, supply, or service). A better tool for predicting how an offeror will perform in the future is to examine its past track record on contracts for similar requirements of the same scope and complexity.

Second, it permits us to recognize the good performer. In the commercial market, poor performers are weeded out as consumers select vendors that live up to the consumer's expectations. Those contractors that provide what is perceived as the best value in supplies or services are the ones that survive. A contractor that delivers what the contract requires without extensive follow-up effort on our part is clearly delivering better value than a contractor that charges the same price, yet needs constant surveillance by our personnel to ensure performance. It also shifts the emphasis from writing the best proposal to performing the best work -- performing as promised.

Role of Past Performance in Source Selection

Proposal Risk vs. Performance Risk

It is important to differentiate between two types of risk usually evaluated in a source selection.

Proposal risks are those associated with an offeror's proposed approach in meeting the requirements of the solicitation. Proposal risk summarizes the risk derived from the technical evaluation. It is an overall assessment driven by each of the subfactors within the technical factor.

Performance risks are those associated with an offeror's likelihood of success in performing the solicitation's requirements as indicated by that offeror's record of current or past performance. Performance risk is assessed separately and assigned a narrative rating. Both proposal and performance risks are, in accordance with the basic guide, integrated with the other evaluation results when presented to the source selection authority for a final decision.

**Performance risks reflect an offeror's
likelihood of success based on
their current or past work record**

Past Performance vs. Responsibility Determinations

It is also important to distinguish comparative past performance evaluations used in the tradeoff process from pass/fail responsibility determinations.

Preaward surveys and pass/fail evaluations in the low price technically acceptable process help you determine whether an offeror is responsible. Responsibility is a broad concept that addresses whether an offeror has the **capability** to perform a particular contract based upon an analysis of many areas including financial resources, operational controls, technical skills, quality assurance, and past performance. These surveys and evaluations provide a "yes/no," "pass/fail," or "go/no-go" answer to the question, "**Can** the offeror do the work?" to help you determine whether the offeror is responsible.

Unlike a pass/fail responsibility determination, a comparative past performance evaluation conducted using the tradeoff process is a very specific endeavor that seeks to identify the **degree of risk** associated with each competing offeror. Rather than asking whether an offeror **can** do the work, you should ask, **will** it do that work successfully? In short, the evaluation describes the degree of confidence the government has in the offeror's likelihood of success. If properly conducted, the comparative past performance evaluation and the responsibility determination will complement each other and provide you with a more complete picture of an offeror than either one could by itself.

Past Performance vs. Experience

Another important issue is the difference between contractors' experience and their past performance. Experience reflects **whether** contractors have performed similar work before. Past performance, on the other hand, describes **how well** contractors performed the work. In other words, how well did they execute what was promised in the proposal/contract. Both of these areas are considered when making a responsibility determination. Either past performance or experience can be considered as source selection factors or subfactors, where they can either stand alone or be considered under performance risk.

If experience and past performance are separate evaluation factors or subfactors, make certain that you clearly define the terms in the solicitation. This will help you avoid the potential for double counting by asking for the same information. Do not confuse evaluation of past

experience with evaluation of past performance. It is proper, however, to distinguish company experience from personnel experience and evaluate both.

When to Evaluate Past Performance

Past performance shall be included as an evaluation factor in competitively negotiated acquisitions unless the contracting officer determines that it is inappropriate and documents the rationale.

Planning the Past Performance Evaluation

Forming an Evaluation Group

In complex acquisitions it may be necessary to form a formal group to specifically evaluate past performance. In smaller dollar value acquisitions that do not involve complex requirements, the evaluation may be accomplished with only one or two people to determine that same risk. This evaluation group may operate separately from the proposal evaluation team or may operate as a separate subgroup of that team. Note, however, that the past performance evaluation should be conducted independently of any other evaluation.

Whether you choose to use an informal or formal evaluation group, the members should be experienced and trained. We will focus on the structure, composition and evaluation process of a formal evaluation group, but bear in mind that while the functions of informal evaluations are basically the same, they should be a lot less time consuming and less involved.

Objectives of the Evaluation Group

The evaluation group is responsible for conducting the past performance evaluation to determine the degree of risk involved in accepting an offeror's promises of performance. This analysis results in a performance risk assessment. The evaluation group documents these performance risk assessments and identifies strengths and weakness in each offeror's past performance.

The group often uses the offeror's proposal as the starting point -- with the proposal acting primarily as a source of reference. Group members then use independent sources of information outside of the offerors' proposals to determine how well those offerors performed in the past.

Evaluation Group Membership and Training

The membership and structure of your evaluation group should be tailored to each acquisition. Ideally, the membership should be multifunctional and include people who have contracting, cost/price, contract administration, supportability/logistics, and technical/program management expertise, as appropriate. Those whom you select should also have prior source selection experience and be capable of making sound and impartial judgments. The group's structure should enhance its ability to independently evaluate performance risk.

As a best practice, it is important that contracting organizations set up their own training program for conducting source selections. Individual programs should include tools and techniques for obtaining and evaluating contractor performance data.

The heart of the performance risk assessment is the information gathering process. Through questionnaires, telephone interviews, and site visits, and by tapping existing data sources, the group can obtain a detailed and useful picture of an offeror's past performance. Because of the importance of the information gathering process, it is absolutely critical that group members have the ability to conduct meaningful telephone interviews. They should also be able to assimilate data, exercise sound judgment, arrive at conclusions that make common sense, and communicate those conclusions effectively both orally and in writing.

The size of the group should reflect the number of offerors expected to respond to the solicitation as well as the nature and complexity of the solicitation requirements. The best practice is to limit the size of the group to as small a number as is realistic for the specific circumstances of the acquisition. A group of at least two members of different functional disciplines enhances opportunities for dialogue, brainstorming, and in-depth fact finding.

A plan for evaluating past performance should be developed early in the process and made a part of the source selection plan.

What Subfactors Should Be Used?

The past performance subfactors, if any, should be tailored to the specific circumstances of the acquisition, but need not mirror those of the proposal evaluation. In most cases the evaluation group should at least consider the offeror's record for on time delivery, good technical quality, and cost control to determine its likelihood of success in performing the solicitation's requirements.

Some suggested subfactors include:

- The offeror's record of conformance to contract specifications and standards of good workmanship. This may include consideration of quality awards or certifications;
- The offeror's effectiveness in containing and forecasting costs on any previously performed cost reimbursable contracts;
- The offeror's adherence to contract schedules, including the administrative aspects of performance;
- The offeror's history for reasonable and cooperative behavior, commitment to customer satisfaction, timely award and management of subcontracts, and whether the offeror met any applicable goals for subcontracting with small entities.

Data Relevancy

Relevancy should not be described as a subfactor. Relevancy is a threshold question when considering past performance, not a separate element of past performance. Irrelevant past performance should not form the basis of a performance risk assessment.

Although the group may consider data available from any sources, its main sources of information are often the references cited by offerors in their proposals. Upon receipt of

proposals, you will determine which of the offeror's past contract efforts relate to the solicitation requirements. The evaluation group should screen the information provided for each of the referenced contracts to make an initial determination of its relevance to the current requirement. However, the source selection authority is responsible for the final determination of relevancy.

Relevancy is defined as something that has a logical connection with the matter under consideration. Such aspects of relevance include the type of effort (e.g., development, production, repair), and the type of requirement (e.g., weapon systems, information systems, engineering services, programmed depot maintenance). The objective of the screening is to remove from consideration those contract references that are clearly unrelated to the type of effort sought. Note that valuable information can be obtained from seemingly unrelated prior contracts regarding considerations such as technical capability, management responsiveness, proactive process improvements, and ability to handle complex technical or management requirements. Other members of the source selection team may be consulted as necessary for assistance in determining relevancy.

Tailor data relevancy and recency to the specifics of each acquisition

In some cases, previous contracts as a whole may be similar to the current contract while in others only portions of previous contracts may be relevant. For example, we use Ada software language in many different government systems. If a solicitation calls for the development of Ada software for an aircraft system, the contractor might identify a previous effort where it developed Ada software for a satellite terminal. We may consider that previous effort to be relevant for purposes of assessing the contractor's ability to develop Ada software even though the underlying system is different from the current requirement. Another example is the evaluation of the contractor's management, planning, and scheduling of subcontractors on a past service contract for a current production requirement calling for integration skills.

Note that, in the case of mergers or joint ventures, only that part of the newly formed corporation identified with the relevant experience should be evaluated.

The evaluation group should consider the most recent data available. The best practice is to select similar efforts that are either still in progress or just completed, and that have at least one year of performance history. While the actual cut-off time should be determined by the contracting officer on a case-by-case basis, the currency of the information requested should be determined by the commodity and the specific circumstances of the acquisition.

How Much Weight to Give Past Performance

Past performance should be given sufficient evaluation weight to ensure that it is meaningfully considered throughout the source selection process and will be a valid discriminator among the proposals received.

Weight past performance sufficiently

to ensure it is a valid discriminator

What are the Rating Categories?

In planning the acquisition, the evaluation group develops a rating scheme for evaluating past performance. The group may use the following definitions of performance risk to describe the results of its assessment:

- **Poor/Very High Performance Risk.** Based on the offeror's performance record, extreme doubt exists that the offeror will successfully perform the required effort.
- **Marginal/High Performance Risk.** Based on the offeror's performance record, substantial doubt exists that the offeror will successfully perform the required effort.
- **Adequate/Moderate Performance Risk.** Based on the offeror's performance record, some doubt exists that the offeror will successfully perform the required effort.
- **Good/Low Performance Risk.** Based on the offeror's performance record, little doubt exists that the offeror will successfully perform the required effort.
- **Excellent/Very Low Performance Risk.** Based on the offeror's performance record, essentially no doubt exists that the offeror will successfully perform the required effort.
- **Unknown Performance Risk.** No performance record identifiable. See "How to Evaluate No Past Performance."

How to Evaluate No Past Performance

In most cases the evaluation group will find some related government or other public or private past performance information for each contractor and subcontractor. Such information will usually surface if the evaluation approach allows a broad interpretation of relevancy or takes into account information regarding the past performance of predecessor companies, key personnel who have relevant experience, or subcontractors that will perform key aspects of the requirement.

Occasionally, however, an evaluation group cannot find any relevant information. In those cases, you must treat an offeror's lack of past performance as an unknown performance risk, having no positive or negative evaluative significance. This allows the government to evaluate past performance in a manner that is fair to newcomers. It neither rewards nor penalizes firms without relevant performance history. The method and criteria for evaluating offerors with no relevant past performance information should be constructed for each specific acquisition to ensure that such offerors are not evaluated favorably or unfavorably on past performance.

You may use a variety of rating methods to evaluate offerors with no past performance history. Regardless of the method selected, the solicitation must clearly describe the approach that will be used for evaluating offerors with no relevant performance history.

**Encourage newcomers to identify other
related past performance information**

You can also ease the impact on newcomers by including language in the solicitation that encourages them to identify related past performance information for Federal, state and local government contracts, commercial contracts, key personnel, and major subcontractors.

What to Include in the Solicitation

Include this form with the solicitation's instructions to offerors to simplify the submission and evaluation of past performance information

(To be completed by the offeror)

1. Contract Number: _____

2. Contractor (Name, Address and Zip Code):

3. Type of Contract: Negotiated _____ Sealed Bid _____
Fixed Price _____ Cost Reimbursement _____ Hybrid (explain) _____

4. Complexity of Work: Difficult _____ Routine _____

5. Description, location & relevancy of work:

6. Contract Dollar Value: _____

Status: Active _____ Complete _____

7. Date of Award: _____

Contract Completion Date (including extensions): _____

8. Type and Extent of Subcontracting:

9. Name, Address, Tel. No. & e-mail of the Procuring Contracting Officer and/or the Contracting Officer's Representative (COR) (and other references, e.g., Administrative Contracting Officer, if applicable):

Blueprint: Format for Submission of Past Performance Information

The solicitation, at a minimum, must clearly describe the approach you will use to evaluate past performance. The approach must include what past performance information you will evaluate, how it will be evaluated, its weight or relative importance to the other evaluation factors and subfactors, and how you will evaluate offerors with no past performance history. The amount of information you request should be tailored to the circumstances of the acquisition. The amount should be reasonable and not impose excessive burdens on offerors or evaluators. The proposal evaluation information, as a minimum, should clearly state that:

- The government will conduct a performance risk assessment based upon the past performance of the offerors and their proposed major subcontractors as it relates to the probability of successfully performing the solicitation requirements;
- In conducting the performance risk assessment, the government may use data provided by the offeror and data obtained from other sources; and
- While the government may elect to consider data obtained from other sources, the burden of providing thorough and complete past performance information rests with the offeror.

The proposal submission instructions must, as a minimum, instruct offerors to submit recent and relevant information concerning contracts and subcontracts (including Federal, State, and local government and private) that demonstrate their ability to perform the proposed effort.

Rather than having the offeror submit a lengthy narrative response, the information requested should be limited to a half-page summary of the offeror's performance claim for each contract or subcontract. The summary should include contract numbers, contract type, description and relevancy of the work, dollar value, contract award and completion dates, and names, phone numbers, and e-mail addresses for references in contracting and technical areas.

In addition, offerors should be given the opportunity to explain why they consider the contracts they have referenced as being relevant to the proposed acquisition. Relevancy is defined as something that has a logical connection with the matter under consideration. (See section entitled, Data Relevancy.) The instructions should also permit offerors to provide information on problems encountered on such contracts and the actions taken to correct such problems. Also, it is important that the offeror specifically describe the work that its major subcontractors will

long.

- If a problem surfaced, ask what the government and contractor did to fix it.
- Ask for a description of the types of personnel (skill and expertise) the contractor used and the overall quality of the contractor's team. Did the company appear to use personnel with the appropriate skills and expertise?
- Ask how the contractor performed considering technical performance or quality of the product or service; schedule; cost control (if applicable); business relations; and management.
- Ask whether the contractor was cooperative in resolving issues.
- Inquire whether there were any particularly significant risks involved in performance of the effort.
- Ask if the company appeared to apply sufficient resources (personnel and facilities) to the effort.
- If the company used subcontractors, ask: What was the relationship between the prime and subcontractors? What was the management role of the prime and how well did it manage the subcontractors? Did the subcontractors perform the bulk of the effort or just add breadth or depth on particular technical areas? If the subcontractors worked on specific technical areas, what were those areas and why were they accomplished by the subcontractors rather than the prime?
- If a problem is uncovered that the reference is unfamiliar with, ask for another individual who might have the information.
- Ask if this firm has performed other past efforts with the reference's agency.
- Ask about the company's weak points or what the reference liked least.
- Inquire whether the reference has any reservations about recommending a future contract award to this company.
- Inquire whether the reference knows of anyone else who might have past performance information on the offeror.

Blueprint: Typical Past Performance Questions

Where to Conduct Telephone Interviews

Following the screening of previous contracts for further in-depth review, each evaluation group member should send questionnaires and/or initiate telephone calls to the identified references for those efforts. The interviewing and reporting of results are usually individual efforts conducted

by each evaluation group member. However, it is sometimes helpful to collect information as a group through the use of conference calls. In any event, the environment in which this work is done significantly impacts both the time required to complete this portion of the process and the quality of the results. These activities are hampered severely if each group member attempts to conduct telephone interviews at their normal work site with all of its attendant interruptions, distractions, and security risks.

If, on the other hand, the group members are able to assemble as a group for telephone interviews, they will be able to provide considerable reinforcement and instant feedback for one another. Group members should be able to devote their undivided attention to this initial assessment process. Although this approach requires a secure area that is large enough to accommodate all of the group members, the resulting benefits are significant.

How to Conduct Telephone Interviews

The telephone interview process is an art form. Until a smooth conversation pattern is developed, it is an inherently uncomfortable situation for many people. There will be some difficulty learning how to start a telephone interview, keep it moving, and cover all important areas. As the interviewing process continues, the evaluation group member usually uncovers special items of interest that he or she will want to pursue through follow-up calls.

At least two references should be contacted on each previous contract effort selected for in-depth review. The contracting officer, program manager, and contracting officer's representative often prove to be excellent sources of information. Additional references are often identified during the interviews. Maximum effectiveness occurs when the expertise of the evaluation group interviewer matches that of the reference.

Prior to initiating a telephone interview, a group member should gather all available information on a specific effort and draft a list of questions. There may be a common group of questions for all offerors and/or tailored questions for each offeror, depending upon the circumstances. These questions can either be sent as questionnaires to each reference or be used by the group member during the telephone interview.

At the start of each telephone interview, the group member should explain the purpose of the call and request voluntary assistance from the reference. The interviewer should explain that he or she will document the results of the conversation and send a copy of the memorandum to the reference for verification. There is usually no need to divulge the solicitation number, program description, or other identifying information to the reference. If you do so, you need to obtain a nondisclosure statement.

In most instances the reference will willingly provide the information requested. In those rare cases when the reference is reluctant to participate, the interviewer should assure the reference of anonymity. At the least, the reference should be requested to provide additional references.

It is important to pursue and document the underlying facts supporting any conclusionary statements received on a contractor. The evaluation group member can determine neither the magnitude of a reported problem nor its possible impact on the current risk assessment without

receive the greatest consideration. The assessment should include a description of the underlying rationale for the conclusions reached. As long as that rationale is reasonable, it will withstand scrutiny even if other reasonable conclusions exist.

A word of caution is appropriate concerning offeror promises to correct past performance failures, as opposed to actions already taken to correct such failures. A promise to improve does not, by itself, improve past performance. However, *demonstrated* corrective actions reflect a commitment to rectify past performance problems, and therefore, can lower the risk of similar performance failures.

Disclosing Past Performance Information to Offerors

The contracting officer must also provide offerors with the opportunity to comment on negative past performance information on which offerors have not had a previous opportunity to comment. This practice ensures fairness for the competing offerors. The validation process is particularly important when the negative information is provided by only one reference, or when there is any doubt concerning the accuracy of the information. Usually, negative information reflects performance that was less than satisfactory, although this is a judgment call that will depend upon the circumstances of the acquisition. Note that while the government must disclose past performance problems to offerors it shall not disclose the names of individuals who provided information about an offeror's past performance.

A special problem arises with respect to subcontractors. Past performance information pertaining to a subcontractor cannot be disclosed to a private party without the subcontractor's consent. Because a prime contractor is a private party, the government needs to obtain the subcontractor's consent before disclosing its past performance information to the prime during negotiations. There are a variety of ways to obtain subcontractor consent. For example, the solicitation could require the prime to submit its subcontractor's consent along with the prime's proposal to the government.

What to Include in the Assessment Report

The goal is to avoid saying too much or too little in the evaluation report. Although there is no need to restate everything contained in the telephone memoranda, the evaluation group must provide the source selection authority with sufficient information to make informed judgments.

Conclusionary statements must be supported by the underlying factual basis. The best practice is to state the conclusion and provide specific examples that support that conclusion.

To ensure that the risk assessments provide the necessary background information and are structured consistently, the entire evaluation group should review and evaluate the report on each offeror. During this review, the evaluation group should correct statements that appear unsupported, inconsistent, or unnecessary.

Occasionally the evaluation group will be unable to arrive at a unanimous agreement on a particular risk assessment. If this occurs, the evaluation group may include the dissenting opinion as part of the assessment report.

Reporting the Past Performance Evaluation Results

The evaluation group's submission of the assessment report usually completes the major portion of its work. The evaluation group leader, should remind the source selection official of the purpose of the group and the past performance evaluation approach, including offerors with no past performance history, described in the solicitation. This is to ensure that everyone fully comprehends the significance of the results being reported. Experience reveals that source selection officials are more apt to rely upon evaluation group results if they thoroughly understand the process.

How to Treat Past Performance Information

Information concerning the past performance of an offeror or of its proposed subcontractors should be treated as sensitive source selection information. This information sometimes includes information that is proprietary, such as trade secrets and confidential commercial or financial data that would not be released under the Freedom of Information Act. Current laws, regulations, and policies governing storage, access, disclosure, and marking of source selection and proprietary information must be observed at all times. Questions concerning the procedures for the handling of past performance information should be referred to the contracting officer or legal counsel for resolution.

The evaluation group must retain the records of its activity throughout the source selection process. Upon contract award or cancellation of the solicitation, all evaluation group records are provided to the contracting officer for retention along with the other source selection documents.

Improving the Evaluation Process

The methods described in this guide will evolve as our needs change and as our knowledge base expands. It is important for all of us to share lessons learned in this process. You can help others benefit from your experiences by submitting lessons learned via the Internet at http://www.army-acquisition.net/amcweb/ssp/ssp_ap_d.htm#57

Guidelines for Conducting Debriefings

Overview

This appendix provides easy to follow guidance for conducting both preaward and postaward debriefings. It should always be used in conjunction with the basic best value guide. Using this guidance will result in meaningful debriefings and will instill greater confidence in the acquisition process. Comprehensive and open debriefings will strengthen and enhance our relationship with industry.

What Is A Debriefing?

A debriefing is a meeting between government personnel and an offeror who has been eliminated from the competition either prior to or after contract award. The purposes of a debriefing are:

- To explain the rationale for exclusion from the competition.
- To instill confidence in the offeror that it was treated fairly.
- To assure the offeror that proposals were evaluated in accordance with the solicitation and applicable laws and regulations.
- To identify weaknesses in the offeror's proposal so the offeror can prepare better proposals in future government acquisitions.
- To reduce misunderstandings and protests.
- To give the offeror an opportunity to provide feedback regarding the solicitation, discussions, evaluation, and the source selection process.

A debriefing is NOT:

- A page-by-page analysis of the offeror's proposal.
- A comprehensive point-by-point comparison of the proposals of the debriefed offeror and the successful offeror(s).
- A debate or defense of the government's award decision or evaluation results.

**Debriefings enhance understanding
of the selection process**

Who Is Entitled To A Debriefing?

Whenever the Government awards a contract based on competitive proposals, an unsuccessful offeror is entitled to a debriefing if it timely requests one. Debriefings are not required when sealed bidding procedures are used.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a preaward or postaward debriefing.

Good business practice dictates that the Government should debrief the awardee if requested. Although the Government often conducts a postaward conference with the awardee, that meeting does not necessarily substitute for a debriefing.

When Must A Debriefing Be Conducted?

The Government must conduct a debriefing for an unsuccessful offeror if:

- (1) the offeror makes a written request for a debriefing, and
- (2) the request is received by the contracting activity within 3 days after the offeror received notice of exclusion from the competition or contract award.

Here's a simple rule for computing time periods: Count days as calendar days and include weekends and legal holidays. Don't count the day the offeror received the notice. Start with the next day. For example, if the offeror received the notice on Tuesday, the 1st day is Wednesday, the 2d day is Thursday, and the 3d day is Friday. Thus, you must receive the request for the debriefing no later than close of business on Friday.

Establishing the date the offeror received the notice may be difficult if the notice is sent by regular mail. Accordingly, you should consider sending the notice by mail with return receipt requested or by electronic transmission (fax) with immediate acknowledgment requested. Remember, every day of delay in notifying the offeror usually extends by one day the time in which a protest may be filed.

If the request is for a preaward debriefing, the contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable. If there are compelling reasons that it is not in the Government's best interest to conduct the debriefing prior to award, the contracting officer can delay it no later than the time when postaward debriefings are provided. In such cases, you must document the contract file with the rationale for the delay. This debriefing should then be conducted as a postaward debriefing.

If an offeror, who has been eliminated from the competition prior to award requests a delayed debriefing (i.e., postaward), the date the offeror knew or should have known the basis of a protest shall be the date the offeror received notice of the exclusion from the competition.

If you receive a timely request for a postaward debriefing, you must conduct the debriefing within 5 days, to the maximum extent practicable, after receipt of the request. Remember that the scheduling of a debriefing may have significant ramifications if a protest is later filed. A

protester filing a protest with the General Accounting Office is entitled to an automatic suspension of contract performance if the protest is filed within 5 days of the debriefing date offered to the protester (or 10 days after contract award, whichever is later).

Thus, it is extremely important that you schedule the debriefing for the earliest possible date for the Government. You should inform the offeror of the scheduled date in writing by electronic means with immediate acknowledgment requested. If the offeror is unable to attend the scheduled date and requests a later date, the offeror should be required to acknowledge in writing that it was offered an earlier date, but requested the later date instead. This procedure will protect the Government's interests if the offeror subsequently files a protest.

If an offeror submits an untimely request for debriefing (i.e., received more than 3 days after notice of elimination from the competition or contract award), the contracting officer should nonetheless conduct a debriefing if feasible. However, the contracting officer should inform the offeror that the request is untimely. Untimely requests do not invoke the statutory provision for automatic suspension of contract performance unless the protest is filed within 10 days of contract award.

The time periods stated in this guidance were current on the date of publication. However, always check with your legal counsel for the latest General Accounting Office rules and revisions.

Where Is A Debriefing Held?

The contracting officer is responsible for selecting a suitable location for the debriefing that ensures a professional presentation in a nondistracting environment.

A conference room will normally suffice. Obviously, the room must be equipped with the necessary audiovisual equipment that will be used during the debriefing. The contracting officer should consult with the offeror to ensure that adequate seating will be available for all personnel attending. If classified material will be discussed, appropriate arrangements must be made.

Although face-to-face debriefings are frequently preferable, it is appropriate to conduct debriefings by telephone or other electronic means. Sometimes, it will be financially prohibitive for the offeror to attend in person. The needs of the offeror should be afforded due consideration, but the contracting officer makes the final decision as to the debriefing location.

If some of the government personnel are located at an installation other than the contracting office, the contracting officer may decide that those individuals' attendance is best accomplished by telephone or video conference. The possibilities are endless -- make use of available technology and do what makes sense!

Who Attends A Debriefing?

Government Personnel

The contracting officer is responsible for chairing the debriefing. This doesn't mean that the contracting officer must conduct the entire debriefing. In fact, usually the contracting officer

will rely on government technical and cost/price personnel to present the portions of the debriefing that address those specialized areas of the offeror's proposal. The debriefing should be conducted with only one offeror at a time.

The contracting officer identifies the Government debriefing team members. The selection is based on the complexities presented in each acquisition. The key is to ensure that knowledgeable Government personnel are present. Because of the statutory requirement for a prompt debriefing, the contracting officer should tentatively select the team before the contract award is announced.

When determining the composition of the team, you must keep in mind the objectives of a meaningful debriefing. Above all, the Government must display that it fully understood the offeror's proposal. If this is not conveyed, the offeror will obviously have little confidence in the conduct of the acquisition. Many debriefings have failed merely because the contracting officer did not ensure appropriate Government personnel were present.

Involve government legal counsel in debriefings

The contracting officer's legal counsel should attend the debriefing. Legal counsel should also assist in the preparation of the debriefing. If the acquisition is in litigation or under protest, legal counsel must attend the debriefing. Legal counsel should be informed of any indicators that a protest is likely. However, the contracting officer will not deny a debriefing because a protest is threatened or has already been filed.

Debriefed Offeror Personnel

The contracting officer should ask an offeror scheduled for a debriefing to identify all individuals by name and position who will attend the debriefing. Normally, no limitation should be placed on the personnel the debriefed offeror may bring to a debriefing. Nonetheless, space limitations of Government facilities may require restrictions in extraordinary cases on the number of offeror personnel invited to attend. The contracting officer should not impose restrictions unless the contracting officer has determined that all suitable alternate facilities are unavailable.

There may be times when you should consider offering to have high level officials from the requiring activity present at the debriefing if the offeror in turn agrees to have commensurate management officials present. This has proven effective when high level officials were substantially involved in the acquisition or the acquisition received extensive high-level visibility or scrutiny.

Preparing For A Debriefing

A debriefing requires preparation!

Only the foolhardy will attempt to conduct a debriefing unprepared. Experience has shown that going into a debriefing unprepared is the surest way to lose the confidence of the offeror and increase the prospects of a protest.

Because debriefings are time sensitive, preparation must begin before proposal evaluation is complete. Usually, the proposal evaluation board will assist you in preparing debriefing charts and conducting the debriefing. Accordingly, at the time the evaluation board is formed, you must inform the evaluators that their duties include assisting with debriefings.

Preparation for the debriefing should be thorough. Debriefings permit offerors to learn their strengths and weaknesses and how to improve future Government proposals. Offerors may also rely, however, on these sessions to influence their decision regarding filing a protest. An effective debriefing can often deter a protest by demonstrating that the Government conducted a thorough, fair evaluation and made a sound decision according to the established solicitation evaluation methodology.

The extent of preparation necessary varies considerably with the complexity of each acquisition. Sometimes, merely preparing debriefing charts is sufficient. Other times, dry run rehearsals are necessary.

Finally, all government personnel attending the debriefing must be briefed on their roles and expected demeanor during the debriefing. Argumentative or overly defensive conduct should be discouraged, and Government personnel should be instructed to make a positive presentation.

What Materials Should Be Brought Into the Debriefing Room?

Debriefing material normally consists of briefing charts and notes prepared for use during the debriefing.

- Experience has shown that Government personnel should *Not* bring the following materials into the debriefing room:
- Proposals of other offerors, and
- Proposal evaluation reports of other offerors' proposals.

The presence of these documents can lead to the inadvertent disclosure of proprietary information and prohibited point-by-point comparisons of proposals.

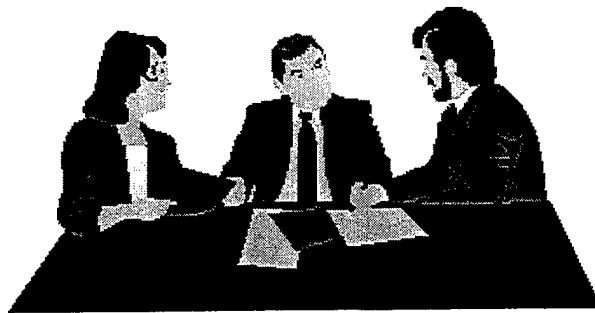
Experience has also shown that a faulty memory or misstatements by Government personnel are detrimental to a successful debriefing. Thus, contracting officers must ensure that necessary notes or other documents are accessible during the debriefing.

Debriefing the Unsuccessful Offeror

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

High Performance Computer Contract

DAAX08-XX-C-1234



Unsuccessful Corp., Inc.

Debriefing

June 2, XXXX

Typical Debriefing Chart No. 1 - Cover Page

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

AGENDA

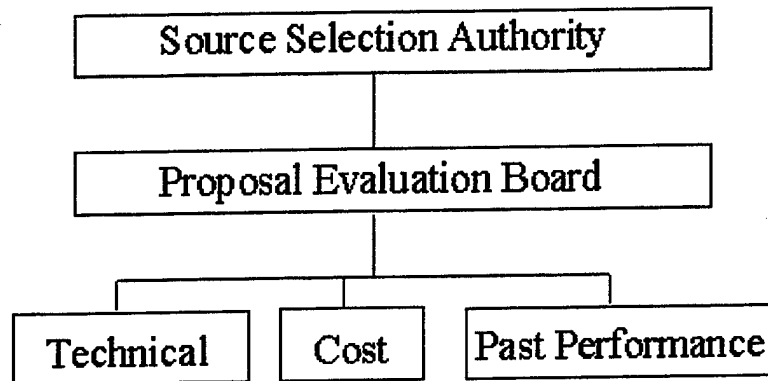
- Introduction
- Ground Rules
- Source Selection Process
- Evaluation Criteria
- Rationale for Award Decision
- Overall Ranking of Proposals
- Relevant Questions

Typical Debriefing Chart No. 2 - Agenda

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

SOURCE SELECTION PROCESS

Source Selection Team



Typical Debriefing Chart No. 3 - Source Selection Process

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

EVALUATION RATINGS DEFINITIONS

EXCELLENT: The proposal demonstrates an excellent understanding of requirements and approach that significantly exceeds performance or capability standards. It has exceptional strengths that will significantly benefit the Government.

GOOD: The proposal demonstrates a good understanding of the requirements and an approach that exceeds performance or capability standards. It has one or more strengths that will benefit the Government.

SATISFACTORY: The proposal demonstrates an acceptable understanding of requirements and an approach that meets performance or capability standards. It demonstrates an acceptable solution, however, has few or no strengths.

MARGINAL: The proposal demonstrates shallow understanding of the requirements and an approach that only marginally meets performance or capability standards necessary for minimal but acceptable contract performance.

UNSATISFACTORY: The proposal fails to meet performance and capability standards. The requirements can only be met with major changes to the proposal.

Typical Debriefing Chart No. 4 - Evaluation Ratings

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

FACTOR EVALUATION RESULTS

	Unsuccessful Corp.	Successful Corp.
Technical Merit	Good	Excellent
significantly more important than		
Proposal Risk	Moderate	Low
which is equal to		
Past Performance Risk	Low Risk	Low Risk
which is equal to		
Cost	\$1,095,200	\$1,186,100

Typical Debriefing Chart No. 5 - Evaluation Results

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

STRENGTHS/WEAKNESSES
Unsuccessful Corp.

SIGNIFICANT STRENGTHS

- Outstanding hardware architecture.
- Excellent cross utilization of personnel.
- Extensive corporate experience in high performance computer hardware.
- Outstanding internal control and quality assurance procedures.
- Use of verification requirements traceability matrix.
- Excellent understanding of data requirements.
- Excellent understanding of unique platform requirements.

SIGNIFICANT WEAKNESSES

- Software is not user friendly.
- Lack of corporate experience in software development.
- Insufficient detail on possibility of concurrent installation/training.
- Part-time commitment of some key personnel to other projects.

Typical Debriefing Chart No. 6 - Strengths/Weaknesses

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

TECHNICAL MERIT SUBFACTORS

	Unsuccessful Corp.	Successful Corp.
Technical Merit	Good	Excellent
Hardware Design	Excellent	Excellent
Software Configuration	Satisfactory	Excellent
Corporate Experience	Excellent	Excellent

ALL ELEMENTS ARE EQUAL

Typical Debriefing Chart No. 7 - Technical Merit

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

PROPOSAL RISK SUBFACTORS

	Unsuccessful Corp.	Successful Corp.
Proposal Risk	Moderate	Low
Hardware Design	Low	Low
Software Configuration	High	Moderate
Corporate Experience	Moderate	Low

ALL ELEMENTS ARE EQUAL

Typical Debriefing Chart No. 8 - Proposal Risk

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

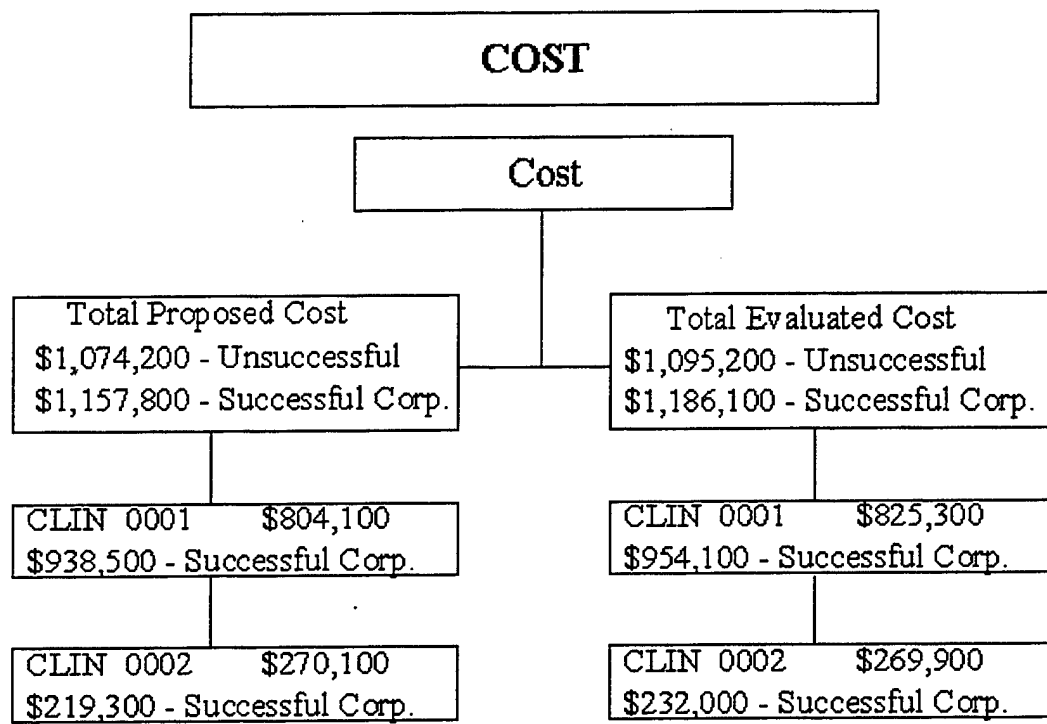
PAST PERFORMANCE SUBFACTORS

	Unsuccessful Corp.	Successful Corp.
Performance Risk	Low Risk	Low Risk
— Quality of Performance	Low Risk	Low Risk
— Cost Management	Moderate Risk	Low Risk
— Contract Schedules	Low Risk	Moderate Risk
— Customer Relations	Low Risk	Low Risk

ALL ELEMENTS ARE EQUAL

Typical Debriefing Chart No. 9 - Performance Subfactors

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award



Typical Debriefing Chart No. 10 - Cost

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

COST REALISM ADJUSTMENTS
Unsuccessful Corp.

	<u>Proposed</u>	<u>Adj.</u>	<u>Evaluated</u>
G&A Expense	\$96,678	+ \$8,320	\$104,998
Travel	\$ 4,600	+\$12,680	\$17,280

Typical Debriefing Chart No. 11 - Cost Realism Adjustments

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

RATIONALE FOR AWARD DECISION

Successful Corp's innovative approach to software configuration represents a significant advancement in the state of the art in terms of capability and user friendly interface. Its proposed hardware architecture is superior to the other offerors in terms of processing speed. Successful Corp. has extensive experience in the development of high performance computer systems and its past performance on similar contracts was excellent. Overall, Successful Corp's proposed solution coupled with its low risk represents the best value to the Government despite its slightly higher cost.

Typical Debriefing Chart No. 12 - Aware Decision Rationale

SOURCE SELECTION "BLUEPRINT"
Typical Unsuccessful Offeror Debriefing Charts - Post Award

OVERALL RANKING OF PROPOSALS

1. Successful Corp.
2. Offeror C
3. Unsuccessful Corp.
4. Offeror E
5. Offeror B
6. Offeror A

Typical Debriefing Chart No. 13 - Proposal Rankings

Blueprint: Typical Unsuccessful Offeror Debriefing Charts -- Post Award

Whos in Charge?

The contracting officer is responsible for the debriefing and as such must never lose control of the debriefing.

Introduction

The debriefing should begin with a brief introduction of all attendees. You should then explain the purposes of the debriefing. (*Refer to: What is a debriefing?*)

Ground Rules

Next, you should inform everyone of the ground rules for the debriefing, any time constraints, and the debriefing agenda.

Handling Questions

During both preaward and postaward debriefings, the debriefed offeror is permitted to ask relevant questions pertaining to whether the Government followed the source selection

procedures set forth in the solicitation, applicable regulations, and other applicable authorities. Often, contracting officers request that questions from the debriefed offeror's personnel be funneled to the debriefed offeror's main spokesperson who will ask all the questions. This practice is permissible and, in fact, often enhances the orderly conduct of a debriefing.

The contracting officer must make every effort to provide reasonable responses to those questions. However, caution must be exercised not to inadvertently disclose proprietary information of other offerors.

Normally, responses should stay within the confines of the guidance stated above. If the contracting officer is unprepared to answer a specific question at the debriefing, the contracting officer should obtain the answer immediately following the debriefing and promptly furnish it to the offeror. To avoid this, you may find it helpful to request written questions ahead of time to use in preparing for the debriefing.

Because the debriefing is the forum for answering reasonable questions, offerors should not be invited to submit questions after the debriefing.

Source Selection Process

The process used in evaluating proposals, establishing the competitive range, and selecting the awardee should be briefly explained. When conducting a postaward debriefing, the source selection authority normally should be identified by name. The identities of the evaluators, other than those present at the debriefing, are normally not disclosed. Nonetheless, the Government must convey to the offeror that the proposals were evaluated by qualified personnel.

Evaluation Factors/Subfactors

The evaluation factors and subfactors disclosed in the solicitation should be restated as the foundation for discussing the evaluation results.

Evaluation Results

The source selection information disclosed at debriefings for an unsuccessful offeror is governed by law, regulation and the sound discretion of the contracting officer. If the contracting officer observes the following guidelines for pre and postaward debriefings, there should be little concern about inadvertently disclosing unauthorized proprietary information.

Preaward Debriefings

At a minimum, the following information will be disclosed:

(1) The evaluation results of significant elements in the debriefed offeror's proposal.

What are significant elements? If the element was significant enough to eliminate the offeror from the competitive range, it is probably significant for debriefing purposes. Include in your discussion positive elements of the offeror's proposal to help him improve future proposals.

(2) Summary of the rationale for eliminating the offeror from the competition.

What Cannot Be Disclosed! (Preaward)

In addition to the information that may *Not* be disclosed in postaward debriefings (see What *Cannot* be Disclosed! (Postaward)), by law the following information may not be disclosed in a preaward debriefing:

- (1) The number of offerors;*
- (2) The identity of other offerors;*
- (3) The content of other offeror's proposals;*
- (4) The ranking of other offerors;*
- (5) The evaluation of other offerors.*

Postaward Debriefings

At a minimum, the following information will be disclosed:

(1) The deficiencies and significant weaknesses of the debriefed offeror's proposal.

When is a weakness significant? If the weakness was of significant enough concern to warrant its discussion during the negotiation phase of the acquisition, it is probably significant for debriefing purposes as well. Whereas, if it wasn't significant enough to warrant discussion, it is not significant for debriefing purposes either, unless, of course the weakness was created in the final proposal revision. It is also a good practice to discuss the significant advantages of the debriefing offeror's proposal.

(2) The evaluation ratings of the debriefed offeror and awardee – but only to the second level of evaluation.

If the evaluation board used adjectival ratings, the adjectives and their definitions contained in the evaluation plan should be disclosed. If numerical ratings or color codings were used instead, they should be disclosed likewise.

What is the second level of evaluation? For example, assume the solicitation sets forth the following four evaluation factors: Technical, Management, Integrated Logistics

Support (ILS), and Past Performance. This is the first level of evaluation and the overall ratings for each of the four factors would be disclosed.

If several subfactors were separately rated under a factor (such as Management Approach, Proposed Staffing, and Past Corporate Experience in the Management factor), then those subfactors constitute the second level of evaluation and their ratings should also be released.

The evaluation ratings at the third and fourth levels of evaluation of the awardee's proposal should normally not be revealed. If ratings are revealed at these lower levels, it is conceivable that the contracting officer may run afoul of the statutory prohibition against point-by-point comparisons of proposals.

Ratings of the debriefed offeror's proposal may be revealed to these lower levels if necessary to explain the rationale for the award decision. Be prepared to explain the rationale for the ratings of the debriefed offeror's proposal.

**(3) The government's total
evaluated costs/prices of the
debriefed offeror's proposal.**

The total evaluated costs/prices of the debriefed offeror's proposal should be disclosed for each contract line item (CLIN), and an explanation given for any significant cost realism adjustments made by the Government at the major cost element level.

**(4) The total evaluated costs/prices
of the awardee's proposal.**

The awardee's total proposed and evaluated costs/prices for each CLIN should be disclosed.

Do Not disclose the specific Government cost/price adjustments to the awardee's proposed cost/prices.

(5) Overall ranking of all proposals.

If the source selection authority ranked the proposals (i.e., the best overall proposal, 2d best, etc.), the overall ranking of all proposals must be revealed. However, the identities of the other unsuccessful offerors should not be revealed. Refer to those offerors by alphanumerical letters or other designators.

(6) Rationale for award decision.

The Government must disclose a summary of the rationale for the contract award decision. The rationale is contained in the source selection authority's (SSA) decision memorandum. Contracting officers should furnish the debriefed offeror a copy of the SSA's memorandum, if requested. However, evaluation information concerning the other unsuccessful offerors and proprietary information of the award must be redacted prior to release.

Identify the significant advantages of the awardee's proposal in general terms without revealing confidential proprietary information contained in the awardee's proposal. (*See below, What Cannot Be Disclosed!*)

(7) The make and model of any commercial end items proposed by the awardee.

If the awardee's proposal includes a commercial item that is an end item under the contract, the make and model of the item must be disclosed.

Information Pertaining To Other Unsuccessful Offerors That May Be Released (Postaward)

Under certain circumstances, you may release other information such as the final overall ratings for noncost factors and/or the final evaluated cost/price of the other unsuccessful offerors. Release of the overall noncost ratings is discretionary. However, release of the total final evaluated cost/price is limited to those situations where an unsuccessful offeror consents or the agency determines that the unsuccessful offeror, after consulting with it, would not suffer competitive harm from such a release. The decision to release any of this information must be made on a case-by-case basis with guidance from your legal office.

What Cannot Be Disclosed! (Postaward)

By law a debriefing may Not include point-by-point comparisons of the debriefed offeror's proposal with the other proposals. If the ratings of the proposals of the debriefed offeror and the awardee are disclosed only to the second level of evaluation, this prohibition should not present a problem.

Also by law, debriefings may NOT disclose information that is exempt from release under the Freedom of Information Act (FOIA) relating to:

- (1) Trade secrets;***
- (2) Privileged or confidential manufacturing processes and techniques;***
- (3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profits, indirect cost/rates, and similar information; and***
- (4) Names of individuals providing reference information about an offeror's past performance.***

This information is normally referred to as ***"proprietary information."***

Proprietary information means information contained in a proposal or otherwise submitted to the Government that the submitter has marked as proprietary. Proprietary information does Not include information that is otherwise available without restriction to the Government or the public. If you believe that information marked proprietary is not truly proprietary, you should contact the assigned legal advisor for an appropriate determination before the information is released.

Debriefing the Awardee

Although debriefing an awardee is similar in many respects to debriefing an unsuccessful offeror, there is one significant difference -- very little information is revealed regarding the proposals of the unsuccessful offerors.

As discussed in ***Debriefing The Unsuccessful Offeror***, the following outline is suggested:

- Introduction.
- Explain the purposes of the debriefing.
- Announce the ground rules.
- Summarize the source selection process that was used.
- State the proposal evaluation factors and subfactors.
- Reveal the evaluation results:
 - (1) The significant advantages of the awardee's proposal.***
 - (2) The significant weaknesses of the awardee's proposal.***
 - (3) The evaluation ratings of the awardee's proposal to the second level of evaluation. Explain the rating definitions.***
 - (4) The Government's total evaluated costs/prices of the awardee's proposal for each Contract Line Item (CLIN). Explain significant cost realism adjustments made by the Government to the major cost element level.***

- A summary of the rationale for the contract award decision.
- The overall ranking of all proposals (if overall rankings were made during source selection), but do not identify the unsuccessful offerors by name.
- Answer relevant questions pertaining to whether the Government followed the source selection procedures set forth in the solicitation, applicable regulations, and other authorities.

The Postdebriefing Memorandum

The contracting officer must include a summary of each debriefing in the contract file. Good postdebriefing memorandums are essential if the acquisition is reopened or resolicited as a result of a protest or otherwise within 1 year of the contract award date.

In those circumstances, the law requires that the contracting agency make available to all offerors information regarding the proposal of the awardee that was provided to other offerors at debriefings on the prior contract. This requirement is designed, in part, to place all offerors on a level playing field. Thus, the need for good postdebriefing memorandums is apparent.

The postdebriefing memorandum should include at a minimum:

- A list of all persons who attended the debriefing.
- A summary of the information disclosed during the debriefing. The most efficient means for doing this is to identify the charts that were used at the debriefing and attach a copy of them to the memorandum.
- The substance of all questions and answers discussed at the debriefing. Include answers provided after the debriefing.

APPENDIX C.
PROTESTS OF CONTRACTS AWARDED USING A TRADE-OFF PROCESS

<u>GAO Case Number</u>	<u>Case Name</u>	<u>Decision Date</u>	<u>Agency</u>	<u>Decision</u>
283057	Ocean House Builders	21-Sep-99	Air Force	Denied
278732	Strategic Resource Solutions Corp.	09-Mar-98	Air Force	Denied
280758	Avtron Manufacturing, Inc.	16-Nov-98	Air Force	Denied
281200	CDS Network Systems, Inc.	21-Dec-98	Air Force	Denied
281046	PCT Services, Inc.	22-Dec-98	Air Force	Denied
281222	WRS Infrastructure & Environment, Inc.	12-Jan-99	Air Force	Denied
281275	QSS Information Systems, Inc.	19-Jan-99	Air Force	Denied
281350	Saratoga Medical Center, Inc.	27-Jan-99	Air Force	Denied
280521.3	RMS Information Systems, Inc.	21-Oct-98	Air Force	Denied
283011	Engineered Air Systems, Inc.	21-Sep-99	Air Force	Denied
280521.2	Techniaacts Science & Technology Corp.	15-Oct-98	Air Force	Denied
283028	Premier Engineering & Manufacturing Inc.	21-Sep-99	Air Force	Denied
283080	Acepex Management Corp.	04-Oct-99	Air Force	Denied
283272	Alaskan Publications	27-Oct-99	Air Force	Denied
278591	Beneco Enterprises, Inc.	01-Feb-98	Air Force	Denied
278582.2	CPAD Technologies, Inc.	19-Feb-98	Air Force	Denied
283794	Tony's Landscaping, Inc.	23-Nov-99	Air Force	Denied
278695	Modern Technologies Corp., et.al.	04-Mar-98	Air Force	Denied
282272	Inland Service Corp.	21-Jun-99	Air Force	Denied
279839	Rothe Development, Inc.	27-Jul-98	Air Force	Denied
281359	West Coast Research Corp.	01-Feb-99	Air Force	Denied

<u>GAO Case Number</u>	<u>Case Name</u>	<u>Decision Date</u>	<u>Agency</u>	<u>Decision</u>
281388	OMV Medical, Inc., et.al.	03-Feb-99	Air Force	Denied
281387	OMV Medical, Inc., et.al.	03-Feb-99	Air Force	Denied
281453	Orbital Technologies Corp.	17-Feb-99	Air Force	Denied
281965	ENMAX Corp.	12-May-99	Air Force	Sustained
280996.2	NAPA Supply of Grand Forks, Inc.	13-May-99	Air Force	Denied
282064	Si-Nor, Inc.	25-May-99	Air Force	Sustained
280154.2	Rohmann Services, Inc.	16-Nov-98	Air Force	Denied
279173.5	Acepex Management Corp.	22-Jul-98	Air Force	Denied
282373	Spectrum Sciences & Software, Inc.	22-Jun-99	Air Force	Denied
279892	Cache Box, Inc.	29-Jul-98	Air Force	Denied
278855.2	Apache Enterprises, Inc.	30-Jul-98	Air Force	Denied
279191.3	Main Building Maintenance, Inc.	05-Aug-98	Air Force	Denied
2784246.1	Symetrics Industries, Inc.	17-Sep-98	Air Force	Denied
278478.4	CVB Company	21-Sep-98	Air Force	Denied
280374	B3H Corp.	23-Sep-98	Air Force	Denied
280521	Bionetics Corp.	14-Oct-98	Air Force	Denied
282082	Buckeye Park Services, Inc.	01-Jun-99	Air Force	Denied
279251.2	Exploration Products	01-Jun-98	Air Force	Denied
278897.4	WP Photographic Services	12-May-98	Air Force	Denied
278165	International Consultants, Inc., et.al.	05-Jan-98	Air Force	Denied
279168	PCT Services, Inc.	12-May-98	Air Force	Denied
275587.9	Pemco Aeroplex, Inc., Aero Corp.	29-Jun-98	Air Force	Denied
279811	Applied Companies	24-Jul-98	Army	Denied
280362	Caterpillar, Inc.	23-Sep-98	Army	Denied
278408	Thermolten Tech., Inc.	26-Jan-98	Army	Denied

<u>GAO Case Number</u>	<u>Case Name</u>	<u>Decision Date</u>	<u>Agency</u>	<u>Decision</u>
278408.3	Teledyne-Commodore, LLC	15-Sep-98	Army	Dismissed
281136	AMS Mechanical Systems, Inc.	04-Jan-99	Army	Denied
278129.4	Proteccion Total/Magnum Security, S.A.	12-May-98	Army	Denied
278651	Compro Computer Services, Inc.	23-Feb-98	Army	Denied
280133	Electronic Data Systems Corp.	03-Sep-98	Army	Denied
283307	ITT Federal Services International Corp.	03-Nov-99	Army	Sustained
278358	Compania De Asesoría Y Comercio, S.A.	20-Jan-98	Army	Denied
283393	Charleston Marine Containers, Inc.	08-Nov-99	Army	Denied
280520	Buck Environmental Technologies, LLC	14-Oct-98	Army	Denied
278195.2	Robotic Systems Technology	07-Jan-98	Army	Denied
278673	Battelle Memorial Institute	27-Feb-98	Army	Denied
283259	Govt. of Hartford County, Maryland	28-Oct-99	Army	Denied
279561	Trifax Corp.	29-Jun-98	Army	Sustained
280422.3	RTF/TCI/EAI Joint Venture	29-Dec-98	Army	Denied
282334	Canadian Commercial Corp./Liftking Industries, Inc.	30-Jun-99	Army	Denied
279723	Riveer Company	14-Jul-98	Army	Denied
282162	TRW, Inc.	09-Jun-99	Army	Denied
280978.3	The Arora Group, Inc.	27-Jan-99	Army	Denied
281342	Lance Ordnance, Inc.	26-Jan-99	Army	Denied
282511	ATA Defense Industries, Inc.	21-Jul-99	Army	Sustained
278298	Midmark Corp.	14-Jan-98	Army	Denied
281246	Vision Blocks, Inc.	14-Jan-99	Army	Denied
283401	Olin Corp.	15-Nov-99	Army	Denied
281006	RMG Systems, Ltd.	18-Dec-98	Army	Denied

<u>GAO Case Number</u>	<u>Case Name</u>	<u>Decision Date</u>	<u>Agency</u>	<u>Decision</u>
280988	NWT, Inc., PharmChem Laboratories, Inc.	17-Dec-98	Army	Denied
280585	Input/Output Technology, Inc.	21-Oct-98	Army	Denied
280568	Day & Zimmerman/IMR, LLC	19-Oct-98	Army	Denied
279393	Marlen C. Robb & Son Boatyard & Marina Inc.	09-Jun-98	Army	Denied
278324.2	Noelke GmbH	09-Feb-98	Army	Denied
278319	Electro-Voice, Inc.	15-Jan-98	Army	Denied
281289	APTUS Company	20-Jan-99	Army	Denied
278168	Joint Threat Services	05-Jan-98	Army	Denied
281331.3	Kellie W. Tipton Construction Company	22-Mar-99	Army	Denied
278797	Rockhill Industries, Inc.	16-Mar-98	Army	Denied
278408.5	Teledyne-Commodore, L.L.C.	08-Mar-99	Army	Denied
278689	Jason Associates, Corp.	02-Mar-98	Army	Denied
279561.2	Professional Performance Development Group, Inc.	06-Jul-98	Army	Denied
278730	FC Business Systems, Inc.	06-Mar-98	Army	Sustained
281141.3	Clean Service Company, Inc.	16-Feb-99	Army	Denied
277827.5	Marquette Medical Systems, Inc.	29-Apr-99	Army	Sustained
280766.3	E.L. Hamm & Associates, Inc.	12-Apr-99	Army	Sustained
279637.2	Hugo-Cantu Joint Venture	20-Jul-98	Army	Denied
283827	B. Diaz Sanitation Inc.	27-Dec-99	Army	Denied
277241.2	Aalco Forwarding, Inc., et.al.	01-Jul-98	Army	Denied
279585	IT Facilities Services	29-Jun-98	Army	Denied
281384	Bulora Technologies, L.L.C.	03-Feb-99	Army	Denied
281002.2	Andrulic Corp.	02-Jun-99	Army	Denied
278793	Coleman Research Corp.	16-Mar-98	Army	Denied

<u>GAO Case Number</u>	<u>Case Name</u>	<u>Decision Date</u>	<u>Agency</u>	<u>Decision</u>
277241.15	Aalco Forwarding, Inc., et. al.	11-Mar-98	Army	Denied
281244.3	D & K Construction Company, Inc.	01-Oct-99	Army	Denied
282739	Allied Technology Group, Inc.	19-Aug-99	Army	Denied
278371	Hardcore Dupont Composites, L.L.C.	20-Jan-98	Army	Denied
282140	North State Resources, Inc.	07-Jun-99	Army	Denied
280044.2	HAP Construction, Inc.	21-Sep-98	Army	Denied
279492.2	Black & Veatch Special Projects Corp.	26-Jun-98	Army	Denied
282231	Garco Construction, Inc., et.al.	15-Jun-99	Army	Denied
281082	Ornni Corp.	22-Dec-98	Army	Dismissed
281695	Stratus Systems, Inc.	24-Feb-99	DoT	Denied
283882	Phantom Products, Inc.	30-Dec-99	DoT	Denied
278422	Baldt, Inc.	28-Jan-98	DoT	Denied
279217	Quaker Valley Meats, Inc./Supreme Sales, Upper Lakes Foods	20-May-98	DCA	Denied
280969	MCR Federal, Inc.	14-Dec-98	DFAS	Sustained in part
280463.3	Rel-Tek Systems & Design, Inc.	25-Nov-98	DFAS	Sustained
281393	Deva & Associates, PC.	01-Feb-99	DFAS	Denied
283491	Communications Technologies, Inc.	30-Nov-99	DISA	Denied
281876	Marathon Watch Company Ltd.	22-Apr-99	DLA	Denied
282554	Wirt Inflatable Specialists, Inc.	28-Jul-99	DLA	Denied
280180.2	The Terxe Group, Inc.	28-Sep-98	DLA	Denied
278268.2	MCA Research Corp.	10-Apr-98	DLA	Denied
278881	San Diego Beverage & Cup, Inc.	24-Mar-98	DLA	Denied
280872.2	Venture Productions	09-Dec-98	DLA	Denied
282150	Wellco Enterprises, Inc.	04-Jun-99	DLA	Denied
281958	National Aerospace Group, Inc.	10-May-99	DLA	Sustained in part

<u>GAO Case Number</u>	<u>Case Name</u>	<u>Decision Date</u>	<u>Agency</u>	<u>Decision</u>
280767.4	D.F. Zee's Fire Fighter Catering	10-Sep-99	DoA	Denied
280767.2	Wilderness Mountain Catering	28-Dec-98	DoA	Denied
280218	Sawtooth Enterprises, Inc.	07-Dec-98	DoA	Denied
279272	William C. Menefee	28-May-98	DoA	Denied
281497	Crasehi Rentals, Inc.	17-Feb-99	DoA	Denied
277063.3	Tri-J Contractors	06-Jul-98	DoA	Denied
281070.2	West Coast Unlimited	18-Aug-99	DoA	Denied
283177	GSA, Inc.	18-Oct-99	DoA	Denied
278579.2	Possehn Consulting	29-Jul-98	DoA	Sustained
280774.2	R.C.O. Reforesting	24-Nov-98	DoA	Denied
278659	Seedburo Equipment Co.	25-Feb-98	DoA	Denied
281706	LB&B Associates, Inc.	24-Mar-99	DoA	Denied
277572.4	HG Properties A., L.P.	11-Feb-98	DoA	Denied
278278	Biospherics, Inc.	14-Jan-98	DoA	Sustained
278649	High County Contracting	30-Jan-98	DoA	Denied
278579	Possehn Consulting	09-Jan-98	DoA	Sustained
283137.3	Kathpal Technologies, Inc., et.al.	30-Dec-99	DoC	Sustained
280003	Madico, Inc.	12-Aug-98	DoD (HQ)	Denied
278904.4	Centech Group, Inc.	13-Apr-98	DoE	Denied
278904.3	Techsys Corp.	13-Apr-98	DoE	Denied
278904.2	McNeil Technologies, Inc.	02-Apr-98	DoE	Denied
277801.4	Advanced Data Concepts, Inc.	01-Jun-98	DoE	Denied
278044.5	L & M Technologies, Inc.	08-May-98	DoE	Denied
282326	Johnson Controls, Inc.	28-Jun-99	DoE	Denied

GAO Case Number	Case Name	Decision Date	Agency	Decision
280967.8	Advanced Data Concepts, Inc.	14-Jun-99	DoE	Denied
278451	COMPA Industries, Inc.	30-Jan-98	DoE	Denied
278904	KRA Corp.	02-Apr-98	DoE	Denied
277805.2	Sciencetech, Inc.	20-Jan-98	DoE	Sustained
278869	MicroMass, Inc.	24-Mar-98	DoE	Denied
278044.4	Source One Management, Inc.	12-Jun-98	DoE	Denied
280929	Westinghouse Government & Environmental Services Co, Inc.	04-Dec-98	DoE/Navy (joint)	Denied
280447	YKK (USA), Inc.	28-Aug-98	DoJ	Denied
281074.2	National Toxicology Laboratories, Inc.	11-Jan-99	DoJ	Denied
279048.2	Professional Gunsmithing, Inc.	24-Aug-98	DoJ	Denied
282139	Interlog, Inc.	27-Apr-99	DoJ	Denied
280388	General Security Services Corp.	25-Sep-98	DoJ	Denied
281484.2	Medical Development International	29-Mar-99	DoJ	Denied
280595	Keane Federal Systems, Inc.	23-Oct-98	DoJ	Denied
280959	General Security Services, Corp.	11-Dec-98	DoJ	Denied
281051.5	Warvel Productions, Inc.	07-Jul-99	DoJ	Denied
276633.2	RAMCOR Services Group, Inc.	23-Mar-98	DoJ	Denied
278906	M3 Corp.	01-Apr-98	DoT	Denied
278276.11	Patriot Contract Services, LLC, et.al.	22-Sep-98	DoT	Denied
278466	Hughes STX Corp.	02-Feb-98	DoT	Sustained
280270	Randolph Engineering Sunglasses	10-Aug-98	DLA	Denied
280645	Phillips Industries, Inc.	17-Sep-98	DLA	Denied
281517	Island Components Group, Inc.	19-Feb-99	DLA	Denied
279697	Dynamic Marketing Services, Inc.	13-Jul-98	Education	Denied

GAO Case Number	Case Name	Decision Date	Agency	Decision
277029.3	McAllister & Associates, Inc.	18-Feb-98	Education	Denied
279924	Information Ventures, Inc.	07-Aug-98	EPA	Denied
279379.2	TEAM Support Services, Inc.	22-Jun-98	EPA	Denied
280011.2	Nick Chorak Mowing	01-Oct-98	EPA	Denied
278650	USA Today	20-Feb-98	DoJ	Denied
281836	Construction Technology Laboratories, Inc.	12-Apr-99	DoT	Denied
283538	Simborg Development, Inc.	07-Dec-99	GSA	Denied
279715	McHargue Construction Co.	16-Jul-98	GSA	Denied
281995	Concepts Building Systems, Inc.	13-May-99	GSA	Denied
280518	Acquest Uniland LLC	13-Oct-98	GSA	Denied
283398	Ideal Electronic Security Company, Inc.	10-Nov-99	GSA	Denied
283192	S.J. Thomas Co., Inc.	20-Oct-99	GSA	Sustained
277874.4	Correa Enterprises, Inc.	13-May-98	GSA	Denied
276837.3	Omega World Travel, Inc.	09-Jun-98	GSA	Denied
279295	Dual, Inc.	01-Jun-98	GSA	Denied
278876.2	NAAB Research Center, Inc.	04-May-98	GSA	Denied
278851	McShade Enterprises	23-Mar-98	GSA	Denied
282776	U.S. Constructors, Inc.	21-Jul-99	GSA	Denied
276012.2	Wackenhut Services, Inc.	01-Sep-98	GSA	Denied
280475	Cobra Technologies, Inc.	06-Oct-98	GSA	Denied
282456	Universal Building Maintenance, Inc.	15-Jul-99	GSA	Sustained
280013.2	Information Systems Technology Corp.	06-Aug-98	HHS	Denied
280176	California Resources	08-Sep-98	HHS	Denied
278508.4	Biospherics, Inc.	06-Oct-98	HHS	Sustained

GAO Case Number	Case Name	Decision Date	Agency	Decision
279260	Conwal, Inc.	26-May-98	HHS	Denied
282074	GCI Information Services, Inc.	28-May-99	HHS	Denied
278343	Comark Federal Systems	20-Jan-98	HHS	Sustained
278678	The American Indian Center, Inc.	27-Feb-98	HHS	Denied
278839	I.S. Grupe, Inc.	20-Mar-98	HHS	Denied
279378	Century Environmental Hygiene, Inc.	05-Jun-98	HHS	Sustained
274689.5	Tidewater Homes Realty, Inc.	11-Aug-98	HUD	Denied
279161.2	Ervin & Associates	13-Oct-98	HUD	Denied
282098	ACS Government Solutions Group, Inc.	02-Jun-99	HUD	Sustained
281352.14	Housing Services, Inc.	07-May-99	HUD	Denied
278727	U.S. Property Management Service Corp.	06-Mar-98	HUD	Sustained
283147	The Communities Group	12-Oct-99	HUD	Denied
279083	Ervin & Associates, Inc.	30-Apr-98	HUD	Denied
280993	Ervin & Associates, Inc.	17-Dec-98	HUD	Denied
280283.3	Du & Associates, Inc.	22-Dec-98	HUD	Denied
279565.2	Consolidated Engineering Services, Inc.	26-Jun-98	HUD	Sustained
279565.5	Consolidated Engineering Services, Inc.	19-Mar-99	HUD	Denied
282808	Cotton & Company, LLP	30-Aug-99	HUD	Sustained
281745.2	Federal Security Systems, Inc.	29-Apr-99	Interior	Denied
280478	Emmert International	07-Oct-98	Interior	Denied
282192	Matrix General, Inc.	10-Jun-99	Interior	Denied
283469.2	Crescent Helicopters	30-Nov-99	Interior	Denied
282661.2	East Slope Conservation Services	09-Jul-99	Interior	Denied
278450	American Artisan Productions, Inc.	30-Jan-98	Interior	Denied

GAO Case Number	Case Name	Decision Date	Agency	Decision
283822	Century Elevator Inc.	20-Dec-99	JFK - CPA	Denied
277849.2	Sytel, Inc.	08-Jan-98	NASA	Denied
278896.2	Aerospace Design & Fabrication	04-May-98	NASA	Sustained
283160	Scientific & Commercial Systems Corp., et.al.	14-Oct-99	NASA	Denied
281773.2	Mentor Technologies, Inc., et.al.	01-Apr-99	NASA	Denied
281773	SGT, Inc.	01-Apr-99	NASA	Denied
280664.2	Plasma-Therm, Inc.	28-Dec-98	NASA	Denied
279828	Technical & Administrative Services Corp.	24-Jul-98	NASA	Denied
279014	P & R Water Taxi, Ltd.	23-Apr-98	Navy	Dismissed
278516.2	Veda Inc.	19-Mar-98	Navy	Denied
279919	SDV Telecommunications	29-Jul-98	Navy	Denied
281579	Joppa Maintenance Company, Inc.	02-Mar-99	Navy	Denied
278260.2	Davies Rail & Mechanical Works, Inc.	25-Feb-98	Navy	Denied
279543	Hard Bodies, Inc.	23-Jun-98	Navy	Denied
281490	OMV Medical, Inc.	16-Feb-99	Navy	Denied
279759.2	Systems Integration & Research, Inc., et.al.	16-Feb-99	Navy	Denied
280250	Chant Engineering Co., Inc.	07-Aug-98	Navy	Denied
277538.2	Command Technology, Inc.	28-Apr-98	Navy	Denied
279707	HSQ Technology	09-Jul-98	Navy	Denied
281521	Chant Engineering Company, Inc.	22-Feb-99	Navy	Denied
278187	J & E Associates, Inc.	05-Jan-98	Navy	Denied
280048.4	Pulau Electronics Corp.	19-May-99	Navy	Sustained in part
279493.3	Telos Corp.	27-Jul-98	Navy	Denied
283796	B.E. Meyers & Company, Inc.	14-Dec-99	Navy	Denied

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<u>Number</u>	<u>Case Name</u>	<u>Decision Date</u>	<u>Agency</u>	<u>Decision</u>
278738	Xeno Technix, Inc.	11-Mar-98	Navy	Denied
279793	Pacific Ship Repair & Fabrication, Inc.	23-Jul-98	Navy	Denied
281872	Metro Machine Corp.	22-Apr-99	Navy	Sustained
281784.3	L-3 Communications Corp, Ocean Systems Division	26-Apr-99	Navy	Sustained in part
282437.3	Burns & Roe Services, Corp.	30-Nov-99	Navy	Dismissed
279773	Southwest Critical Care Associates	16-Jul-98	Navy	Denied
283650	Advanced Communication Systems, Inc.	16-Dec-99	Navy	Denied
279662.5	Electronic Design, Inc.	25-May-99	Navy	Denied
283738	BioGenesis Pacific, Inc.	14-Dec-99	Navy	Denied
283448	J & E Associates, Inc.	03-Nov-99	Navy	Denied
280814	Packaging Strategies, Inc.	25-Nov-98	Navy	Denied
280511.2	GTS Duratek, Inc.	19-Oct-98	Navy	Sustained
282982	Thames Towboat Company, Inc.	09-Sep-99	Navy	Denied
281278	Ventura Petroleum Services, Inc.	21-Jan-99	Navy	Denied
278141.2	Dawco Construction, Inc.	02-Jan-98	Navy	Denied
281285	Browning Ferris Industries of Hawaii, Inc.	21-Jan-99	Navy	Denied
280853	Durocher Dock & Dredge/Black & Veatch, A Joint Venture	24-Nov-98	Navy	Denied
283236	ELS, Inc.	25-Oct-99	Navy	Denied
280573.2	Environmental Tectonics Corp.	01-Dec-98	Navy	Denied
280834	Lear Siegler Services, Inc.	25-Nov-98	Navy	Denied
278281	F2M-WSCI	14-Jan-98	Navy	Denied
282670	A & T Engineering Technologies	13-Aug-99	Navy	Denied
282271	Am Clyde Engineered Products Company, Inc.	21-Jun-99	Navy	Denied
277143.2	Navistar Marine Instrument Corp.	13-Feb-98	Navy	Denied

GAO Case Number	Case Name	Decision Date	Agency	Decision
282887	Olympus Building Services, Inc.	31-Aug-99	Navy	Denied
282912	Infrared Technologies Corp.	02-Sep-99	Navy	Denied
283239	DTH Management JV	06-Oct-99	Navy	Denied
282630.2	OMNIPLEX World Services Corp.	22-Sep-99	Navy	Denied
282947	Nova Group, Inc.	15-Sep-99	Navy	Sustained
283234	J.A. Jones Grupo de Servicios, SA.	25-Oct-99	Navy	Denied
277926.2	Teleport Communications Group	17-Sep-98	Navy	Denied
280049	Nations, Inc.	24-Aug-98	Navy	Sustained
278584	U.S. Technology Corp.	17-Feb-98	Navy	Denied
279662.2	Electronic Design, Inc.	31-Aug-98	Navy	Sustained
278734.4	East/West Industries	28-May-98	Navy	Denied
281142	National Steel & Shipbuilding Co.	04-Jan-99	Navy	Denied
280261	Morrison Knudsen Corp.	09-Sep-98	Navy	Denied
281437.2	Wilcox Industries, Corp.	30-Jun-99	Navy	Sustained
280284	Aerostructures, Inc.	15-Sep-98	Navy	Denied
278647.2	Oceanometrics, Inc.	09-Jun-98	Navy	Denied
282249	J & D Maintenance & Service	18-Jun-99	Navy	Denied
282407	Support Services, Inc.	08-Jul-99	Navy	Denied
278921.2	Braswell Services Group, Inc.	17-Jun-98	Navy	Denied
282634	Red River Service Corp.	15-Jul-99	Navy	Denied
278360	Tidewater Construction Corp.	20-Jan-98	Navy	Sustained
280398.2	Knights' Piping Inc., et.al.	09-Oct-98	Navy	Denied
281030	Beckman Coulter	21-Dec-98	HHS	Sustained
279049	Chant Engineering Company	30-Apr-98	PCC	Denied

GAO Case Number	Case Name	Decision Date	Agency	Decision
277916.2	Mechanical Contractors, S.A.	04-Mar-98	PCC	Sustained
281503	The Production Company	18-Feb-99	SS Admin.	Denied
279305	WECO Cleaning Specialists, Inc.	03-Jun-98	SS Admin.	Denied
280429	Securiguard/Group 4 Joint Venture	30-Sep-98	State	Denied
278929.7	Jensco Marine, Inc.	11-Feb-99	Treasury	Denied
275502.3	Signal Corp.	06-Jul-98	Treasury	Denied
281255	Amdahl Corp.	28-Dec-98	Treasury	Denied
279221	Ideal Electronic Security	19-May-98	Treasury	Denied
280922	Teltara, Inc.	04-Dec-98	Treasury	Sustained
278929.2	Mar, Inc., et.al.	28-Sep-98	Treasury	Denied
281919	KBM Group, Inc.	03-May-99	Treasury	Denied
278715	The Centech Group, Inc.	05-Mar-98	Treasury	Denied
278189.3	Foundation Health Federal Services, Inc. et.al.	04-Feb-98	TSO	Sustained
278254	Research Triangle Institute	12-Jan-98	USAID	Denied
279920	Development Alternatives, Inc.	06-Aug-98	USAID	Denied
281241.2	Ritchie Sawyer Corp.	25-Jan-99	USAID	Denied
281028.2	Mid-Atlantic Service & Supply Corp.	29-Dec-98	USAID	Denied
280113	RONCO Consulting Corp.	11-Aug-98	USAID	Denied
282555	Chemonics International, Inc.	23-Jul-99	USAID	Sustained
282571	AdvanChip Corp.	29-Jul-99	Interior	Denied
279756	Robertson Leasing Corp.	17-Jul-98	DoJ	Denied
280959.5	Farnham Security, Inc.	09-Feb-99	DoJ	Denied
281904	Walsh Distribution, Inc.	29-Apr-99	VA	Denied

GAO Case Number	Case Name	Decision Date	Agency	Decision
280430	SDS Petroleum Products, Inc.	01-Sep-98	VA	Denied
2822243	Life Oxygen & Health Services, Inc.	18-Jun-99	VA	Denied
281693	Opti-Lite Optical	22-Mar-99	VA	Sustained
278223	BFI Waste Systems of Nebraska, Inc.	08-Jan-98	VA	Denied
278400	University of Kansas Medical Center	26-Jan-98	VA	Denied
281693.2	Opti-Lite Optical	15-Jul-99	VA	Denied
281800	Korreck Optical	09-Apr-99	VA	Denied
280652	HG Properties A., L.P.	02-Nov-98	VA	Denied
283295.2	Rotech Medical Corp.	08-Nov-99	VA	Denied

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 Attn: Code SM/LT
 Monterey, CA 93943-5000

4. Dr. J. Holmes Armstead 1
 Naval Postgraduate School
 Attn: Code NS/AJ
 Monterey, CA 93943-5000

5. Defense Contract Management Command, Raytheon Tuscon 1
 P.O. Box 11337
 Bldg. 801 M/S D4
 Tuscon, AZ 85734-1337
 Attn: CDR Dave Smith

6. LCDR Casey C. Burns 1
 173 South Main Street
 Newton, NH 03858