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## Decision

**Matter of:** Planned Systems International, Inc.

**File:** B-405292.3

**Date:** July 10, 2012

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Christian B. Nagel, Esq., Fluet Huber & Hoang, PLLC, for the protester.  
Gregory S. Jacobs, Esq., Joelle E.K. Laszlo, Esq., and Leigh T. Hansson, Esq.,  
Reed Smith LLP, for Luke & Associates, an intervenor.  
Behn M. Kelly, Esq., Department of the Air Force, for the agency.  
Glenn G. Wolcott, 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 reasonably evaluated offerors' fixed prices by performing comparisons of proposed individual labor rates and total evaluated prices, consistent with the Federal Acquisition Regulation and the provisions of the solicitation, and was not required to consider protester's historic pricing in performing the evaluation.
2. Protester's assertion that it should have received the highest possible past performance rating will not be considered where protester's evaluated price was more than 19 percent higher than that of the highest-priced awardee, and the solicitation expressly provided that the agency would pay no greater than a 10 percent price premium for a proposal with the highest past performance rating.
3. Where, after initially announcing contract awards, the agency corrected the past performance rating of another offeror, leading to an additional award to that offeror on the basis of its second-lowest price, the agency was not required to further expand the pool of awardees to include the protester's highest-priced proposal.

### DECISION

Planned Systems International, Inc. (PSI), of Columbia, Maryland, protests the Department of the Air Force's decision not to award a contract to PSI pursuant to request for proposals (RFP) No. FA8053-11-R-0001 to provide medical advisory and assistance services. PSI asserts that the agency's source selection decision reflected various flaws, including the agency's alleged failure to properly evaluate proposals with regard to price and past performance.

We deny the protest.

## BACKGROUND

The solicitation was issued in May 2011 and, as amended, provided for multiple awards of indefinite-delivery, indefinite-quantity contracts for a 5-year ordering period; subsequent task orders will be competed between the awardees.<sup>1</sup> The solicitation established three evaluation factors--technical, past performance and price--and provided that award decisions would be made based on price/past performance tradeoffs between technically acceptable proposals.<sup>2</sup> Agency Report (AR), Tab 4, RFP, at 143. The solicitation further advised offerors that the agency intended to award contracts without conducting discussions. Id.

With regard to price, the solicitation contained an attachment (referred to as table B-1) listing all of the labor categories that may be sought under subsequent task orders; offerors were required to submit "not to exceed" (NTE) labor rates for each of the table B-1 labor categories. The solicitation also contained a firm fixed-price sample task order (STO) establishing specific requirements and identifying particular labor categories, along with associated quantities of labor, that would be required to perform the STO requirements. Offerors were required to propose the fixed-price labor rates at which they would provide the quantities and types of labor specified by the STO, and the solicitation advised offerors: "[t]he Total Evaluated Price [for contract award] is the total proposed price for the sample task [order]."<sup>3</sup> RFP at 147 (underlining in original). Finally, with regard to the evaluation of price, the solicitation stated that the agency would assess whether a proposed price was reasonable, that is, whether it represented a price "that a prudent person would pay when consideration is given to prices in the market," further stating:

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<sup>1</sup> The agency conducted two procurements under this solicitation--an unrestricted procurement and a small business set-aside. PSI participated only in the unrestricted procurement. Accordingly, our decision does not address any aspect of the small business set-aside.

<sup>2</sup> The solicitation provided that proposals would be evaluated under the technical factor on an acceptable/unacceptable basis. RFP at 142.

<sup>3</sup> The solicitation also advised offerors that, "at time of contract award, a task order may be awarded for some or all of the requirements included in [the STO]." RFP at 121.

3.4 This source selection is conducted with the expectation of adequate price competition and will rely heavily on market forces and the cost/price analysis to determine proposed prices are fair and reasonable.

**3.5 Comparison of proposed prices in response to the solicitation is the preferred and intended price analysis technique.** Other techniques and procedures, if deemed necessary, **may** be used to ensure a fair and reasonable price, to include, but not limited to, the following: comparison of previously proposed prices and previous Government and commercial contract costs/prices with current proposed prices for the same or similar service/items; comparison with competitive market costs/prices of similar indexes; GSA Schedule(s) or Department of Labor wage/salary indexes; or comparison of proposed prices with the Independent Government estimate.

RFP at 148 (bolding added).

With regard to past performance, offerors were required to identify at least 5, but no more than 8, prior contracts for evaluation. The solicitation provided that the agency would make assessments regarding relevance and performance quality for each contract and that, based on these assessments, the agency would assign overall confidence ratings of substantial confidence, satisfactory confidence, limited confidence, or no confidence. RFP at 148-54.

Finally, for purposes of selecting awardees, the solicitation described how the agency would perform the past performance/price tradeoff, stating:

[T]he Government will rank the technically acceptable offers with Satisfactory or Substantial Confidence ratings on the same spreadsheet with the lowest price at the top of the list and the highest price at the bottom, and the government will move down the list starting with the lowest priced offer. If the Government finds a situation where there is at least one higher priced offer with Substantial Confidence within 10% of a lower priced offer that has [a] Satisfactory Confidence rating, the Government will perform a tradeoff analysis of each pair consisting of the lower priced Satisfactory offer

and each Substantial offer within that 10% range until the target number of awards has been reached.<sup>[4]</sup>

A lower priced technically acceptable offer with Satisfactory Confidence rating may be traded off against an offer with Substantial Confidence that [is] not greater than 10% above the lower priced Satisfactory offer.

RFP at 143.

On or before the July 6, 2011 closing date, proposals were submitted by 13 offerors.<sup>5</sup> The agency first evaluated proposals with regard to technical acceptability and, thereafter, evaluated them with regard to price and past performance.<sup>6</sup>

In evaluating price, the agency compared each offeror's proposed STO rates for each labor category, performance location, and option period. AR, Tab 5A, Price Analysis Spreadsheets. More specifically, the agency considered "[e]ach cell for all labor categories," comparing all of the proposed rates with each other. Id.; AR, Tab 32, Contracting Officer's Response to PSI's Agency Protest, at 9. The agency also compared each proposed STO labor rate against the NTE rates in table B-1 to ensure that no STO rate exceeded the table B-1 rates, and further examined each proposal for unbalancing. Id.; AR, Tab 8, Price Competition Memorandum, at 8. Finally, the agency compared all of the technically acceptable offerors' total evaluated prices against each other. Id. Based on its various comparisons and analyses, the agency concluded that the offerors' total evaluated prices were fair and reasonable. Id.

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<sup>4</sup> Although the solicitation stated that the agency was "targeting 5 awards," it further provided that the agency "reserves the right to award more or fewer [contracts]" based on the source selection authority's (SSA) assessments regarding the "expected volume of work," the "need to sustain adequate competition," and/or the "availability of best value proposals." RFP at 142.

<sup>5</sup> A fourteenth offeror submitted a proposal, but failed to include a pricing volume; accordingly, that proposal was not further considered.

<sup>6</sup> Consistent with the terms of the solicitation, the agency did not conduct discussions with any offeror.

The following reflects the final evaluation ratings for all of the proposals under each of the evaluation factors:

<b>Offeror</b>	<b>Technical</b>	<b>Past Performance</b>	<b>Total Evaluated Price</b>
<b>ASM Research, Inc.</b>	Acceptable	Substantial	\$51,990,345
<b>Luke &amp; Associates</b>	Acceptable	Limited	\$62,313,168
<b>Booz Allen Hamilton, Inc.</b>	Acceptable	Substantial	\$63,425,116
<b>TASC, Inc.</b>	Acceptable	Substantial	\$63,597,808
<b>Serco, Inc.</b>	Acceptable	Satisfactory	\$68,388,720
<b>Evolvent Tech., Inc.</b>	Acceptable	Satisfactory	\$68,883,017
<b>Deloitte Consulting LLP</b>	Acceptable	Substantial	\$69,934,435
<b>Lockheed Martin</b>	Acceptable	Substantial	\$71,577,557
<b>CACI</b>	Acceptable	Substantial	\$71,598,979
<b>Offeror A</b>	Acceptable	Satisfactory	\$83,428,195
<b>Offeror B</b>	Acceptable	Substantial	\$84,147,331
<b>Offeror C</b>	Acceptable	Satisfactory	\$84,990,506
<b>PSI</b>	Acceptable	Satisfactory	\$85,346,140

AR, Contracting Officer's Statement, at 14.

As shown above, PSI's proposal offered the highest price--\$85,346,140--and received a past performance rating of satisfactory confidence.

Thereafter, the agency awarded contracts to the nine offerors that are identified by name above.<sup>7</sup> PSI and three other offerors (identified as Offerors A, B, and C, above) were notified of their non-selection. Thereafter, PSI filed an agency-level protest, which the agency denied. This protest to our Office followed.

## DISCUSSION

PSI protests that the agency misevaluated proposals with regard to price; improperly rated PSI's past performance as only "satisfactory confidence"; and improperly awarded a contract to L&A. As discussed below, none of PSI's assertions provide a basis to sustain the protest.

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<sup>7</sup> The agency did not initially make award to Luke & Associates (L&A). Following notification of the initial award decisions, L&A filed a protest with this Office challenging the agency's rating of L&A's past performance as "limited confidence." Upon review, the agency concluded that L&A's past performance should have been rated as at least "satisfactory confidence," and that award to L&A was appropriate based on its second-lowest price (\$62,313,168).

## Price Evaluation

PSI first asserts that the agency “failed to follow the evaluation criteria as set forth in the Solicitation with respect to reasonableness of price proposals.” Protest at 13. More specifically, PSI maintains that its own price proposal was “based on rates it currently charges for similar tasks under existing requirements,” contends that the agency should have considered PSIs “past costs,”<sup>8</sup> and argues that the “[u]se of such historical data would provide the Agency with a more realistic and objective evaluation of the reasonableness of the submitted price proposals.”<sup>9</sup> Protest at 14.

In conducting fixed-price procurements, an agency must determine whether proposed prices are fair and reasonable. With regard to such obligation, the Federal Acquisition Regulation (FAR) permits an agency to use various price analysis techniques and procedures, including the comparison of proposed prices received in response to the solicitation to each other or to an independent government estimate. FAR § 15.404-1(b)(2); C.L. Price & Assocs., Inc., B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3; Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8.

As discussed above, the solicitation here expressly advised offerors that the agency “will rely heavily on market forces” and that “[c]omparison of proposed prices in

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<sup>8</sup> PSI acknowledges that it is not an incumbent contractor for this procurement, but refers to allegedly similar activities it has performed under other contracts. Protest at 14.

<sup>9</sup> Throughout its pursuit of this protest, PSI challenges the agency’s evaluation regarding the “reasonableness”—not the “realism”—of proposed prices. PSI’s arguments reflect a lack of understanding of the distinction between price reasonableness and price realism. A price reasonableness evaluation determines whether the prices are too high. See, e.g., Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3; WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 4 n.2. A price realism evaluation determines whether prices are too low, thereby creating risk of poor performance. See, e.g., C.L. Price & Assocs., Inc., supra; SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. In a fixed-price procurement, price realism analysis is not required, absent a specific solicitation provision requiring such. Here, the agency maintains, and PSI does not dispute, that the solicitation did not so provide. Based on our review of the entire record, we conclude that, even if the solicitation were to be construed as contemplating a price realism assessment, the agency’s evaluation record adequately supports such an assessment.

response to the solicitation is the preferred and intended price analysis technique.” RFP at 148. Beyond that, the solicitation stated that other techniques “may” be used “if deemed necessary.” Id.

Here, the agency’s price evaluation conformed to the terms of the solicitation. Specifically, as discussed above, the agency prepared comprehensive spreadsheets comparing each offeror’s proposed fixed-price STO rate for each labor category, performance location, and option period. AR, Tab 5A, Price Analysis Spreadsheets. The evaluation worksheets further show that the agency’s analysis included consideration of the high, low, and average rates proposed for each “cell,” as well as a calculation of the standard deviation for each individually proposed rate.<sup>10</sup> Id. The agency further examined each offeror’s price proposal for unbalancing. Id.; AR, Tab 8, Price Competition Memorandum, at 8. Finally, the agency compared all of the technically acceptable offerors’ total evaluated prices against each other. Id. Based on its various comparisons and analyses, the agency concluded that the offerors’ total evaluated prices were fair and reasonable and were representative of what a prudent person would pay. Id.

Based on our consideration of the entire evaluation record, we find no merit in PSI’s assertions that the agency’s price evaluation was flawed. More specifically, we reject PSI’s assertion that the agency was required, in addition to the analyses discussed above, to give special consideration to PSI’s own historic “pricing experience.” Comments, May 13, 2012, at 5-6. While the solicitation provided that consideration of historic rates was permissible, it did not so mandate. RFP at 148 (other evaluation techniques/procedures “may” be used “if deemed necessary”). Here, based on the agency’s receipt of substantial competition, the agency concluded that further evaluation procedures were unnecessary. We find no basis to question that determination. PSI’s challenge to the agency’s price evaluation is denied.

#### Past Performance Evaluation

Next, PSI asserts that it should have received a “substantial confidence” past performance rating, rather than a “satisfactory confidence” rating. Protest at 10-12; Comments at 3-5. We decline to consider this allegation, since it is clear that the terms of the solicitation precluded consideration of PSI’s proposal for award, even if it had received the higher past performance rating.

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<sup>10</sup> Pursuant to a protective order issued by our Office, counsel for the protester received copies of the agency’s evaluation documentation. Following receipt of that information, including the comprehensive spreadsheets discussed above, counsel did not identify any particular rate, group of rates, or particular offeror’s total price, that it believes to be either unrealistic or unreasonable.

As discussed above, the solicitation expressly provided that the agency would pay not greater than a 10 percent price premium in connection with an offeror's past performance rating of "substantial confidence."<sup>11</sup> RFP at 143. Here, PSI's price of \$85,346,140 was more than 19 percent higher than that of the highest-priced awardee. Thus, pursuant to the solicitation provisions limiting the permissible price premium, PSI's proposal would not have been considered for award even if it had received a "substantial confidence" past performance rating.<sup>12</sup> On this record, we will not further consider PSI's complaints regarding its past performance rating.

#### Award to Luke & Associates

Finally, PSI protests that the agency's corrective action award to L&A was improper because the agency allegedly "allowed L&A to change its price proposal after submission," or "chang[ed] its evaluation of L&A's pricing." Protest at 6. PSI complains that it "was not afforded the same opportunity to change its pricing proposal evaluation." Id.

The record shows that PSI's assertions are factually inaccurate. Specifically, the record shows that, following submission of L&A's protest challenging its "limited confidence" past performance rating, the agency concluded that L&A's proposal should have received a past performance rating of at least "satisfactory confidence." The agency unequivocally states that the agency did not permit L&A to revise its proposal, did not revise the evaluation of L&A's price, and did not conduct discussions with L&A or any other offeror. Contracting Officer's Statement at 20. Nothing in the record provides any basis to question the agency's representations in this regard. Rather, the record shows that, based on the agency's recognition of its erroneous past performance rating, the agency concluded that award to L&A was appropriate based on L&A's second-lowest evaluated price (\$62,313,168). Id.; AR, Tab 19, Litigation Risk Assessment Memorandum, Mar. 5, 2012. On this record, PSI's protest challenging the award to L&A is without merit.<sup>13</sup>

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<sup>11</sup> Specifically, the solicitation stated: "A lower priced technically acceptable offer with Satisfactory Confidence rating may be traded off against an offer with Substantial Confidence that [is] not greater than 10% above the lower priced Satisfactory offer." RFP at 143.

<sup>12</sup> Moreover, the record establishes that another unsuccessful offeror (Offeror B) received a "substantial confidence" past performance rating, and offered a lower price (\$84,147,331) than PSI. Accordingly, PSI's proposal would not be next in line for award even if it had received a "substantial confidence" past performance rating and even if the solicitation's limitation on price premium was somehow considered inapplicable.

<sup>13</sup> PSI also asserts that the agency's corrective action forms a basis for challenging the agency's determination regarding the total number of contract awards that were  
(continued...)

In summary, as discussed above, PSI's assertions challenging the agency's price evaluation are without merit. In addition, PSI's various other protest allegations provide no basis for sustaining its protest.

The protest is denied.

Lynn H. Gibson  
General Counsel

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(...continued)

made. PSI essentially asserts that, because the agency added an additional awardee (L&A), it was unreasonable for the agency to further limit the pool of awardees. PSI's arguments are without merit. As noted above, the solicitation specifically stated that, while 5 awards were "targeted," the agency "reserves the right to award more or fewer [contracts]" based on various considerations. PSI has failed to demonstrate that the agency's addition of one awardee--but not more--was unreasonable or that it was in any way inconsistent with the terms of the solicitation. Finally, PSI makes various arguments that are in addition to, or variations of, the arguments specifically discussed above. We have considered all of PSI's assertions and find no basis to sustain the protest.