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**Comptroller General
of the United States**

**United States Government Accountability Office
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Decision

Matter of: AMEC Earth & Environmental, Inc.

File: B-404959.2

Date: July 12, 2011

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Paul F. Khoury, Esq., and Brian G. Walsh, Esq., Wiley Rein LLP, for Parsons Infrastructure & Technology Group, Inc., an intervenor.

V. Paul Clay, Esq., and Nate Cushman, Esq., Department of the Navy, for the agency.

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

DIGEST

1. Protest challenging agency's technical evaluation of protester's proposal is denied where agency's evaluation was reasonable and supported by the record.

2. Protest challenging agency's price evaluation is denied where record shows agency conducted a proper price realism analysis.

DECISION

AMEC Earth & Environmental, Inc., of San Diego, California, protests the award of contracts to six other firms under request for proposals (RFP) No. N62473-09-R-2623, issued by the Department of the Navy for environmental remediation services.¹

We deny the protest.

BACKGROUND

The RFP provided for the award of multiple, fixed-price indefinite-delivery/indefinite-quantity (ID/IQ) contracts for environmental restoration services at contaminated

¹ The awardees are Arcadis US, Inc.; Innovative Technical Solutions, Inc. (ITSI); Battelle Memorial Institute; CE2 Kleinfelder JV; AECOM-Environcon JV; and Parsons Infrastructure & Technology Group, Inc.

sites located at Navy, U.S. Marine Corps, and other government agency installations, and would include sites on the Superfund National Priority List.² RFP, Statement of Work, at 3. Offerors were informed that the contractors would have the opportunity to compete for task orders to provide environmental remediation services. See RFP at 36-39.

The RFP also provided that concurrent with the award of the contracts the agency would award a task order (TO 0001) to one contractor for soil hotspot characterization at Hunter's Point Shipyard, San Francisco, California. The RFP explained that the main focus for this work was

to systematically collect soil samples . . . surrounding specific "hotspot" locations to properly characterize the areal and volumetric extent of chemical contamination.

RFP at 67.

The RFP provided that awards would be made on a best value basis, considering the offerors' prices to perform TO 0001 and the following technical evaluation factors (which were of equal importance): past performance, specialized experience, contract management, technical approach for TO 0001, and commitment to socio-economic programs. Price was stated to be "slightly less important" than any one of the other evaluation factors, and the combined weight of the technical factors was stated to be significantly more important than price. RFP at 113. Offerors were also informed that the agency intended to award the contracts without conducting discussions. Id.

With respect to the technical approach factor, the RFP identified a number of areas that the agency would evaluate to assess the viability of an offeror's proposed approach to performing the task order, including the proposal's "technical approach breakdown." RFP at 118. The solicitation provided proposal preparation instruction for each of these areas. Id. at 106. For example, with respect to the project approach area, offerors were instructed to describe their plan for working with the appropriate regulatory agencies and obtaining joint regulatory approval of the proposed approach. Id.

With respect to price, the RFP informed offerors that the agency would evaluate the firms' proposed prices for TO 0001 for reasonableness, realism, and proposal risk. Id. at 120. The RFP also provided that price proposals that were found to be unreasonable, unrealistic, substantially inaccurate, or incomplete may be considered unacceptable. Id.

² The RFP stated that the agency intended to award three to five contracts, but could award more if the agency determined it was in its best interest to do so. RFP at 113.

The Navy received eleven proposals, including the protester's. The protester's and awardees' technical proposals were evaluated in the following order:³

	Past Performance	Specialized Experience	Contract Management	Technical Approach	Socio-Economic	Overall
Parsons	Excellent ⁴	Excellent	Excellent	Excellent	Good	Excellent
ITSI	Good	Excellent	Excellent	Good	Excellent	Excellent
AMEC	Excellent	Good	Excellent	Satisfactory	Good	Good
Battelle	Excellent	Satisfactory	Good	Good	Excellent	Good
CE2	Good	Excellent	Good	Satisfactory	Good	Good
Arcadis	Good	Excellent	Satisfactory	Good	Satisfactory	Good
AECOM	Good	Satisfactory	Good	Good	Good	Good

Agency Report, (AR), Tab 7, Business Clearance Memorandum, at 12.

The agency's adjectival ratings were supported by narrative explanations, which identified respective strengths, deficiencies, significant weaknesses, and weaknesses. For example, under the technical approach factor, the agency noted a number of strengths in the protester's proposal, including its offer to [DELETED], which the agency found would reduce the total volume of soil that needed to be excavated. AR, Tab 4, Technical Evaluation Board Report, at 62. Another strength in the protester's proposal was AMEC's plan to [DELETED], which "may translate into future cost savings, since the Navy will not have to dispose of clean soil." *Id.* at 62. The TEB also noted as a significant weakness AMEC's proposal to contact regulatory agencies on its own without including the Navy. *Id.* at 62-63. The evaluators further noted a

³ The evaluators ranked the offerors' proposals based upon the overall adjectival assessment and the number of excellent or good ratings received under each of the factors. That is, AMEC's proposal was ranked higher than the other proposals that also were rated good overall simply on the basis that AMEC's proposal received more excellent and good ratings under the evaluation factors. AR, Tab 7, Business Clearance Memorandum, at 13.

⁴ An excellent rating reflected a proposal demonstrating a thorough and detailed understanding of the requirements, technical considerations and capabilities that significantly exceed the standards, one or more strengths that outweigh any weaknesses, and a high probability of success with no apparent risk in meeting the agency's requirements. A good rating reflected a proposal showing a clear understanding of the requirements, technical considerations and capabilities that exceed the standards, one or more strengths that outweigh any weaknesses, and a strong probability of success with a low degree of risk. A satisfactory rating reflected a proposal showing an acceptable understanding of the requirements, which meets the performance and capability standards, with a reasonable possibility of success and a moderate amount of risk. AR, Tab 3, Source Selection Plan, at 20.

number of other weaknesses, including AMEC's proposal to excavate at a [DELETED] slope;⁵ for its approach to sampling soils to determine the extent of contamination; and for failing to discuss certain quality control procedures. See id. at 62.

The agency also evaluated the offerors' proposed prices. Noting that all of the offerors' pricing and the independent government estimate (IGE) were based upon similar approaches to performing the task order work, the agency compared each offeror's price to an average of the proposed prices and to the IGE (\$764,901). AR, Tab 6, Price Evaluation Board Report, at 4. The agency also compared each offeror's technical approach to that firm's price proposal to determine whether the resources proposed in the technical proposal had been included in the offerors' prices. Id. Based on these comparisons, the agency determined that the awardees' and protester's proposed prices were reasonable and realistic.

The technical and price evaluation reports were provided to the agency's source selection board (SSB), which used a cost/technical tradeoff analysis to assess the comparative merit of the firms' proposals. The SSB ranked the awardees' and protester's proposals as follows:

Rank	Offeror	Technical Rating	Price
1	Arcadis	Good	\$409,969
2	ITSI	Excellent	\$596,453
3	Battelle	Good	\$467,132
4	CE2	Good	\$487,927
5	Parsons	Excellent	\$677,682
6	AECOM	Good	\$580,961
7	AMEC	Good	\$1,085,283

AR, Tab 7, Business Clearance Memorandum, at 34.

With respect to AMEC's proposal, the SSB concluded that the protester's proposal was essentially equal to the proposals of Arcadis, Battelle, CE2, and AECOM, which also received overall good ratings. Id. at 38. With respect to ITSI's and Parsons' proposal, which received excellent overall rankings, the SSB recognized these firms' technical superiority, but determined that on the basis of the board's cost/technical tradeoff analysis these firms' proposals should be ranked second and fifth, respectively. Id. at 35, 37.

The SSB recommended that the agency make awards to the six highest ranked offerors. Id. at 39. The source selection authority (SSA) agreed, and contracts were

⁵ The protester explains that a [DELETED] slope is [DELETED]. Protest at 13.

awarded to Arcadis, ITSI, Battelle, CE2, Parsons, and AECOM. Following a debriefing, AMEC protest to our Office.

DISCUSSION

Technical Evaluation

The protester complains that the Navy rated AMEC's proposal as only satisfactory under the technical approach factor. In this regard, AMEC disputes that its approach to contacts with other regulatory agencies was a significant weakness, arguing that it had not proposed to initiate contact with other agencies, as the Navy found. Protest at 11. AMEC also challenges the agency's determination under this factor that AMEC's proposal contained a number of other weaknesses.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with the agency's evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Here, we find that the Navy evaluation of AMEC's proposal as satisfactory under the technical approach factor was reasonable. In this regard, the record shows that, contrary to AMEC's arguments, the Navy did not mischaracterize the protester's proposal, which the Navy found provided for the firm's interaction with outside regulatory agencies without the Navy's participation. Specifically, AMEC's proposal stated that [DELETED]. AMEC's Proposal at 4-15. The Navy found that this language indicated that AMEC might initiate contact with outside regulatory agencies prior to notifying the Navy.⁶ Although AMEC's denies that this would be the case, its proposal does not state that AMEC would not initiate such contact prior to discussing the matter with the Navy. We cannot say that this was an unreasonable concern by the agency.

AMEC also disputes the assignment of a number of weaknesses by the Navy under the technical approach factor. We find from our review of the record no basis to disagree with the Navy's evaluation here.

For example, AMEC objects to the Navy's assignment of a weakness for failing to discuss certain quality control procedures. AMEC contends that the agency erred in

⁶ The Navy states that it is the agency's policy that its contractors not represent or appear to represent the agency before other regulatory agencies. AR at 18.

concluding that AMEC had failed to discuss document and submittal quality control, and subcontractor quality assurance, because its proposal had in fact addressed these matters. In this regard, the protester notes that it stated in its proposal that it would use [DELETED]. See AMEC Proposal, Factor 4, at 4-5. The protester also notes that it informed the agency that it would create a quality control plan, which would address items like reports, data submissions, and other items. However, we find that the record supports the agency's assessment of a weakness in this regard. That is, the protester's proposal does not describe AMEC's internal quality control process for documents and for subcontractor work quality. Rather, AMEC merely promised that it would have an adequate quality control process.

As another example, AMEC challenges the agency's concern that AMEC's proposed excavation of soil using a [DELETED] slope would "create a lot of excess soil that may not be necessary to remove, leading to unnecessary costs."⁷ See AR, Tab 4, TEB Report, at 62. AMEC argues that, given the type of soil and groundwater present at Hunter's Point Shipyard, various federal regulations, Navy policies, and its previous experience at the shipyard require that the excavation be done using a [DELETED] slope. AMEC fails, however, to identify any legal or solicitation requirement requiring excavations of soil be done using a [DELETED] slope. Although the protester points to section 1926.652 of the Occupational Safety and Health Administration's regulations to support its position, this regulation merely provides for sloping systems or "support systems, shield systems, and other protective systems." See 29 C.F.R. § 1926.652(b), (c) (2011).

In sum, we find no support for AMEC's argument that Navy's assignment of a satisfactory rating under the technical approach factor was unreasonable. The record shows that the agency recognized that AMEC's technical approach contained a number of strengths, such as the firm's proposing to [DELETED]. AR, Tab 4, Technical Evaluation Board Report, at 62. The agency also found, however, that AMEC's evaluated strengths under this factor did not outweigh the evaluated significant weakness and other weaknesses. Id. at 61. Although AMEC disagrees with the agency's judgment in this regard, its disagreement does not demonstrate that the agency's evaluation was unreasonable. See Citywide Managing Servs. of Port Washington, Inc., supra, at 10-11.

AMEC also challenges the Navy's evaluation of its proposal as good under the specialized experience factor. AMEC complains that it should have been rated as

⁷ The Navy notes that AMEC's site characterization method, including its approach to sampling soils in order to determine the extent of contamination, is predicated on the use of a [DELETED] slope during excavation. However, because such slope is not required for excavation, AMEC's method of sampling effectively limits the kind of excavation that the Navy can perform there.

excellent under this factor because the evaluators noted that AMEC's proposal had a number of strengths and only one weakness. In this regard, AMEC complains that the Navy assessed the proposal of Arcadis as excellent under this factor, although that firm's proposal was also found to have a number of strengths and only one weakness. We find no merit to AMEC's complaint that it should have received a higher rating under this factor. Although both firms' proposals were assessed as having only one weakness, the proposals were not viewed as having similar strengths and weaknesses under this factor. In this regard, the Navy found that the weakness in the Arcadis proposal was minor and would affect only a small number of sites. See Supp. AR at 3. In contrast, AMEC's evaluated weakness was not characterized as minor; the Navy found that this weakness concerned the experience for which the agency could credit the protester under this factor.⁸ Id. at 4.

Price Evaluation

AMEC protests that the Navy unreasonably evaluated the offerors' price proposals. Specifically, AMEC complains that the Navy's evaluation did not take into account the costs associated with the amount of soil excavation that would ultimately be removed under each offeror's technical approach. In this regard, AMEC asserts that its proposal, while costing the Navy more initially, would save the Navy money in the long term since its approach "was specifically designed to precisely map the extent of the contamination," resulting in savings to the agency during the excavation work. Protester's Comments at 23.

Here, the RFP did not provide for consideration of costs savings associated with an offeror's technical approach to soil excavation as part of the price evaluation.⁹ To the extent AMEC believes the RFP should have provided for evaluation of future cost savings that may be associated with each offeror's approach, this ground of protest is untimely filed. 4 C.F.R. § 21.2(a)(2).

AMEC also challenges the agency's price realism analysis, complaining that the Navy merely compared each offeror's price to the IGE and an average of the proposed prices, without regard to the individual proposal's technical approach. Protester's Comments at 25. AMEC alleges that such a "rigid assessment" of the offerors' proposals is improper, as the Navy was required to "independently analyze the

⁸ The protester argues that its weakness here was the result of "two typos" in its proposal. Protester's Comments at 28. However, it is an offeror's responsibility to submit a well written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7.

⁹ The record shows that the agency recognized in its technical evaluation that AMEC's approach may result in lower costs during the subsequent excavation of the soil.

realism of an offeror's proposed costs based upon its particular approach, personnel, and other circumstances." Protester's Comments at 25 (citing Honeywell Tech. Solutions, Inc.; Wyle Labs., Inc., B-292354, B-292388, Sept. 2, 2003, 2005 CPD ¶ 107 at 12).

Where, as here, a solicitation provides for the award of a fixed-price contract, or a fixed-price portion of a contract, an agency may provide for the use of a price realism analysis for the limited purpose of measuring a vendor's understanding of the requirements or to assess the risk inherent in a vendor's quotation. See Ball Aerospace & Tech. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. Among the price analysis techniques that may be used are comparison with other prices received under the solicitation and comparison of proposed prices with IGEs. See Federal Acquisition Regulation (FAR) § 15.404-1(b)(2).

We find no basis to question the agency's analysis here. As noted above, the agency found that the offerors had taken similar approaches to completing the task order work.¹⁰ Given the similar approaches to performing the work, the agency compared the awardees' prices with other prices received, as well as to the IGE, both of which are acceptable price analysis techniques under the FAR. AR, Tab 6, Price Evaluation Board Report, at 4. Although the protester complains that some of the awardees neglected to include subcontractor hours in the level of effort identified in their technical proposals for the technical approach factor, the record shows that those firms priced that level of effort in their price proposals.¹¹

¹⁰ The protester notes that the agency's legal memorandum states that offerors provided differing technical approaches to completing the task order. The contemporaneous record shows, however, that the agency, in fact, found that the offerors and IGE had taken similar approaches to the work. Moreover, consistent with the contemporaneous record, elsewhere the agency's legal arguments state that the technical approaches were similar.

¹¹ AMEC complains that the agency did not evaluate the risk that an offeror's low-priced proposal may result in inadequate mapping of the site, leading to higher costs to excavate the contaminated soil. Protester's Comments at 33-34. We find no merit to this argument. The record demonstrates that the agency specifically considered risk in evaluating each offeror's price proposal. See AR, Tab 6, Price Evaluation Board Report, at 7, 8, 10, 11, 13 (finding the degree of risk of unsuccessful performance associated with each proposal). In any case, the RFP does not require a risk analysis of the sort AMEC posits here.

Cost/Technical Tradeoff

AMEC protests that the Navy failed to perform a cost/technical tradeoff analysis in selecting offers for award, as required by the RFP. AMEC argues that the agency's awards were essentially made on a low-priced, technically acceptable basis.

The record shows, however, that the Navy performed a cost/technical tradeoff in selecting offers for award, as evidenced by the fact that the two highest technically rated offers were not rated highest overall after consideration of price. With respect to AMEC's complaint that the Navy did not perform a tradeoff analysis among the proposals that the Navy found were essentially technically equal, such an analysis was not required.

Where, as here, in a negotiated, best value procurement, an agency finds proposals to be essentially technically equal, price becomes the determining factor for award. Staff Tech, Inc., B-403035.2; B-403035.3, Sept. 20, 2010, 2010 CPD ¶ 233 at 6. A finding that proposals are essentially equivalent technically means that overall there is no meaningful difference in what the proposals have to offer; it does not mean that the proposals are identical in every respect. 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 22.

Here, the Navy explains that AMEC's proposal, despite having higher technical ratings under some evaluation factors, was nevertheless found not to be meaningfully better than any of the other awardees' proposals. The agency found that AMEC's "excellent" technical ratings under the past performance and contract management evaluation factors were offset by the firm's weaknesses under the other evaluation factors. Supp. AR, Statement of SSA, at 2-4. For example, the agency noted, as weaknesses under AMEC's proposal, that it had proposed a rigid scheme for performing the work which may lead to unnecessary costs in removing the

contaminated soil.¹² Id. at 3. Although AMEC disagrees with the agency, its disagreement does not show that the Navy's determination was unreasonable.

The protest is denied.¹³

Lynn H. Gibson
General Counsel

¹² To the extent AMEC challenges the agency's determination that its proposal was technically equivalent to Arcadis's proposal, the agency explains that Arcadis was higher rated under the specialized experience evaluation factor for having specialized experience on larger and complex projects, an ability to manage high value projects "on a concurrent basis," and having implemented innovative technologies. Supp. AR, Statement of SSA, at 2. The agency also noted, under the technical approach evaluation factor, that Arcadis had provided for systemic planning, dynamic work strategy, and real-time measurements. Id. at 3.

¹³ AMEC made a number of other arguments in its protest. Although we discuss only AMEC's primary protest contentions, we have considered all of its arguments in resolving the protest.