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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Leisure-Lift, Inc.

File: B-291878.3; B-292448.2

Date: September 25, 2003

Philip J. Davis, Esq., Phillip H. Harrington, Esq., William Leith, Esq., and Timothy W. Staley, Esq., Wiley Rein & Fielding, for the protester.
Robert H. Koehler, Esq., Patton Boggs, for Electric Mobility Corp., and Timothy S. Kerr, Esq., Elliot Reihner Siedzikowski & Egan, for Golden Technologies, the intervenors.
Maura C. Brown, Esq., and Philip S. Kaufman, Esq., Department of Veterans Affairs, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's determination that the awardee offered a domestic end product compliant with the Buy American Act was reasonable, where in response to allegations made prior to award concerning the compliance of the awardee's product, the agency reasonably investigated the compliance of awardee's product with the Buy American Act, including visiting the awardee's facility to observe the manufacturing process and receiving detailed information from the awardee regarding the cost and origin of the components that comprise the offered product, and where the protester provided no specifics that showed the end product or the majority of its component costs were not manufactured in the United States.

2. The agency's pre-award receipt of an unsupported allegation that the awardee sells an inferior product manufactured by another firm in Taiwan does not impose an obligation on the contracting officer to conduct an investigation whether the awardee will comply with the awardee's certification in its proposal that the end products offered in its proposal are compliant with the Trade Agreements Act.

DECISION

Leisure-Lift, Inc. protests the awards of contracts to Golden Technologies under request for proposals (RFP) No. 797-NC-03-0007 (-0007) and Electric Mobility Corp. (EMC) under RFP No. 797-NC-03-0008 (-0008), issued by the Department of Veterans Affairs, for motorized scooters to be used by individuals with mobility problems.

The protester contends that the award to Golden under RFP -0007 was improper because the Golden scooters are not domestic end products for the purposes of the Buy American Act, 41 U.S.C. § 10a-10d (2000). Leisure-Lift argues with regard to RFP -0008 that the award to EMC was improper because the award was not in compliance with the Trade Agreements Act of 1979, 19 U.S.C. §§ 2501-2582 (2000), and that the agency did not reasonably evaluate its proposal and product sample, and failed to conduct meaningful discussions with it.[1]

We deny the protests.

The agency explains that the procurements here are "part of a broader program underway at VA to standardize prosthetic items." Agency Report (AR) (B-291878.3) at 1; (B-292448.2) at 1. In this regard, VA has established a Prosthetic Clinical Management Program (PCMP), whose goals "include enhancing and standardizing the quality of care, enhancing the appropriate use of Prosthetics, improving access to Prosthetics, and reducing the acquisition cost of Prosthetics." AR (B-291878.3) at 2; (B-292448.2) at 2. The specifications and evaluation factors for the scooter procurements here were developed by a "scooter workgroup" within the VA's PCMP. The solicitations were issued in order to "obtain user uniformity and quality products at lower than current contract and open-market prices" through the establishment of consolidated requirements contracts for scooters purchased through the PCMP. AR (B-291878.3) at 2; (B-292448.2) at 2.

RFP -0007

RFP -0007, issued as a total set-aside for small businesses, provided for the award of a requirements contract, for a base period of 1 year with four 1-year options. The RFP stated that award would be made to the offeror submitting the proposal representing the best value to the government, and listed the following evaluation factors: technical, price, and quality/past performance. The RFP informed offerors that the technical factor was slightly more important than price, and that the quality/past performance factor was significantly less important than price. The RFP required offerors to submit product samples (i.e., scooters) for evaluation, in addition to technical and business proposals. The solicitation also incorporated by reference Federal Acquisition Regulation (FAR) § 52.225-1, which implements the Buy American Act, and required offerors to certify that the end product offered was a domestic end product as that term is defined in the Buy American Act, or to identify its product as a foreign end product.[2]

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[1] Leisure-Lift raised and later withdrew various other protest bases under both RFPs.

[2] For small business set-asides, such as this, FAR § 19.102(f)(1) requires that only domestically produced products can be furnished under small business set-asides. TRS Research, B-282342, Nov. 4, 1999, 99-2 CPD ¶ 85 at 3; Kaysam Worldwide, Inc., B-247743, June 8, 1992, 92-1 CPD ¶ 500 at 2.

The agency received proposals and product samples from five offerors, including Golden and Leisure-Lift. Golden's proposal/product sample was evaluated as "very good" under the technical factor and "exceptional" under the quality/past performance factor, at an evaluated annual price of $2,531,130.[3] AR (B-292448.2), Tab 10, Price Negotiation Memorandum, at 2-3. Leisure-Lift submitted proposals for two models of its scooters, with the most competitive of the proposals/product samples being evaluated as "good" under the technical factor and "highly acceptable" under the quality/past performance factor, at an annual evaluated price of $3,388,406. Id. The agency awarded the contract to Golden on June 5, 2003, and this protest followed.

The protester argues that Golden's proposed scooter cannot be considered a "domestic end product" under the Buy American Act, and that accordingly Golden's proposal should have been rejected by the agency.

As implemented in the FAR, the Buy American Act defines "domestic end product" as an "end product manufactured in the United States if the cost of its . . . components which are mined, produced or manufactured in the United States exceeds 50 percent (50%) of the cost of all its components." FAR § 25.101. Components are defined as "those articles, materials, and supplies incorporated directly into the end products." Id. Thus, to qualify as domestic, an end product must meet a two-pronged test: (1) it must be manufactured in the United States; and (2) the cost of its components which are mined, produced, or manufactured in the United States must exceed 50 percent of the cost of all its components; components must also be manufactured in the United States to qualify as domestic components. Computer Hut Int'l, Inc., B-249421 et al., Nov. 23, 1992, 92-2 CPD ¶ 364 at 4.

As a general rule, an agency should go beyond a firm's self-certification for Buy American Act purposes and should not rely upon the validity of that certification where the agency has reason to believe, prior to award, that a foreign end product will be furnished. On the other hand, where a contracting officer has no information prior to award that would lead to the conclusion that the product to be furnished is a foreign end product, the contracting officer may properly rely upon an offeror's self-certification without further investigation. Following award, whether an offeror does in fact furnish a foreign end product in violation of its certification is a matter of contract administration. Cryptek, Inc., B-241354, Feb. 4, 1991, 91-1 CPD ¶ 111 at 4. Where an agency is required to investigate further, we will review the evaluation and resulting determination as to whether the item offered is a domestic end product to

[3] The proposals/products samples were evaluated under the technical factor as "superior," "very good," "good," "acceptable," "fair," or "poor." The proposals were evaluated under the quality/past performance factor as "exceptional," "highly acceptable," "neutral," "acceptable," "minimally acceptable," or "unacceptable." This same scheme was used in evaluating proposals under RFP -0008.

ensure that they were reasonable. General Kinetics, Inc., Cryptek Div., B-242052.2, May 7, 1991, 91-1 CPD ¶ 445 at 7.

Here, the record reflects that, prior to the issuance of the solicitation, Leisure-Lift contacted the VA contracting officer and "alleged that Golden Technologies' scooters were made in Taiwan," and that the contracting officer had been provided with "pictures of Golden Technologies' boxes, which clearly were labeled 'Made in Taiwan.'" AR (B-292448.2) at 11.

The contracting officer responded to Leisure-Lift's allegation by first determining that Golden's scooters were on the Federal Supply Schedule (FSS), and requesting that the contracting officer that administered Golden's FSS contract investigate Leisure-Lift's allegation. Id. The FSS contracting officer and an attorney with the VA subsequently had "several conversations" with Golden concerning the allegation, and were informed that "the scooter shell was made in Taiwan" and that Golden was "merely reusing these boxes to ship the completed scooter." Id. As a result of these conversations, Golden sent a letter to the FSS contracting officer detailing the various components that comprise the completed scooter, and providing that each of the components, with the exception of the scooter shell, were made in the United States. AR (B-292448.2) at 11; Tab 20, Golden Letter (Nov. 27, 2002). The record reflects that Golden next contacted an attorney with U.S. Customs and Border Protection, Department of Homeland Security (Customs), and in response to Golden's description of its manufacturing process, Golden was informally informed that based on the facts presented "the completed scooter would be considered a product of the U.S." AR (B-292448.2) at 11; Tab 19, E-Mail from Customs Attorney (Dec. 3, 2002). The Customs attorney then informed the VA contracting officer of his opinion that, based upon the facts presented by Golden, its scooter "would be considered a U.S. product under our country of origin criteria." AR (B-292448.2), Tab 18, E-mail from Customs Attorney (Dec. 23, 2002).

Shortly before award, another offeror alleged that Golden's scooter was of foreign manufacture, and provided the VA contracting officer with the name of a Customs special agent to contact. AR (B-292448.2) at 14. A representative of the VA's Office of the Inspector General (OIG) and the Customs special agent subsequently visited Golden's facility to "observe the manufacturing process." AR (B-292448.2) at 14. The VA OIG and Customs representatives concluded that the Golden's scooters "were to be considered made in America," and detailed their reasons for this conclusion. AR (B-292448.2) at 14; Tab 15, VA OIG Representative's E-mail (June 5, 2003).

Also, in response to Leisure-Lift's protest, the VA contracting officer requested and received from Golden a detailed matrix identifying each component of the scooter, its country of origin, cost, and percentage of that cost in relation to the completed scooter's cost. This matrix, in sum, provided that only the scooter shell, or "base unit," whose cost comprised 47.7 percent of the scooter's total cost, was made in Taiwan, with the rest of the components being of United States origin.

AR (B-292448.2), Tab 13, Cost Matrix. This matrix was accompanied by a number of spreadsheets further breaking down each component of the scooter into its individual items, and identifying the cost of each of these items. AR (B-292448.2), Tab 13, Spreadsheets.

Leisure-Lift contends that the information furnished by Golden was not sufficiently detailed for the agency to reasonably conclude that Golden's scooter was a domestic end product for Buy American Act purposes. In this regard, the protester points out that "[w]hile Golden is apparently purchasing the remaining purported domestic components from companies with addresses in the United States, there is not a single certification for any of the components that the item was actually manufactured in the United States." Protester's Comments (B-292448.2) at 5.

In our view, the agency's evaluation and resulting determination that Golden's scooter was a domestic end product were reasonable. As indicated above, Leisure-Lift's initial allegation was that Golden's scooter was manufactured in Taiwan, as evidenced by the markings on the Golden boxes. The record reflects that before making award the agency investigated the claim by discussing the matter with Golden, providing for an on-site visit of Golden's manufacturing facility by Customs and VA OIG officials, and receiving informal opinions from Customs' officials that Golden's scooter was domestically manufactured. After award, the VA contracting officer obtained information from Golden providing the country of origin of each of the component parts of its scooter, which indicated the majority of the component costs were for components manufactured in the United States.

The only specific challenge Leisure-Lift makes with regard to whether the components of Golden's scooter are domestic is its assertion that one of the components claimed by Golden as manufactured in the United States--the scooter's transaxle--is actually of foreign manufacture. In support of this contention, the protester has provided a statement from the president of Leisure-Lift, wherein he asserts that he had previously contacted the same transaxle supplier that Golden is currently using and was informed that the transaxle was made in the Peoples Republic of China and included two parts that were made in the United States. Protester's Comments (B-292448.2), attach. A, Declaration of the President of Leisure-Lift. In response, Golden has provided a letter from its transaxle supplier stating that while it does provide a transaxle manufactured in China for use in another of Golden's scooters, the transaxle provided for use in the scooter offered by Golden to the VA here is "manufactured and assembled" in Pennsylvania. Intervenor's Supplemental Comments, Attach. 1, Letter from Transaxle Supplier/manufacturer (Aug. 8, 2003). In the absence of countervailing evidence, we think that the agency reasonably relied upon this evidence in determining that the transaxle was domestically manufactured.

In sum, under the circumstances here, which include, among other things, Golden's completion of the Buy American Act certificate in its proposal, the pre-award

investigation of Golden and its manufacturing process by the VA OIG and Customs, the requested post-award submissions by Golden concerning its component costs (that were consistent with the pre-award information), and the lack of specifics (with the exception of its transaxle argument) from Leisure-Lift in support of its allegation that the majority of the components comprising Golden's scooter are of foreign manufacture, we find the agency had adequate information to, and did, reasonably determine that Golden's scooter was a domestic end product as relevant here.[4] See Cryptek, supra, at 4 (awardee's confirmation by telephone that its Buy American Act certificate was correct, without the submission of any additional information, was adequate given the level of detail provided by the protester prior to the award of the contract regarding its allegation that the awardee's product was not Buy American Act compliant).

RFP -0008

RFP -0008, issued as an unrestricted procurement, provided for the award of a requirements contract, for a base period of 1 year with four 1-year options, for three different "award group[s]" of scooters. The first award group was for the "smallest scooter," the second award group was for a full-sized three-wheeled scooter, and the third award group was for a full-sized four-wheeled scooter. Leisure-Lift's protest here only concerns the award under the third group.

The RFP stated that award would "be made by [a]ward [g]roup" to the offeror submitting the proposal representing the best value to the government, and listed the following evaluation factors: technical, price, quality/past performance, and small disadvantaged business (SDB) participation. RFP -0008 at 32; amend. 1, at 3. The RFP informed offerors that the technical factor was slightly more important than price, and that the quality/past performance and SDB participation factors, when combined, were significantly less important than price.

The RFP required offerors to submit product samples (i.e., scooters) for evaluation, in addition to a technical and business proposal. RFP -0008 at 27. The RFP also advised offerors that the agency intended "to evaluate offers and award a contract without discussions with offerors," and that "the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint." RFP -0008 at 23.

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[4] The protester also complained that Golden erroneously included certain labor costs in its calculation of the domestic component costs associated with its scooter that improperly inflated the percentage of domestic component costs comprising Golden's scooter. Protester's Comments (B-292448.2) at 3-5. We need not decide whether these labor costs were properly calculated by Golden because, as conceded by the protester, even if the contested labor costs are deducted from Golden's calculation of domestic component costs, the domestic component costs still exceed 50 percent of the scooter's total component cost. Id. at 5.

The RFP contained detailed specifications for the full-sized four-wheeled scooters that comprised the third award group, including a number of "options" for this scooter group--for example, options for "Flip up arm rest[s]," "Seat back angle adjustment," and "Power Seat Elevation." RFP -0008, amend. 1, at 2. The RFP also included a pricing schedule to be completed by offerors, which set forth the item to be acquired (including option items), estimated quantity, unit, unit price, and total amount. The pricing schedule for the full-sized four-wheeled scooters provided for an estimated quantity of 910 scooters under item No. 3a, 819 pairs of flip up arms rests under item No. 3d, and 91 "Power seat elevation" under item No. 2g. RFP -0008, amend. 1, at 4. The solicitation provided the following explanation with regard to pricing and completion of the schedule:

> All prices quoted shall be "on scooter" prices and shall be quoted taking into consideration that the items will be on the scooter instead of the specified items. For example, if there is an additional cost for flip up arm rests, the cost of the standard arm rest should be deducted from the cost of the flip up arm rest. . . . To be considered for award, all items within an Award Group must be offered. Since award will be made by Award Group, the minimum offer for the solicitation is one Award Group.

RFP -0008, amend. 1, at 3.

Finally, the solicitation included FAR §§ 52.212-4 and 52.225-5, which implement the Trade Agreements Act 19 U.S.C. § 2511 (2000) and the North American Free Trade Agreement Implementation Act of 1993, 19 U.S.C. § 3301 note.[5] In this regard, offerors were required to certify that the end product offered was a domestic end product or to identify the product as a foreign end product. The RFP provided that "'End Product' means those articles, materials, and supplies to be acquired under the contract for public use," and that a "'U.S.-made end product' means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed." RFP -0008 at 13.

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[5] The Trade Agreements Act authorizes the President to waive all buy-national laws, regulations, or procedures for the acquisition of eligible "end products" from any country designated as a reciprocating, signatory nation to a recognized agreement or at least a developing country. In order to encourage trade agreements with additional countries for reciprocal procurement opportunities, the Trade Agreements Act also requires the President to prohibit the procurement of eligible end products from foreign countries not designated pursuant to the Act. 19 U.S.C. § 2511; Hung Myung (USA) Ltd.; Containertechnik Hamburg GmbH & Co., B-244686 et al., Nov. 7, 1991 91-2 CPD ¶ 434 at 2-3.

The agency received eight proposals and product samples from five offerors, including EMC and Leisure-Lift, for the third award group.[6] After the proposals and product samples were evaluated, both offerors were requested to submit final revised prices. EMC's proposal/product sample was evaluated as "good" under the technical factor and "highly acceptable" under the quality/past performance factor, at an evaluated annual price of $1,332,240. AR (B-291878.3), Tab 13, Price Negotiation Memorandum, at 7-8. Leisure-Lift's most competitive proposal/product sample was evaluated as "acceptable" under the technical factor and "highly acceptable" under quality/past performance factor, at a proposed price of $1,447,552.[7] Id. The agency awarded the contract for the third award group to EMC on June 5. This protest followed.

Leisure-Lift first argues that EMC's proposal under RFP -0008 should have been rejected by the agency because it does not comply with the Trade Agreements Act. In this regard, by letter dated May 23, 2003 (prior to contract award), Leisure-Lift provided the agency with a copy of a "Warning Letter" from the Food & Drug Administration (FDA) to a Taiwanese manufacturer of scooters for various problems associated with the scooters. AR (B-291878.3), Tab 21, Leisure-Lift Letter to VA (May 23, 2003). Leisure-Lift asserted that the FDA letter was "relevan[t] to this acquisition because scooters sold by [EMC] are manufactured" by the Taiwanese firm cited by the FDA, and concluded that the "documented problems raise serious doubts about the quality and potential safety of [EMC] scooters." Id. at 1-2.

As with the Buy America Act, when a bidder or offeror represents that it will furnish end products of designated or qualifying countries (including domestic end products) in accordance with the Trade Agreements Act, it is obligated under the contract to comply with that representation. If prior to award an agency has reason to believe that a firm will not provide compliant products, the agency should go beyond a firm's representation of compliance with the Trade Agreements Act; however, where the contracting officer has no information prior to award which would lead to such a conclusion, the contracting officer may properly rely upon an offeror's representation without further investigation. E.D.I., Inc., B-251750, B-252128, May 4, 1993, 93-1 CPD ¶ 364 at 5.

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[6] Two of the offerors submitted multiple proposals, each offering a different model of scooter, such that a total of eight different models of scooters were proposed. Five of the scooters proposed were rejected by the agency for failing to meet the specifications set forth in the solicitation, leaving two scooters proposed by Leisure-Lift and one by EMC in the competition.

[7] The proposals submitted by Leisure-Lift and EMC did not propose any SDB participation, and were thus each rated "[n]one" under the SDB utilization factor.

Here, the contracting officer notes that Leisure-Lift's letter did not include any documentation in support of its assertion that EMC sold scooters manufactured by the Taiwanese firm, and that the contracting officer relied on EMC's certification in its proposal that the scooter offered met the requirements of the Trade Agreements Act. Contracting Officer's Statement (B-291878.3) at 2.

Based on our review, we find the contracting officer's actions here to be reasonable. First, the problems noted by Leisure-Lift in its letter concerned, by the letter's terms, scooters manufactured by a firm other than EMC, and the allegation that EMC sold this firm's scooters was not supported. Additionally, Leisure-Lift never mentioned any buy-national laws, regulations, or procedures, such as the Trade Agreements Act, in its letter to the agency; rather, the letter asserted that the scooters of the Taiwanese manufacturer had quality and safety issues that should impact the agency's evaluation of EMC's proposal and determination as to EMC's responsibility. AR (B-291878.3), Tab 21, Leisure-Lift letter (May 23, 2003). Without more, Leisure-Lift's unsupported allegations did not impose an obligation on the contracting officer to conduct a detailed investigation behind the Trade Agreements Act certification provided by EMC in its proposal.[8] See Cryptek, Inc., supra, at 4.

Leisure-Lift also protests that the power seat actuator (one of the parts that comprises the power seat elevation option) used in EMC's scooter is made in the China, and contends that because of this, the acquisition of EMC's scooter is barred by the Trade Agreements Act, since China is not a designated country pursuant to that Act. See FAR § 25.401. Specifically, the protester argues that the Trade Agreements Act provision set forth in the RFP, although applicable only to "end products," must be considered applicable to each of the items set forth in the RFP as options, such as power seat elevation, as well as the scooter itself. The protester argues that this is so because the option items for each award group of scooter were set forth as separate line items in the RFP, and were identified elsewhere in the solicitation as "items." The protester argues further that the power seat actuator is not "substantially transformed" by the process through which it is incorporated into the seat assembly to provide the scooter with power seat elevation. Protester's Supplemental Comments (B-291878.3) at 7-13.

The agency responds that Leisure-Lift's reading of the solicitation is unreasonable, as it is clear from the RFP, when read as a whole, that the end-item being procured is the scooter itself, rather than power seat elevation or any of the other options set forth in the RFP. The agency adds that even if power seat elevation could be considered an end item under the solicitation, the power seat actuator is

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[8] We note that in any event, EMC has provided a detailed response to the protester's assertions, explaining that the scooter offered in its proposal here is not manufactured by the Taiwanese firm cited by the FTC, but is manufactured in the United States by EMC. AR (B-291878.3), Tab 20, EMC Letter (June 26, 2003).

"substantially transformed" by EMC into a power seat assembly, such that it should be considered a "U.S.-made" end product under the terms of the Trade Agreements Act.

We need not decide the merits of Leisure-Lift's protest regarding the power seat actuator. As explained above, the agency could reasonably rely on EMC's certification in its proposal that its offered scooters will meet the requirements of the Trade Agreements Act, particularly since Leisure-Lift's allegations concerning the power seat actuator were only raised after award was made. Thus, we agree with the agency that whether EMC does in fact comply with its Trade Agreements Act certification is now a matter of contract administration that is not for our review. E.D.I., Inc., supra, at 4.

Leisure-Lift also protests that the agency's evaluation of proposals was unreasonable and evidences unequal treatment, and that the agency failed to conduct meaningful discussions with Leisure-Lift. Specifically, the protester contends that its and EMC's proposals/product samples received ratings of "acceptable" and "good," respectively, under the technical factor, even though the evaluators' comments as to the results of the product sample evaluation were very similar and, with regard to Leisure-Lift's scooter, evidenced that the evaluators may not have reasonably evaluated and tested the product sample. The protester adds that to the extent that the actual difference in its and EMC's proposals/product samples was, as claimed by the agency, Leisure-Lift's American National Standards Institute, Inc./Rehabilitation Engineering and Assistive Technology Society of North America (ANSI/RESNA) test results, the agency's concerns regarding this aspect of Leisure-Lift's proposal, together with the other evaluated "significant weaknesses" that were found in its proposal under the technical factor, should have been raised by the agency during discussions.

The agency argues that regardless of the merits of Leisure-Lift's arguments here, there is no reasonable possibility that Leisure-Lift was prejudiced by the agency's allegedly unreasonable and unequal evaluation, and its failure to hold meaningful discussions. Agency's Supplemental Report (B-291878.3) at 6. The agency explains that if the allegedly unreasonable evaluation, unequal treatment, and lack of meaningful discussions were addressed by increasing Leisure-Lift's rating under the technical factor to "good," the agency's source selection decision would have been the same, given EMC's rating of "good" under the technical factor, the offerors' identical ratings of "highly acceptable" under the quality/past performance factor, and EMC's nine-percent lower price.

Competitive prejudice is necessary before we will sustain a protest; where the record does not demonstrate that the protester would have a reasonable chance of receiving award but for the agency's actions, we will not sustain a protest, even if deficiencies, such as an unequal evaluation of proposals or lack of meaningful discussions, is found. Metropolitan Interpreters & Translators, B-285394.2 et al., Dec. 1, 2001, 2000 CPD ¶ 97 at 9.

The record reflects that, in accordance with the terms of the solicitation, the nine-percent price advantage associated with EMC's proposal was a significant aspect of the agency's source selection. AR (B-291878.3); Tab 13, Price Negotiation Memorandum, at 7-8. Given this, and the fact that, in response to the agency's detailed assertion of lack of prejudice, the protester does not assert nor point to anything in the record (nor can we find anything based on our review) that indicates or otherwise provides that had the agency reasonably evaluated Leisure-Lift's proposal and/or engaged in meaningful discussions, its proposal/product sample would have received a rating higher than "good" under the technical factor (or the same as EMC's proposal's rating), we fail to see any reasonable possibility that the protester was prejudiced by the agency's actions here.[9]

The protests are denied.

Anthony H. Gamboa
General Counsel

[9] Leisure-Lift's assertion of prejudice here is premised in part upon its allegation, which we deny above, that EMC's proposal violated the Trade Agreements Act, and that as a result, EMC was able to offer a lower price.