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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: Aegis Defence Services, Ltd.

File: B-403226; B-403226.2; B-403226.3

Date: October 1, 2010

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Ron R. Hutchinson, Esq., Doyle & Bachman LLP, for TigerSwan, Inc., an intervenor.
CPT Bridget E. Keenan, Department of the Army, 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

Agency reasonably determined that awardee's pricing was realistic, notwithstanding the fact that it was below that of the other technically acceptable offerors, where the agency determined that awardee's lower pricing was due to its particular staffing approach, which allowed it to significantly reduce its costs.

DECISION

Aegis Defence Services, Ltd., of London, United Kingdom, protests the award of a contract to TigerSwan, Inc., of Apex, North Carolina, under request for proposals (RFP) No. W91GDW-10-R-6008, issued by the Department of Defense, CENTCOM Contracting Command, for personal security detail (PSD) services for the Task Force for Business and Stability Operations (TFBSO) in Iraq. Aegis challenges the agency's technical evaluation, price realism evaluation, and best value selection decision.

We deny the protest.

BACKGROUND

On June 7, 2010, CENTCOM issued the solicitation, which contemplates the award of a firm fixed-price contract to provide, for a 7-month period, personal security services needed for secure transportation and close proximity protection for designated officials throughout the country of Iraq. In order to facilitate the safe and secure movement of TFBSO personnel and guests throughout Iraq, the contractor is required to provide mobile security teams "capable of operating on a stand-alone

basis, and able to carry a minimum of four (4) personnel.” RFP, Performance Work Statement (PWS), at 2. While all security teams must be capable of deploying and operating throughout Iraq, the PWS specified that the contractor is required to provide one security team to support operations in Basra, two security teams to support operations in Baghdad, and a “surge” team. Id. Due to security concerns, the PWS specified that “there can be no Local (Iraqi) Nationals on the security teams.” Id.

The RFP provided for award to the offeror whose proposal was determined to be most beneficial to the government based on a consideration of the following factors: (1) technical capability; (2) past performance; and (3) price. Technical capability was to be evaluated on a pass/fail basis, with ratings of acceptable or unacceptable. RFP at 58. Under the past performance factor, which was identified as “significantly more important than cost or price considerations,” the RFP specified that the agency would assess its confidence in an offeror’s ability to successfully accomplish the proposed effort based on the offeror’s recent (within the past 2 years) performance of Joint Contracting Command Iraq/Afghanistan personal security detail and convoy security contracts of a similar size and scope. RFP at 51, 57, 59. Based on that evaluation, the agency would rate offerors’ past performance as outstanding, good, acceptable, marginal, poor, or neutral. As it relates to the protest, the RFP defined a rating of outstanding to mean that the agency had “essentially no doubt” that the offeror would successfully perform the required effort based on the offeror’s performance record. The RFP also specified that a rating of neutral would be assigned to an offeror without any recent and relevant past performance and that the rating would neither benefit nor harm the offeror. RFP at 60.

With regard to price, offerors were required to submit fixed prices for 17 separate contract line item numbers (CLIN). As it relates to the protest, CLINs 0002 and 0003 sought fixed unit prices on a monthly basis (for a total of 7 months) for the Basra and Baghdad security teams, respectively. The RFP stated that the agency would evaluate the reasonableness and affordability of an offeror’s proposed total evaluated price, which was to be based on the sum of the 17 CLINs. Offerors were also warned that the agency “may reject a proposal that is evaluated to [have an] . . . unrealistically high or low price when compared to contracting officials estimates, such that the proposal is deemed to reflect an inherent lack of competence or failure to comprehend the complexity, scope or risks of the program.” RFP at 58.

Upon receipt of all proposals, the agency conducted an initial evaluation of firms’ technical proposals and determined that the proposals submitted by three offerors (including Aegis and TigerSwan) were technically acceptable. The agency limited its past performance evaluation to these three technically acceptable firms. Based on its review of their past performance information, the agency assigned Aegis a rating of outstanding and TigerSwan a neutral rating.

TigerSwan's total price was \$5,678,082.44, which was less than the total prices proposed by the other two offerors (Aegis' total price was \$8,754,411, while the third offeror's total price was \$15,940,217.35). The record reflects that the contracting officer reviewed the offerors' pricing for realism principally by comparing the prices of each of the three technically acceptable offerors on a CLIN by CLIN basis and considering pricing for a prior task order awarded to the [DELETED] for convoy security. Although an independent government cost estimate (IGCE) had been prepared, the contracting officer gave little weight to the IGCE because the contracting officer understood that it had been prepared based solely on the pricing of the incumbent contractor and because it failed to account for a change in the requirements under the current RFP, which did not allow for use of local nationals (LN) on security teams. Agency Report (AR), Tab 10, Source Selection Decision, at 4.

Upon review of the firms' CLIN pricing, the contracting officer found that TigerSwan's lower total price was primarily due to its significantly lower pricing for the security detail CLINs (0002 and 0003). Specifically, the firms' extended prices for these two CLINs were as follows:

	CLIN 0002 Basra Security Team	CLIN 0003 Baghdad Security Teams
TigerSwan	\$303,455.74	\$492,229.08
Aegis	[DELETED]	[DELETED]
Offeror #3	[DELETED]	[DELETED]

AR, Tab 9, Price Realism Analysis, at 5.

Although not required by the RFP, TigerSwan's price proposal included detailed cost information for CLINs 0002 and 0003, which included the daily rates and total direct costs for each of the various security team members identified by position (i.e. team leader, second in command, team member). TigerSwan's price proposal also included information regarding its indirect costs and indicated that it was limiting its profit to [DELETED]. TigerSwan Price Proposal, Attach. 2, Price Matrix, at 7, 11-13.

The contracting officer concluded that TigerSwan's price advantage for CLINs 0002 and 0003 was driven by two factors. The first, and principal, driver underpinning TigerSwan's ability to achieve a significantly lower price stemmed from TigerSwan's decision to staff its security teams largely with third country nationals (TCN) (specifically, [DELETED]), as opposed to expatriates (U.S. nationals). The TCNs proposed by TigerSwan were significantly less expensive than the expatriates as evidenced in TigerSwan's price proposal, reflecting that the daily rate for an expatriate is approximately [DELETED] times higher than the daily rate for a TCN.

In this regard, the contracting officer's price realism analysis noted that TigerSwan's Basra and Baghdad security teams were composed of [DELETED] and [DELETED] TCNs, with an average price of approximately [DELETED] per person per month.¹ AR, Tab 9, Price Realism Analysis, at 5. According to the contracting officer's price realism analysis, TigerSwan's per person/per month pricing for its security teams was "in line" with a previous task order for convoy security awarded to the [DELETED], which, like TigerSwan, utilized security teams largely devoid of expatriates (the [DELETED] teams were primarily composed of TCNs and LNs, with only [DELETED] member per team).² By way of contrast, the contracting officer found that Aegis, which staffed its security teams exclusively with [DELETED], had a much higher per person/per month price of [DELETED]. *Id.* The contracting officer also noted that TigerSwan's profit was only [DELETED], which was lower than "the regular rate of [DELETED]." *Id.*

Given TigerSwan's particular staffing approach, which was considered to be technically acceptable, and low profit rate, the contracting officer concluded that TigerSwan's pricing was realistic, notwithstanding the fact that its pricing for CLINs 0002 and 0003 was significantly below that of the other technically acceptable offerors. AR, Tab 10, Source Selection Decision, at 4.

The source selection authority (SSA) decided to make award to TigerSwan, concluding that its offer represented the best value to the government. In this regard, the SSA specifically considered TigerSwan's neutral past performance rating

¹ TigerSwan's monthly unit price for CLIN 0002, Basra Security Team, was \$43,350.82, which, when divided by [DELETED] (the number of members on the security team), yields an average monthly per person price of [DELETED]. The record reflects that the contracting officer miscalculated the average monthly per person price for TigerSwan's Baghdad Security Team, CLIN 0003. TigerSwan's monthly price was \$70,318.44, which, when divided by [DELETED] (the total number of security team members), yields an average per person monthly price of [DELETED]. The record reflects that the difference in the average per person/per month price was due to the fact that the Baghdad teams utilize a [DELETED] of TCNs, which are less expensive than expatriates, as compared to the Basra team.

² As explained later in the decision, the record reflects that the contracting officer also calculated a per person monthly price for the [DELETED] task order, but used the wrong number of team members in his calculation. Specifically, the contracting officer calculated the per person monthly rate for the [DELETED] task order to be approximately [DELETED], based a monthly price of [DELETED] and [DELETED] team members. The record, however, reflects that the [DELETED] security teams were composed of only [DELETED] members (not [DELETED]) and that the actual per person monthly rate was [DELETED] ([DELETED] divided by [DELETED] team members).

as well as Aegis' outstanding past performance rating, but in the SSA's judgment, Aegis' superior past performance could not overcome TigerSwan's significant price advantage. Id. Upon learning the agency's award decision, Aegis filed this protest.

DISCUSSION

Aegis challenges the award to TigerSwan in three respects. First, Aegis argues that the agency improperly determined that TigerSwan's proposal was technically acceptable. Second, Aegis challenges the agency's determination that TigerSwan's low price was realistic. Third, Aegis maintains that the agency's best value decision was unreasonable.

Technical Acceptability

In challenging the technical acceptability of TigerSwan's proposal, Aegis focuses on the composition of TigerSwan's security teams. According to Aegis, TigerSwan's Baghdad security teams were understaffed since the RFP required two "stand-alone" teams for Baghdad, yet TigerSwan [DELETED] proposed [DELETED] team leader for [DELETED] teams, thereby leaving [DELETED] a leader. In addition, Aegis asserts that TigerSwan's use of TCNs--specifically, [DELETED]-- should have rendered its proposal unacceptable because Iraqi security forces frequently have a difficult relationship with TCNs from [DELETED].

In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. Our Office affords particular deference to the technical expertise of agency personnel in cases such as this contract for personal security services where their technical judgments involve matters of human life and safety. Sig Sauer, Inc., B-402339.3, July 23, 2010, 2010 CPD ¶ 184 at 5-6. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

As noted above, technical proposals were evaluated on a pass/fail basis and the agency determined that TigerSwan's technical approach was acceptable. The record reflects that TigerSwan proposed a total of [DELETED] individuals to cover the requirement for two security teams in Baghdad. TigerSwan's proposal identified [DELETED] team leader, and established that each separate security team would have [DELETED] with [DELETED] team members. TigerSwan Technical Proposal at 15. In addition, TigerSwan assigned [DELETED] officer to the TFBSO director. While Aegis asserts that this staffing mix is insufficient because, when viewed separately, [DELETED] of TigerSwan's team's would not have [DELETED], the RFP did not specify a minimum number of individuals for a security team, nor did it

specify that each team must have a specifically designated team leader. Thus, by the terms of the RFP, there was nothing inherently unacceptable in TigerSwan's approach, which, when viewed on a stand-alone basis, would result in [DELETED] team composed of [DELETED] individuals, with [DELETED] the assistant team leaders [DELETED]. Given that the agency found TigerSwan's approach technically acceptable, and the approach was not contrary to the terms of the RFP, we have no basis to conclude that the agency's evaluation of TigerSwan's proposal was unreasonable or otherwise improper.

Similarly, we have no basis to conclude that TigerSwan's use of [DELETED] rendered its proposal technically unacceptable. While the RFP precluded offerors from proposing local Iraqi nationals on the security teams, it did not preclude the use of TCNs.³ Moreover, TigerSwan's proposal expressly identified the fact that it was using [DELETED], and the record reflects that one of the technical evaluators specifically considered this fact, noting that it would overcome language—but perhaps not cultural—barriers. Supplemental AR, Technical Evaluator 2 Worksheet. While Aegis may disagree with the agency's assessment in this regard, its disagreement does not render the agency's evaluation unreasonable.

Price Realism

Aegis challenges the agency's conclusion that TigerSwan's lower price was realistic notwithstanding its significantly lower pricing for the security team CLINs. In this regard, Aegis asserts that the agency improperly failed to use the IGCE in its price realism analysis. Aegis also argues that the contracting officer's consideration of the [DELETED] task order to assess the realism of TigerSwan's pricing was unreasonable because the [DELETED] task order did not provide a valid basis for comparison since it involved convoy security services, which are less complex and expensive as compared with the personal security detail services required by the RFP, and because the contracting officer misunderstood and miscalculated the [DELETED] security team pricing.

Where an RFP contemplates the award of a fixed-price contract, an agency may, as here, provide in the solicitation for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal. Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33 at 6. Although the Federal Acquisition Regulation (FAR) does not use the term "price realism," it states that cost realism analysis may

³ Aegis also suggests that TigerSwan's proposal was defective because it proposed to use LNs as camp guards. The RFP, however, only precluded the use of LNs on the security teams, see RFP, PWS, at 2 (stating "there can be no Local (Iraqi) Nationals on the security teams"); TigerSwan's proposal complied with this RFP prohibition given that its security teams were composed entirely of expatriates and TCNs.

be used to evaluate fixed-price proposals for purposes of assessing proposal risk, but not for the purpose of adjusting an offeror's evaluated price. FAR § 15.404-1(d)(3).

As our Office has repeatedly held, the depth of an agency's price realism is a matter within the sound exercise of the agency's discretion. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 4-5. In reviewing protests challenging price realism evaluations, our focus is on whether the agency's review was reasonable and consistent with the terms of the solicitation. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5.

Here, TigerSwan's pricing for its security teams was significantly lower than that of the other two offerors and the IGCE.⁴ The record reflects that the price difference stemmed primarily from TigerSwan's use of a different staffing approach, one which was based on a much less expensive workforce through its employment of TCNs, as opposed to expatriates. Given this difference in approach, simply comparing TigerSwan's pricing with the other offerors' pricing would not have been a valid approach to evaluating TigerSwan's pricing for realism. Similarly, the record reflects that the CO considered the IGCE as part of his realism assessment, but reasonably gave it "little weight" due, in part, to the fact that the IGCE was derived from the incumbent contract pricing, which was based on the extensive use of expatriate staffing for the security teams, whereas TigerSwan's pricing was premised on staffing its security team largely with TCNs. AR, Tab 10, Source Selection Decision, at 4.

Recognizing the problem with comparing TigerSwan's pricing with the other offerors' pricing and the IGCE, the agency sought to account for the different staffing approaches in its realism analysis by comparing TigerSwan's pricing with the pricing for the [DELETED] task order, where the security teams were composed primarily of TCNs and LNs as opposed to the significantly more expensive expatriates, an approach more closely aligned with the staffing approach used by TigerSwan.⁵

⁴ The IGCE reflected a 6-month total cost of approximately \$8.8 million. AR, Tab 6, IGCE.

⁵ Throughout its protest, Aegis argues that the [DELETED] task order does not provide a valid basis for comparison since the security teams under the [DELETED] task order were a mix of TCNs and LNs, whereas TigerSwan used exclusively TCNs. According to Aegis, the use of LNs by the [DELETED] would have further increased the price difference between TigerSwan's security teams and those of [DELETED] since LNs are less expensive than TCNs. In our view, this difference appears to be of little significance where the only evidence in the record regarding their relative pay rates reflects that daily pay rates for LNs and the TCNs used by TigerSwan were roughly comparable (approximately [DELETED], respectively).

As noted above, Aegis contends that the agency misunderstood and miscalculated the [DELETED] task order pricing and argues that the [DELETED] task order did not provide a valid basis for comparison since it involved less complex requirements. After accounting for these issues, Aegis asserts, it should have been apparent to the agency that TigerSwan's pricing actually was substantially lower than the [DELETED] pricing, and thus that TigerSwan's pricing was unrealistic. In our view, the record shows that the agency's realism analysis of TigerSwan's pricing was reasonable.

Aegis maintains that when the contracting officer found that TigerSwan's pricing for CLIN 0003 (\$492,229) was in line with the [DELETED] task order security team price of [DELETED], he failed to appreciate the fact that TigerSwan's CLIN 0003 price reflected a price for two security teams, while the [DELETED] price was for only one security team. After accounting for this difference, Aegis argues, it is apparent that TigerSwan's security team pricing is actually much lower than that of the [DELETED]. The record reflects, however, that the contracting officer's price realism analysis was not based on a comparison of TigerSwan's total CLIN 0003 price for two teams with the [DELETED] total price for a single team. Rather, the contracting officer compared the average per person/per month prices for TigerSwan and the [DELETED], an approach which accounts for the different number of teams reflected in TigerSwan's and the [DELETED]'s total pricing. Using the per person pricing, the contracting officer was able to compare, albeit a somewhat crude comparison, the labor costs of two offerors' security teams, which had a similar staffing composition. Based on this comparison, the contracting officer concluded that TigerSwan's average per person monthly pricing was in line with [DELETED]'s average per person monthly pricing. Aegis' challenge in this regard is therefore without merit.⁶

Aegis argues that the per person monthly price comparison was flawed because the per person/per month price for the [DELETED] task order security team was understated. In this regard, Aegis explains that the contracting officer erroneously calculated the per person price based on a team composed of [DELETED]

⁶ Aegis' arguments suggest a general concern that TigerSwan's low pricing is reflective of labor costs that are too low to perform as promised, thereby raising the risk to the government. We do not think the record supports this conclusion. Specifically, despite the fact that TigerSwan's price proposal identifies its daily staffing rates by position for each position on its security teams (*i.e.*, [DELETED] team leaders, [DELETED] second in command, and [DELETED] security team members), Aegis has not argued or provided any evidence to suggest that any of TigerSwan's particular rates (including rates for expatriates, which Aegis itself proposes to use) are unrealistic, such that TigerSwan could not reasonably hire the personnel it has proposed.

individuals, yet the record reflects that the teams under the [DELETED] task order were composed of only [DELETED] members. Accounting for this difference, Aegis asserts, the average per person price for the [DELETED] security teams should have been [DELETED], not [DELETED].

In our view, the agency's calculation error was not material. The agency specifically concluded that TigerSwan's calculated per person/per month price of [DELETED] was in line with the [DELETED] price calculated for the [DELETED].⁷ This comparison was, by its nature, limited since the [DELETED] pricing was based on fully burdened rates--the agency did not have a breakdown of the [DELETED] rate information (overhead, profit, etc.)--and the contracting officer did not know the country of origin of the TCNs used on the [DELETED] security teams. Moreover, this comparison was made relative to Aegis' much higher average per person monthly price of \$26,631, the other basis of comparison. Given the limited nature, and context, of the agency's comparison, there is nothing to suggest that increasing this difference by \$800 would have led the agency to conclude that TigerSwan's pricing was unrealistic.

Aegis also contends that it was unreasonable to compare pricing for the [DELETED] convoy security task order requirements with the RFP's PSD requirements since the requirements are not similar. To the extent the record indicates that the two requirements are not identical--the [DELETED] task order involved providing convoy escort security teams to protect 20-160 flatbed truck convoys and their drivers while en route to sites throughout Iraq, and the RFP's PSD work requires providing personal protection for individuals traveling throughout Iraq--the RFP established that the agency in fact considered the work to be comparable. Specifically, under the technical capability section, the RFP provided that experience of proposed personnel could be based on experience "in PSD operations or Convoy Security operations which shall carry equal weight when evaluated." RFP at 58. Similarly, the past performance factor provided that the agency's evaluation would be based on an assessment of an offeror's relevant past performance, "which includes PSD or Convoy Security missions." *Id.* at 59. Aegis' challenge to the agency's judgment in this regard constitutes mere disagreement, and does not establish that the agency

⁷ Aegis also maintains that the agency failed to appreciate the fact that there was an even larger gap between TigerSwan's pricing for CLIN 0003 and the pricing under the [DELETED] task order since the average per person/per month price for CLIN 0003 was in fact only [DELETED] (\$70,318.44 per month divided by [DELETED] team members), not [DELETED]. Aegis' reliance on this larger gap is misplaced, however, because it is not reflective of any change in TigerSwan's identified labor costs for its expatriate and TCN staff. Rather, the difference is due solely to TigerSwan's staffing approach, which is based on an even higher ratio of TCNs for CLIN 0003, an approach that the agency concluded was technically acceptable.

acted unreasonably in using the [DELETED] task order as a basis for evaluating TigerSwan's pricing.

Best Value Decision

As a final matter, Aegis challenges the SSA's tradeoff decision. Because the solicitation provided that past performance was significantly more important than price, Aegis believes its own outstanding past performance, when compared with TigerSwan's neutral past performance rating, should have led the agency to select Aegis for award, notwithstanding its higher price.

It is well-settled that an agency properly may select a lower-rated, lower-priced proposal, even where price is a less important evaluation factor than technical merit, where it reasonably concludes that the price premium involved in selecting the higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Thus, a protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, do not establish that the evaluation or source selection was unreasonable. General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8. The record reflects that the SSA specifically considered Aegis' outstanding past performance, yet concluded that it did not outweigh TigerSwan's significant price advantage.⁸ We have no basis to object to the agency's decision in this regard.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁸ Aegis maintains that the SSA erroneously concluded that both TigerSwan and Aegis offered the same services when in fact Aegis had several technical advantages when compared to TigerSwan's technical approach. This argument is misplaced since the RFP provided that the offerors' technical proposals would be evaluated solely for acceptability on pass/fail basis and were not to be considered in the tradeoff decision process.