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

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## Decision

**Matter of:** General Dynamics, American Overseas Marine

**File:** B-401874.14; B-401874.15

**Date:** November 1, 2011

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Kimberly G. Foxx, Esq., Department of the Navy, for the agency.  
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the decision.

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### DIGEST

1. Agency properly did not evaluate fixed-price proposals for price realism where the solicitation did not provide for such an evaluation.
2. Agency properly did not consider in its price evaluation the protester's proposed cost savings with regard to certain items and services where the solicitation did not request any price or cost information regarding these items and did not include any terms providing for the evaluation of these costs.
3. Agency properly considered the availability of certain of the awardee's parent company's resources where there was no provision in the solicitation that precluded offerors from relying on the resources of the corporate parent in performing the contract, and the awardee's proposal represented through its reference to the parent company's resources that the resources would be committed to the contract.
4. The agency's selection of a slightly lower-rated, lower-priced proposal for award of a contract for the operation and maintenance of certain ships is unobjectionable where the evaluation and source selection were adequately documented, consistent with the terms of the solicitation, and reasonably based.

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## DECISION

General Dynamics, American Overseas Marine (AMSEA) protests the award of a contract to Maersk Line, Limited (MLL), under request for proposals (RFP) No. N00033-09-R-3316, issued by the Military Sealift Command (MSC), Department of the Navy, for the maintenance and operation of certain ships. The protester argues that the agency's evaluation of proposals and selection of MLL's proposal for award were unreasonable.

We deny the protest.

## BACKGROUND

The RFP provided for the award of multiple fixed-price plus award fee contracts for the operation and maintenance of up to 11 ships. These ships, referred to as maritime prepositioning force ships, are "strategically placed around the world and loaded with equipment and supplies in support of Army, Navy, Marine Corps, Air Force and Defense Logistics Agency operations." Agency Report (AR) at 3. The solicitation divided the ships into five contract lots on the basis of ship class. The solicitation stated that each lot would be evaluated and awarded separately. This protest involves the award of a contract for Lot 4, which consists of five ships.

The RFP provided that awards would be made on a best-value basis, considering the evaluation factors of technical, past performance, socioeconomic program utilization, and price. The RFP added that in determining which proposal represents the best value to the government, the results of the evaluation under the technical factor would be considered more important than the results under the past performance and socioeconomic program utilization factors; that the results under the past performance and socioeconomic program utilization factors would be considered equal in importance; and that the results under the non-price factors combined would be considered approximately equal to, but slightly more important, than price.

The technical evaluation factor had five subfactors: (1) ship operation and manning, (2) maintenance and repair, (3) contract administration, (4) management of reimbursables and purchasing system, and (5) property management. The first three subfactors were equal in importance and each was more important than the other two equally weighted subfactors. The first four subfactors each had various equally weighted areas that would be considered in evaluating proposals.<sup>1</sup>

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<sup>1</sup> For example, the evaluation of the ship operation and manning subfactor would consider the areas of shipboard operational experience and capability, and shipboard personnel.

The agency received proposals from 12 offerors under the RFP with seven proposals being received for Lot 4. The proposals were evaluated, a competitive range was established, discussions were conducted, and final revised proposals were requested and received. The agency evaluated the proposals, and ultimately selected MLL for award of contracts for Lots 2, 3, 4 and 5. Waterman Steamship Corporation, the incumbent contractor for the Lot 5 vessels, protested the award of Lot 5. In addition, Keystone Prepositioning Services, Inc., the incumbent contractor for the Lot 2 and Lot 3 vessels, and AMSEA, the incumbent contractor for the Lot 4 vessels, protested the awards of Lots 2, 3, 4, and 5. The agency ultimately took corrective action with regard to the protests of the awards to MLL for Lots 2, 3, 4 and 5, and our Office dismissed the protests as academic.

As part of its corrective action concerning Lot 4, the agency reopened and conducted multiple rounds of discussions, and requested, received and evaluated revised proposals. AR at 9-11. The proposals of AMSEA and MLL were evaluated as follows:<sup>2</sup>

	<b>AMSEA</b>	<b>MLL</b>
<b>Technical</b>	<b>Exceptional</b>	<b>Exceptional</b>
-Ship Operation and Manning	Exceptional	Exceptional
-Maintenance and Repair	Exceptional	Exceptional
-Contract Administration	Exceptional	Very Good
-Management of Reimbursables and Purchasing System	Exceptional	Very Good
-Property Management	Very Good	Very Good
<b>Past Performance</b>	<b>Very Good</b>	<b>Very Good</b>
<b>Socioeconomic Program Utilization</b>	<b>Exceptional</b>	<b>Exceptional</b>
<b>Price</b>	<b>\$150.1 Million</b>	<b>\$135.2 Million</b>

Agency Report (AR), Tab 62, Source Selection Evaluation Board (SSEB) Report-Lot 4, at 7-9.

The source selection authority (SSA) determined that MLL’s proposal represented the best value to the government. In doing so, the SSA noted, among other things, that MLL’s “technical proposal satisfies all and exceeds many of the solicitation’s requirements,” and that the “proposal reflects numerous strengths, many of which are attributable to the experience [MLL] has gained in operating and maintaining”

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<sup>2</sup> The possible adjectival ratings under the technical factor were “exceptional,” “very good,” “satisfactory,” “marginal, and “unsatisfactory;” the possible ratings under the past performance factor were “very good,” “satisfactory,” “unsatisfactory,” and “neutral;” and the possible ratings under the socioeconomic program utilization factor were “exceptional,” “satisfactory,” and “unsatisfactory.” AR, Tab 2, Source Selection Plan, at 8-10.

two other classes of Navy ships for 10 and 20 years respectively. AR, Tab 64, Source Selection Decision, at 4. In comparing the proposals of MLL and AMSEA, the SSA recognized and discussed AMSEA's proposal's higher ratings and the reasons behind those ratings, and observed that "[a]s the only company to operate the [Lot 4 class] ships, AMSEA's overall 'Exceptional' technical rating is attributable in part to its unique familiarity and specialized experience with these ships." *Id.* at 5. The SSA ultimately found that "[a]lthough AMSEA's technical proposal is slightly superior to that of [MLL]," he was "unable to identify benefits to the Government that justify payment of AMSEA's higher price (the highest proposed for Lot 4)," and thus selected MLL for award. *Id.* at 8. After requesting and receiving a debriefing, AMSEA filed this protest with our Office.

## DISCUSSION

### Price Evaluation

The protester argues at length that the agency "failed to recognize that [MLL's] proposed price was understated," and that the agency, in evaluating MLL's proposal and selecting MLL for award, improperly "ignored the technical risks associated with accepting such a low proposed price." Protest at 10; *see* Protester's Comments at 5-8; Protester's Supp. Comments at 6-8.

Before awarding a fixed-price contract, an agency is required to determine whether the price offered is fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). An agency's concern in making this determination in a fixed-price environment is primarily whether the offered prices are too high, as opposed to too low, because it is the contractor and not the government that bears the risk that an offeror's low price will not be adequate to meet the costs of performance. *Sterling Servs., Inc.*, B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3.

An agency may, in its discretion, provide for a price realism analysis for the purpose of assessing whether an offeror's price is so low as to evince a lack of understanding of the contract requirements or for assessing risk inherent in an offeror's approach. *METAG Insaat Ticaret A.S.*, B-401844, Dec. 4, 2009, 2010 CPD ¶ 86 at 6. However, offerors competing for award of a fixed-price contract must be given reasonable notice that a business decision to submit a low-priced proposal will be considered as reflecting on their understanding or risk associated with their proposal. *Milani Constr., Inc.*, B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 4; *CSE Constr.*, B-291268.2, Dec. 16, 2002, 2002 CPD ¶ 207 at 4-5. Where a solicitation for a fixed-price contract omits a provision for realism, but requests detailed cost or pricing information, we have found that an agency may properly consider whether an unreasonably low price poses proposal risk, if the solicitation, in either the technical or price factors, provides for the evaluation of an offeror's understanding of the requirements. *METAG Insaat Ticaret A.S.*, *supra*; *SEEMA, Inc.*, B-277988, Dec. 16, 1997, 98-1 CPD ¶ 12 at 5. Conversely, where the solicitation lacks either a technical or price evaluation factor that provides for the offerors' understanding of the requirements,

and the solicitation also does not require detailed cost or pricing information, then the agency may not consider whether unreasonably low prices pose proposal risk. Milani Constr., Inc., supra; CSE Constr., supra.

As recognized by the protester, the RFP here “did not require a price or cost realism analysis,” but rather, provided only that “[e]ach offeror’s price proposal will be evaluated for price reasonableness.” Protester’s Comments at 6; see RFP at 131. Moreover, the solicitation did not request the submission of cost or pricing data, and in fact expressly stated that the “[s]ubmission of cost or pricing data is not required.” RFP at 115. As such, the performance of a price realism analysis here would have been inconsistent with the terms of the solicitation and thus improper.

The protester, while recognizing that the performance of a price realism analysis would have been inconsistent with the terms of the solicitation, argues that the agency nevertheless expressly concluded that each offerors’ proposed price, including MLL’s, was realistic. In support of this assertion, the protester points to a sentence on the last page of the agency’s 19-page (without attachments) final price report that provides as follows: “The Contracting Officer, after reviewing the final proposal revisions feels confident that all offerors proposed prices reflect their understanding of the requirement and reflect their intended prices.” AR, Tab 58, Final Price Report, at 19. The protester asserts here that because “[t]his conclusion could only be reached based on a price realism analysis,” and because no price realism analysis was performed, the agency’s evaluation and source selection were “tainted” and therefore unreasonable. Protester’s Supp. Comments at 6-7; see Protester’s Comments at 6.

This argument is meritless. Besides the above-quoted statement in the final price report, the evaluation record is devoid of any other reference or statement that could be construed as providing or indicating that a price realism evaluation was performed, or that any or all of the offerors’ proposed prices were determined realistic. Thus, we cannot find on the record here that the above-referenced sentence in the final price report “tainted” the evaluation or source selection by misleading those involved into believing that a price realism evaluation had in fact been performed and the offerors’ proposed prices had been found realistic.

The protester also argues that the agency’s price evaluation “failed to adequately consider the [DELETED] in savings to the Navy in reimbursable (or non-fixed) costs presented in AMSEA’s proposal.” Protest at 13. The protester explains that “AMSEA is uniquely positioned” to achieve cost savings for certain of the supplies and services identified in the solicitation as “reimbursable items,” that is, for items that

during the performance of the contract the contractor will be reimbursed “only for the actual price paid.”<sup>3</sup> Protest at 14; RFP at 3-5, 78-79.

This argument is also without merit. As the agency points out, the solicitation did not request cost or price information regarding any of the identified reimbursable items or services, nor did the RFP’s evaluation scheme provide for the consideration of such costs. As such, the consideration of AMSEA’s claimed savings, which the agency argues are speculative in any event, would have been inconsistent with the terms of the solicitation and thus improper. Marquette Medical Sys., Inc., B-277827.5; B-277827.7, April 29, 1999, 99-1 CPD ¶ 90 at 7. Although procuring agencies have broad discretion to determine the evaluation scheme they will use, they do not have the discretion to announce in the solicitation that one scheme will be used, and then follow another in the actual evaluation. 10 U.S.C. § 2305(b)(1) (2006); Marquette Medical Sys., Inc., *supra*, at 6.

#### Past Performance Evaluation

AMSEA argues that the agency’s evaluation of AMSEA’s and MLL’s proposals under the past performance factor was unreasonable. AMSEA contends that the agency, in evaluating both AMSEA’s and MLL’s proposals as “very good” under the past performance factor, “improperly created a false equivalence between the two offerors,” based upon AMSEA’s view that its record of past performance is “demonstrably superior to that of MLL.” Protester’s Supp. Comments at 14. In support of its contentions, the protester points to the narrative explanations and past performance response matrix set forth in the agency’s final past performance report, and notes, among other things, that it received better ratings from its references than did MLL. Protester’s Comments at 16-18; Protester’s Supp. Comments at 14-17; see AR, Tab 57, Final Past Performance Report, at 7-9, 18-23, encl. 1, Government Past Performance Response Matrix.

Where a protester challenges an agency’s past performance evaluation, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation’s stated evaluation factors and applicable statutes and regulations. Although an agency is not required to identify and consider each and every piece of past performance information, it must consider information that is reasonably available and relevant as contemplated by the terms of the solicitation. Where an agency has considered reasonably available and relevant past performance information, its judgments regarding the relative merits of competing offerors’ past performance are primarily matters within the contracting agency’s discretion, and the protester’s mere disagreement with such judgments does not establish a basis for

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<sup>3</sup> For example, the solicitation identifies “shoreside utility services” and “trash disposal” as reimbursable items for which the contractor will be reimbursed “only for the actual price paid.” RFP at 3-4, 78.

our Office to sustain a protest. Pemco Aeroplex, Inc., B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 7-8; recon. denied, Pemco Aeroplex, Inc., B-310372.2, Feb. 1, 2008, 2008 CPD ¶ 24.

The RFP requested that each offeror's proposal include past performance data consisting of, among other things, "a list of present and past contracts most relevant to the effort required by this RFP including contract number, period of performance and the contracting agency or company name." RFP at 125. Offerors were also required to complete certain forms for each contract listed, and past performance questionnaires to be completed by the appropriate reference. Id. Offerors were informed that the agency would consider the information provided, as well as "other sources of information," such as "PPIRS reports."<sup>4</sup> Id. at 130. In performing its evaluation, the record reflects that the agency considered the currency and relevancy of the offerors' performance. AR, Tab 57, Final Past Performance Report, at 3. In this regard, the agency noted that "performance occurring after 2005" is "more current and hence more relevant than older past performance," and that "[p]ast performance becomes more relevant as the vessel(s) and contract(s) . . . become more similar to the vessel type, requirements, and contract type under the solicitation" here. Id.

The agency's past performance evaluation notes that AMSEA provided information on three completed government contracts and six ongoing government contracts. In evaluating AMSEA's proposal as "very good" under the past performance factor, the agency received and reviewed "seven past performance questionnaires and one PPIRS" regarding AMSEA, and also considered "[i]nformation contained in five additional PPIRS found for AMSEA [that] evaluated performance occurring prior to 2005." Id. at 7. The specific information considered included that pertaining to AMSEA's performance as the long-time incumbent contractor for the operation and maintenance of the Lot 4 ships that are the subject of this RFP, and for which AMSEA received ratings of "very good" in every category assessed. The past performance information considered by the agency also included AMSEA's performance as the contractor from November 2000 through November 2005 for the operation and maintenance of the Lot 2 ships, for which AMSEA also received ratings of "very good" for every category assessed. Id. at 8. The agency concluded its evaluation of AMSEA's past performance by noting that "[t]he past performance feedback received in both questionnaires and PPIRS reports indicates AMSEA's performance in operating these vessels has been consistently highly rated indicating that little doubt exists that this offeror would be able to successfully perform the

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<sup>4</sup> The Past Performance Information Retrieval System (PPIRS) is a web-enabled, government-wide application that collects quantifiable delivery and quality past performance information. FAR § 42.1503; Solers, Inc., B-404032.3; B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 10 n.12.

required effort,” and accordingly, assigned the highest available rating of “very good” to AMSEA under the past performance factor. Id. at 9.

With regard to MLL, the agency’s past performance evaluation notes that MLL provided information on nine completed government contracts and one ongoing government contract, and that the agency received and reviewed four past performance questionnaires and 12 PPIRS reports for MLL. Id. at 18. The record reflects that the agency also considered eight additional PPIRS reports regarding MLL’s performance prior to 2005. Id. at 19. Although MLL also received a “very good” rating under the past performance factor, the evaluation record notes a number of instances where the completed questionnaires had assessed MLL’s performance under certain categories as “satisfactory.” For example, the record reflects that MLL has operated and maintained five maritime prepositioning force ships for the past 25 years. The completed questionnaire for these contracts provided that MLL’s “performance met and exceeded contract requirements and has been marked by professionalism and expertise,” but also noted, in evaluating certain aspects of MLL’s performance as “satisfactory,” that MLL’s performance had been inconsistent “over the last couple of years,” due to changes in key personnel and responsiveness. Id. Similar concerns were expressed regarding MLL’s performance under another contract for ships similar to the Lot 4 ships here, and performed by MLL between September 2002 and December 2008. Specifically, while one completed questionnaire regarding this contract gave MLL the highest ratings available under every category, the three other questionnaires received here evaluated certain aspects of MLL’s performance as “satisfactory,” noting that while MLL’s performance had generally been superior and had exceeded requirements, there had been certain concerns with MLL’s performance during the last year of the contract. Id. at 20. The agency ultimately found that despite these instances of “satisfactory” performance, MLL’s record of performance, including its 25 years of operating and maintaining the five ships mentioned above, evidenced that MLL “has been consistently highly rated in performance of these contracts indicating that little doubt exists that [MLL] would be able to successfully perform the required effort.” Id. at 23. The agency thus rated MLL’s past performance as “very good” overall. Id.

In reaching its conclusions and making its recommendations regarding the merits of the seven competing proposals, the SSEB noted that each of the offerors received ratings of “very good” under the past performance factor. AR, Tab 62, SSEB Report-Lot 4, at 7-8. The SSEB noted, among other things, that AMSEA “consistently received ratings of ‘Very Good’ on recent and relevant past performance information submitted on its behalf,” including past performance information pertaining to its performance as the incumbent contractor on the Lot 4 ships, and that “[i]t is apparent from AMSEA’s record that this offeror has consistently met and exceeded contractual requirements.” Id. at 13. With regard to MLL, the SSEB noted that although MLL had experienced “[s]ome recent performance issues . . . due to changes in key personnel and responsiveness,” its “performance has historically been marked by professionalism and expertise and has exceeded requirements.” Id. at 11.

In comparing the merits of the AMSEA's and MLL's proposals under the past performance factors, the SSEB noted that AMSEA had consistently received ratings of "very good" for its performance, and that MLL, while deserving of a "very good" rating overall, had not been "as consistently rated." *Id.* at 16. The SSEB concluded here that because the evaluation reflected MLL's "long record of operating vessels for MSC with success," and the SSEB was thus "confident" that MLL could successfully perform the contract, it was "unable, on the basis of a comparison of the offerors' past performance, to justify paying AMSEA's higher price." *Id.* The record reflects that the SSA, in selecting MLL's proposal for award, considered, concurred with, and adopted the SSEB report. AR, Tab 64, Source Selection Decision, at 1.

In our view, the record reflects that the agency reasonably considered the past performance information pertaining to AMSEA and MLL, and acted reasonably in assigning ratings of "very good" to both proposals. Moreover, the agency recognized that while the proposals merited "very good" ratings, the information regarding AMSEA's past performance was more favorable than that pertaining to MLL. Given the reasonableness of the agency's well-documented evaluation of AMSEA's and MLL's past performance, we have no basis to object to this aspect of the agency's evaluation.

#### Technical Evaluation

AMSEA argues that the agency's evaluation of its and MLL's proposals under the technical evaluation factor was unreasonable. The protester points out that its proposal was evaluated as containing more "strengths" than MLL's proposal (30 strengths for AMSEA and 24 for MLL), and as such, its proposal, which received the same rating of "exceptional" under the technical factor as MLL's proposal, was in reality "far superior to MLL's [proposal]." Protester's Comments at 9-10. The protester further argues that "AMSEA is the only contractor ever to have operated and serviced [the Lot 4] vessels," and "[a]s a result, [MLL] (or any offeror) simply could not achieve technical equivalency with AMSEA." Protest at 16. The protester continues by arguing that its proposal, which received the highest possible rating of "exceptional" under four of the five subfactors to the technical factor and "exceptional" overall, should have been evaluated by the agency as containing numerous other strengths. The protester concludes that "had the Navy conducted a proper evaluation that recognized all of the benefits and strengths offered by AMSEA, the overwhelming superiority of AMSEA's proposal would have precluded award to any other offeror under the Solicitation's best value criterion." Protest at 17.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7. Rather, we will review the record only to determine whether

the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's evaluation judgments does not render those judgments unreasonable. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., *supra*.

With regard to the protesters' general assertions regarding the relative numbers of evaluated strengths, weaknesses, or other discriminators identified by the agency during its evaluation of proposals, our Office has consistently recognized that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Where the evaluation and source selection decision reasonably consider the underlying basis for the ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable, and consistent with the terms of the solicitation, the protester's disagreement over the actual numerical, adjectival, or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. Similarly, the evaluation of proposals and consideration of their relative merit should be based upon a qualitative assessment of proposals consistent with the solicitation's evaluation scheme, and should not be the result of a simple count of the relative strengths and weaknesses assigned to the proposals during the evaluation process. See ITT Corp., Sys. Div., B-310102.6 et al., Dec. 4, 2009, 2010 CPD ¶ 12 at 10; Kellogg Brown & Root Servs., Inc., B-298694.7, June 22, 2007, 2007 CPD ¶ 124 at 5.

As to AMSEA's general assertion that no other offeror could possibly achieve "technical equivalency with AMSEA" given AMSEA's status as the incumbent contractor, we first note that there is nothing in the solicitation that provides for the assignment of credit based upon AMSEA's status as the incumbent. Similarly, under the provisions of this solicitation, there was no basis to, in effect, penalize MLL or any other offeror simply for their status as non-incumbent contractors. See United Concordia Cos., Inc., B-404740, Apr. 27, 2011, 2011 CPD ¶ 97 at 7.

In any event, as the examples below demonstrate, the technical evaluation record includes numerous positive comments highlighting AMSEA's status as the incumbent contractor. For example, the evaluators specifically noted in evaluating AMSEA's proposal as "exceptional" overall under the technical evaluation factor that "AMSEA's technical proposal was rated as EXCEPTIONAL overall because of the offeror's uniquely specialized experience operating prepositioned ships." AR, Tab 59, Final Technical Evaluation Report, at 17. As another example, the agency noted in evaluating AMSEA's proposal as "exceptional" under the ship operations and manning subfactor to the technical factor that "[t]he offeror's strong and thorough understanding of solicitation requirements derives from uniquely specialized experience building and operating [the Lot 4] ships." *Id.* The agency made a similar comment in evaluating AMSEA's proposal as "exceptional" under the maintenance and repair subfactor to the technical factor, stating that "AMSEA's

strong and thorough understanding of the requirements of the solicitation gained through specialized life-cycle management of [the Lot 4] and other MSC ships maximizes the potential of successful performance under this contract.” Id. at 19. As a final example here, the agency also noted in evaluating AMSEA’s proposal as “exceptional” under the contract administration subfactor to the technical factor that “[t]he qualifications of the proposed senior management team, including personnel with long and uniquely specialized experience managing [the Lot 4 ships], significantly exceed solicitation requirements and should maximize the potential of successful performance of this contract.” Id. at 21.

This recognition of the advantages offered by AMSEA’s incumbent contractor status is also reflected in the SSEB report as well as the source selection statement. In this regard, the SSEB as well as the SSA commented, among other things, that “AMSEA’s overall ‘Exceptional’ technical rating is attributable in part to its unique familiarity and specialized experience with [the Lot 4] ships.” AR, Tab 62, Lot 4 SSEB Report, at 17; Tab 64, Source Selection Decision, at 5. In sum, while the RFP did not mandate that AMSEA be rewarded for its incumbent status, or conversely that MLL or any other offeror be penalized for their status as non-incumbent contractors, the record reflects that the agency recognized and considered in a positive manner AMSEA’s status as the long time incumbent contractor during the technical evaluation and source selection.

As indicated, AMSEA also argues that the agency’s evaluation of AMSEA’s and MLL’s technical proposals was unreasonable because the agency assertedly should have credited AMSEA’s proposal with more strengths and MLL’s with less. We have reviewed the protester’s arguments in this regard, and do not find the agency’s evaluation of AMSEA’s and MLL’s proposals under the technical factor and its subfactors to be unreasonable. We discuss some examples below.

AMSEA argues at length that the agency’s evaluation of AMSEA’s and MLL’s proposals under the property management subfactor to the technical evaluation factor was unreasonable and reflected unequal treatment. Specifically, AMSEA points out that in evaluating MLL’s proposal as “very good” under the property management subfactor the agency noted MLL’s maintenance of “a warehouse in Norfolk, VA, used for storage of shore-based spare parts” as a “strength.” AR, Tab 59, Final Technical Evaluation Report, at 40-41. The protester maintains that “[t]here was no legitimate basis for the Agency to assign MLL a strength for its warehouse,” because “[o]ffering a warehouse was an RFP requirement, and MLL did nothing more than meet this requirement.” Protester’s Comments at 12. The protester continues by arguing that, in any event, “if maintenance of [a] warehouse were a valid strength, AMSEA, upon whose warehouse the RFP’s requirement was based, should have received a similar strength.” Id.

The RFP’s statement of work included a section entitled “Contract Administration,” and in that section included a subsection entitled “Ship Delivery, Delivery of Government Property and Familiarization.” RFP at 47-48. This subsection defined a

number of terms, including “Ship Delivery,” “Delivery of Government Property,” and “Phase-in, Phase-out,” and set forth a number of tasks the successful contractor would be responsible for upon contract phase-in.<sup>5</sup> *Id.* at 47. Included here was a provision describing the contractor’s responsibilities with regard to “onboard government property,” that required, among other things, that the “Contractor shall also be responsible for transferring Shore Based Spares (SBS) from existing locations to the Contractor’s warehouse.” *Id.* at 48 (emphasis deleted).

The section of MLL’s proposal addressing MLL’s proposed approach to property management included a detailed description of MLL’s warehouse, including its size, location, and compliance with applicable “fire suppression/detection and security requirements” as set forth elsewhere in the solicitation. AR, Tab 74, MLL Proposal, Technical Volume, at 31.

The agency explains that it “credited [MLL] for providing a warehouse it currently maintains to store ship spare parts” because it “represents an added benefit to the Government by reducing future performance risks associated with storage of shore-based parts and assur[es] compliance with the property provisions of the RFP.” Agency Supp. Report at 12. The agency points out that, in contrast to MLL’s relatively detailed explanation of its warehouse, AMSEA’s proposal failed to include any information regarding its warehouse. *Id.*

The record confirms that MLL’s proposal provided considerable detail regarding its proposed warehouse and thoroughly addressed its compliance with this aspect of the RFP, whereas AMSEA’s proposal, as explained below, did not. Given the detail provided in MLL’s proposal regarding its proposed warehouse, and the agency’s reasonable belief that this aspect of MLL’s proposal constituted a strength because it assured compliance with terms of the RFP and reduced performance risk, we have no basis to object to the agency’s evaluation here. See L-3 Commc’ns Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 6-7.

The protester’s claim that its proposal should also have merited a “strength” under the property management subfactor because it too offered a warehouse is based upon its contention that the agency knew or should have known that AMSEA would have a warehouse available. The protester argues that this is so because, “as implied in the Solicitation, this requirement was based on *AMSEA’s current Massachusetts warehouse*, which it uses to perform the current contract.” Protester’s Comments at 12.

The protester’s contention here is without merit. An offeror’s technical evaluation is dependent upon the information furnished; there is no legal basis for favoring a firm

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<sup>5</sup> The RFP defined phase-in as “the assumption of all contractual duties and responsibilities by the successful offeror.” RFP at 47.

with presumptions on the basis of its incumbent status. HealthStar VA, PLLC, B-299737, June 22, 2007, 2007 CPD ¶ 114 at 2. It is the offeror's burden to submit an adequately written proposal; an offeror, including an incumbent contractor, must furnish, within its proposal, all information that was requested or necessary to demonstrate its capabilities in response to a solicitation. Id.

Simply put, in contrast to MLL's proposal, AMSEA's proposal did not describe or otherwise mention that its proposal included a warehouse for the storage of certain items. As such, the agency's assignment of a strength for MLL's proposal for providing such detail, and not considering AMSEA's proposal which did not reference its warehouse in the same manner, did not constitute unequal treatment.

The protester argues that the agency unreasonably evaluated MLL's technical proposal because the evaluation includes mention of MLL's parent company (the A.P. Moller-Maersk Group). The protester contends that any credit given to MLL's proposal based upon its association with its parent company was improper because MLL's proposal did "not specify the parental resources that will be used for the contract" and did not expressly "commit any of those global parent resources to contract performance." Protester's Comments at 3.

As pointed out by the protester, the executive summary of MLL's proposal notes that "MLL's parent organization, the A.P. Moller-Maersk Group, has more than 300 offices in 130 countries yielding unparalleled support when called on." AR, Tab 74, MLL Proposal, Technical Volume, at 1. MLL's proposal continues by stating in regard to the ship operations and manning technical evaluation subfactor that "MLL's ability to draw upon A.P. Moller-Maersk's extensive global footprint, with offices in 130 countries, 110,000 employees, and over 105 years of international best-in-class maritime experience gives us unparalleled flexibility and corporate reach back to respond to MSC's needs." Id. at 2. MLL's proposal also points out in reference to the maintenance and repair technical evaluation subfactor that MLL will be able "to realize significant cost savings by leveraging volume that A.P. Moller-Maersk can offer a supplier" due to "frame agreements" A.P. Moller-Maersk has with those suppliers. Id. at 16. As MLL's proposal explains, these frame agreements "provide baseline cost and delivery data to determine the best competitive pricing," and that with these frame agreements, "MLL can ensure reimbursable costs are kept at the lowest possible rate." Id.

The agency's technical evaluation report includes a number of comments regarding MLL's relationship with A.P. Moller-Maersk. In this regard, the report begins with an "overview" section that notes, among other things, that "MLL is a large-business subsidiary of A.P. Moller-Maersk; the parent company operates in over 130 countries with 110,000 employees," and that "[a]s a subsidiary of one of the world's largest shipping organizations, MLL can leverage manning and logistics networks that can favorably contribute to its management of workload in this solicitation." AR, Tab 59, Technical Evaluation Report, at 36. The report adds, in summarizing MLL's proposal under the maintenance and repair technical evaluation subfactor, that "[t]he global

reach of the parent company's logistics networks exceeds solicitation requirements and can be expected to contribute significantly to ship readiness under this contract at reduced cost to the Government," and, in evaluating MLL's proposal under the management of reimbursables and purchasing system technical evaluation subfactor, that "MLL's parent company provides access to a diversified global network of transportation, logistics and repair providers." Id. at 38, 40.

As pointed out by the protester, the SSEB report, and the SSA through the adoption of the SSEB report, made similar findings. For example the SSEB noted in considering MLL's proposal generally under the technical evaluation factor that "[MLL] is a subsidiary of a world-wide shipping conglomerate." AR, Tab 62, SSEB Report-Lot 4, at 10. The SSEB report continues by specifically finding, under the management of reimbursables and purchasing system subfactor, that "[t]hrough its parent company, [MLL] has access to a diversified global network of transportation, logistics and repair providers," and that the "[u]se of [DELETED] by [MLL] and its parent company allows this offeror to rapidly leverage scale economies with suppliers of repair parts, consumables, and subsistence items." Id. at 11.

The protester contends that any credit accorded to MLL due to its parent company was misplaced given the protester's view that GAO's "decisions on this issue are clear." Protester's Comments at 2. Specifically, the protester points to decisions of our Office where we have held, as a general matter, that "an agency may properly attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that resources of the parent or affiliate will affect the performance of the offeror." See Staff Tech, Inc., B-403035.2; B-403035.3, Sept. 20, 2010, 2010 CPD ¶ 233 at 4-5; see also Bering Straits Technical Servs., LLC, B-401560.3; B-401560.4, Oct. 7, 2009, 2009 CPD ¶ 201 at 4 (agency acted reasonably in not crediting offeror with past performance of affiliated companies where the offeror's proposal failed to demonstrate that resources of those entities would affect contract performance).

The decisions of our Office pointed to by the protester concern the propriety of an agency's determination as to whether to consider one company's performance in its evaluation of another company's performance under a past performance or experience evaluation factor. In this regard, our Office has found that in the context of a past performance evaluation, an agency must consider the nature and extent of the relationship between the two companies--in particular, whether the work force, management, facilities, or other resources of one may affect contract performance by the other. NAHB Research Center, Inc., B-278876.2, May 4, 1998, 98-1 CPD ¶ 150 at 4. As indicated, we have found that it would be inappropriate to consider a company's performance record where that record does not bear on the likelihood of successful performance by the offeror. Id. We have also found that it would be appropriate to consider a company's performance record where it will be involved in the contract effort or where it shares management with an offeror. Id.

Our Office has employed a less stringent standard in reviewing whether an agency's consideration of the availability of a parent or affiliated company's resources was appropriate in the context of a technical evaluation. In those cases, our Office has stated that absent a provision in a solicitation that precluded offerors from relying on the resources of the corporate parent or affiliate in performing the contract, the consideration of such was appropriate where the offeror represented in its proposal the resources of the parent or affiliate company would be committed to the contract. Physician Corp. of Am., B-270698 et al., Apr. 10, 1996, 96-1 CPD ¶ 198 at 13; Military Newspapers of Virginia, B-249381.2, Jan. 5, 1993, 93-1 CPD ¶ 5 at 4.

As discussed above, MLL's proposal specifically referred in certain sections of its proposal to the availability of certain A.P. Moller-Maersk's resources. The record reflects that the agency's evaluation of MLL's proposal and consideration of A.P. Moller-Maersk's resources in that evaluation was consistent with the manner in which they were described in the MLL's proposal. We note that the solicitation did not establish a required form to be used to document a parent's commitment of resources to the contract, and that MLL's proposal referred to and generally represented in the areas noted above that certain of its parent company's resources would be available during MLL's performance of the contract. Given this, we have no basis on which to find the agency's relatively limited consideration of MLL's parent company's resources objectionable.

Nor can we conclude that this aspect of the agency's evaluation reflected disparate treatment. In this regard, we note that the technical evaluation report references AMSEA's association with its parent company General Dynamics. Specifically, the report begins with an "overview" of the technical evaluation by commenting that AMSEA is "a large-business subsidiary of General Dynamics." AR, Tab 59, Technical Evaluation Report, at 17. The report continues by specifically noting as a "strength" under the maintenance and repair technical evaluation subfactor that "[a]s part of General Dynamics, AMSEA benefits from corporate synergy including enhanced technical and management support." Id. at 20. The report further comments in summarizing its evaluation of AMSEA's proposal as "exceptional" under the management of reimbursable and purchasing system technical evaluation subfactor that "General Dynamics, the offeror's parent, provides scale and specialization that will benefit this contract." Id. at 22. The SSEB report includes similar positive comments and references to AMSEA's parent company, stating, for example, "the purchasing power of AMSEA's parent company, and the company's practice of [DELETED] should result in scale economies for the Government under a potential contract." AR, Tab 62, SSEB Report-Lot 4, at 16.

In sum, we cannot find unreasonable the agency's determinations and consideration of the MLL's (and AMSEA's) parent companies' resources in the evaluation of the technical proposals, or, as illustrated by the foregoing examples, that the evaluation of proposals under the technical factor was unreasonable or reflected disparate treatment.

## Source Selection Decision

The protester argues that the agency failed to properly document its source selection decision, and that the selection of MLL's lower-priced proposal was unreasonable, given the agency's flawed evaluation of AMSEA's and MLL's proposals under the solicitation's technical, past performance, and price factors. The protester further argues that regardless of the underlying evaluation errors, the source selection was unreasonable given the protester's view that "AMSEA's proposal was well worth the price premium." Protester's Comments at 23.

As an initial matter here, AMSEA's contention that the source selection was unreasonable because the underlying technical, past performance, and price evaluations were flawed, is without merit. Since, as explained above, we find the agency's evaluation of AMSEA's and MLL's proposals to be reasonable, MLL's contention here provides no basis for overturning the award determination. See Matrix Int'l Logistics, Inc., B-277208, B-277208.2, Sept. 15, 1997, 97-2 CPD ¶ 94 at 14.

With regard to the agency's documentation of the source selection decision, FAR § 15.308 requires that a source selection decision be based on a comparative assessment of proposals against all of the solicitation's evaluation criteria. The FAR further requires that while the SSA "may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment." Source selection decisions must be documented, and include the rationale and any business judgments and tradeoffs made or relied upon by the SSA. FAR § 15.308. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision, nor is there a requirement to quantify the specific cost or price value difference when selecting a lower or higher-priced proposal for award. FAR § 15.308; General Dynamics--Ordinance & Tactical Sys., B-401658; B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8; Advanced Fed. Servs. Corp., B-298662, Nov. 15, 2006, 2006 CPD ¶ 174 at 5. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. General Dynamics--Ordinance & Tactical Sys., *supra*; ViroMed Labs., Inc., B-310747.4, Jan. 22, 2009, 2009 CPD ¶ 32 at 6.

In determining which proposal represents the best value to the agency, an agency may reasonably determine that the benefit of specific features set forth in a proposal are not worth any additional cost associated with the proposal, as long as that determination remains consistent with the solicitation's evaluation and source selection criteria. Johnson Controls World Servs., Inc., B-289942; B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. In reviewing an agency's source selection decision, our Office examines the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Id.

The source selection statement provides that in determining that MLL's proposal represented the best value to the agency in accordance with the terms of the solicitation, the SSA considered, among other things, the "comparative assessment of the strengths, weaknesses, and risks of the proposals" conducted by the SSEB and set forth in the SSEB's report. AR, Tab 64, Source Selection Decision, at 1. The SSA also represents in the source selection statement that he "agree[s] with and hereby adopt[s] as [his] own" the SSEB report, but that the source selection "decision represents [his] independent judgment." Id.

The source selection decision provides that the SSA recognized that although the proposals of AMSEA and MLL received overall ratings of "exceptional" under the technical evaluation factor, AMSEA's proposal was superior as evaluated under the contract administration, and management of reimbursables and purchasing system technical evaluation subfactors. Id. at 5. In considering which proposal represented the best value to the agency, the SSA reasonably framed "the issue [as] whether the additional benefit to the Government associated with the AMSEA proposal in a few areas is worth the additional premium." Id. The SSA ultimately concluded in selecting MLL's proposal for award that, based upon his review, he could "not find the additional benefit the Government might receive to be commensurate with the \$14,896,865.63 (11.02%) price premium it would pay if the contract [were] awarded to AMSEA." Id.

Under the circumstances here, we see nothing improper in this source selection statement. As set forth above, the statement reflects that in choosing MLL for award, the SSA was aware and considered the strengths and weaknesses of the competing proposals, the proposals' ratings under the RFP's evaluation factors and overall, and the proposals' evaluated prices. In this regard, the source selection decision demonstrates that the SSA recognized and reasonably considered the non-price advantages associated with AMSEA's proposal, with the source selection decision expressly addressing certain of the advantages associated with AMSEA's technical proposal. Although the protester complains that the SSA failed to expressly recognize that the SSEB, while rating the proposals of both AMSEA and MLL as "very good" under the past performance factor, had found that MLL's past performance had not been as "consistently rated" as "very good" as AMSEA's, we do not find this aspect of the source selection decision objectionable. That is, the SSA, in his source selection statement, expressly states that he reviewed the SSEB report and was thus aware of the SSEB's findings regarding the competing offerors' past performance, and the protester has provided no basis on which to question this.

To the extent that the protester is arguing that the source selection decision, in finding that the particular advantages associated with AMSEA's proposal did not warrant the payment of the requisite \$14.9 million price premium should have engaged in a more precise determination or quantification of the proposals and their

merits, we note that such a degree of precision or quantification is not required.<sup>6</sup> See Highmark Medicare Servs., Inc.; Cahaba Gov't Benefit Adm'rs., LLC; Nat'l Gov't Servs., Inc., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 2.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>6</sup> As indicated above, AMSEA has made numerous other contentions concerning the evaluation of proposals under regarding the propriety of the agency's evaluation and source selection decision. Although these contentions are not all specifically addressed in this decision, each was considered, including the protesters' general and specific assertions that the conduct of the agency reflected unequal treatment in a number of ways, and found either to be insignificant in view of our other findings, or without merit based upon record as a whole.