



## Decision

**Matter of:** PDL Toll  
**File:** B-402970  
**Date:** August 11, 2010

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Robert E. Korroch, Esq., Francis E. Purcell, Esq., and William Wozniak, Esq., Williams Mullen, for the protester.  
Mark W. Golden, Esq., Department of the Navy, for the agency.  
Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Agency's issuance of a solicitation for ship husbanding services for Navy vessels visiting ports in Australia, which provides for award on a low-priced, technically-acceptable basis rather than on a best value basis, is unobjectionable, where the requirements were relatively noncomplex and involved little performance risk, and the solicitation contained estimated quantities.
2. Protest that solicitation for ship husbanding services is defective for failing to include all its ship requirements at the various ports is denied, where the agency reasonably determined to include only those requirements where estimated quantities could be provided.

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### DECISION

PDL Toll, of Melbourne, Australia, protests the terms of request for proposals (RFP) No. N40345-10-R-0070, issued by the Department of the Navy, for ship husbanding services for Navy vessels visiting ports in Australia.

We deny the protest.

The RFP contemplates the award of a fixed-price indefinite-delivery/indefinite-quantity contract for a base year, with a 6-month option period, to "the responsible offeror who submits the lowest price, technically acceptable offer with acceptable or neutral past performance." RFP at 71. With respect to evaluation of past performance, the RFP provided that each offeror's performance will be considered under existing and prior contracts for similar services. *Id.* The RFP further provided

that information from references listed in proposals, other customers known to the agency, and other sources of useful and relevant information may be considered. Id.

PDL, the incumbent contractor, protests the terms of the solicitation. It argues that the use of the lowest-price, technically-acceptable source selection process is not appropriate for this acquisition, and it maintains that the Navy should employ a tradeoff process. The protester also argues that because the inherent risk of unsuccessful contract performance is high, the agency should conduct a comparative assessment of the offerors' past performance. Lastly, the protester contends that the agency has improperly omitted several husbanding services that are provided under an existing contract for husbanding services in Australia.<sup>1</sup>

An agency has the discretion to determine its needs and the best way to meet them. USA Fabrics, Inc., B-295737; B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 4. Agency acquisition officials have broad discretion in the selection of the evaluation criteria that will be used in an acquisition, and we will not object to the absence or presence of a particular evaluation criterion so long as the criteria used reasonably relate to the agency's needs in choosing a contractor or contractors that will best serve the government's interest. King Constr. Co. Inc., B-298276, July 17, 2006, 2006 CPD ¶ 110 at 3.

The record here reflects that the agency reasonably determined that it could meet its needs using a low-priced, technically-acceptable approach to evaluate offers with an acceptable or neutral record of past performance. The contracting officer states that this decision was based on the fact that the requirement was relatively noncomplex, and there was relatively little performance risk. In addition, there was a substantial amount of information provided to the offerors in the solicitation, including estimated quantities for each line item by port. Contracting Officer's Statement at 2. While the protester disagrees with the agency's conclusions, the protester's disagreement does not render the agency's determinations unreasonable.

The protester contends that the agency improperly omitted certain requirements from the RFP, such as items that had been included in prior procurements but were

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<sup>1</sup> In its initial protest, PDL also argued that the requirements were not clearly defined with respect to vessel classification and that lack of definition of various required services increased the risk of performance. The agency addressed these issues in its report. In its comments on the agency report, the protester did not attempt to rebut or otherwise address the agency's response to these issues; accordingly, we consider it to have abandoned these arguments. CM Mfg., Inc., B-293370, Mar. 2, 2004, 2004 CPD ¶ 69 at 3.

not included in the instant solicitation.<sup>2</sup> As an example, the protester maintains that the requirement for provisioning has historically been included as part of providing husbanding services in Australia. The protester argues that as a result of omitting certain requirements, the agency risks that the contract will not result in the best price for the government. The protester also argues that the agency's "piecemeal" procurements will deprive the protester from offering to the agency a proposal that offers the full advantages of PDL's extensive ship husbanding services. Protest Comments at 6.

The agency explains that the requirements included in the solicitation were intentionally limited to those the agency would actually require during the contract's short performance period and for which estimated quantities could be provided. Contracting Officer's Statement at 3. The agency states that if additional requirements for supplies and services arise under the contract to be awarded, it will then determine the acquisition method for obtaining those requirements, including issuing separate solicitations. Again, given the agency's explanation and the discretion afforded an agency in determining its needs and the best way to accommodate them, we cannot find this determination to be unreasonable.

To the extent the protester argues that the agency's fulfillment of the remainder of its requirements after the contract has been awarded is likely to result in an improper sole-source award to the awardee, this argument is premature and speculative. Paramount Group, Inc., B-298082, June 15, 2006, 2006 CPD ¶ 98 at 6-7. As stated above, the agency has not decided how it will procure additional requirements for services and supplies, and our Office will not assume in advance that an agency will conduct its procurements improperly. Id.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>2</sup> It appears that PDL is arguing that the agency should bundle its multiple requirements into one contract, which would have the potential for restricting competition by excluding firms that can furnish only basic husbanding services.