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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: Guam Shipyard

File: B-311321; B-311321.2

Date: June 9, 2008

David J. Taylor, Esq., William J. Spriggs, Esq., Katherine A. Allen, Esq., and Rachel W. McGuane, Esq., Spriggs & Hollingsworth, for the protester.

Robert E. Korroch, Esq., Francis E. Purcell, Jr., Esq., and Khaliah Wrenn, Esq., Williams Mullen, for Gulf Copper Ship Repair, Inc., the intervenor.

Jeff Mansfield, Esq., and Bruce Potocki, Esq., Department of the Navy, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's evaluation and award decision is denied where record shows they were reasonable and consistent with the terms of the solicitation and applicable procurement rules.

DECISION

Guam Shipyard protests the evaluation of proposals and the award of a contract to Gulf Copper Ship Repair, Inc. under request for proposals (RFP) No. N55236-08-R-0006, issued by the Department of the Navy, Southwest Regional Maintenance Center, for alterations to sanitary spaces (low maintenance, sensor-operated washroom facilities) on Barge YRBM-25 in Guam. The protester challenges the reasonableness of the agency's evaluation of proposals and determination to make the award to Gulf Copper, which received a higher past performance rating and offered a higher price than the protester.

We deny the protest.

The RFP, set aside for small businesses, anticipated the award of a fixed-price contract to the firm that submitted the technically acceptable proposal deemed to offer the best value to the agency considering two evaluation factors approximately equal in importance, price reasonableness and performance risk. RFP at 45, 48. The performance risk factor was comprised of two subfactors also of approximately equal importance, past performance (including technical quality, schedule, and

management) and price realism. Id. The RFP advised that the evaluation of past performance would be subjective and based mainly on performance evaluations available in the agency's automated Past Performance Information Retrieval System (PPIRS), information obtained from the offeror's past performance references, and information available in local files. Id. Each offeror was to submit past performance reference information for relevant contracts (ongoing or completed within the last 3 years) that the firm wanted to be considered. The RFP advised that the agency might not contact all of the references, and emphasized that the offeror was to ensure that references could be readily contacted, would be cooperative, and would provide performance information for evaluation. Id. at 44.

For the price realism subfactor of the performance risk evaluation factor, offerors were advised that their proposed prices would be compared to the other prices proposed and the independent government estimate (IGE), that low prices could increase the firm's overall performance risk, and that a "contract price is realistic if it is high enough to preclude the [c]ontractor from enduring a significant financial loss in performing the requirements of the contract." Id. at 49. The RFP noted that unrealistically low prices increase an agency's risk of performance, since, in an effort to cut losses, a contractor may "cut corners" on quality, deliver late, or default, often requiring additional agency involvement as well as reprocurments which consequently may increase the agency's cost of performance. The source selection was to be based on the difference in performance risk and price between proposals; if one offeror's proposal presented lower performance risk but a higher price, then the agency was to decide whether the difference in performance risk was worth the difference in price, and if so, then the higher-priced offer was to be deemed the best value for award. Id.

Four proposals were received by the scheduled closing time. Discussions were conducted and revised proposals were submitted and evaluated. The protester's revised proposal was the lowest-priced offer received, it was found to be reasonably priced, and its technical proposal was found acceptable. Its performance risk, however, was rated as very high overall. Under the price realism subfactor, the protester's proposed price of \$969,334.03 was considered unrealistically low (and evaluated as being approximately 23 percent below the IGE). Under the past performance subfactor, the firm's proposal was evaluated as marginal based on an unfavorable Contract Performance Assessment Report (CPAR) in the agency's automated PPIRS regarding the firm's recent performance of similar work for the agency.¹ The CPAR was the only performance report available in the PPIRS, and the

¹ Under the evaluation scheme used here, a rating of very high performance risk, as was received by the protester's proposal, was to apply to a proposal rated as unsatisfactory for past performance and having a realistic price, or an unrealistically priced proposal rated satisfactory, marginal or unsatisfactory for past performance. Source Selection Plan at attach. 2. A rating of marginal under the past performance (continued...)

only past performance information considered by the evaluators for the firm since the contract reference Guam had provided for two other contracts failed to respond to the agency's email request for past performance information.

Gulf Copper was found to have proposed a reasonable and realistic price of \$1,374,537.50 (which was evaluated as only 2 percent above the IGE). Its proposal, which was rated satisfactory under the past performance subfactor based on its ratings of very good from two references and a rating of satisfactory from the third reference, was rated moderate overall for performance risk. Finding that the \$405,200.47 price premium associated with an award on the basis of Gulf Copper's higher-rated past performance and lower performance risk was warranted, the contracting officer determined that Gulf Copper's proposal presented the best value to the government and made award to that firm. This protest followed.

Guam protests the agency's evaluation of its past performance as marginal, contending that it has received accolades for performance of similar work in the past. The protester contends that if the agency had received information regarding its past performance from the reference Guam identified in its proposal, the information would have been favorable; in this regard, the protester questions the adequacy of the agency's attempt to contact the reference by email, since the agency has not demonstrated that the email message was in fact received by the reference. The protester also challenges the agency's reliance on the adverse CPAR regarding an ongoing Guam contract with the Navy for similar work. Guam has not refuted the substance of the performance problems described in that CPAR, either in its protest or when it had the opportunity to comment on the CPAR findings before the report became final in the PPIR. Rather, the firm only generally suggests that the agency's consideration of the CPAR was improper because Guam had not realized that the CPAR had been posted on the PPIR even though the contract is not fully performed yet.

Our Office will examine an agency's past performance evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the contracting agency's discretion. See Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4. In conducting a past performance evaluation, an agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Federal Env'tl. Servs., Inc., B-250135.4, May 24, 1993, 93-1

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subfactor, as Guam's proposal received, was to apply to a proposal that failed to meet some contract requirements, and showed a serious problem for which corrective measures have not yet been identified. Id. at attach. 3.

CPD ¶ 398 at 12. An agency is only required to use reasonable effort to contact an offeror's references, and is not required to make multiple attempts to contact a firm's past performance references. See OSI Collection Servs., Inc.; C.B. Accounts, Inc., B-286597.3 et al., June 12, 2001, 2001 CPD ¶ 103 at 9.

Here, the agency points out that the past performance reference listed by the protester failed to respond to the agency's email inquiry for relevant survey information. While Guam suggests that proof of the reference's receipt of the email message is necessary to show a reasonable attempt at contacting the reference, the firm provides no support for its contention. Rather, in light of the RFP's emphasis on the importance of the offeror providing reliable contact information (including, as was used here, email addresses) and ensuring cooperation from its references, we think the agency's email inquiry was an adequate effort to contact the reference; the failure of the reference to respond does not show that the agency's effort was inadequate (particularly in view of Guam's apparent failure to ensure, or, at a minimum, encourage its reference to cooperate) or that the past performance evaluation was improper.

As stated above, the agency, consistent with the terms of the RFP, considered a comprehensive, recent, and relevant CPAR that rated the firm's past performance as marginal and showed that Guam had problems with following procedures, safety issues, accidents, obtaining material, scheduling, manpower, and management. Guam had an earlier opportunity to respond to the information reported in the CPAR and, despite seeking an extension of time to do so, never refuted the CPAR, which then became a final report in the PPIR and, in accordance with the terms of the RFP, was properly considered as part of the firm's past performance evaluation. The protester has provided no basis to question the reasonableness of the agency's findings that such unfavorable recent performance of similar work suggests that similar instances of "re-work" or flawed performance could be anticipated under this contract, and that there is also a greater potential for agency involvement in monitoring performance, which may increase the ultimate cost of performance for the agency. Lastly, while Guam generally suggests that accolades for good past performance have been given to the firm in the past, as the agency points out, the firm did not include such information in its proposal, nor was it in the CPAR, and thus, we have no basis to object to the agency's failure to credit the firm with such information.

Guam also challenges the agency's evaluation of its proposal under the price realism subfactor of the performance risk factor, and the finding that its price was unrealistically low.² The protester only generally asserts that because it used its

² Guam challenges that the price realism evaluation of Gulf Copper's proposal, contending that substantial travel costs should be imputed to the firm's performance of the contract because, according to Guam, the awardee lacks a sufficient local

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currently approved labor rates in formulating its price, its price must be considered realistic; similarly, Guam contends that the higher-priced IGE must be flawed because it exceeds Guam's labor rates. As the agency points out, however, Guam's proposed price was not found to be unrealistically low based only on its lower labor rates; rather, Guam's low price also reflected lower prices for materials than those proposed by the other offerors and included in the IGE. Additionally, the protester's failure to identify any profit added to the agency's concerns about whether the firm's substantially lower-priced proposal would affect performance of the contract, since, as indicated in the RFP, financial loss, including a lack of or little profit, may cause a contractor to "cut corners" in the performance of the required work.³

The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Comparison of proposed prices with each other and an IGE are recognized price analysis techniques for a price realism review. See Quality Elevator Co., Inc., B-276750, July 23, 1997, 97-2 CPD ¶ 28 at 7. Here, the agency compared the protester's proposed price to the other offerors' prices and concluded that, as the lowest-priced offer, with a price substantially lower than Gulf Copper's next low price, there is some degree of performance risk associated with the protester's lower price; Guam's price also was evaluated as approximately 23 percent lower than the IGE. Given the reasonableness of the agency's concern regarding quality of performance in light of Guam's low price, we have no reason to question the determination that the proposed price is unrealistically low and, consistent with the definition of unrealistic pricing in the RFP, could result in financial loss for the contractor in performance of the contract. In light of the reasonableness of the performance risk assessment here, including the recent

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presence, in terms of local facility, employees, and possessing the required agency agreement for ship repair services. As the agency and intervenor point out, Gulf Copper specifically reported to the agency that it intends to perform the contract with a sufficient number of local employees, thereby eliminating any travel costs; that it currently leases an appropriate facility for the work; and that it holds the noted agency ship repair agreement. As such, we see no basis in the record to question Gulf Copper's status as a local firm, and, consequently, there was no need to factor in travel costs applicable to non-local firms, as Guam contends, as part of the price realism analysis of its proposal.

³ While Guam generally challenges the agency IGE used for evaluation of the price proposals, the firm provides insufficient argument or facts to question the comprehensive explanation of the multitude of pricing considerations adopted by the agency's estimator. We see no basis to review the challenge further.

marginal past performance by the firm, we find no basis to question the agency's determination that the potential savings offered by Guam's very high risk proposal is not worth the increased risk to the government.

The protest is denied.

Gary L. Kepplinger
General Counsel