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**Comptroller General
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**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Marine Hydraulics International, Inc.

File: B-291594.3

Date: October 3, 2003

Robert E. Korroch, Esq., and Michael J. Gardner, Esq., Williams Mullen, for the protester.

Frederick W. Claybrook, Jr., Esq., Edward R. Murray, Esq., and Daniel R. Forman, Esq., Crowell & Moring, for Metro Machine Corporation, an intervenor.

Rhonda L. Russ, Esq., Katherine A. Andrias, Esq., and Stephen P. Anderson, Esq., Department of the Navy, for the agency.

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

DIGEST

1. Where solicitation for cost-reimbursement contract required offerors to provide supporting rationale for proposed costs and protester failed to provide credible support for its proposed staffing levels, as confirmed by hearing testimony provided by protester's personnel, agency reasonably increased protester's proposed staffing levels, for cost evaluation purposes, with regard to tasks the agency considered understaffed.
2. Agency conducted meaningful discussions with protester where it identified every work item the agency believed to be understaffed and sought additional information from the protester regarding the bases for its staffing calculations.
3. Where solicitation for cost-reimbursement contract to perform ship repairs advised offerors that prior contracts involving drydocking and contracts performed on a cost-reimbursement basis would be more relevant for purposes of evaluating past performance, agency properly considered those factors in determining the

relative relevance of offerors' prior contracts, and protester's assertion that it was entitled to past performance rating of "excellent" rather than [deleted] constitutes mere disagreement with the agency's judgment.

DECISION

Marine Hydraulics International, Inc. (MHI) protests the Department of the Navy's award of a contract to Metro Machine Corporation pursuant to request for proposals (RFP) No. N62678-02-R-0031 for maintenance of specified Navy ships. MHI's protest challenges various aspects of the agency's source selection decision, including assertions that the agency failed to perform a proper cost realism analysis, failed to properly evaluate the offerors' past performance, and failed to engage in meaningful discussions.

We deny the protest.

BACKGROUND

The solicitation at issue here was published on April 15, 2002, seeking proposals to perform various tasks associated with the ongoing maintenance of FFG class ships (frigates) homeported in Norfolk, Virginia. The solicitation contemplated award of a cost-plus-incentive-fee contract for performance of "selected restricted availabilities" (SRAs) and "drydocking selected restricted availabilities" (DSRAs) on certain ships,¹ along with associated advance planning and procurement of required materials for each availability.

Each offeror was required to submit a three-part proposal consisting of a technical proposal,² a past performance proposal, and a cost proposal. Section M of the solicitation advised offerors that, for proposals evaluated as technically acceptable, the agency would perform a trade-off between evaluated cost and past performance and that, although these factors would be "approximately equal," past performance would be "more important." Agency Report, Tab 1, at M-2. In evaluating past

¹ SRAs are relatively short, labor-intensive availabilities for the accomplishment of repairs and alterations, generally scheduled at specific times throughout a ship's operating cycle. A DSRA is an SRA extended to include drydocking of the ship. Agency Report at 2.

² The solicitation provided that the technical proposal would be evaluated only as acceptable/unacceptable. Within this portion of their proposals, offerors were required to establish possession of a master ship repair agreement and the availability of acceptable pier and drydocking facilities. Both MHI's and Metro's technical proposals were rated as acceptable.

performance, the solicitation established four equally weighted subfactors: technical performance, schedule control, cost control, and management.³

With regard to cost proposals, the solicitation contained multiple work items, representing the tasks to be performed during a typical DSRA.⁴ Offerors were required to propose staffing levels and material costs for each work item, along with applicable direct and indirect rates, and to submit cost data supporting their proposed costs.⁵ The RFP also provided that, in evaluating cost, the agency would perform a cost realism analysis and, if the agency determined that an offeror's proposed costs were understated, the agency would establish a "probable cost" to be used for evaluation purposes. Agency Report, Tab 1, at M-4. Finally, the solicitation instructed offerors not to propose discounts for projected "learning" during contract performance because "the nature and extent of work similarity between availabilities will vary to an unpredictable extent." Agency Report, Tab 1, at L-10.

Proposals were submitted by four offerors, including MHI and Metro, by the June 18, 2002 closing date. On September 30, a contract was awarded to an offeror other than MHI or Metro. That award led to submission of various protests which, upon review, led the agency to determine that corrective action was appropriate; the September 30 contract was subsequently terminated.

³ The solicitation explained (in bold type) that, in evaluating past performance, the agency would assess the expected risk associated with each subfactor, based on past performance of relevant contracts, and identified attributes of a prior contract that would make it "more relevant," including contracts that involved drydocking and contracts that had been performed on a cost-reimbursement basis. Agency Report, Tab 1, at M-3, M-4. The solicitation further advised offerors that if past performance information was not available, "either for past performance as a whole or for one of the subfactors . . . a neutral rating will be assigned." *Id.*

⁴ Because the exact tasks are unknown in advance, the solicitation contained a "notional" work package reflecting work items typically required for a DSRA. Agency Report at 5.

⁵ In directing offerors to submit "full supporting rationale" for their proposed costs, the solicitation identified specific types of support that were to be provided "as a minimum," including: "Historical labor, overhead, G&A [general & administrative] and other proposed rates for the last four corporate fiscal years," "a breakdown of labor hours [and] rates . . . by trade," and "[an] explanation, quantification, and location of any significant costs that are included somewhere other than in the appropriate work item (i.e. in overhead pool, etc.)." Agency Report, Tab 1, at L-11, L-12.

Thereafter, the agency issued further RFP amendments making various changes to the solicitation requirements; these changes included the establishment of separate work item numbers for supervision, quality assurance, rigger services, crane services and fire watch;⁶ as ultimately amended, the RFP also included work items for diesel generator installation and desalinization upgrade—tasks which the parties agree constitute a significant portion of overall contract performance. Revised proposals were submitted in December 2002, and the agency subsequently reviewed and evaluated those proposals, performing a cost realism analysis for each specified work item. Discussions were thereafter conducted with each offeror.

In evaluating MHI's proposal the agency determined that MHI's overall proposed staffing reflected approximately [deleted] percent of the overall staffing requirements estimated by the government. Agency Report, Tab 20, at 12. By discussion letter to MHI dated January 22, 2003, the agency identified multiple work items the agency considered understaffed, specifically advising MHI that its proposed staffing levels for these work items were "considerably lower than the Government's estimate."⁷ Agency Report, Tab 35, at 1. The work items identified as understaffed included those for diesel generator installation, desalinization upgrade, supervision, quality assurance, rigger services and crane services. For these work items, MHI proposed a total of [deleted] staff hours; the agency's total estimate for these work items was [deleted] staff hours. Agency Report, Tab 20, at 9-12.

The agency's discussion letter to MHI requested that it "[p]lease review your proposed total manhour estimates for these specification items and either revise them or provide clarification." Agency Report, Tab 35, at 1. In addition, with regard to MHI's calculation of staffing for supervision and quality assurance, the agency asked, "What percentage did you use for man-hours . . . ?" Agency Report, Tab 35, at 3.

By letter dated January 28, MHI provided its response to the agency's discussion letter. Agency Report, Tab 36. In that response, MHI noted that it had moved staff hours for supervision, quality assurance, crane services and rigger services from the general work items for diesel engine installation and desalinization upgrade to the more specific work items for those tasks. However, MHI offered no further explanation regarding the basis for the staffing levels it had proposed nor how it intended to successfully accomplish these work items. With regard to the agency's specific questions regarding its calculation of staffing for supervision and quality

⁶ These work items replaced an aggregate work item—administration and support services—which was deleted when the individual items listed above were added.

⁷ The letter also identified multiple line items for which MHI's proposed material costs were "considerably lower than the government estimate." Agency Report, Tab 35, at 2.

assurance, MHI stated: “MHI did not use a percentage to calculate manhours[,] but analyzed the work package to come up with a specific estimate for [these] item[s].” Agency Report, Tab 36, at 2. Again, MHI offered no further explanation regarding the basis for its “specific estimate.”

On April 28, MHI and the other offerors submitted their final proposal revisions (FPRs). In its FPR, MHI neither increased its proposed staffing levels for the work items discussed above, nor offered any substantive information regarding its proposed approach to performing these items.⁸ Accordingly, in evaluating MHI’s proposal for cost realism, the agency increased MHI’s proposed manning levels to the government’s estimates. The agency’s final evaluation of all offerors’ FPRs are reflected in the following table.⁹

	MHI	Metro	Offeror A	Offeror B
Past Performance	[deleted]	Exceptional	[deleted]	[deleted]
Past Performance Subfactors				
Technical Performance	[deleted]	[deleted]	[deleted]	[deleted]
Schedule Control	[deleted]	[deleted]	[deleted]	[deleted]
Cost Control	[deleted]	[deleted]	[deleted]	[deleted]
Management	[deleted]	[deleted]	[deleted]	[deleted]
Proposed Cost	[deleted]	\$42,591,393	[deleted]	[deleted]
Evaluated Cost	[deleted]	\$42,904,575	[deleted]	[deleted]

⁸ In response to another agency discussion question concerning the level of MHI’s proposed labor rates, MHI stated that it was able to lower its proposed rates by instituting a “new program” using students from the local community college as “skilled workers.” Agency Report, Tab 41. MHI did not discuss the impact of student workers on the level of staff hours it proposed, nor does it appear that this explanation provides any basis for decreasing proposed staff hours.

⁹ As provided in the solicitation, the agency applied an adjectival rating scheme using the terms exceptional, very good, satisfactory, marginal and unsatisfactory.

As shown, Metro’s proposal reflected the highest rating for past performance and the lowest evaluated cost.¹⁰ Accordingly, Metro’s proposal was selected for contract award. Thereafter, MHI was notified of Metro’s selection; this protest followed.

DISCUSSION

MHI first protests the agency’s cost realism adjustments to MHI’s proposal, focusing specifically on the work items for diesel engine installation, desalinization upgrade, supervision, quality assurance, rigger services and crane services. MHI asserts that the agency’s upward adjustment of its proposed staffing “failed to take into consideration MHI’s particular approach.” Protest at 5. More specifically, MHI first complains that the agency failed to recognize that it had moved staff hours for performing supervision, quality assurance, rigger services and crane services from the general work items for diesel engine installation and desalinization upgrade to the more specific work items applicable for supervision, quality assurance, rigger services and crane services; therefore, MHI asserts that the agency’s upward adjustment of the general work items constituted “double counting.” MHI Post-Hearing Brief at 12.

At the hearing conducted by GAO in connection with this protest, MHI’s own witnesses provided contradictory testimony regarding this issue.¹¹ Specifically, MHI’s president asserted that MHI’s proposed staff hours were, or “should have been,” moved from the general accounts to the more specific accounts on an “hour-for-hour” basis—thus leading to his conclusion that the agency’s upward adjustment constituted double counting. Hearing Transcript (Tr.) at 255-56. In contrast, MHI’s proposal manager acknowledged that, in connection with moving the hours, MHI reduced them “[by] a quarter to a third.” Tr. at 294.

Further, the face of MHI’s protest establishes that MHI proposed its lower staffing levels on the basis of an assumption that was expressly prohibited by the solicitation. Specifically, MHI’s protest challenges the agency’s cost realism as being flawed for failing to consider “[MHI’s] [r]eduction of labor costs [that] can be expected from learning curve savings.” Protest at 6. As noted above, the solicitation expressly directed offerors that proposed staffing reductions based on projected learning curve savings were impermissible, stating:

So that all offerors may be evaluated on a fair and consistent basis, and notwithstanding anything in the RFP that might be interpreted

¹⁰ All four proposals were rated “pass” under the pass/fail technical evaluation factor.

¹¹ In resolving this protest GAO conducted a hearing during which testimony was provided by the agency’s contracting officer, cost evaluation panel chair, past performance panel chair, MHI’s president, and MHI’s proposal manager. All witnesses were sequestered during preceding witnesses’ testimony.

differently, offerors are notified that learning shall not be proposed in the cost proposals. Because the nature and extent of work similarity between availabilities will vary to an unpredictable extent, learning will not be used in evaluating cost.

Agency Report, Tab 1, at L-10.

Finally, with regard to MHI's proposed staffing for supervision, MHI asserts that the agency's cost realism analysis failed to reflect MHI's representation, made to the agency during discussions, that MHI had "analyzed the work package to come up with a specific estimate for this item." Agency Report, Tab 36, at 2. However, in testifying during the GAO hearing, MHI's president acknowledged a somewhat different approach. Specifically, he testified as follows:

GAO: With regard to supervision, I think you said you calculated . . . [deleted] hours [in your proposal]. I'm assuming that . . . you [did] some calculation to come up with . . . that number, [deleted].

MHI President: You know how we really do that? I figure out how many jobs I've got and how many supervisors I have available and they can only work so many hours and that's how it's calculated.

GAO: Could you repeat that? . . .

MHI President: If I have eight supervisors and I have three ships [on which MHI is working], they [the supervisors] can only work so many hours and be in so many places.

Tr. at 272-73.

In short, MHI's president testified that, contrary to its representation during discussions that it "analyzed the work package," MHI's proposed level of supervision was apparently a function of the number of "available" MHI supervisors, divided between the ships on which MHI would be working. On the basis of the entire record here, including the hearing testimony, we find no credible basis to question the reasonableness of the agency's upward adjustment of MHI's proposed staffing.

MHI next protests that the agency failed to conduct meaningful discussions. More specifically, MHI maintains that, when MHI's responses to the agency's discussion questions were considered insufficient to support MHI's proposed staffing levels, the agency was obligated to follow up with further discussions. For example, MHI specifically asserts that the agency's discussion questions regarding supervision were inadequate.

As discussed above, the agency identified each and every work item, including supervision, that it viewed as being "considerably" understaffed. Specifically, with

regard to supervision, the agency further requested that MHI identify the percentage of its proposed staffing that would be supervisory. Agency Report, Tab 35, at 3. In response to the agency's identification of the multiple work items that were understaffed, MHI offered no substantive explanation regarding how it intended to successfully perform the required work items.¹² With regard to the specific question seeking the basis for MHI's calculation of proposed supervision, MHI responded, "MHI did not use a percentage to calculate manhours but analyzed the work package to come up with a specific estimate for this item." Agency Report, Tab 36, at 3. MHI now maintains that, if this response was insufficient, the agency was obligated to follow up with more questions probing the substance of MHI's purported "analy[sis]." We disagree.

When an agency engages in discussions with an offeror, the discussions must be meaningful. Training and Mgmt. Res., Inc., B- 234710, June 29, 1989, 89-2 CPD ¶ 12. However, this requirement does not obligate an agency to spoon-feed an offeror, ITT Fed. Sys. Int'l Corp., B-285176.4, B-285176.5, Jan. 9, 2001, 2001 CPD ¶ 45 at 7, nor does it create an obligation for agencies to conduct successive rounds of discussions until all proposal defects have been corrected. OMV Med., Inc., B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 7. Rather, an agency's discussion questions must simply lead an offeror into the areas of its proposal that require correction or amplification. Creative Mgmt. Tech., Inc., B-266299, Feb. 9, 1996, 96-1 CPD ¶ 61 at 4.

Here, the agency's discussions with MHI identified each and every work item that the agency believed to be understaffed. Further, the agency sought additional specific information regarding the basis for MHI's calculation of its proposed supervisory staff. On this record, the agency's discussions more than met the required standard; MHI's complaints to the contrary are entirely without merit.

Finally, MHI challenges the agency's evaluation of past performance. MHI first complains that it was improper for the agency to treat prior performance of cost-reimbursement contracts as more relevant than fixed-price contracts and, similarly, that the agency improperly considered performance of a contract involving drydocking as more relevant than performance of a ship repair contract that did not involve drydocking. MHI Post-Hearing Brief at 16-17.

As noted above, the solicitation expressly identified various attributes of a prior contract that would render the contract "more relevant," including contracts that involved drydocking and contracts performed on a cost reimbursement basis. Agency Report, Tab 1, at M-3. Since MHI did not challenge those provisions of the solicitation prior to submitting its proposal, we will not now consider its assertion

¹² During its pursuit of this protest, MHI and/or its counsel have offered various explanations purporting to support the proposed staffing levels; this information was not provided to the agency at any time during the procurement process.

that the agency's application of those solicitation provisions was improper.¹³ 4 C.F.R. § 21.2(a)(1) (2003).

Finally, MHI asserts that the "[t]he Government's rating of MHI's past performance as [deleted] overlooked numerous outstanding features of MHI's past performance," arguing that the agency unreasonably failed to give MHI's proposal "the 'Exceptional' rating it that merited." Protest at 8. As support for this assertion, MHI maintains that the contractor performance assessment rating system (CPARS) data, on which the agency relied in evaluating past performance, contained more "complimentary comments" applicable to MHI's past performance than it contained regarding Metro's past performance. MHI Post-Hearing Brief, at 20-21.

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3; Hydraulics Int'l, Inc., B-284684, B-284684.2, May 24, 2000, 2000 CPD ¶ 149 at 14. A protester's mere disagreement with the agency's judgment does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

Here, it is clear that, while most of the past performance data for both MHI and Metro reflected positive past performance experiences, the agency evaluators viewed Metro's past performance as slightly superior to MHI's due, in part, to the greater relevance of Metro's prior contracts. As noted above, the agency's determinations regarding the relative relevance of Metro's and MHI's prior contracts were consistent with the solicitation's provisions. We have reviewed the entire

¹³ Similarly, MHI's comments on the agency report, submitted on August 15, assert for the first time that the agency improperly rated MHI's proposal [deleted] under the cost control subfactor, due to the fact that MHI has not performed cost-reimbursement contracts. It is undisputed that the agency advised MHI of its [deleted] rating, and the basis for that rating, during MHI's debriefing that occurred more than 10 days prior to August 15. Accordingly, this aspect of MHI's protest is untimely filed and not for consideration. 4 C.F.R. § 21.2(a)(2).

record and find MHI's assertions that it should have been rated "exceptional" rather than [deleted] to constitute mere disagreements with the agency's judgment. As such, MHI's disagreements do not provide a basis for sustaining its protest.

The protest is denied.¹⁴

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General Counsel

¹⁴ We have considered other arguments that MHI presented and find them to be without merit.