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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:** TFab Manufacturing, LLC

**File:** B-406698

**Date:** August 3, 2012

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Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for the protester.  
S. Lane Tucker, Esq., and Kirsten M. Kinegak-Friday, Esq., Stoel Rives LLP, for Redstone Defense Systems, the intervenor.

Tina Pixler, Esq., and Genevia Fontenot, Esq., Department of the Army, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that the agency's evaluation of the awardee's technical, past performance, and cost proposals was unreasonable is denied where the record shows that the evaluation was reasonable and sufficiently supported.

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### **DECISION**

TFab Manufacturing, LLC, of Madison, Alabama, protests the award of a contract to Redstone Defense Systems (RDS), of Huntsville, Alabama, under request for proposals (RFP) No. W58RGZ-11-R-0003, by the Department of the Army, to provide services in support of the Prototype Integration Facility (PIF) at the Aviation and Missile Research and Development and Engineering Center located at the Redstone Arsenal in Alabama.<sup>1</sup>

We deny the protest.

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<sup>1</sup> The PIF manages, operates, and maintains a turn-key, customer focused government-owned/government-operated engineering, manufacturing, test, and integration facility capable of effectively executing the functions required to meet organizational mission requirements.

## BACKGROUND

The RFP was issued on June 3, 2011 as a section 8(a) small business set-aside. The RFP contemplated the award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract under which fixed-price and cost-plus-fixed-fee task and/or delivery orders could be placed. The contract had a 3-year base period with a 2-year award option.

Under the RFP, proposals were to be evaluated on a best-value basis, considering the following evaluation factors: (1) technical, (2) cost, (3) past performance risk, and (4) small business participation plan. The solicitation stated that the technical factor was the most important factor and was significantly more important than the cost factor, which was approximately equal to the combined weight of the equally-weighted past performance risk and small business participation plan factors. The technical factor had three subfactors: (1) sample orders, (2) transition plan, and (3) management. The sample order subfactor was significantly more important than the equally-weighted transition plan and management subfactors. The solicitation further provided that risk would be assessed as an inherent part of the technical factor and within each of the technical subfactors. RFP § M.3.

The agency received proposals from three offerors, including TFab and RDS, by August 2. The agency engaged in communications, characterized as “errors, omissions and clarification” (EOC) exchanges, to “enhance the Government’s understanding of each offeror’s proposal; allow reasonable interpretation of the proposal; and facilitate the Government’s evaluation process.” Contracting Officer’s (CO) Statement at 4; AR, Tab I, EOCs for RDS; Tab J, EOCs for TFab. Following the evaluation of initial proposals, the agency established a competitive range that included all three proposals. The agency then conducted discussions with the offerors and received revised proposals by November 28. The source selection evaluation board (SSEB) performed an analysis utilizing the initial proposal evaluation, responses to the items for negotiation, and the revised proposals to complete the interim evaluation of the revised proposals. On January 20, 2012, a letter was sent to each offeror closing discussions, identifying the remaining weaknesses found in each of the proposals, and requesting the submission of final proposal revisions (FPR) by January 27. All three offerors submitted FPRs .

The SSEB evaluated the FPRs and prepared consensus evaluations. The agency source selection authority (SSA) reviewed the consensus evaluations, and prepared a selection decision. The FPRs of RDS and TFab were evaluated as follows:<sup>2</sup>

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<sup>2</sup> The offerors’ proposals were assigned a rating under the technical factor and subfactors of either outstanding, good, acceptable, marginal or unacceptable. Under the past performance factor offerors were assigned performance confidence assessment ratings of either substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. The ratings of acceptable and  
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<b>Evaluation Results by Factor/Subfactor</b>	<b>RDS</b>	<b>TFab</b>
<b>Technical</b>	Outstanding	Good
--Sample Orders	Outstanding	Good
--Transition Plan	Good	Good
--Management	Good	Acceptable
<b>Cost (Total Evaluated Price)</b>	\$ 2.4232 billion	\$ 2.5002 billion
<b>Past Performance Risk</b>	Substantial Confidence	Satisfactory Confidence
<b>Small Business Participation Plan</b>	Acceptable	Acceptable

AR, Tab F, Source Selection Decision at 6.

Under the sample order subfactor, the most important subfactor of the technical factor, RDS received an outstanding rating, as compared to TFab's good rating. RDS was the only proposal that received a significant strength under this subfactor for its supporting technical analysis provided within its technical approaches to sample orders I and II. The agency determined that "RDS's exceptional, efficient and flexible product-oriented technical approach in the preparation of SOEPs [sample order execution plans] and Sample Order SOWs [statements of work] demonstrates a clear advantage over TFab." Id. at 8.

Under the management subfactor, RDS received a good rating in part because its offered facilities exceeded the requirements, "appreciably enhancing the probability of successful contract performance and far exceeding the size of the facilities offered by TFab." Id. at 12. TFab received an acceptable rating in part because it provided a letter of intent for its leased facilities that indicated that the availability of TFab's facility was not guaranteed. Id.

Under the past performance risk factor, RDS was also found to have an advantage over TFab. In accordance with the "New Corporate Entity" provision of the solicitation, which allows new corporate entities to submit data on prior contracts involving its officers and employees, RDS identified the roles of its officers and key personnel in five relevant projects performed under the existing PIF contract.<sup>3</sup> The

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unacceptable were utilized in the evaluation of the offerors' small business participation plan.

<sup>3</sup> Amendment No. 3 to the RFP stated with reference to the past performance risk factor:

(continued...)

referenced past performance was generally considered to be outstanding, such that “there [was] a high expectation that RDS can successfully perform the required effort.” Id. at 16.

The agency selected RDS’s proposal for award based on its high technical ratings and lowest evaluated price. Id. at 22. This protest followed.

## DISCUSSION

The protester argues that the agency unreasonably evaluated RDS’s proposal and that the proposals were unequally evaluated. In that regard, TFab alleges that RDS lacks the capability to perform the contract, and is instead relying on the personnel and resources of the incumbent. TFab contends that the agency failed to consider the risks presented by such an approach, particularly during transition. The protester states that the agency improperly evaluated the past performance of RDS. TFab also contends that the agency failed to evaluate RDS’s cost proposal for reasonableness and realism.

The evaluation of proposals, including the determination of the relative merits of proposals, is primarily a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. In reviewing an agency’s evaluation, we will not reevaluate the proposals or make a new source selection, but rather will examine the record of the evaluation and source selection to ensure that they are reasonable and consistent with the stated evaluation criteria as well as with procurement law and regulation. Id. A protester’s mere disagreement with a procuring agency’s judgment is insufficient to establish that the agency acted unreasonably. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. We have reviewed all of the protester’s arguments regarding the propriety of the agency’s evaluation of the protester’s and awardee’s proposals and the source selection, and have found none that provide a basis to sustain TFab’s protest. We discuss some examples below.

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(d) New Corporate Entities Section. New corporate entities may submit data on prior contracts involving its officers and employees. However, in addition to the other requirements in this section, the offeror shall discuss in detail the role performed by such persons in the prior contracts cited. Information should be included in the files described in the sections above.

RFP, Amend. No. 3, at 25.

To understand TFab's primary allegation--that RDS is improperly relying on the experience of the incumbent contractor--requires additional background on the relationship between RDS and the incumbent JVYS; the incumbent and the awardee here are linked by a Cooperative Transition Agreement. AR at 16. In this regard, the agency explains that the incumbent contractor on the PIF contract is an unpopulated joint venture, which no longer qualifies as an 8(a) concern. The JVYS joint venture is formed by Yulista Management Services (YMS) and Science and Engineering Services (SES). AR at 14. RDS, the awardee here, is an 8(a) business also operating as an unpopulated joint venture; the RDS joint venture is comprised of Yulista Aviation, Incorporated (YAI), an Alaskan Native Corporation (ANC) 8(a) business, which is serving as the majority partner to the joint venture, and Science and Engineering Services (SES), a small business, which is serving as the minority partner to the joint venture.<sup>4</sup>

As unpopulated joint ventures, neither JVYS nor RDS possess personnel, resources, or facilities. Instead, the personnel, resources, and facilities of both companies are assets of the individual partners forming the joint venture. We note that SES served as a partner in the incumbent joint venture, and in the awardee's joint venture. Similarly, in the case of the ANC-owned YMS and YAI, some personnel, resources, and/or facilities may be owned by the tribe or an administrative holding company of the tribal corporation. In addition, the Calista Corporation, the parent corporation to YMS and YAI, and one of 13 regional corporations established pursuant to the Alaska Native Claims Settlement Act, performs administrative services for all its subsidiaries, to include management, accounting, finance, human resources, marketing, legal, operations, taxes, licenses and business compliance.<sup>5</sup> AR at 14.

As with most joint ventures, the agency's evaluation of the personnel and facilities proposed by RDS was based on the assets that are currently possessed (owned, leased, or employed) by each of the RDS joint venture partners.<sup>6</sup> RDS proposes to

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<sup>4</sup> The Small Business Administration (SBA) approved the joint venture agreement between YAI and SES under the name of RDS for participation in the 8(a) program on March 11, 2011, and, specifically for the PIF acquisition.

<sup>5</sup> The Calista Corporation established the wholly-owned subsidiary, Yulista Holding, LLC, as an administrative holding company overseeing the management, contracts, bids and proposals, and other administrative areas, of YMS, YAI, and other subsidiaries. AR at 14; Tab M, Vol. 1, RDS's Initial Technical Proposal § 2.0.

<sup>6</sup> The contracting officer consulted with the SBA with regard to the specific interpretation of the regulations and procedures governing the organization of an ANC 8(a) concern, including its proposal of facilities of a parent company or tribal affiliate and its proposal to share resources with such firms. The SBA found such proposals were proper. AR, Tab Z-01, Memorandum for the Record (Sept. 6, 2011).

provide the requisite experience necessary for successful execution of the RDS PIF support contract by transferring Yulista and SES employees to this effort as the JVYS PIF support contract ends; RDS is also proposing the use of many of the same facilities used by the incumbent. We see nothing improper about the awardee's reliance on many of the employees and facilities of the incumbent, and, based on our review we find the evaluation was reasonable in this regard.<sup>7</sup>

The protester also argues that the agency failed to consider the "technical and management risks inherent in RDS's proposal," given its dependence on the incumbent contractor, JVYS, to obtain the essential tools and means to perform its contract and the need for continued performance of the incumbent contract while RDS transitioned into the present contract. Protest at 12. The record, however, shows that the agency specifically considered this risk and issued several EOC requests to RDS to clarify the proposed use of shared resources while performing the current PIF contract. CO Statement at 25. The SSD noted that RDS's proposed transition plan to "utilize the personnel and facilities currently supporting the PIF result[s] in some risk during the Transition-In period in that these resources will need to be shared, and their availability at the start of this contract is unknown with regard to ongoing projects under the existing PIF contract." AR, Tab F, Source Selection Decision at 11. Based on our review, we find the agency reasonably considered this risk.

TFab similarly argues that RDS is an entity separate and distinct from JVYS, YMS, and SES, and, as such, JVYS is not a subcontractor to RDS and its past performance is not relevant to the Army's assessment of RDS's past performance under the terms of the RFP and, thus, did warrant its "substantial confidence" rating. However, consistent with Federal Acquisition Regulation (FAR) § 15.304(a)(2)(iii), the RFP allowed newly created entities to submit past performance information on prior contracts involving its employees and officers. RFP at 98. As part of its past performance, RDS cited the highly relevant past performance of certain YMS employees on five projects under the existing PIF contract. The agency notes that RDS, in response to the agency's EOCs, provided a precise correlation of these officers and employees to specific tasks performed under the JVYS contract. CO Statement at 20. We find the record supports RDS's

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<sup>7</sup> With respect to TFab's argument that the agency's evaluation here was unequal because TFab's proposal relied upon its own and its subcontractor's resources, the RFP did not prohibit RDS's approach and the agency specifically reviewed the risk of RDS's resource sharing and found it acceptable. The agency found under the transition plan subfactor that RDS offered facilities and personnel that were in its possession and in use, which was given greater consideration compared to TFab's offer that relied on its proposed subcontractor for personnel and facilities combined with leasing and setting up its own integration facility. CO Statement at 30. This evaluation was not inconsistent with the solicitation and does not provide evidence of unequal treatment.

substantial confidence past performance rating and does not evidence unequal evaluation.<sup>8</sup>

TFab finally argues that the agency failed to evaluate RDS's cost proposal for reasonableness and realism. When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contract its actual and allowable costs. FAR §§ 15.305(a)(1); 15.404-1(d); CGI Federal Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 4. Consequently, the agency must perform a cost realism analysis to evaluate the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1); Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 9. An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(c), or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. An agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonable and realistic in view of other cost information reasonable available to the agency as of the time of its evaluation. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. Because the contracting agency is in the best position to make this determination, we review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and not arbitrary. Hanford Env'tl. Health Found., supra at 8-9.

The record demonstrates that the agency conducted and documented an in-depth review of RDS's proposed costs, including issuing numerous EOCs to RDS's partners (YAI and SES) to determine how the RDS proposed personnel, facilities, equipment and other resources were factored into RDS's proposed rates, and how the proposed shared resources were accommodated in RDS's proposed pricing. The agency also obtained an audit by the Defense Contract Audit Agency of the direct labor and indirect rates included in the offeror's initial proposal, which resulted in RDS increasing its proposed indirect rates and escalation, and also resulted in the agency making a probable cost adjustment of \$6.6 million to account for an evaluated understatement in RDS's proposed indirect rates. While TFab states that allowing RDS to share resources with the

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<sup>8</sup> TFab's "satisfactory confidence" past performance rating was indicative of its less relevant past performance as evaluated by the agency. CO Statement at 35; AR, Tab F, Source Selection Decision, at 16.

incumbent entity resulted in an unfair understatement in its costs, it has not shown that RDS's approach here was improper or that the shared resources were not reasonably accounted for in the cost evaluation.

The protest is denied.

Lynn H. Gibson  
General Counsel