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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Puglia Engineering of California, Inc.

File: B-297413; B-297413.2; B-297413.3

Date: January 20, 2006

Mark G. Jackson, Esq., Derek D. Crick, Esq., and G. Matthew Koehl, Esq., Preston Gates & Ellis LLP, for the protester.

C. Scott Penner, Esq., John C. Dippold, Esq., and Sandip Soli, Esq., Carney Badley Spellman, PS, for Todd Pacific Shipyards Corporation, an intervenor.

Talbot J. Nicholas, II, Esq., Department of Homeland Security, United States Coast Guard, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency's evaluation of proposals was unreasonable and inconsistent with the stated evaluation criteria is denied where the record shows that the agency's evaluation was reasonable, and that the solicitation's evaluation criteria were fairly and consistently applied in the agency's assessment of both the protester's and the awardee's proposals.

2. Source selection authority (SSA) performed a reasonable price/technical tradeoff in determining that the awardee's proposal represented the best value, where the SSA's judgment, based upon the results of a reasonable, documented technical evaluation, demonstrates the SSA's understanding of the evaluated strengths and weaknesses of the respective proposals, and shows a reasonable weighing of the offerors' respective technical and price advantages consistent with the solicitation's evaluation criteria.

DECISION

Puglia Engineering of California, Inc. (PECI) protests the award of a contract to Todd Pacific Shipyards Corporation under request for proposals (RFP) No. HSCG85-05-R-625306, issued by the Department of Homeland Security, United States Coast Guard, Maintenance & Logistics Command Pacific, for dockside maintenance services. PEGI argues that the agency conducted a flawed evaluation of proposals and failed to perform a reasonable price realism evaluation; PEGI contends that the selection decision was flawed for these reasons, and was improper on its face.

We deny the protest.

BACKGROUND

The objective of this procurement is to improve delivery of maintenance and dockside ship repair services for the HEALY, a Coast Guard vessel. The HEALY is a unique research vessel used by both the national and international scientific communities and has the most rigorous mission schedule in the Coast Guard. The HEALY's primary mission generally lasts from late May until mid-November when the vessel returns to its homeport in Seattle, Washington for its annual winter maintenance. Since its commissioning, the Coast Guard has not been able to adequately perform vessel maintenance; therefore, the agency decided to issue a multiple-year, multiple-option ship repair contract in order to achieve its maintenance objectives and still serve the scientific community. Agency Report (AR) exh. 6, Acquisition Plan, at 1.

The RFP, issued as a small business set-aside, contemplated the award of a fixed-price contract for a 1-year base period and four 1-year option periods. The services required are represented by four distinct types of efforts: (1) contractor advance planning for dockside availabilities; (2) contractor execution of dockside availabilities; (3) interavailability/voyage repairs; and (4) provisioned item procurement (material/equipment purchases). RFP at 3-10.

The solicitation advised offerors that, in the award selection, the combined non-price factors would be considered significantly more important than price. RFP amend. 5, at 3. Under the evaluation factor for assessing technical quality, the solicitation established the following five technical elements, listed in descending order of importance:¹ (1) understanding scope of responsibilities (with four associated sub-elements);² (2) ability to manage purchasing /subcontractor effort (with two associated sub-elements); (3) contractor facilities (with one associated sub-element); (4) business base information (with one associated sub-element); and (5) past performance. RFP at 39-40. Proposals were to be evaluated under the technical factor to determine the extent to which the offerors exhibited a clear understanding of the work requirements, the means required to fulfill the requirements, and the extent to which they demonstrated an ability to meet or exceed the RFP requirements. SSP at 4-5; RFP at 39-40.

¹ The relative weights were identified in the agency's internal Source Selection Plan (SSP); these weights were not identified in the solicitation. AR exh. 9, SSP, at 4.

² The solicitation did not disclose the relative weights of the associated technical sub-elements. RFP at 40.

With regard to price, offerors were required to propose fixed prices for each of the contract line item numbers (CLIN) listed in section B of the solicitation that comprised various aspects of the maintenance and repair work. Included in section B was a base item, CLIN 0001, for planning fiscal year 2006 dockside availabilities, and 11 optional items (CLIN 0002 through CLIN 0012). RFP at 2. The total evaluated price was to consist of the evaluation of the base and optional item prices and would be used exclusively for evaluation purposes.³ RFP amend. 5, at 2. The solicitation included a document designated as attachment J.3, which was a comprehensive list of all tasks to be performed under each CLIN listed in section B and offerors were to provide detailed pricing information for each task listed on attachment J.3. RFP amend. 5, at 2. The RFP stated that proposed prices would be analyzed for price realism and reasonableness and cautioned that proposals which were unrealistically low in price would be considered indicative of the offeror's lack of understanding of the complexity and risks in the solicitation requirements. Id. at 3.

Three firms--PECI, Todd, and a third offeror that is not a party to this protest--submitted initial proposals.⁴ The agency's technical evaluation team (TET) evaluated each proposal, identifying strengths, weaknesses and deficiencies, and assigning adjectival ratings under each technical element and sub-element. The contract specialist separately evaluated price proposals and from this evaluation, he prepared written discussion questions regarding the offerors' price proposals. All three initial proposals were included in the competitive range. AR exh. 19, TET Interim Report; AR exh. 20, Negotiation Memorandum, at 4-5, and attach. B.

Written and oral discussions were held, and final proposal revisions (FPR) were requested, received, and evaluated. The TET issued a final technical evaluation report which indicated the consensus scores and the technical ranking of the offerors. AR exh. 21, TET Final Report, at 12-21.

³ The RFP informed offerors that pricing for the optional items would be subject to "negotiation" based upon actual maintenance needs and that the "negotiated pricing" would "supersede pricing of the notational requirements in the awarded contract." RFP at 17-18. The offerors responded to the solicitation without objection to this language, and we resolve the protest consistent with the RFP terms. We point out, however, that, if the successful offeror will have no legal obligation to perform the optional item work using the rates in its proposal, the prices proposed ultimately may not reflect the actual costs of performing this contract.

⁴ The agency reports that all three firms had recent experience working on the HEALY at the vessel's homeport. Contracting Officer (CO) Statement, at 2.

The following matrix summarizes the overall technical evaluation results:

	PECI	Todd	Offeror C
OVERALL TECHNICAL (Merit/Risk)⁵	S/M	G/L	M to S/M
A. Understanding Scope of Responsibilities	S/M	G/L	S/M
B. Ability to Manage Purchasing/ Subcontractor Effort	S/M	E/L	S/M
C. Contractor Facilities	G/L	G/L	M/H
D. Business Base Information	S/M	S/M	M/H
E. Past Performance	G/L	G/L	S/M

AR exh. 21, TET Final Report, at 4-5.

The final evaluation report described the consensus evaluation findings for each offeror under the technical factor. The TET found Todd's FPR eliminated almost all weaknesses identified by the agency and in some instances Todd's FPR presented additional strengths. For example, under the most important technical element--understanding scope of responsibilities--the evaluators identified two additional strengths in Todd's FPR. Specifically, the TET found that Todd's final proposal demonstrated a long history of completing non-scheduled repairs as described in CLIN 0002 which the TET deemed a significant capability that greatly improved Todd's ability to successfully perform the services. The second additional strength noted under this technical element was Todd's demonstration of its strong history in translating third party designs, in identifying problem areas, in recommending solutions, and in working with the customer to achieve its satisfaction. *Id.* at 17-18.

The TET evaluated PECI's final proposal as markedly improved under two technical elements--understanding scope of responsibilities and ability to manage purchasing/subcontractor efforts. As a result, many weaknesses were eliminated, but the TET concluded that PECI's FPR demonstrated no new evaluated strengths. However, under the past performance element, the protester's rating improved from marginal to good. *Id.* at 12-16.

In performing the price reasonableness and realism analyses, the contract specialist compared and contrasted various elements of the offerors' final proposed prices. Specifically, he did a comparison of the proposed prices with each other, a comparison of the proposed prices to the independent government estimate, and an analysis of each offeror's proposed labor rate. AR exh. 22, Price Negotiation Memorandum (PNM), at 3-14. In this regard, PECI proposed a labor rate of

⁵ In assessing technical merit, the TET used adjectival ratings of excellent (E), good (G), satisfactory (S), marginal (M), and unsatisfactory (U). Risk was assessed as either high (H), moderate (M), or low (L). AR exh. 9, SSP, at 5-6.

[DELETED] per hour, and the contract specialist compared this to a June 16, 2005 Defense Contract Audit Agency (DCAA) computed rate for an affiliated company of [DELETED] per hour with an added [DELETED] profit to arrive at a fully burdened straight time rate of [DELETED] per hour. *Id.* at 9; AR exh. 25, Puglia Written Debriefing, at 4. The contract specialist concluded that the difference between these two rates indicates

that the firm has understated its labor price by [DELETED]. Confining the discussion to labor costs alone, this means that [PECI] may have understated its Total Price by [DELETED]. Further understatement of price is due to the absence of escalation factors in [PECI's] proposal.

AR exh. 22, PNM, at 9.

The PNM (which, as noted below, eventually served as the source selection decision document) identified the offerors' total evaluated prices (evaluated by totaling the proposed base and optional item prices, as called for by the RFP), as well as the contract specialist's "adjusted" or "factored" prices (based on the assessment of "price realism"), as follows:

	Total Evaluated Price	"Adjusted" Price
PECI	[DELETED]	[DELETED]
Offeror C	[DELETED]	[DELETED]
Todd	[DELETED]	[DELETED]

AR exh. 22, PNM, at 16.

The PNM stated that the offerors' proposed prices, as set forth in the middle column in the above table, would "be utilized in the trade-off." *Id.* at 16. The PNM contains a trade-off analysis between Todd's proposal and each of the other two proposals. The analysis found that although all three offerors understood the complexity of the work involved in this project and that each was capable of performing the maintenance work on the HEALY, the proposal submitted by Todd was the most technically advantageous proposal. AR exh. 22, PNM, at 18. In this regard, the PNM stated as follows:

In the second comparison [with PEGI], one might justify engaging a firm with a lesser technical score if substantial savings were absolutely assured. However, in making such a choice, HEALY's maintenance and logistics providers would be required to defer or abandon altogether the objective of obtaining an optimal technical source for HEALY maintenance. Based upon the rationale in the Acquisition Plan for issuing this procurement and the solicitation which speaks to the complexity of HEALY dockside maintenance, [the agency] must choose the firm with the highest technical capability unless reasonable

evidence suggests that the price for obtaining that capability is not justified. As indicated in the Technical Evaluation Report, Todd possesses superior planning and execution capabilities necessary to optimize HEALY dockside maintenance. At this point, [PECI] does not. [PECI's] price, while very attractive, cannot be assured post-award. Furthermore, questions remain about the true cost of [PECI's] involvement on an eventual contract, as indicated elsewhere in this Memorandum. That uncertainty only serves to reinforce the recommendation for Todd.

In the analyst's opinion, the advantages of having Todd perform HEALY [dockside] maintenance is worth the additional financial outlay (regardless of whether that amount is based upon the original proposed values or adjusted values).

Id. at 18-19.

Although there is no separate source selection decision document, the SSA concurred in the recommendation by appending his signature on the signature page of the PNM. As a result, award was made to Todd. After a debriefing, these protests followed. In its initial and supplemental protests, PEGI has raised numerous issues concerning the conduct of this procurement. We have considered each issue and find them all to be without merit. We discuss what we view as the key contentions below.

DISCUSSION

Price Evaluation

PECI maintains that the agency's price evaluation was unreasonable, complaining that the Coast Guard improperly determined that its proposal was unrealistically priced. Protest at 7-8; Protester's Comments, Nov. 28, 2005, at 2-5; Protester's Response to Agency's and Intervenor's Reply Briefs, Dec. 13, 2005, at 2.

Where, as here, an RFP contemplates the award of a fixed-price contract, an agency may provide for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal. Rodgers Travel, Inc., B-291785, Mar. 12, 2003, 2003 CPD ¶ 60 at 4; Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 2. The nature and extent of the agency's price analyses are matters within the sound exercise of the agency's discretion, and our review of such an evaluation is limited to determining whether it was reasonable and consistent with the provisions of the solicitation. Id. Among the price analysis techniques that may be used is an analysis based on previous proposed prices or contract prices. Federal Acquisition Regulation (FAR) § 15.404-1(b)(2).

We agree with the protester that the contract specialist's "adjustments" to the fixed prices proposed were problematic. A price realism analysis, if conducted, may affect the technical evaluation; it cannot properly lead to adjustment of proposed fixed prices. See Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 6 n.3. If the selection decision had been based on those "adjusted" or "factored" prices, the procurement might have been fatally flawed. The tradeoff analysis in the PNM, however, was explicitly based on the unadjusted proposed prices, and the source selection decision, as quoted above, explicitly found that "the advantages of having Todd perform [the work] is worth the additional financial outlay (regardless of whether that amount is based upon the original proposed values or adjusted values)." Accordingly, any flaws in the conduct of the price realism analysis did not prejudice PECE. Competitive prejudice is an essential element of a viable protest and where no prejudice is shown, or is otherwise not evident from the record, our Office will not sustain a protest, even if a deficiency in the procurement is found. Orion Int'l Tech., Inc., B-293256, Feb. 18, 2004, 2004 CPD ¶ 118 at 3.

Meaningful Discussions

PECE asserts that the agency failed to hold meaningful discussions regarding the firm's price proposal. Specifically, the protester complains that the agency failed to discuss: (1) that the firm allegedly proposed an extraordinarily low number of labor hours; (2) that the protester did not include a price escalation factor; and (3) that the firm's labor rate was understated by [DELETED] percent. Protester's Second Supplemental Comments, Dec. 29, 2005, at 1-2.

We need not address these issues at length because here, too, there is no reasonable possibility that any defect in the conduct of the discussions prejudiced PECE. All of these topics relate to the agency's perception that PECE had underpriced its proposal. If the firm had suffered in the competition because of any of them—either in the technical evaluation or in the price evaluation—more complete discussions would have given the firm the opportunity to address the agency's concerns and potentially improve its competitive position. Here, however, if the discussions had raised these matters and the protester had then addressed them by revising its proposal, the protester would presumably have raised its price, by increasing the number of proposed labor hours, or adding a price escalation factor, or increasing its labor rate (or some combination of the three). Doing so would have hurt PECE's competitive position, not helped it, so it appears that the lack of discussion of any of these three areas, actually helped PECE.⁶ In fact, none of these matters

⁶ For the record, we note that one of the three issues, concern about the firm's proposed labor hours, appears to have been raised in the agency's July 13, 2005 discussion letter, identifying as topics for discussion PECE's labor hour estimates for work items D-5, D-18, and D-22 through D-27 on attachment J.3, as well as the
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disadvantaged the protester, since the tradeoff analysis was based on the proposed prices, not the contract specialist's "adjusted" prices.

Price/Technical Tradeoff

PECI challenges the reasonableness and sufficiency of the SSA's price/technical tradeoff, asserting that the SSA failed to determine what additional benefits would result from accepting Todd's higher-priced proposal. Protester's Comments, Nov. 28, 2005, at 5-8.⁷ Where a solicitation emphasizes the significantly greater importance of technical factors over price, an agency has considerable discretion to award to an offeror with a higher technical rating and a higher price. WPI, B-288998.4, B-288998.5, Mar. 22, 2002, 2002 CPD ¶ 70 at 10. Where a tradeoff is made, it must be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs; the tradeoff, however, need not be quantified. FAR § 15.308. We will review the reasonableness of the SSA's judgment concerning the significance of the proposal differences and whether the selection is justified in light of the announced RFP criteria. Northrop Grumman Tech. Servs., Inc.; Raytheon Tech. Servs. Co., B-291506 et al., Jan. 14, 2003, 2003 CPD ¶ 25 at 35-36.

From our review of the detailed PNM (including the final TET report), which the SSA adopted, we find that his decision was reasonable and consistent with the evaluation criteria. That is, the PNM reflects the SSA's understanding that Todd's technical proposal was superior to PECI's proposal under the most important technical element, understanding the scope of responsibilities. Under the second most important technical element, ability to manage purchasing/subcontractor effort, PECI's proposal also was not evaluated as highly as Todd's proposal. In addition, the PNM specifically noted that Todd possessed superior planning and execution capabilities that would optimize dockside maintenance of the HEALY.

The SSA weighed Todd's evaluated technical superiority against PECI's lower proposed price (approximately [DELETED] lower). Contrary to the protester's arguments, the SSA recognized PECI's price advantage, but noting that the RFP provided that the non-price evaluation factors were in the aggregate significantly more important than price, the SSA determined that Todd's proposal reflected the

(...continued)

protester's labor hours, and its material and subcontract costs and prices for work items D-22 through D-27 on attachment J.3, which pertained to weight handling systems, which the agency reports--and PECI does not dispute--were the most costly work items. AR exh. 13, PECI Discussion Letter, encl. 1.

⁷ We do not address further PECI's challenges to the price/technical tradeoff, inasmuch as they are all premised on the evaluation of PECI's and Todd's proposals, which we have found reasonable.

best value to the government based upon its evaluated technical superiority. AR exh. 22, PNM, at 18-19. Although PEGI disagrees with the underlying evaluation and the SSA's judgment, its disagreement does not demonstrate that the SSA's tradeoff assessment was unreasonable; rather, we find that the decision reflects a reasonable price/technical tradeoff assessment.

In sum, based on our review of the record, we conclude that the Coast Guard's evaluation and source selection decision were reasonable and in accordance with the terms of the solicitation.

The protest is denied.⁸

Anthony H. Gamboa
General Counsel

⁸ In its initial and supplemental protest filings, PEGI raised additional issues that have since been expressly withdrawn. Protester's Comments, Nov. 28, 2005, at 8, 9.