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Decision

Matter of: Hernandez Engineering, Inc.; ASR International Corporation

File: B-286336; B-286336.2; B-286336.3; B-286336.4

Date: January 2, 2001

Richard J. Webber, Esq., and David A. Vogel, Esq., Arent Fox, for Hernandez Engineering, Inc., and Anthony B. Barton, Esq., Forchelli, Curto, Schwartz, Mineo, Carlino & Cohn, for ASR International Corporation, the protesters.
Alan M. Grayson, Esq., Ira E. Hoffman, Esq., and Mark R. Mann, Esq., Grayson and Kubli, for SRS Information Services, an intervenor.
Bernard J. Roan, Esq., National Aeronautics & Space Administration, for the agency.
Katherine I. Riback, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency improperly evaluated awardee's past performance as "very good" is denied, even though the agency considered references of the awardee's parent corporation in the past performance evaluation, where the solicitation did not require any specific minimum of reference questionnaire responses and the agency received a reference questionnaire response regarding a comparable contract performed by the awardee rating its performance as "very good" to "excellent."
2. Consistent with the solicitation's evaluation factors, agency reasonably found significant strengths in awardee's proposal that justified a technical rating that was significantly higher than that of protesters.
3. In calculating probable costs of protesters' proposals, agency reasonably upwardly adjusted their costs where protesters proposed less staffing than forecasted in the solicitation for some of the required services without adequate explanations of the methodology used to develop the proposed lesser levels of staffing and/or accounting for the enhanced levels of services contemplated by the solicitation.

DECISION

Hernandez Engineering, Inc. and ASR International Corporation protest the award of a contract to SRS Information Services, for mission assurance services by the National Aeronautics & Space Administration (NASA) pursuant to request for proposals (RFP) No. 5-02035-502. Both protesters challenge NASA's evaluation of their and the awardee's proposals.

We deny the protests.

BACKGROUND

The Office of Systems Safety and Mission Assurance at Goddard Space Flight Center conducts reviews before and after launches of flight projects and provides independent technical support, including risk assessment and guidance to all flight programs. The procurement at issue here is to support NASA's mission by providing services in the mission assurance engineering, system safety, reliability, continuous risk management, and information and assurance technology areas. RFP attach. A, at 1. The solicitation, issued on April 6, 2000, as a 100-percent small business set-aside, anticipated the award of a cost-plus-award-fee (CPAF) contract for 5 years. The RFP stated the agency's intention to award the contract without discussions.

The three evaluation factors listed in the RFP were, in descending order of importance: mission suitability, past performance, and cost/price. The RFP stated that the non-cost/price factors, when combined, were significantly more important than the cost factor. The mission suitability factor was point scored and adjectivally rated considering four subfactors: technical approach and methodology (300 points), scenarios (300 points), management approach (200 points), and quality approach (200 points).¹ RFP § M.3. The past performance factor was adjectivally rated based largely on responses to the "Experience and Past Performance Questionnaire" that each offeror was to send to its references. RFP § L.16. For the cost/price factor, the agency considered both proposed and probable costs, as calculated through cost realism analyses, for the offerors' proposals for the total 5-year contract effort as well as for the offerors' responses to the seven scenarios. RFP § M.4.

¹ The responses to all mission suitability subfactors were to be presented in the form of oral presentations, with the exception of responses regarding relevant experience and educational levels of proposed labor categories and the professional employees compensation plan. RFP § L.8. There were seven specific scenarios representing typical services required to satisfy the mission requirements to which offerors were to submit responses. RFP § L.14.1.B.

The RFP further provided for the deduction of points from the mission suitability score where there was a significant variance between an offeror's proposed costs and probable costs.² As indicated, under the RFP, cost realism adjustments could be made to the offeror's proposed CPAF value for the total 5-year effort and to the total CPAF value associated with the seven scenarios. The percentage cost realism adjustment for these two items would then be added together and divided by two to obtain an average cost realism adjustment. This average would be utilized to determine if reductions in the mission suitability score were warranted. Percentage differences in excess of plus or minus 6 percent between an offeror's proposed and probable costs would lead to specified point reductions to the offeror's mission suitability score. RFP § M.3.3.

The agency received three proposals by the June 19 closing date. Each offeror then made its oral presentation. The findings of the source evaluation board (SEB) are summarized as follows:

| | Raw Mission Suitability Score/ Adjectival Rating | Post-Cost Realism Mission Suitability Score/ Adjectival Rating | Past Performance | 5-Year Proposed Cost | 5-Year Probable Cost |
|-----------|--|--|------------------|----------------------|----------------------|
| SRS | 887/Very Good | 887/ Very Good | Very Good | \$44.7M | \$45.0M |
| Hernandez | 570/Good | 470/Fair | Very Good | \$44.8M | \$45.7M |
| ASR | 544/Good | 444/Fair | Very Good | \$36.8M | \$41.4M |

Agency Report at 4.

SRS's proposed costs for the 5-year effort and for the scenarios were within 1 percent and 0.5 percent, respectively, of the NASA-computed probable costs for the SRS-described technical approaches; as a result, SRS's mission suitability score was not adjusted. *Id.*, Tab 22, SEB Initial Findings Report, at 29. Hernandez's proposed costs for the 5-year effort and for the scenarios were within 2 percent and 19 percent, respectively, of the NASA-computed probable costs, for an average cost realism adjustment of 11 percent; and ASR's proposed costs for the 5-year effort and for the scenarios were within 13 percent and 12 percent respectively, of the

² This provision was based on the assumption that a significant lack of cost realism may reflect a flawed understanding of, or an inability to meet, the government's requirements and thus could adversely affect an offeror's mission suitability rating. Agency Legal Memorandum at 2-3.

NASA-computed probable costs, for an average cost realism adjustment of 12.5 percent. Id. at 30-32, 35-38. Based on the RFP methodology, NASA reduced the mission suitability scores of both Hernandez and ASR by 100 points.³ Id. at 32, 37-38.

The Source Selection Official concurred with the SEB's findings, and stated the following:

As compared with ASR, the magnitude of the difference in the Mission Suitability scores between the two was significantly greater than the cost disadvantage SRS sustained as compared with ASR. In order to confirm this result, I considered whether the greater cost of the SRS proposal was warranted by the technical benefits which the Government would realize from SRS performance of the contract. The services to be provided support flight projects at very critical times in assessing spacecraft, launch vehicle, operational ground systems, and scientific instruments prior to, during, and following launch. Failure to timely identify technical issues affecting the successful operation of multi-million dollar instruments and spacecraft can well result in their permanent reduced level of performance or even total loss. The level of services which SRS has demonstrated it can provide meaningfully reduces risk of such problems as compared to that demonstrated by ASR, in light of the specific strengths and weaknesses previously discussed. The amount of additional cost to be incurred is more than reasonable to provide for reduced risk of instrument and spacecraft losses, and thereby loss of millions of dollars of investment.

Id., Tab 25, Source Selection Memorandum at 7. The source selection official thus determined to award the contract to SRS.⁴

EVALUATION OF SRS'S PROPOSAL

Both Hernandez and ASR protest that the technical evaluation of SRS's proposal was improper. The evaluation of technical proposals is primarily the responsibility of the contracting agency. Our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation

³ The RFP stated that a difference of 11 to 15 percent between the proposed and probable costs required that 100 points be subtracted from the mission suitability score. RFP § M.3.3.

⁴ NASA has stayed the award of the contract to SRS pending the resolution of these protests. Agency Report at 6.

criteria. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115 at 8. A protester's mere disagreement with the agency's evaluation does not render the evaluation unreasonable. SWR Inc., B-286044.2, B-286044.3, Nov. 1, 2000, 2000 CPD ¶ __ at 3. Based on our review, we find the agency's technical evaluation of SRS'S proposal unobjectionable.

Both protesters contest the agency's past performance evaluation of SRS's proposal. Hernandez notes that three of the four questionnaires from customers regarding SRS's relevant experience and past performance in fact related to the performance of SRS Technologies, which is the parent corporation of SRS Information Services and is not proposed to perform the RFP work. As a result, Hernandez contends that the agency's evaluation of SRS's past performance was "arbitrary and irrational." Hernandez Comments (Nov. 2, 2000) at 1-3.

While it is true that three of SRS's four references were in fact for SRS Technologies, one of the questionnaires that the agency received from an SRS reference related to the performance of SRS Information Services on a contract at Patrick Air Force Base to provide safety engineering, mission assurance, and occupational safety and health support services. Agency Report, Tab 15, SRS Past Performance Questionnaires. The majority of the responses on this questionnaire pertaining to the performance of SRS Information Services were "excellent" and the remaining responses were "very good." *Id.* The contracting officer noted that SRS Information Services had "provided very comparable space-based mission assurance services to Patrick Air Force Base," and that "the respondent is pleased with the services provided." Supplemental Contracting Officer's Statement at 1-2. The contracting officer stated that, even assuming the SEB excluded the three questionnaires related to SRS Technologies, the rating for SRS's past performance would remain unaffected because SRS Information Services had relevant and highly rated past performance. *Id.* While the protester states that we should reject the contracting officer's conclusion because it was only offered in response to the protest and the agency in fact considered SRS Technologies' references in the evaluation, we note that the RFP did not require any specific minimum number of questionnaire responses. RFP § L.16. Accordingly, we find reasonable the contracting officer's conclusion that the highly relevant and favorable reference for SRS Information Services supports a rating of very good.

Hernandez next argues that the agency's evaluation of the SRS proposal for the technical approach subfactor was irrational because it was based upon the alleged better credentials of the SRS management and staff personnel, even though SRS's proposal, like Hernandez's, showed that it intended to employ incumbent staff personnel. Hernandez Supplemental Protest (Oct. 30, 2000) at 4-5. The agency replies that the SEB was concerned with the minimum education requirements and experience that offerors were proposing to use for labor categories providing

services to meet the contract's statement of work requirements.⁵ Supplemental Contracting Officer's Statement at 7. While the SEB recognized that an offeror did "not need certified or degreed people to meet all of the statement of work requirements," it did regard as a strength in SRS's proposal the fact that SRS will require professionally certified people to manage the contract and quality engineers to have bachelor degrees.⁶ *Id.* The agency found that this "demonstrate[d] the offeror's effective understanding of the level of expertise required to provide the services necessary for effective contract performance." Agency Report, Tab 22, SEB Initial Findings Report, at 22. While it is true that both SRS and Hernandez offered incumbent personnel who were certified and had bachelor degrees, we find the agency's determination that SRS's proposal warranted a strength for requiring its personnel to meet such minimum requirements to be reasonable and consistent with the stated evaluation criteria, particularly given that the other offerors did not make the same offer.

The protesters assert that it was irrational for the agency to conclude that SRS's proposal to obtain ISO 9001-2000 compliance and obtain third-party evaluation and certification of this compliance was a strength in SRS's quality approach. The protester contends that this should not form a basis for differentiating among the proposals because the RFP required only ISO 9000 compliance. The SEB found that SRS's third-party accreditation of its quality system provided the government with more confidence in the offeror's ability to successfully perform the work. Agency Report, Tab 22, SEB Initial Findings Report, at 11. Based on our review, we find the agency's conclusion reasonably based and not inconsistent with the RFP's evaluation scheme. The quality approach subfactor specifically stated that the offeror's compliance with ISO standards to ensure they are integrated into the quality management system would be evaluated, and the agency acted reasonably in assigning a strength based on SRS's enhanced offer under this qualitatively evaluated factor.

Hernandez also claims that the agency, in making its source selection, unreasonably noted as a strength SRS's proposed use of the [DELETED] database, which allows government customers access to information relative to the services provided, but did not assign Hernandez a similar strength for its assertedly functionally equivalent

⁵ The RFP, under the technical approach subfactor, stated that the agency would evaluate "the relevant experience and educational levels of the proposed labor categories to provide services within each service area of the SOW." RFP § M.3.1.

⁶ The contracting officer notes that the fact that the SEB recognized as a strength in SRS'S proposal the use of minimum education requirements did not mean that the SEB noted a corresponding weakness in Hernandez's proposal. Supplemental Contracting Officer's Statement at 7.

database, which Hernandez asserts evidences unequal treatment.⁷ SRS's proposal of the [DELETED] database was viewed as a significant strength because it allowed government customers to access [DELETED] all current information regarding action items, status, cost, and schedule on the services provided by the contractor. Agency Report, Tab 22, SEB Initial Findings Report, at 10. While Hernandez claims that its proposal offered the same basic functionality as the [DELETED] database, the agency responds, and Hernandez concedes, that SRS's proposed [DELETED], which poses the risk that [DELETED]. Supplemental Contracting Officer's Statement at 8. Based on our review, we find the agency's evaluation in this area to be reasonable and not unequal treatment.

Hernandez also challenges the significant strength noted in SRS's proposal (under the management approach subfactor) for its proposed use of [DELETED] training for all personnel, including [DELETED], while not crediting Hernandez's proposal for its proposed training. The agency viewed SRS's proposed [DELETED] as a significant strength because it [DELETED]. Agency Report, Tab 22, SEB Initial Findings Report at 10. Given that Hernandez's proposal does not offer the [DELETED] proposed by SRS, we cannot find this evaluation of SRS to be unreasonable.

EVALUATION OF HERNANDEZ'S PROPOSAL

Hernandez claims that NASA improperly increased its probable cost due to the agency's erroneous conclusion that Hernandez's direct labor hours for "reliability services" were understated and did not match the "historical" data in the RFP. The protester contends that the historical figures in the RFP were overstated, and were not an accurate reflection of the predecessor contract. Clause L.13 of the RFP, "Historical Data," included a table that identified the full-time equivalents (FTE) per year for various services "based on past historical data." This table estimated 10 FTEs for reliability services. Hernandez proposed using [DELETED] FTEs for reliability services. *Id.*, Tab 13, Hernandez Cost/Price Proposal, § 5.0, exh. 4, at 22. For cost evaluation purposes, the SEB increased Hernandez's reliability services FTEs from [DELETED] to 10. The agency contends that the 10 FTE figure included in the table for reliability services was a correct estimate of these services, but the manner in which the table was identified was "imprecise," Supplemental Contracting Officer's Statement at 4, and that the FTEs should have been identified as "anticipated based on historical experience and projected workload." Contracting Officer's Statement at 24. The contracting officer notes that the Anticipated Service Forecast Letter (RFP encl. 2, at 2-3) showed a significant increase in anticipated services within the safety and reliability work areas from the incumbent contract due to the fact that NASA has recently been focusing more on the system safety and

⁷ The agency's evaluation of this database was considered under the management approach subfactor, which stated that the agency would evaluate, among other things, an offeror's "approach on software and hardware." RFP § M.3.1.C.

reliability of its missions; according to NASA, this equates to an increase in the number of required services over historical figures and the estimate in the table in the RFP reflected this additional work. Contracting Officer's Statement at 25. Hernandez has not shown the agency's FTE estimate for these services was erroneous or that Hernandez's proposed staffing and technical approach accounted for the increased reliability services called for by the RFP.⁸ Thus, we find that the agency's upward adjustment of Hernandez's probable cost for understating the required staffing for reliability services was reasonable.

Hernandez also argues that the agency improperly reduced its mission suitability score from 570 points to 470 points because of the cost realism adjustments to Hernandez's scenario costs. The protester argues that this cost realism adjustment "treats the Scenarios' cost estimates as if they are part of the estimated costs of actually performing the contract," when in fact "the scenarios are only hypotheticals, and those estimated costs are not added to, or otherwise part of, the overall estimated costs of performing the contract." Hernandez Supplemental Comments (Nov. 27, 2000) at 5. Hernandez also claims that this evaluation constitutes improper double-counting in the mission suitability evaluation for alleged deficiencies already accounted for in the cost evaluation. Hernandez's arguments here constitute an untimely challenge to the evaluation scheme set out in the RFP. As noted, the RFP clearly announced that scenario costs would be part of the cost evaluation and described the adjustments that would be made to the mission suitability score where proposed costs varied more than 6 percent from probable costs. RFP § M.3.3.

Hernandez next contends that the agency's evaluation of its proposal under the technical approach, management approach and quality approach subfactors was "arbitrary," in that the evaluation documentation contained little more than the adjectival ratings for these subfactors. The SEB judged that Hernandez's proposal warranted a "good" rating under each of these subfactors and no particular strengths or weaknesses in Hernandez's technical proposal were recorded for these subfactors, except for one "other" (that is, not significant) strength for the technical approach factor (which strength was thoroughly described).⁹

⁸ In fact, Hernandez now states that it was aware that the figures labeled "historical" FTEs were incorrect, but that it decided not to pursue the matter in order to preserve its "competitive advantage." Hernandez Comments (Nov. 27, 2000) at 9. To the extent that Hernandez claims that the figures on the table were improperly labeled, this would constitute an untimely challenge to the terms of the RFP. 4 C.F.R. § 21.2(a)(1) (2000).

⁹ A "good" adjectival rating was defined as:

A proposal having no deficiency and which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole,

(continued...)

We find that the documentation of the SEB's evaluation was sufficient. The SEB was not required to document how it rated or disposed of every component of Hernandez's technical proposal. Under Federal Acquisition Regulation § 15.305(a), NASA was obligated to document "the relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation." While NASA was required to document its evaluation in sufficient detail to permit a meaningful review of its evaluation, KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447 at 7, we think that it did so here. In this regard, Hernandez has not identified any examples of strengths or weaknesses in its proposal which were not documented but reasonably would be considered significant discriminators between the proposals.¹⁰ Thus, the record does not show that the evaluation of Hernandez's proposal under these subfactors was arbitrary or unreasonable.

EVALUATION OF ASR'S PROPOSAL

ASR points out that its subcontractor, [DELETED], is the incumbent contractor and its performance has been rated excellent. ASR argues that it is "incorrect and inconsistent" for NASA to evaluate [DELETED] current performance as excellent, and then evaluate ASR's proposal, which includes [DELETED] as a subcontractor, as weak. ASR's Initial Protest at 1-2. In particular, ASR argues that [DELETED] experience should speak for itself, with the agency evaluating ASR's responses to the seven scenarios based on [DELETED] "reasonableness of knowledge and experience in accomplishing similar efforts"; instead, the agency, in ASR's view, improperly relied on evaluators' "subjective" judgments in rating ASR's responses. Id. at 2.

The contracting officer responds that the emphasis of this contract is in the areas of mission assurance, system safety, and reliability, yet the work for which [DELETED] has been proposed is for continuous risk management and information and assurance technology services, which account for only 15 percent of ASR's total hours. The contracting officer goes on to state that:

(...continued)

weaknesses not off-set by strengths do not significantly detract from the offeror's response.

Agency Report, Tab 23, SEB Presentation Charts to Source Selection Official, at 10.

¹⁰ For example, as discussed above, in contrast to SRS's proposal, Hernandez's proposal was properly not credited with strengths or weaknesses for its proposed database and training. Thus, the agency was not required to specifically discuss these features of Hernandez's proposal in the evaluation documentation.

ASR is relying on the fact that the incumbent is a subcontractor in their proposal and their performance under the current contract should be recognized and accounted for in evaluating ASR's proposal but has not proposed to utilize [DELETED] expertise and knowledge gained as the incumbent contractor to provide services under the most important statement of work service areas and, instead, is relying on incumbent capture to ensure high-quality services are provided. . . . Regardless, the SEB evaluated the proposal in accordance with the RFP. [DELETED] high-quality work as the incumbent was noted in a past performance questionnaire subject to the current contract and was taken into account in ASR's past performance rating.

Contracting Officer's Statement at 34.

The record shows that NASA reasonably evaluated ASR's technical proposal, including the scenario responses, based on what appeared within the four corners of ASR's technical proposal and accounted for [DELETED] past performance in the past performance evaluation. ASR has not provided us any reason to find that the agency's evaluation here was unreasonable.¹¹

ASR also disputes the significant weakness that the agency found in its proposal for its failure to explain its methodology for fulfilling the requirements identified in the Anticipated Semi-Annual Forecast Letter (RFP encl. 2). ASR claims that the methodology was in fact described in its proposal. ASR Initial Protest at 3; ASR's Comments at 2. The RFP specifically requested that offerors explain their technical approach and methodology to be utilized to meet the requirements in the Forecast Letter, including "any assumptions as a means to demonstrate the proposed approach and understanding of the requirements." RFP § L.14.1. The agency concluded that ASR's proposal failed to address the methodology that was used to develop the FTEs that ASR proposed based on the estimates and information contained in the Forecast Letter. Supplemental Contracting Officer's Statement at 9. Based on our review of ASR's proposal, we find that the agency reasonably

¹¹ ASR argues that the valuation of a contract that it performed at [DELETED] was incorrectly listed by the questionnaire respondent at \$530,000 instead of \$5.8 million, so the ASR's past performance rating was understated. ASR's Comments at 3. We note that an apparent disagreement or misunderstanding between ASR and the respondent caused this problem, not NASA's miscalculation. In any case, NASA asserts that even had it considered the valuation of the [DELETED] contract at the higher value, it is unlikely that the SEB would have raised its past performance rating from "very good" to "excellent," inasmuch as ASR had no contracts that were "truly aerospace related." Supplemental Legal Memorandum at 31.

concluded that ASR failed to adequately state its methodology as to how the Forecast Letter was used to develop its proposed staffing.

ASR, like Hernandez, argues that the agency improperly added additional FTEs for reliability services and continuous risk management services in the cost evaluation, which also resulted in a decrease in ASR's mission suitability score. ASR had proposed [DELETED] FTEs per year for reliability services and [DELETED] FTEs per year for continuous risk management services. Agency Report, Tab 14, ASR Proposal, Cost/Price Volume, at 8-9. However, because, as noted above, ASR failed to explain its methodology for meeting the forecast requirements while proposing FTEs below the "historical" levels, the agency raised ASR's proposed FTEs to the "historical" levels. In its protest, ASR stated that it is able to account for its lower proposed FTEs "with an increase in small business efficiency, initiatives and innovations by reducing the current number of field personnel by utilizing part time personnel resulting in cost savings to NASA." ASR Initial Protest at 3. In response, the contracting officer notes that "none of these cost-reducing measures were cited in the Estimating Methodology of ASR's Cost/Price Proposal." Legal Memorandum at 29. Our review confirms the agency's position and we therefore find that the agency reasonably increased the FTEs and the probable cost of ASR's proposal in these areas, and thus properly lowered ASR's mission suitability score in accordance with the RFP evaluation scheme.

ASR challenges other aspects of the cost realism evaluation that resulted in a significant upward adjustment to ASR's costs. As noted by the agency, ASR applied the same labor rate for incumbent employees that it applied to its own employees. This was an incorrect labor rate for the incumbent employees. NASA moved the costs for these employees into the correct labor category and raised ASR's probable costs accordingly. Supplemental Contracting Officer's Statement at 13. ASR now admits that it did use the incorrect labor rate for the incumbent employees, but contends that the methodology that NASA utilized in making the cost realism calculations is flawed. ASR Comments at 2. In response, the agency further explained its methodology, Supplemental Contracting Officer's Statement at 11, upon which ASR was given the opportunity, but failed, to comment. We have reviewed the record in this regard, and find the increase in ASR's probable costs as a result of the change of the labor rates for the incumbent personnel was reasonable.

ALLEGED PROCUREMENT INTEGRITY VIOLATION

Finally, Hernandez argues that a possible procurement integrity violation involving disclosure of source selection information and possible bias by some SEB members in violation of the Office of Federal Procurement Policy Act, 41 U.S.C. § 423 (Supp. IV 1998) may have occurred, which Hernandez contends our Office should investigate since NASA has not adequately done so. That Act provides that no person shall file a protest alleging a violation of the Act, unless the alleged violation was first reported to the agency responsible for the procurement. 41 U.S.C. § 423(g); see 4 C.F.R. § 21.5(d). Hernandez brought the potential violations to NASA's attention. NASA reports that it reviewed the contentions, but found that the alleged violations likely did not occur and in any case there was no effect on the integrity of the evaluation process. NASA also reports that it has referred the matter to its Inspector General for investigation, which is still ongoing. Because our consideration of this issue pending the completion of NASA's investigation would be premature, this allegation is dismissed. See Veda, Inc.-Recon., B-278516.3; B-278516.4, July 8, 1998, 98-2 CPD ¶ 12 at 5 n.1.

The protests are denied.

Anthony H. Gamboa
Acting General Counsel