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**Comptroller General
of the United States**

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

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Decision

Matter of: General Dynamics-Ordnance & Tactical Systems

File: B-295987; B-295987.2

Date: May 20, 2005

David A. Churchill, Esq., William R. Stoughton, Esq., and Kathy C. Weinberg, Esq., Jenner & Block LLP, for the protester.

Thomas P. Humphrey, Esq., Elizabeth W. Newsom, Esq. and Brian Roemer, Esq., Crowell & Moring LLP, for Alliant Techsystems, Inc., an intervenor.

Angela J. Cosentino, Esq., Naval Sea Systems Command, for the agency.

Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's challenge that it should have been afforded the opportunity to comment on negative past performance information, which the protester had not previously had the opportunity to address, is denied where the solicitation indicated that award could be made without the benefit of discussions and there was no basis for the agency to have questioned the validity of the information since it was based on the agency's first-hand experience with the protester's performance.

2. Agency did not trigger requirement to hold discussions with all competitive range offerors by communicating with awardee regarding its subcontracting plan prior to award since these communications did not pertain to evaluation of the awardee's proposal and therefore did not constitute discussions. Rather, the negotiation and ultimate approval of a subcontracting plan involved a question of the awardee's responsibility.

DECISION

General Dynamics-Ordnance & Tactical Systems, Inc. (GD-OTS) protests the Department of the Navy's award of a contract to Alliant Techsystems, Inc. under request for proposals (RFP) No. N00164-04-R-4217 for the purchase of MK 244 ammunition. GD-OTS argues that the Navy's past performance evaluation was improper; offerors were treated unequally with regard to the conduct of discussions or clarifications; the awardee's proposal was unacceptable for failing to include an adequate small business subcontracting plan; the Navy failed to conduct a price realism analysis; and the Navy's source selection decision was improper.

We deny the protest.

On August 13, 2004, the Department of the Navy, Naval Surface Warfare Center, Crane Division, issued the RFP requesting offers for “first article and production quantities of linked MK 244 Mod 0 Armor Piercing Discarding Sabot (APDS) 20MM cartridges in accordance with referenced specifications.” Agency Report (AR) at 2-3. The RFP provided for the award of a 5-year, indefinite-quantity contract with fixed unit-prices for specified production quantities. Offerors were permitted to submit alternate offers since the RFP was divided between two lots. Lot 1 included a line item for production of 800 “First Articles” for testing and approval. RFP at 2. “First Articles” were required unless waived for those offerors demonstrating that they had previously delivered the MK 244 or a similar item, and that the item had been accepted by the government. Where waiver was applicable, an offeror could submit a proposal for lot 2, which did not include a line item for “First Articles.” While offerors could submit offers for both lots, the RFP specified that the Navy would make award under only one lot. RFP at 4.

The RFP provided that award would be made to the firm submitting the proposal “determined most advantageous to the Government, cost/price and other factors considered” based on a consideration of two evaluation factors: past performance and cost/price—with past performance being “significantly more important” than cost/price. RFP at 57. The RFP further advised that the government “may award a contract on the basis of initial offers received, without discussions.” RFP at 58.

With regard to the evaluation of past performance, the solicitation required each offeror to submit a list of no more than five of its most recent contracts “for the same/similar products.” RFP at 58. Offerors were “authorized to provide information relative to any problems encountered on the identified contracts and any corrective actions taken by the offeror.” Id. The RFP further provided that the past performance evaluation would be based on the information submitted by the offeror as well as “other information obtained by the Contracting Officer,” and the offeror’s past performance would be assessed by the “Source Selection Authority (SSA)/Contracting Officer” and assigned an adjectival rating of “highly favorable, favorable, neither favorable nor unfavorable, unfavorable, or highly unfavorable.” Id. Offerors without a history of providing the same or similar products would be assigned a neutral rating, which was neither favorable nor unfavorable. Id.

As to price, the RFP stated that “[p]roposed prices will be evaluated based on an examination of the proposed price for the first article units . . . and an average price for the five years for the production units” RFP at 58. Although the RFP stated that “cost is not a weighted evaluation factor,” it further emphasized that “it will not be ignored,” explaining that “[t]he degree of importance of the cost will increase with the degree of equality of the proposals in relation to the other factors on which selection is to be based” RFP at 57.

The RFP also required offerors to include a subcontracting plan in accordance with Federal Acquisition Regulation (FAR) § 52.219-9. The plan was required to include a “mandated five percent (5%) goal for small disadvantaged business concerns or a detailed explanation as to why the goal cannot be included in the plan.” RFP at 55.

By the November 16 amended closing date for receipt of proposals, the agency had received proposals from two firms--GD-OTS and Alliant. GD-OTS submitted offers for both lots, while Alliant submitted an offer only for lot 1.¹

For the purpose of evaluating its past performance, GD-OTS identified five reference contracts in its proposal. Three of the contracts were for production of the identical round being procured under the RFP, the MK 244, and two were for the 20mm MK149, which GD-OTS identified as similar to the MK 244. See GD-OTS Proposal, Past Performance Information. Of the three MK 244 contracts identified by GD-OTS, two were Navy contracts (a “Low Rate Initial Production” (LRIP) contract and a contract for “Full Scale Production”) and the third was with the government of Canada. GD-OTS Proposal, Past Performance Information, at 7, 10.

With regard to the LRIP contract, GD-OTS was involved as a subcontractor to its “sister company,” General Dynamics Armament and Technical Products (GDATP), which was the prime contractor. AR at 3. According to GD-OTS, in its subcontractor role, GD-OTS was “responsible” for the MK 244 ammunition produced under the contract. Protester’s Comments at 3. The LRIP contract was, in essence, a precursor to full-scale manufacture of the MK 244--the MK 244 round had not been the subject of large-scale manufacture at the time of the LRIP contract. GD-OTS’s proposal discussed the LRIP contract at length, describing manufacturing challenges and their resolution through what GD-OTS described as the cooperative efforts of the Navy, GDATP, and the protester. With regard to the Navy contract for full-scale production, which specified delivery of 166,084 rounds in January 2005, GD-OTS indicated in its proposal that it had requested a schedule extension due to delays resulting from the LRIP contract. Protester’s Proposal, Past Performance Information, at 10.

Unlike the protester, Alliant had never manufactured the MK 244. Thus, Alliant’s proposal listed four contracts where it had produced ammunition that it identified as similar to the MK 244--production of the 20mm PGU-27 A/B, production of the 25mm

¹ GD-OTS submitted offers for both lots with the expectation that the government would waive the first article requirement based on, as discussed more fully below, its previous production of the 20mm MK 244, albeit as a subcontractor, under a Navy contract. Protest at 5; AR at 3. The agency notes that the protester’s pricing information for production units of the MK 244 was, nonetheless, the same for both offers. AR at 3.

M791 Armor Piercing Discarding Sabot with Tracer Cartridge, and two contracts for production of the 20mm ZAP. Alliant Proposal, Past Performance Information.

In evaluating past performance, the Navy considered whether the cartridges produced under the contracts were the same as or similar to the MK 244. In addition, the Navy sought information from references for each of the contracts listed by the offerors in their proposals. Where a contract identified by an offeror involved a Navy contract, however, the Navy relied on its first-hand knowledge of the offeror's performance for that contract. For each of the contracts referenced, the Navy sought and considered comments regarding how well the contractor performed, whether the contractor met delivery schedules, whether it was "cooperative and easy to work with," whether the contractor provided "a quality product," and whether the contractor performed "within original cost estimates" if it was a cost-type contract. AR, Tab 8, Past Performance Information, at 4.

With regard to the evaluation of the protester's past performance, the Navy assigned GD-OTS a rating of "favorable." AR, Tab 9, Business Clearance Memorandum, at 15. In arriving at this rating, the Navy noted that three of the contracts identified by GD-OTS were for production of the exact cartridge as the subject procurement. In addition, the Navy concluded that the two contracts submitted by GD-OTS for production of the MK149 were "similar" to the contracts for production of the MK 244, and highlighted various similarities between the MK149 and the MK 244 as well as several differences, including the fact that the MK149 has [deleted] as in the MK 244." AR, Tab 8, Past Performance Information, at 11.

The record reflects that GD-OTS received a "favorable" rating as opposed to a "highly favorable" rating because, in the agency's view, the past performance information for the protester demonstrated that GD-OTS was late with delivery at times, although the Navy concluded that GD-OTS "generally provide[d] a quality product" and was a good contractor overall. AR, Tab 9, Business Clearance Memorandum, at 15.

Specifically, under the LRIP contract, the Navy highlighted the fact that there were "major delays," which the Navy attributed to both the government and contractor performance—the Navy estimated that the government was responsible for approximately 20 percent of the delays. AR, Tab 8, Past Performance Information, at 9. For example, the Navy noted that first article scheduling was delayed "due to GD-OTS [deleted] delays" and that further delay was "due to GD-OTS delays in [deleted]." Id. The Navy also noted delays resulting from the fact that "GD-OTS ran into many issues including a [deleted]." Id.

The Navy noted delays on other GD-OTS contracts as well, including the fact that the LRIP contract delays had resulted in the delay of production and delivery on the protester's contract with the Navy for full production of the MK 244 cartridge. The Navy also noted that the protester's first delivery on one of its MK149 contracts was approximately 2-3 months late. AR, Tab 8, Past Performance Information, at 11.

Alliant received a past performance rating of “favorable” as well. Because Alliant had not identified any contracts for production of the MK 244, the Navy compared the similarities and differences between all of the cartridges produced under Alliant’s referenced contracts with those of the MK 244.² For example, with regard to Alliant’s contracts for production of the 20mm ZAP, the Navy identified various similarities with the MK 244, including the fact that the [deleted] is the same; they both use the [deleted], and [deleted]; the [deleted]; and they use [deleted]. While ultimately concluding that the 20mm ZAP cartridge was “similar” to the MK 244 for the purpose of evaluating Alliant’s past performance, the Navy also noted several differences between the two cartridges, including the fact that the 20mm ZAP is a [deleted]. AR, Tab 8, Past Performance Information, at 6-7.

In addition, as it relates to the protest, Alliant’s proposal included a subcontracting plan that neglected to provide dollar amounts or percentages for subcontract placements (i.e., small businesses, small disadvantaged businesses, women-owned small businesses, Historically Underutilized Business Zone firms, veteran-owned firms, and service-disabled veteran-owned firms), instead inserting an asterisk in place of dollars and percentages. The asterisk referenced a section of its subcontracting plan which explained that Alliant intended to “issue an intracompany subcontract to Alliant-Lake City Small Caliber Ammunition Plan” (ATK-Lake City) for the total program requirements and that ATK-Lake City would be “responsible for any outside purchasing activity and flowing applicable program requirements to their suppliers . . . ATK-Lake City will report small business placements as required.” Alliant Proposal, Memorandum of Agreement for Master Subcontracting Plan at 5. Because Alliant intended to subcontract the program requirements in their entirety, Alliant indicated that “ATK-Lake City operations are not used in calculating goals for [Alliant] Small Business Plans” under the FAR. Id.

Further, under the heading “Clause Flowdown,” Alliant’s proposal stated:

Alliant Techsystems Inc. includes FAR 52.219-8, “Utilization of Small Business Concerns”, in all subcontracts over [deleted] when applicable. We require all subcontractors (except small business concerns) that receive subcontracts in excess of [deleted] . . . to adopt a plan that meets the requirements of 52.219-9, “Small Business Subcontracting Plan.”

Id. at 14.

² While Alliant submitted four references, the Navy also considered Alliant’s performance on a fifth Navy contract. AR, Tab 8, Past Performance Information, at 8.

As evidenced by internal Navy correspondence, the Navy had some question about whether Alliant's proposed plan was adequate. Prior to award, the Navy raised the matter with Alliant, indicating that the firm needed to revise its subcontracting plan to expressly state subcontracting goals of zero percent. Alliant complied with the Navy's request and the Navy documented its determination that Alliant's subcontracting plan was acceptable. In documenting the adequacy of Alliant's plan, the Navy noted the explanation in Alliant's proposal as well as the fact that Alliant had a successful record of small business contracting. AR, Tab 4E, Subcontracting Plan Information, Contracting Officer's Determination of Adequacy.

Because the past performance ratings for Alliant and GD-OTS were essentially equivalent, and because Alliant's total evaluated price (\$23,553,409) was approximately \$5 million less than the total evaluated price for GD-OTS (\$28,691,160), the Navy concluded that Alliant's offer represented the best value. The Navy documented this decision in its Business Clearance Memorandum, which included a summary of the Navy's past performance evaluation. AR, Tab 9, Business Clearance Memorandum. In making award, the contracting officer also concluded that Alliant's pricing was "fair and reasonable" based upon a comparison with the prices proposed by GD-OTS.³ Id. at 11.

After receiving a debriefing from the Navy, GD-OTS filed this protest with our Office.

In challenging the award to Alliant, GD-OTS argues that: (1) the Navy's past performance evaluation was improper; (2) offerors were treated unequally with regard to holding discussions or requesting clarifications; (3) Alliant's proposal was unacceptable for failing to provide an adequate small business subcontracting plan; (4) the Navy failed to conduct a price realism analysis; and (4) the Navy failed to make a proper source selection decision.

Past Performance Evaluation

GD-OTS contends that the Navy's evaluation of its past performance as "favorable," rather than "highly favorable," was unreasonable because it was based upon the erroneous assumption that GD-OTS was responsible for delays under the LRIP contract. GD-OTS also challenges Alliant's "favorable" past performance rating since Alliant has never produced the MK 244.

³ In its Business Clearance Memorandum, the Navy concluded that prices were fair and reasonable based on a comparison of prices received in response to the solicitation in accordance with FAR § 15.404-1(b)(2)(i), and that neither cost nor pricing data was required because there was adequate price competition in accordance with FAR § 15.403-1(b)(1). AR, Business Clearance Memorandum, at 2, 4, 5, 11.

The evaluation of past performance, including the agency's determination of the relevance and scope of the offeror's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation criteria. Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3. Moreover, an agency's past performance evaluation may be based on a reasonable perception of inadequate prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts, Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 5, and the protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

GD-OTS asserts that the delays attributed by the Navy to its performance on the LRIP contract were not its fault, but rather the result of actions taken by the government and the prime contractor. For example, GD-OTS contends that first article delays were caused in part by problems with the government's technical data package for the MK 244 and government-furnished equipment, and that shipping delays were the result of the Navy's failure to provide timely "Hazard Classification." GD-OTS also identifies various delays that it contends were caused by the prime contractor. The protester, however, did not refute many of the delays identified by the Navy's past performance evaluation and attributed to GD-OTS (*i.e.*, [deleted] delays, delays in [deleted], and a [deleted] problem). AR, Tab 8, Past Performance Information, at 9. Moreover, the Navy's conclusions about the protester's past performance were not based exclusively on its performance of the LRIP contract. Rather, the record reflects that the Navy considered two other GD-OTS contracts that experienced delays, which the protester has not disputed. Based on our review of the record and the protester's arguments, we conclude that the protester's challenges constitute nothing more than disagreement with the agency's evaluation judgment, and that they do not provide us with a basis to find unreasonable the Navy's decision to assign the protester a past performance rating of "favorable" as opposed to "highly favorable."

With regard to the evaluation of Alliant's past performance, the protester initially argued that Alliant should have received a "neutral" rating because it had never produced the MK 244 and that no other contracts should be considered "similar" because "no other round necessitates [deleted] for the MK 244 round." Protest at 10. In response to the agency report, which included the Navy's documented determination that the contracts identified by GD-OTS and Alliant for production of ammunition other than the MK 244 were in fact similar to the MK 244 for the purpose of evaluating the firms' past performance, GD-OTS did not pursue its initial challenge of the evaluation of Alliant's past performance. Instead, GD-OTS argued that the agency's past performance evaluation was flawed because, in essence, the Navy failed to compare the relative relevance of the contracts performed by Alliant with those performed by GD-OTS. According to the protester, its own proposal would have been favored under such an analysis since it had more relevant past

performance where it had manufactured and produced the MK 244 and Alliant had “never manufactured a round demanding the technical solutions GD-OTS identified for the MK 244.” Protester’s Comments at 12.

The record establishes that the Navy’s past performance evaluation was reasonable and consistent with the terms of the solicitation. The Navy expressly considered whether the contracts referenced by Alliant were for production of ammunition that was the same as or similar to the MK 244. Based upon a comparison of the similarities and differences between the ammunition produced under Alliant’s referenced contracts, the Navy concluded that Alliant’s contracts were for production of ammunition that was “similar” to the MK 244 and considered Alliant’s performance on those contracts. Based upon this assessment, which reflected uniformly positive reviews, the Navy assigned Alliant a “favorable” rating. There simply was no requirement for the Navy to compare the degree of similarity between the offerors’ past performance references and, as suggested by the protester, to have credited GD-OTS with a higher past performance rating based on its having actually produced the MK 244 round. The protester’s argument is akin to the position of protesters who complain that they were not given extra credit in an evaluation for their status as the incumbent. In such cases we have routinely found evaluations to be reasonable where the agency did not provide such credit. See, e.g., Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 5.

Discussions/Clarifications

GD-OTS also contends that the Navy improperly failed to seek comment from GD-OTS regarding adverse past performance information on the LRIP contract—specifically, the delays attributed to GD-OTS by the Navy. In this regard, the protester argues that the Navy abused its discretion in not affording it the opportunity to comment on the Navy’s concerns about the LRIP contract delays through discussions or clarifications. Second, the protester contends that the Navy treated offerors unequally because it held discussions or clarifications with Alliant regarding its subcontracting plan but did not hold discussions or clarifications with GD-OTS regarding its past performance.

With regard to the first issue, the solicitation expressly provided that the agency intended to make award without discussions. FAR § 15.306(a)(2), which addresses clarifications and award without discussions, states in relevant part that where an award will be made without conducting discussions, “offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror’s past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.” Pursuant to this provision, an agency has broad discretion to decide whether to communicate with a firm concerning its performance history. We will review the exercise of such discretion to ensure that it was reasonably based on the particular circumstances of the procurement. NMS Mgmt., Inc., B-286335, Nov. 24,

2000, 2000 CPD ¶ 197 at 3; A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5.

Regarding communications concerning adverse past performance information to which the vendor has not previously had an opportunity to respond, we think that for the exercise of discretion to be reasonable, the agency must give the offeror an opportunity to respond where there clearly is a reason to question the validity of the past performance information, for example, where there are obvious inconsistencies between a reference's narrative comments and the actual ratings the reference gives the offeror. In the absence of such a clear basis to question the past performance information, we think that, short of acting in bad faith, the agency reasonably may decide not to ask for clarifications. NMS Mgmt., Inc., *supra*.

Applying this standard here, we conclude that the agency reasonably exercised its discretion in deciding not to communicate with GD-OTS regarding the delays under the LRIP contract, since the information was based on first-hand knowledge of Navy personnel who evaluated the protester's past performance; thus, there was no reason for the Navy to have questioned the validity of its own conclusions. While the protester clearly disagrees with the Navy's conclusions about the LRIP delays and may have wished to respond to the information, that fact does not render the agency's decision to make award without holding discussions or clarifications unreasonable, given the permissive language of FAR § 15.306(a)(2). *Id.*

The protester's argument that offerors were treated unequally is similarly unavailing.⁴ According to GD-OTS, when the Navy raised its concerns with Alliant regarding its subcontracting plan, and afforded Alliant the opportunity to revise its plan as directed by the agency, the Navy effectively held discussions with Alliant, and thereby triggered a requirement for the agency to hold discussions with GD-OTS as well.

⁴ While the protester argues, in the alternative, that the communications between Alliant and the Navy regarding Alliant's subcontracting plan constituted clarifications and that the Navy, therefore, treated offerors unequally by not also engaging in clarifications with GD-OTS regarding its past performance, clarifications, in contrast to discussions, do not trigger a requirement that the agency seek clarifications from other offerors. See Landoll Corp., B-291381 *et al.*, Dec. 23, 2002, 2003 CPD ¶ 40 at 8; Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 5; Global Assocs. Ltd., B-271693, B-271693.2, Aug. 2, 1996, 96-2 CPD ¶ 100 at 4. While we recognize that there may be a rare situation where it would be unfair to request clarification from one offeror but not from another, the mere fact that an agency requests clarification from one offeror and not another, does not constitute unfair treatment.

While the protester correctly points out that when the government conducts discussions with one offeror, it must hold discussions with all offerors in the competitive range, FAR § 15.306(d)(1), in this case, the exchange between the Navy and Alliant regarding Alliant's subcontracting plan did not constitute "discussions" for the purpose of triggering the requirement of § 15.306(d)(1). Specifically, because the requirement for an acceptable small and disadvantaged business subcontracting plan is applicable to the "apparently successful offeror," FAR § 19.702, such a requirement relates to an offeror's responsibility. See AmClyde Engineered Prods. Co., Inc., B-282271, B-282271.2, June 21, 1999, 99-2 CPD ¶ 5 at 8; A.B. Dick Co., B-233142, Jan. 31, 1989, 89-1 CPD ¶106 at 3. A request for, or providing of, information that relates to offeror responsibility, rather than proposal evaluation,⁵ does not constitute discussions and thus does not trigger the requirement to hold discussions with other competitive range offerors. A.B. Dick Co., *supra*. Thus, even where, as here, the solicitation asks offerors to submit a subcontracting plan with their proposals, and the agency engages in exchanges with an offeror regarding its plan, those communications do not trigger the requirement for discussions with all offerors. AmClyde Engineered Prods. Co., Inc., *supra*; see also Consolidated Eng'g Servs. v. United States, 64 Fed. Cl. 617 at ___ (Fed. Cl. 2005).

Alliant's Subcontracting Plan

The protester argues that the subcontracting plan submitted by Alliant "made the subcontracting requirement vanish" and that the Navy thereby improperly waived the subcontracting plan requirement for Alliant. Supplemental Protest at 5. According to GD-OTS, Alliant effectively eliminated the subcontracting plan requirement in two ways: (1) it indicated that the goals did not apply because ATK-Lake City would perform the work; and (2) the plan proposed "zero" subcontracting goals. We find the protester's argument to be without merit.

Contrary to the protester's suggestions, as noted above, the Navy's consideration of Alliant's subcontracting plan was not part of its evaluation of Alliant's proposal for purposes of making an award determination--the RFP included only two evaluation factors, past performance and cost/price, neither of which provided for consideration of an offeror's subcontracting plan. As noted above, the requirement for a subcontracting plan in this context related solely to an offeror's responsibility; thus the Navy's consideration of the adequacy of Alliant's plan was plainly in the context of its affirmative responsibility determination for Alliant. Because the determination that a particular contractor is capable of performing a contract is largely committed to the contracting officer's discretion. Our Office will not

⁵ The Navy's consideration of Alliant's subcontracting plan was not part of its evaluation of Alliant's proposal for purposes of making an award determination--the RFP included only two evaluation factors, past performance and cost/price, neither of which provided for consideration of an offeror's subcontracting plan.

consider a protest challenging an affirmative determination of responsibility except under limited circumstances not alleged or evident here.⁶ 4 C.F.R. § 21.5(c) (2005).

Price Analysis

According to GD-OTS, the Navy was required to conduct a “price realism” analysis under the terms of the RFP, but failed to do so. Protest at 11-12. Generally, where, as here, a solicitation contemplates the award of a fixed-price contract, the agency is not required to conduct a realism analysis. This is because a fixed-price (as opposed to a cost-type) contract places the risk and responsibility for loss on the contractor. Rodgers Travel, Inc., B-291785, Mar. 12, 2003, 2003 CPD ¶ 60 at 2. However, an agency may provide for a realism analysis in a competition for a fixed-price contract to assess, among other things, the risk of poor performance. Dismas Charities, Inc., B-289575.2, B-289575.3, Feb. 20, 2004, 2004 CPD ¶ 66 at 4.

GD-OTS maintains that the agency stated its intention to consider realism notwithstanding the fixed-price nature of the competition by providing in the RFP that it “may accept other than the lowest priced offer if doing so would result in greater value to the Government in terms of technical performance, quality, reliability, life cycle cost, or lower overall program risk.” RFP at 58. We disagree. The language cited by the protester is contained within a paragraph discussing the agency’s evaluation of past performance, not price, and merely explains that the award decision will be based on a best-value determination, and that in making such a determination, a higher-priced offeror may be selected based on a trade-off analysis. Because the RFP did not require a realism analysis, the Navy was not required to perform one. Rather, the Navy properly performed a more limited price analysis by finding Alliant’s price “fair and reasonable” based on a comparison of Alliant’s price information with that received in response to the solicitation.⁷

⁶ As explained above, the Navy specifically considered and approved the plan submitted by Alliant based on Alliant’s representations that it intended to subcontract performance entirely to ATK-Lake City, and that the subcontracting goals and responsibility for compliance with the stated subcontracting goals would flow down to ATK-Lake City by contract, as well as the fact that Alliant had a successful record of small business contracting.

⁷ The FAR identifies a number of price analysis techniques that may be used to determine whether prices are fair and reasonable, including comparison of the proposed prices with each other, comparison with prior contract prices for the same or similar services, and comparison with an independent government estimate. FAR § 15.404-1(b).

Best Value Determination

As a final matter, the protester argues that the Navy's best value determination was flawed since the Navy did not perform a proper trade-off analysis. In support of this contention, GD-OTS notes that the agency's best-value determination is a mere two sentences. Our review of the record, however, reveals that the agency's award determination was reasonable and consistent with the RFP. Because there were only two evaluation factors for the Navy to consider in making its award determination—past performance and price—and because the Navy rated both GD-OTS and Alliant as “favorable” for past performance, Alliant's lower price obviously became the discriminating factor for award, such that a tradeoff analysis was not required. Where selection officials reasonably regard proposals as being essentially equal technically, cost to the government may become the determinative factor in making an award notwithstanding that the evaluation criteria assigned cost less importance than technical considerations. *See, e.g., AIROD Sdn. Bhd.*, B-294127, Aug. 16, 2004, 2004 CPD ¶ 156 (denying protest where solicitation anticipated a past performance/price tradeoff, offerors received equal past performance ratings, and agency made award based on price without performing a tradeoff analysis).

The protest is denied.

Anthony H. Gamboa
General Counsel