

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeals of TRIAD MANAGEMENT )  
SYSTEMS, INC. (TRIAD) AND )  
COMPREHENSIVE TECHNOLOGIES, )  
INC. (CTEK) ) Docket Nos. MSBCA 1872 & 1874  
)  
Under Department of Human )  
Resources, )  
Office of Information )  
Management Solicitation No. )  
OIM/OIM 94-030S )

April 3, 1995

Competitive Negotiation - The State did not violate any procurement law or regulation when it waived the failure of the offerors then in competition to achieve a certain score on one portion of the technical evaluation criteria and continued to evaluate the technical proposals through another criteria closely related to the waived criteria through which proposals should be classified.

Competitive Negotiation - While it would have been preferable for the State to have advised the offerors in advance, rather than after the fact, that the failure of their proposals to achieve the minimum score on resume evaluation necessary to advance to the interview stage would be waived, such absence of advance notice was not shown on the record to have prejudiced any offeror.

Competitive Negotiation - Any agency may waive on a uniform and consistent basis the failure of all offerors to achieve a threshold score on the evaluation of one of technical evaluation criteria where the agency in good faith concludes that all technical proposals of offerors then in competition are capable of being made acceptable. Once evaluation of a specific criteria is waived for offerors then in competition, such waiver must be applied to the proposal to an offeror who is subsequently returned to the competition as a result of a protest.

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Sherry L. Kendall  
Assistant Attorney General  
Baltimore, MD

OPINION BY CHAIRMAN HARRISON

Appellants, Triad and CTek, timely appeal the denial of their protests in this procurement by competitive sealed proposals.

Neither party commented on the Agency Report and no hearing was requested.

### Findings of Facts

1. On August 23, 1994, the Office of Information Management (OIM), a unit of the Department of Human Resources (DHR) issued a Request for Proposals (RFP) to acquire a team of five technical project managers to direct and coordinate the implementation of a custom-design automated system throughout the department and its 24 subdivision offices. The system consists of the Clients' Automated Resource and Eligibility System and Common Database and the Child Support Enforcement System known collectively as the Client Information System.
2. The contract being solicited was for a one-year term, with options to renew for two additional one-year periods. The closing date for receipt of the proposals was September 21, 1994.
3. The criteria for evaluation of technical proposals were set forth in the RFP as follows:

#### 4.3 Technical Evaluation

All proposals found to be in compliance with the mandatory requirements of this RFP will be initially classified as reasonably susceptible of being selected for award, in accord with COMAR 21.05.03.03B, subject to a technical evaluation. During this technical evaluation phase, the Procurement Officer shall reserve the right to enter discussions equally with responsible vendors.

These discussions will be in accordance with State Procurement Regulations and will be initiated with the advice of the Committee.

A resume evaluation will be conducted for all proposals in compliance with the mandatory requirements of this RFP. Each resume submitted by the vendor shall be reviewed and scored by the Committee based on the criteria identified in Section IV.4.4.1 and IV.4.4.2. A total of 60 points may be obtained for each proposal.

Vendors scoring at least 80% on the resume evaluation will advance to the next evaluation level, the interview. The Evaluation Committee reserves the right to conduct an interview with the individual(s) named in each proposal as well as a presentation from the representative(s) of the vendor. The interviews will be scored by the Evaluation Committee based on a total of 40 points.<sup>1</sup> The interview will be evaluated based on response to committee questions, management style, and interpersonal skills.

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<sup>1</sup>The evaluation Committee determined that this number should be 45 points, consistent with the weighting factors numbers set forth in §§4.4 below.

Vendors scoring at least 80% on the Technical Evaluation (combining Resume Evaluation and Interview) will then advance to next evaluation threshold, the financial evaluation.

4.4 Criteria for Technical Evaluation

The Technical Evaluation will be based upon the qualifications, i.e. education, skills, experience, of the individual(s) who will perform the work as described in this Request for Proposal, insofar as those qualifications are represented in the written proposal and in the interview. The following evaluation factors will be assessed:

<u>Evaluation Criteria</u>	<u>Weighting Factors</u>
1. The extent to which the individual(s) meet the technical requirements defined Resume evaluation will be based on the following criteria:	50
a. Demonstrated Project Management experience and success Review of resume against required tasks/functions.	
b. Demonstrated Application Knowledge, both functional and large-scale development management experience.	
c. Demonstrated System Software Knowledge, experience and expertise.	
d. Third party software package experience.	
e. Hardware-System platform experience;	
f. Demonstrated skills and experience to meet vendor mandatory requirements.	
g. Demonstrated skills and experience to meet vendor desired requirements.	
2. Education	5
3. Interview	45
	<u>100</u>
4.5 <u>Financial Evaluation</u>	

Vendors must submit a separate cost proposal. Eligible cost proposals will be opened only after the completion of the technical evaluation. The cost proposal will include the information requested in Attachment 2 of this RFP which MUST be completed and returned as part of the vendor's proposal. The committee shall review the cost per hour presented in the cost proposal in order to establish a financial ranking of the proposals.

$$\frac{\text{Lowest Offer}}{\text{Individual Offer}} = Y \text{ (x 40\%)}$$

4.6 Final Evaluation and Recommendation for Award

Following reference checks, the Committee will make a recommendation for award of the contract to the responsible, qualifying offeror whose proposal is determined to be most advantageous to the State based on the results of the final technical (60%) and financial (40%) factors set forth in the RFP.

4. Proposals from seven offerors were received by the September 21, 1994 closing date. An Evaluation Committee (the Committee) consisting of seven persons began evaluating the proposals on September 22, 1994. Prior to the resume evaluation, the Committee classified proposals for compliance with the mandatory requirements as follows:

*Acceptable - All mandatories were met*

*Potentially Acceptable - All mandatories were stated. One or more needed clarification*

*Unacceptable - One or more mandatories were not stated in the Technical Proposal*

5. As a result, the following three vendors<sup>2</sup> were determined to have acceptable proposals:

*Andersen Consulting LLP (Andersen)  
Aspen Systems Corp. (Aspen)  
Syscom, Inc. (Syscom)*

The remaining four proposals<sup>3</sup> were judged unacceptable because one or more mandatories were missing from the proposals.

6. The Committee devised a method for scoring the proposals deemed acceptable, based on the weighting factors and the maximum 60 points prescribed by the RFP. Under this scoring plan, a maximum of 30 points could be achieved for resumes, three points for education, and 27 points for oral interviews.

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<sup>2</sup> The words vendor and offeror are used interchangeably herein.

<sup>3</sup> The proposals of Triad, CTek, Deloitte & Touche and Information Services Group.

7. In accord with the RFP requirement that vendor proposals had to achieve 80 percent on the resume evaluation in order to advance to interviews, the Committee established 26.4 points as the minimum that would be needed to qualify for the interviews (30 points technical requirements plus three points education equals 33 points times 80% equals 26.4). None of the three vendors who had passed the mandatories and were still in competition achieved this score on their resume evaluations. These scores were:

Andersen:	Resume -	12.960 Points	
	Education -	2.235 points	
			Total: 15.195
Aspen:	Resume -	19.590 points	
	Education -	2.640 points	
			Total: 22.230
Syscom:	Resume-	17.685 points	
	Education -	1.920 points	
			Total: 19.605

8. Given the "urgent" need for the services<sup>4</sup>, the Committee determined that it would be in the best interest of the State to permit the three vendors to proceed to the interviews and waive the failure to achieve the 80 percent score as set forth in the RFP. Besides the projected time of up to three months that would be needed to reissue the RFP and perform another technical evaluation, the Committee discussed other reasons for waiving the 80% requirement (quantified by the Committee as 26.4 points). According to the Agency Report:

a. From the resume evaluations, it was the consensus of the Committee that any one of the vendors could provide the services.

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<sup>4</sup> The services included developing systems to support child support collections and public assistance eligibility determinations.

- b. It was impossible to devise a scaling formula for scoring resumes so as to qualify them for interviews without awarding points unequally.
- c. Evaluation of the resumes was difficult and required substantial subjective interpretation because of the dissimilar formats, jargon and terminology used by each offeror to describe individual skills and experience of staff.
- d. Face-to-face interviews were deemed essential in clarifying the credentials of the people being proposed in order to determine their ability to perform the management services. The RFP requires that the five managers who are to perform the work be interviewed.

The interviews were needed not only to verify the information provided in the resumes, but, more significantly, to obtain more information about the "desirable," as opposed to the "Mandatory," experience listed in the RFP for each position. Desirables are heavily weighted toward the types of management skills and experience users needed, but resumes tended to emphasize mandatories.

- e. The same vendors would most likely respond to a new solicitation. Since the information in the proposals were largely biographical, the data being evaluated would not be significantly changed.
9. According to the Agency Report the procedure for the interviews was in relevant part as follows:
- a. The Committee employed the written resumes from the offerors' technical proposals as a tool in conducting the interviews.
  - b. The Committee devised 27 points as the maximum score that could be attained in interviews. This was based on the weighting factor of 45% assigned to interviews in the RFP times the 60-point maximum. Each of the seven evaluators was given 27 points to award per vendor, four for each person/position, four for the vendor representative or CEO, and a discretionary three points to award or not to award for the company (Vendor Support). A total raw score of 189 was possible (17 times 7). In accord with the RFP ... 80% of the total possible points had to be achieved in the interview in order to qualify for the financial proposal evalua-

tion (the ratio between total possible points and actual points achieved would be multiplied by 27 points to determine the actual interview score).

c. A different Committee member wrote the interview questions for each position, depending on the member's expertise. Other Committee members would then review each draft set of questions, discuss them and add or revise questions based on the discussions.

d. All panel members were present at all interviews, but only one person was designated to ask questions. The Committee had discussed ahead of time what information they were looking for, and what responses they expected, focusing on the Desirables. One general question was asked at the end of each interview, in which interviewees were given the opportunity to add anything they wished to add. No questions were permitted that deviated from the predetermined format, as, for example, to discuss specific features of an individual offeror's proposal.

e. In vendor representative/CEO interviews, the vendor had the option of bringing one additional person. Only one of the two could respond to a given question, but they could alternate. In position interviews, the vendor could accompany the manager but could not speak.

10. According to the Evaluation Committee Report included with the Agency Report documents the interviews served to amplify the skills and experiences of each prospective manager and in some cases they disclosed "striking" disparities between the written resumes and what the individual described and exhibited during the interview.

11. Of the three offerors interviewed, only Andersen achieved 80 percent of the total possible points given by the seven evaluators. Andersen's raw score, 172, was 91.01 percent of the total points, thereby earning Andersen a score of 24.57 on the interviews.

12. Following the scoring of interviews, and based on advice of counsel, on October 19, 1994 OIM sent letters to Andersen and

Syscom advising them that none of the proposals had met the maximum requirements needed to proceed to the interviews, but that the Committee had decided to equalize the vendors in order to move them into the interview evaluations.

13. On that same day, October 19, the Committee wrote to Aspen, which had only scored 2.71 points on its interviews, that its proposal was disqualified from further review.
14. No protests of the October 19 letters were filed.
15. On October 31, 1994, OIM notified the six unsuccessful offerors that the Committee had selected Andersen for the contract. Triad received this notice on November 4, 1994 and requested a debriefing via fax on that day.
16. On November 7, 1994 Triad timely protested the award to Andersen based on information Triad had received in a debriefing held earlier that day. The basis for Triad's protest was its disagreement with the Committee's finding that it had not met all mandatory requirements.
17. CTek received the award notice on November 7, 1994, received a debriefing on November 16, 1994, and filed a protest of the award on November 25, 1994. The basis for CTek's protest was its disagreement with the Committee's finding that it had not met all mandatory requirements.
18. Following a meeting with involved staff on December 2, 1994, the DHR Deputy Secretary for Operations directed OIM to review the evaluation process in light of the issues raised in the protests and, if appropriate, to score vendors who had been disqualified on account of missing mandatories.
19. The Committee reassembled in order to plan for the evaluation of the additional vendors. At this meeting the Committee decided not to rescore the resumes for the second group of vendors who might qualify for the technical evaluation. According to the Agency Report the primary reason for this decision was that experience in interviewing Andersen, Aspen and Syscom had shown the resumes unreliable for the purpose of providing the information the Committee needed to determine



the qualifications of future potential managers, particularly with regard to the "Desirable" experience factors listed in the RFP. Additionally, because the Committee had waived the 80 percent threshold (the 26.4 points) needed to qualify the first three offerors for the interviews, they determined to do so for the others.

20. On December 7, 1994 OIM, through its Procurement Officer, requested clarification from the four offerors whose proposals had initially been rated unacceptable for failure to meet one or more mandatories.<sup>5</sup> OIM also requested these offerors to extend their price proposals for 60 days.
21. That same day, December 7, 1994, OIM notified Anderson and Syscom that, as a result of protests, OIM was continuing the evaluation and requested extension of their price proposals for an additional 60 days.
22. Responses to the requests for clarification were received from all four vendors notified and the Committee determined that CTek, ISG and Triad had met all the mandatory requirements set forth in the RFP.
23. On December 28, 1994, the Procurement Officer notified D&T that it was being disqualified as a result of the failure of its proposal to meet a mandatory requirement.
24. On that same day, December 28, the Procurement Officer telephoned the three vendors who had clarified their technical proposals, CTek, ISG and Triad, in order to schedule interviews. ISG and Triad each made one substitution of personnel. ISG had already provided an alternate resume in its technical proposal for that individual. Triad submitted a resume for the substituted manager on its team who would be interviewed.
25. The Committee reviewed the resumes prior to the interviews, and utilized them as a tool in conducting the interviews.

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<sup>5</sup> i.e., Appellant (CTek), Deloitte & Touche (D&T), Information Services Group (ISG) and Appellant (Triad).

Employing the same procedure and questions that had been used for the interviews of Andersen, Aspen and Syscom the Committee interviewed the CTek, ISG and Triad personnel over a four-day period, beginning Thursday, January 5, 1995, and concluding Monday, January 9, 1995.

26. At the time the interviews of these three offerors were conducted one member of the Committee had left State service. The Committee had devised 27 points as the maximum score that could be attained in the interviews. Therefore, total possible scores for each vendor, based on six evaluators, were 162 (6 times 27). None of the three vendors, however, achieved 80 percent of the total points needed to qualify for the financial evaluation.
27. By letter dated January 18, 1995, the Procurement Officer notified CTek, ISG, Syscom and Triad as follows:

- a. Four proposals initially did not appear to meet the mandatory requirements in the RFP, and the remaining three did not achieve the minimum point score needed to qualify for the interphase.

- b. DHR had decided to advance the three offerors whose proposals met the mandatory requirements to the interviews, rather than reject all proposals.

- c. Two of the offerors whose proposals had been rated unacceptable on the mandatories protested.

- d. Following the interviews of the first group of vendors DHR notified them of the decision to interview them despite their not having received the minimum point scores on their resumes.

- e. In order to resolve the protests on the mandatories, DHR had requested clarification from the remaining four vendors concerning the mandatory requirements and determined that three, in fact, had acceptable proposals.

- f. Since the two protesters' proposals were deemed acceptable for the technical evaluation based on full compliance with mandatory requirements, and subsequently these offerors had participated in and been scored on interviews, their protests were now moot.

g. Only one of the six vendors whose team was interviewed scored 80 percent of the total possible points on its technical proposal, and therefore that vendor would be recommended for award.

28. Triad officials received a debriefing on January 23, 1995, and protested the award to Andersen on January 25, 1995. Triad's protest was based on alleged changes in the evaluation criteria and procedures from that set forth in the RFP, wrongful disqualification of its proposal, bias in scoring, and the awards not having been based on price.
29. The Procurement Officer issued a final decision to Triad on February 3, 1995 denying its protest. This appeal followed on February 9, 1995.
30. CTek protested the award to Andersen on January 25, 1995, prior to receiving a debriefing on January 31, 1995. The basis for its protest were alleged improper changes in the evaluation criteria and procedures, wrongful disqualification of its proposal, too much subjectivity in the interviews, lack of notice of changes in evaluation procedures and the absence of a financial evaluation. No changes were made to the protest as a result of the debriefing.
31. The Procurement Officer issued a final decision to CTek on February 6, 1995, denying its protest. This appeal followed on February 16, 1995.

#### Decision

Appellants have specifically listed as grounds for their appeal that OIM procurement officials changed the criteria and procedures for evaluating proposals from those set forth in the RFP. They also protest that the evaluation process was subjective. Finally, they submit that the lack of any financial proposal evaluation could not have been in the State's best interest and was improper.

The Board has observed that ". . . Maryland's Procurement Law provides that the determination of which proposal best fits the agency's needs is the responsibility of the agency. Such deter-

minations shall not be overturned unless contrary to all objective facts." Baltimore Industrial Medical Center, Inc., MSBCA 1815, 4 MSBCA \_\_\_\_\_ (1994) at p. 12. In that same decision, this Board stated that it "does not second guess an evaluation of a proposal, but merely concerns itself with whether a reasonable basis exists for the conclusions and results reached or determined." Id. at 5. This Board's function is to decide whether determinations of procurement officials as to the evaluation of the technical merits of proposals are arbitrary, capricious, unreasonable or contrary to law or regulation. AGS Genasys Corporation, MSBCA 1325, 2 MSBCA ¶158 (1987). In order to meet the burden of showing that the Evaluation Committee or the Procurement Officer acted improperly, Appellants would have to show that they were not accorded fair and equal treatment in having their proposals evaluated based on the evaluation factors in the RFP, or that those officials improperly considered aspects of a competing proposal that were outside the scope of the evaluation factors set forth in the RFP. R&E Consolidation Services, Inc., MSBCA 1375, 2 MSBCA ¶187 (1988).

In this appeal Appellants allege that in the course of the evaluation, procurement officials modified the comparatively equal weight assigned in the RFP to resumes and interviews. The RFP was rather detailed and specific as to the types of experience the Department was seeking for the five managers to be hired. Both resumes and interviews were designed to elicit information about that experience from the persons who were to provide the management services. Appellant's have not shown that in obtaining that information, criteria were applied to resumes or interviews that were not set forth in the RFP.

Insofar as allegations of subjectivity are concerned, the Board has repeatedly recognized that the evaluation process is inherently subjective. Numerical scoring systems are used as guidelines to aid in decision making, but such systems do not convert into an objective process that which is largely a subjective one. Information Control Systems Corporation, MSBCA 1198, 1 MSBCA ¶81 (1984); AGS Genasys Corporation, supra, at p. 13; Systems

Associates, Inc., MSBCA 1257, 2 MSBCA ¶116 (1985) at pp. 14-15. Herein, application of the Committee's pre-determined format for the interview questions, the custom tailoring of questions to the positions being interviewed for, and the uniform treatment of project personnel and vendor representatives would tend to minimize that subjectivity. In any event, Appellants have not met their burden to show that the evaluators were biased or otherwise did not exercise an independent judgment in evaluating the criteria set forth in the RFP.

Finally, concerning alleged lack of evaluation of the cost proposals, the Board has held that, unless the RFP sets forth a precise numerical formula in which price is integrated as a factor, the Procurement Officer has the discretion to select the higher quality proposal as being the most advantageous to the State, even at a higher price. The selection of the higher priced proposal is reasonable where as here the technical score carries more weight than price. Systems Associates, Inc., *supra*, at pp. 15-16; United Technologies Corp., et al, MSBCA 1407 and 1409, 3 MSBCA ¶201 (1989) at p. 60. Here, the weighting factors in the RFP were not such a precise numerical formula and the State apparently does not consider Andersen's price to be excessive.<sup>6</sup>

Further discussion, however, is required concerning Appellants' argument that the Evaluation Committee and the Procurement Officer's decision to advance the three vendors whose proposals were deemed acceptable to the interview phase of the technical evaluation was unreasonable, arbitrary and capricious and in violation of law.

Both Appellants have protested that changes were made to the process for evaluation of proposals from the process stated in the

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<sup>6</sup> Because Andersen's proposal was the only technical proposal to achieve an acceptable technical score on the interviews, its price proposal was the only price proposal considered. Because of the system devised by the State in this procurement the State took the risk that if only one technical proposal was found to qualify that offeror's price might be what the State would pay.

RFP. The two changes the Committee made, concurred in by the Procurement Officer, each related to scoring of the technical proposals. These were that (1) the Committee waived the minimum number of points it needed to give the resumes in order to qualify those offerors for interviews, and (2) the Committee ultimately determined, after having interviewed 18 persons representing the first group of three acceptable vendors, that the interviews were more reliable in eliciting the information sought for the evaluation, and that they would be given more weight than originally contemplated. All six vendors were treated the same as to both procedures, except that Triad was allowed to substitute a resume for a substituted person and ISG's alternate person as set forth in its proposal and resume therefore were considered.

COMAR 21.05.03.02A, dealing with procurement by competitive sealed proposals, requires that the RFP inform offerors of the evaluation factors that will be used to evaluate their proposals, and their relative importance including price. Numerical ratings are not required. COMAR 21.05.03.03A. See MIS Support Group, Inc., MSBCA 1055, 1 MSBCA ¶17 (1982), at p. 8. This Board has interpreted these COMAR provisions to mean that so long as the evaluation factors are set forth in the RFP, award need not be based on highest point score unless the RFP states that award is to be made to the offeror achieving the highest number of points. Baltimore Industrial Medical Center, Inc., supra, at p. 3; R&E Consolidation Services, Inc., supra, at pp. 45-46. The reason for this is that point scores are merely guides for intelligent decision-making by the selecting official(s). Systems Associates, Inc., supra, at p. 15. Such systems do not convert into an objective process what is largely a subjective one. AGS Genasys Corporation, supra, at p. 13.

The discretion accorded to procurement evaluators includes the identification of proposals that are capable of being made acceptable within the framework of work described by the RFP. Systems Associates, Inc., supra, at p. 12. In advancing the offerors to the interview phase of the evaluation, the State argues

that the Committee was merely attempting to validate the resume material, thereby making the technical proposals acceptable. Here the Committee, having devised the scores, elected to waive the minimum points to be obtained through one of two procedures, resumes and interviews, where both procedures were designed to ascertain the same specific information listed in the RFP.

In advancing Andersen, Aspen and Syscom to the interviews the Committee thereby modified the 55% weighting factor for the resume evaluation. Appellants claim such action to be unlawful per se. However, that formula was not immutable. Unless a solicitation sets forth a precise numerical formula, with price included as a factor, and provides that the award will be made to the offeror whose proposal receives the highest number of points, the award need not be made on that basis. Systems Associates, Inc., supra, at p. 15; United Technologies Corp., MSBCA 1407 and 1409, 3 MSBCA ¶201 (1989) at p. 37, p. 59. The RFP in this case contained no such precise formula, requiring award to the offeror with the highest number of points.

Appellants next argue that it was improper for the process to be changed from that stated in the RFP without offerors being informed in advance. Is such an unannounced change prohibited by the General Procurement Law and COMAR? After the three proposals deemed to have met the mandatory requirements (Aspen, Syscom and Andersen) did not achieve the minimum score for advancement on the resume evaluation as set forth in the RFP it was determined to advance all three to the interview stage since the Committee had determined that all three could provide the services sought by the RFP and time was of the essence. After the interviews were conducted in October, DHR/OIM by letters dated October 19, 1994 notified Aspen that it was eliminated and notified Syscom and Andersen of the decision to waive their failure to achieve the specified score set forth in the RFP for the resumes and of their advancement to the interview stage. The record does not reflect that the earlier elimination of the other vendors for alleged failure to meet the mandatories was not an action taken in good

faith. Accordingly, there was no legal requirement to notify these eliminated vendors of the change in procedure. While it might be argued that it would have been preferable to advise the three remaining vendors who had passed the mandatories that their failure to achieve the minimum score on the resumes necessary for advancement (i.e. further consideration) to the interview stage had been waived prior to actually conducting the interviews, such action was not protested by Syscom or Andersen when they<sup>7</sup> were after the fact advised of it. Nor did Syscom protest when advised that Andersen was the selected winner by letter dated October 31, 1994.<sup>8</sup> Thus in October 1994 a change in the process occurred which the Board will not disturb due to absence of protest at the time by the then eligible offerors.

In January 1995 this change in the RFP that had occurred in October 1994 was protested by Appellants, Appellants having been restored to the competition in December, 1994 as a result of their protest of their elimination under the mandatories.<sup>9</sup> However, the Board finds that due to the earlier change in procedure, such change would have to be applied to all the vendors who were returned to the competition in December, 1994 in order to maintain a level playing field. While it is arguable that such change should have been communicated to this group of offerors in advance of their interviews, the failure to communicate the change has not

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<sup>7</sup> Aspen was eliminated based on its interview and so advised on October 19, 1994.

<sup>8</sup> The Board offers no opinion on whether it might have been preferable for DHR to have formally amended the RFP or rejected all proposals and resolicited when none of the three offerors then in competition scored the requisite number of points on the resumes rather than waive such requirement. No one protested at that time when informed after the fact of such change.

<sup>9</sup> Appellants did not find out about the change in process until advised of the change by letter dated January 18, 1995 reciting that award would be made to Andersen. Appellants then timely protested the change.



on this record been shown to have prejudiced Appellants or any other offerer.<sup>10</sup>

COMAR 21.05.03.03C(3)(a) in pertinent part provides:

*Qualified offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions, negotiations, and clarification of proposals.*

Clarification of proposals may occur at any time prior to an award. Although it usually takes the form of a one-on-one communication between a procurement officer and an offeror, there is no prohibition against clarification occurring through an interview mode. The Committee's interviews of the 18 personnel from Aspen, Andersen and Syscom provided the panel members with a significantly more accurate picture of their capabilities and strengths.

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<sup>10</sup>Triad asserts that it was prejudiced by this change because it allegedly may have achieved the 80% score of 26.4 on its resumes and therefore been advanced to the interview stage as the sole interviewee. The record, however, reflects the following comment from the person who conducted the Triad debriefing, ". . . on review of the resumes included with TMS's proposal, it was evident that the same problems would have surfaced, as with the initial vendors scored, if we attempted to score their resumes." The Board also notes that Triad substituted a resume for one initially submitted prior to its interview. Prior to all six vendors interviews, the Committee members reviewed the resumes of all the interviewees that had been included in the technical proposals, and used the resumes as a tool or guide while conducting interviews. The reasons why the Committee chose not to conduct formal resume evaluation for CTek, Triad and ISG prior to their interviews were as stated in the Evaluation Committee Report and the Agency Report: (1) Experience in interviewing Aspen, Andersen and Syscom had shown the resumes unreliable in clarifying the credentials of the interviewees particularly with regard to the "Desirable" experience. For example, Aspen had received the highest score on the resumes, but only received 2.71 points out of a possible 27 on its interview, and was thereby disqualified, even though resumes and interviews concerned the same data; (2) Having waived the achievement of 26.4 points on resumes for the first group of vendors, the Committee decided that advancing the second group to interviews without regard to numerical ratings would provide the most consistent and equitable treatment to those offerors.

As pointed out above, procurement officials necessarily have a reasonable amount of discretion in evaluating technical proposals. The Board concludes that this discretion permitted the Committee to modify its own point scoring methodology where the record reflects it did so in a good faith attempt to render proposals acceptable and no contemporaneous protest of such action was noted by offerors then in competition.

COMAR 21.05.03.03A requires, inter alia, that the evaluation be based on the evaluation factors set forth in the RFP, and that factors not specified therein may not be considered. The Procurement Officer concurred in the Committee's decision to count the interview phase of the technical evaluation as determinative of the final result of that evaluation. In doing so, the Committee did base its scoring of interviews on the evaluation factors specified in the RFP which took the form of detailed descriptions of specialized skills and experience. The questions the Committee asked were reflective of those factor as set forth in the RFP. In scoring interviews, the Committee adhered to the 80% threshold in the RFP that was needed to pass the technical evaluation, as well as to the 60 percent overall value for technical proposals as compared to price proposals. The only change the Committee made was to abandon the 45% weighting factor to be assigned to the interviews in the scoring of the technical proposals and base its recommendation for the award to Andersen on raw scores.

The RFP contained all the information offerors needed as to the basis upon which the merits of their proposals would be judged. The record reflects that offerors had, "as good an idea as is reasonably possible of the basis for the selection considering the subjectivity and uncertainty involved." Systems Associates, Inc., supra, at p. 15. While as noted above it might be perceived as being fairer to have advised the offerors of the change in procedure in advance, we find no actual violation of law or regulation in the modification of the procedure herein without prior notice, nor, given the facts herein, do we find that any

offeror was or could have been prejudiced by such change. Accordingly, the appeals are denied.

Dated: April 3, 1995

Robert B. Harrison III

Robert B. Harrison III  
Chairman

I concur:

Candida Steel

Candida S. Steel  
Board Member

Randolph B. Rosencrantz

Randolph B. Rosencrantz  
Board Member

#### Certification

##### COMAR 21.10.01.02 Judicial Review.

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

##### Annotated Code of MD Rule 7-203 Time for Filing Action.

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 1872 & 1874, appeals of Triad Management Systems, Inc. & Comprehensive Technologies, Inc. under Department of Human Resources Contract No. OIM/OIM 94-030S.

Dated: 4/3/95

Mary F. Priscilla  
Mary F. Priscilla  
Recorder