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## Decision

**Matter of:** Beyel Brothers, Inc.

**File:** B-406640; B-406640.2

**Date:** July 18, 2012

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Edward J. Kinberg, Esq., and R. Brent Blackburn, Esq., Kinberg & Associates, LLC, for the protester.

S. Scott Bluestein, Esq., Bluestein Law Firm, P.A., for Northcliffe Ocean Shipping & Trading, Inc., the intervenor.

Robert Elwell, Esq., Kimberly Foxx, Esq., Gordon Ivins, Esq., and Kelly McKallagat, Esq., Department of the Navy, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that the awardee's proposed fuel price was unrealistically low fails to state a valid basis for protest where the solicitation provided for the award of fixed-price contract and did not provide for a price realism analysis.

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### DECISION

Beyel Brothers, Inc., of Cocoa, Florida, protests the award of a contract to Northcliffe Ocean Shipping and Trading Company, Inc. (NOSAT), of Saint Simons Island, Georgia, under request for proposals (RFP) No. N00033-11-R-5504, issued by the Department of the Navy, Military Sealift Command (MSC), for ship charter services.

We deny the protest.

### BACKGROUND

The RFP, issued as a small business set-aside, provided for the award of a fixed-price contract for the charter of a vessel to perform logistical support resupply services for the Atlantic Undersea Test and Evaluation Center, Andros Island,

Bahamas.<sup>1</sup> Offerors were informed that the agency would charter either a “roll-on/roll-off” vessel or a tug/barge combination for a base period of one year with 3 option years and a single 11-month option. See Contracting Officer’s (CO) Statement at 1.

The RFP provided that award would be made to the firm submitting the lowest-priced, technically-acceptable proposal. The following non-price factors were identified for evaluating the acceptability of proposals: technical acceptability (compliance with vessel minimum requirements); past performance; and compliance with solicitation requirements. RFP at 133-35. Offerors were informed that the lowest evaluated price would be computed by adding the offeror’s charter hire rates for the entire contract period (base plus option periods) and the cost of fuel.<sup>2</sup> Id. at 136.

With regard to the cost of fuel, the RFP required offerors to provide fuel consumption rates for its proposed vessel.<sup>3</sup> The RFP informed offerors that fuel consumption rates would be deemed warranties: if the actual performance of the vessel failed to meet the warranties, the agency’s remedies included, among other things, an equitable adjustment to the charter hire rate. Id. at 23. The RFP also informed offerors that their proposed prices and fuel consumption rates would be evaluated for reasonableness.<sup>4</sup> The RFP stated that fuel consumption costs would be calculated using the most current Defense Logistics Agency – Energy standard prices and certain fuel conversion factors. Id. at 136. In this regard, the RFP provided DLA’s current fuel prices and conversion factors for various types of fuel. Id.

The agency received proposals from two offerors, Beyel and NOSAT. Both firms proposed a tug and barge combination. NOSAT offered the tug, YBOR City, and

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<sup>1</sup> The RFP was amended 21 times. Our citations to the RFP are to the conformed copy of the RFP that includes all amendments.

<sup>2</sup> The total evaluated price was also to include the price of any “ballast bonuses,” if offered. RFP at 136. Because no firm offered such bonuses, they are not discussed further in this decision.

<sup>3</sup> The RFP required offerors to submit various fuel consumption rates for certain situations (such as, average fuel consumption for vessels laden or carrying ballast, auxiliaries underway fuel consumption, and idle period fuel consumption). See RFP at 9.

<sup>4</sup> The RFP, as originally issued, stated that fuel consumption rates would be evaluated for realism. The RFP was amended, however, to provide that fuel consumption rates would be evaluated only for reasonableness. See RFP, amend. 1, at 40.

barge, MB 1219. The agency conducted discussions with the offerors. Each firm was provided with a number of discussion items, including the requirement to provide up-to-date certifications for their vessels. The firms were also reminded that their fuel consumption rates were warranties, and that any breach of the warranty would be subject to the remedies contained in the RFP. See Agency Report (AR), Tab 26, Beyel Discussion Letter; Tab 27, NOSAT Discussion Letter.

In its response to the discussion items, NOSAT proposed a different tug/barge combination (the tug, [DELETED], and the barge, [DELETED]), and provided certifications for this combination as well as the one previously proposed. AR, Tab 41, sect. 2, NOSAT Vessel Certifications. Subsequently, the agency closed discussions, and requested final revised proposals. RFP amend. 20. In its final revised proposal, NOSAT again proposed to provide the YBOR City tug.

The final revised proposals were evaluated as follows:

	<b>Beyel</b>	<b>NOSAT</b>
Charter Hire	[DELETED]	[DELETED]
Fuel	[DELETED]	[DELETED]
<b>Total Evaluated Price</b>	<b>\$13,398,000</b>	<b>\$10,560,867</b>

AR, Tab 29, Price Evaluation Report, at 3.

Both proposals were found technically acceptable. The contract was awarded to NOSAT, and this protest followed.

## DISCUSSION

Beyel challenges the agency's price evaluation associated with NOSAT's fuel consumption rates. In this regard, Beyel asserts that NOSAT's initial proposal included a price based on fuel consumption rates of [DELETED] barrels per day for average fuel consumption (laden and ballast), and yet the awardee increased its rates by over 500% in its final revised proposal, offering fuel consumption rates of [DELETED] barrels per day. Beyel also contends that NOSAT's fuel consumption rates are too low and notes that its proposed price was based on fuel consumption rates (laden and ballast) of [DELETED] barrels per day.

In response, the agency and intervenor explain that NOSAT's original proposal incorrectly provided its fuel consumption rate in tons per day, not barrels per day as called for in the RFP. Intervenor's Comment, exhib. 1, Declaration of NOSAT President; Supp. CO's Statement at 1. NOSAT points out that, after applying the DLA conversion factors contained in the RFP (converting from tons to barrels), NOSAT's laden and ballast per day consumption rates remained the same. Intervenor's Comments, exhib. 1, Declaration of NOSAT President.

Beyel does not challenge the agency's calculation of NOSAT's fuel consumption rates, but argues that the agency failed to properly evaluate the reasonableness of NOSAT's fuel consumption rates. Beyel contends that NOSAT's final fuel consumption rates, which are lower than its own rate and the government's estimate, increase the risk of poor performance and are unreasonable "as a matter of law."<sup>5</sup> Protester's Supp. Comments at 3.

Beyel's argument reflects a lack of understanding as to the distinction between price reasonableness and realism. The purpose of a price reasonableness review in a competition for the award of a fixed-price contract is to determine whether the prices offered are too high, as opposed to too low. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3; WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 4 n.2. Arguments, such as the one raised by Beyel here, that an agency did not perform an appropriate analysis to determine whether prices are too low such that there may be a risk of poor performance concern price realism. C.L. Price & Assocs., Inc., B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3; SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. A price realism evaluation is not required where, as here, a solicitation provides for the award of a fixed-price contract and does not include a requirement for a price realism evaluation. C.L. Price & Assocs., Inc., supra; WorldTravelService, supra, at 3.

Beyel also challenges the award to NOSAT on the basis that NOSAT's final revised proposal was ambiguous as to which tug the firm was proposing. Protester's Supp. Comments at 1. Beyel argues that, in its final revised proposal, NOSAT did not clearly indicate whether it would provide the YBOR City or the [DELETED]. We disagree. NOSAT's final revised proposal identified the YBOR City as the tug it would provide and included pricing sheets and other required information specifically for this vessel. See AR, Tab 41, NOSAT Final Revised Proposal, Feb. 10, 2012. The documents which Beyel references to show that NOSAT proposed the

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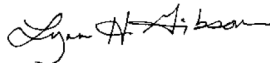
<sup>5</sup> Beyel also argues that the agency improperly evaluated price because the agency failed to include NOSAT's cancellation fees as part of the agency's price evaluation. We disagree. The price evaluation scheme laid out in the RFP did not permit the agency to include such fees in its price evaluation. To the extent the protester believes that such fees should have been included in the price evaluation, Beyel was required to challenge the RFP's price evaluation scheme prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2012); see e.g. Technical & Admin. Servs. Corp., B-279828, July 24, 1998, 98-2 CPD ¶ 85 at 6-7 (protest that agency failed to consider transition costs in price evaluation where the solicitation did not provide for such consideration is untimely).

[DELETED] were provided in response to discussions, and were not included in the firm's final revised proposal.

Beyel also complains that the agency should not have included NOSAT's proposal in the competitive range, because NOSAT's initial proposal should have been found to be technically unacceptable on the basis of its allegedly low fuel consumption rates.<sup>6</sup>

This argument is without merit. Even if the agency concluded that NOSAT's fuel consumption rates were too low such that this was a deficiency (which, as explained above, the agency did not), there is no requirement preventing an agency from including a technically unacceptable proposal in the competitive range for the purpose of conducting discussions. The determination of whether a proposal is in the competitive range is principally a matter within the sound judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. While exclusion of technically unacceptable proposals is permissible, it is not required. Grove Resource Solutions, Inc., B-296228, b-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 3-4. A fundamental purpose in conducting discussions is to determine whether deficient proposals are reasonably susceptible of being made acceptable. Id. at 4.

The protest is denied.<sup>7</sup>



Lynn H. Gibson  
General Counsel

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<sup>6</sup> The protester also argues that the agency did not provide meaningful discussions. In this regard, Beyel maintains that the agency should have informed NOSAT during discussions that its fuel consumption rate was unreasonably low. We find no merit to this argument as, explained above, the RFP contained no requirement that the agency analyze whether NOSAT's fuel consumption rates were too low.

<sup>7</sup> Beyel also contends that NOSAT's proposal should have been rejected as unbalanced. In support of this, Beyel points to the fact that NOSAT's price for its charter rate drops approximately [DELETED] for the third and fourth options years. There is no merit to this argument here. Unbalanced pricing exists where, despite an acceptable total evaluated price, the price of one or more are significantly overstated or understated as indicated by the application of cost or price analysis techniques. See Federal Acquisition Regulation (FAR) § 15.404-1(g)(1). There is no indication that NOSAT's prices were significantly understated.