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Decision

Matter of: Triad International Maintenance Corporation

File: B-408374

Date: September 5, 2013

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William H. Butterfield, Esq., Department of Homeland Security, United States Coast Guard, for the agency.

Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the protester's past performance is sustained where the record shows that the agency failed to reasonably consider the protester's performance of the incumbent contract requirements.
 2. Protest against price evaluation that determined that the protester's low price was a moderate risk is sustained where the solicitation did not provide for considering price realism.
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DECISION

Triad International Maintenance Corporation, Aviation Services (TIMCO), of Greensboro, North Carolina, protests the award of a contract to DRS Technical Services, Inc., of Herndon, Virginia, under request for proposal (RFP) No. HSCG38-13-R-H00001, issued by the United States Coast Guard, for progressive structural inspections (PSI) on HC-130H and HC-130J aircraft. TIMCO challenges the agency's evaluation of its past performance, proposed price, and technical proposal, and also argues that the agency's evaluation of the protester's and awardee's proposals reflected disparate treatment in favor of the awardee.

We sustain the protest.

BACKGROUND

A PSI is a detailed depot-level non-destructive inspection procedure designed to ensure aircraft worthiness. The Coast Guard's "Aircraft Structural Integrity Program" requires completion of a PSI on every HC-130 series aircraft every 48 months. See RFP at 5. These aircraft are the Coast Guard's long-range surveillance aircraft, which provide critical search and rescue, law enforcement, logistics, and marine environmental protection services. Since 2008, the Coast Guard has obtained PSI services for its HC-130H and HC-130J aircraft under separate contracts. One contract for these services, for HC-130H and HC-130J aircraft, was performed by DRS, at a facility in Elizabeth City, North Carolina; the other contract for these services, limited to HC-130H aircraft, was performed by TIMCO at a facility in Lake City, Florida.¹ See Agency Report (AR), Tab E, TIMCO Proposal, Vol. I, at I-10; Tab F, DRS Proposal, Factor II, at 6.

On December 20, 2012, the Coast Guard issued the RFP seeking a contractor with facilities and personnel to perform PSIs on all of the agency's HC-130H and HC-130J aircraft fleet. The solicitation anticipated award of an indefinite-delivery/indefinite-quantity fixed-price contract, with some time and materials requirements, for a base year and four 1-year options. The RFP stated that the contractor will be required to perform the following services: painting and de-painting; depot level repairs; unscheduled depot level maintenance, including time compliance technical development/implementation (TCTO); nonrecurring repairs; storage, stocking, control, accounting, issuance and shipping of supply parts and aeronautical equipment; preservation, storage and maintenance of replacement parts; technical and engineering support in aeronautics and avionics; sheet metal shop support; maintenance and computer repair on T-56 engines and HC-130H propellers; maintenance on AE 2100D engines and HC-130J propellers; widespread fatigue damage inspection of center wing box; rapid modification production line; and avionics modernization TCTO installation for the HC-130H. RFP at 5.

The RFP provided for award on a best-value basis, considering four evaluation factors, which were listed in descending order of importance: (1) technical capability, (2) relevant past performance, (3) management, and (4) price.² The technical capability factor listed seven equally-weighted subfactors: (1) technical experience, (2) corporate/commercial experience, (3) facilities, (4) quality assurance

¹ TIMCO also performed a contract with the Coast Guard for PSI services on HC-130H aircraft, prior to 2008. See AR, Tab E, TIMCO Proposal, Vol. II, at II-8.

² Additionally, to be eligible for the award, an offeror's proposal was required to meet two "go/no-go" requirements in the statement of work: (1) runway requirement and (2) facility requirements. See RFP at 37-40, 87.

program, (5) ground flight risk (GFR) compliance, (6) hazardous materials, and (7) subcontracts for de-painting/painting requirements, if applicable. The management factor also included three equally-weighted subfactors: (1) planned approach, (2) delivery, (3) key personnel qualifications. The price evaluation was to evaluate reasonableness and balance. For purposes of award, the non-price factors, when combined, were significantly more important than price. RFP at 89.

As relevant here, the technical capability factor required an offeror to provide an overview of its technical knowledge and corporate commercial experience regarding HC-130 series aircraft PSIs, as well as a brief summary of the PSIs completed or substantially completed that were similar to the RFP's scope of work. Id. at 89-90. For past performance, the offeror was required to provide information on contracts performed over the past 10 years relevant to the requirement in type of work, size and complexity. For this purpose, the offeror was required to submit past performance questionnaires to its references, which were to be returned to the Coast Guard no later than the closing date of the solicitation. The RFP also stated that the government may use other sources of information available to evaluate an offeror's past performance. Id. at 90.

Four offerors responded to the RFP by the February 21, 2013, closing date, including TIMCO and DRS. Under the non-price factors, the proposals were evaluated by a proposal evaluation group (PEG) and prices were evaluated by a price evaluation team (PET). The proposals were assigned both a color-coded adjectival rating and a risk rating for each non-price and price factor.³ The evaluation of the proposals was as follows:

| | TIMCO | DRS |
|---------------------------------|-----------------|-----------|
| TECHNICAL CAPABILITY | | |
| Technical Experience | Yellow/Moderate | Blue/Low |
| Corporate/Commercial Experience | Yellow/Moderate | Blue/Low |
| Facilities | Green/Moderate | Blue/Low |
| Quality Assurance Program | Green/Moderate | Green/Low |
| Ground Flight Risk Compliance | Green/Low | Green/Low |
| Hazardous Materials | Green/Moderate | Green/Low |
| Subcontracts | Not Applicable | Green/Low |
| RELEVANT PAST PERFORMANCE | GREEN/MODERATE | BLUE/LOW |
| MANAGEMENT | | |
| Planned Approach | Green/Moderate | Green/Low |

³ The possible adjectival ratings were blue-outstanding, green-acceptable, yellow-marginal and red-unacceptable. The risk ratings were high, moderate, and low. AR, Tab N, Proposal Evaluation Group (PEG) Report at 3.

| | | |
|------------------------------|--------------------------|---------------|
| Delivery | Green/Moderate | Blue/Low |
| Key Personnel Qualifications | Green/Low | Blue/Low |
| PRICE EVALUATION RATING | YELLOW/HIGH ⁴ | GREEN/LOW |
| TOTAL PRICE ⁵ | \$153,962,340 | \$182,672,705 |

See AR, Tab N, PEG Report at 4; AR, Tab L, Price Evaluation Team (PET) Report at 2, 23.

Based upon an integrated assessment and a comparison of the strengths, weaknesses, deficiencies, and risks in the proposals, the source selection authority (SSA) found DRS's proposal to be the best value. With regard to TIMCO, the SSA, noted, among other things, the following concern:

TIMCO proposed a total overall contract price of \$153,962,340.14. While TIMCO has completed HC-130H PSIs on a FFP [firm-fixed-price] basis in the past, this work did not include completing a pre-inspection of the aircraft at the operational unit and then ordering the long lead time parts, de-painting and painting the aircraft. These three (3) new requirements, which total hundreds of thousands of dollars, did not appear to be represented in TIMCO's FFP for completing the PSI [contract line item number]. Therefore, there is a moderate risk associated with TIMCO's pricing due to the reasons cited as their pricing was approximately 26 [percent] lower than the Independent Government Cost Estimate (IGCE).

AR, Tab N, Selection Decision, at 5.

With regard to DRS, the SSA noted that DRS's proposal received three outstanding ratings under technical capability, which was the most important evaluation factor, that its proposed price was fair and reasonable, and that its proposal presented low risk for the Coast Guard. *Id.* at 6. Award was made to DRS on May 14. TIMCO received a debriefing, and this protest followed.

DISCUSSION

TIMCO argues that the Coast Guard's evaluation of the offerors' proposals was flawed, and that the award decision was therefore unreasonable. The protester raises the following primary arguments: the agency unreasonably evaluated the

⁴ As discussed below, the source selection authority subsequently found that TIMCO's price proposal had "moderate risk." AR, Tab N, Selection Decision, at 5.

⁵ The independent government cost estimate (IGCE) was \$206,080,909.35.

protester's past performance; the agency unreasonably evaluated its proposal under the technical capability factor; the agency unreasonably evaluated TIMCO's and DRS's proposals in a manner that reflected disparate treatment in favor of the awardee; and the agency conducted an improper price realism evaluation. For the reasons discussed below, we sustain the protest based on the protester's arguments concerning the evaluation of its past performance and proposed price, and also note an additional concern as to whether the agency equally evaluated the offerors under the technical capability factor.⁶

Past Performance Evaluation

TIMCO argues that the Coast Guard's evaluation of its past performance was unreasonable because the agency failed to consider the protester's performance as one of the two incumbent contractors for PSI services. TIMCO contends that the agency ignored or failed to reasonably consider past performance about which the agency had firsthand knowledge. We agree.

As a general matter, the evaluation of an offeror's past performance is within the agency's discretion. We will question the evaluation conclusions where they are unreasonable or undocumented. Clean Harbors Envtl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. The critical questions are whether the evaluation was conducted fairly, reasonably, and in accordance with the stated evaluation terms, and whether it was based on relevant information sufficient to make a reasonable determination of the firm's overall past performance. Id. An agency's past performance evaluation is unreasonable where the agency fails to give meaningful consideration to all the relevant past performance information it possesses. DRS C3 Sys., LLC, B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 22.

As discussed above, the RFP here sought to combine the agency's requirements for PSIs for its HC-130H and HC-130J aircraft, which had been performed under separate contracts by TIMCO and DRS, respectively. TIMCO submitted information about eight of its prior contracts, including the incumbent contract for HC-130H requirements. Four of these contracts were performed by TIMCO, and the other four were performed by TIMCO's teaming partners, [deleted]. AR, Tab E, TIMCO Proposal, Vol. II, at II-vii. In its proposal, TIMCO stated that it had sent the required questionnaires for each contract to each of its customers. See id. at II-7. Regarding the incumbent contract for the HC-130H requirements, TIMCO provided an "in-progress" contractor performance report for the period from September 2005

⁶ Although we do not address each of TIMCO's arguments, we have reviewed all of the protester's allegations, and sustain the protest only with regard to the issues specifically identified below.

to July 2006. The protester explained that “[f]or the past two [Coast Guard PSI] contracts, TIMCO has received one evaluation from the [Coast Guard].” Id. at II-11. The progress report reflects that for the criteria being evaluated, TIMCO received an excellent rating for quality of product or service, an excellent rating for cost control, an outstanding rating for timeliness of performance, and an outstanding rating for business relations.⁷

As noted, the Coast Guard assigned TIMCO’s proposal a green/acceptable rating and a moderate risk rating for past performance. This evaluation was based on two returned questionnaires.⁸ One was for a TIMCO contract with Northrop Grumman and the United States Air Force for KC-10 aircraft, and the other was for a [deleted] contract with the Coast Guard for propeller overhauls. AR, Tab N, PEG Report, at 33.

The agency evaluators noted that although TIMCO’s proposal cited other examples of past performance, “[i]t was difficult to judge the reliability of TIMCO’s past performance assertions without further customer feedback.” AR, Tab N, PEG Report, at 33. Specifically, with regard to the TIMCO’s performance for the HC-130H PSI services, the agency stated as follows:

In an “in-progress” Contractor Performance Report from July 20, 2006, TIMCO received excellent ratings from the Government; however, some of the comments caused concerns and raised potential risks. For example, the Government stated, “Labor costs are controlled well but materials management requires inordinate amounts of costly Government intervention and assistance.” This statement raises concerns due to the amount of material management duties required in the SOW. They also received positive statements such as, “From four vendors over four years and 25 aircraft, this is the first vendor to receive incentive payments for early delivery.” It appears this Contractor Performance Report was never officially submitted.

⁷ Outstanding was the highest rating and excellent was the next highest rating on the progress report’s performance rating scale. Id. at II-12.

⁸ We note that the Coast Guard asserts that even though TIMCO has alleged that it sent questionnaires to several individuals within the Coast Guard regarding its performance on the incumbent contract, no one within the source selection team was aware that questionnaires had been sent. See AR at 7. This statement, however, is contradicted by TIMCO’s proposal which specifically informed the source selection officials that TIMCO had sent questionnaires to references for each contract. See AR, Tab E, TIMCO Proposal, Vol. II, at II-7.

Id.

With regard to the risk evaluation, the evaluators concluded that “[t]here is moderate risk that TIMCO can perform the proposed effort since there was minimal customer feedback to substantiate their past performance and the fact that no information was provided to substantiate relevant past performance for the facility in Lake City, FL.” Id.

We find that the Coast Guard’s evaluation of TIMCO’s past performance was unreasonable. In this regard, the record shows that the Coast Guard’s evaluation of TIMCO’s performance of the incumbent contract (which was also for the Coast Guard) relied solely upon the 2006 “in-progress” report, rather than any recent performance information. Id. In addition, the agency raised concerns and assessed a moderate risk rating due to the “lack of customer feedback” and the absence of “substantiat[ion]” regarding TIMCO’s performance. Id. In our view, the Coast Guard’s decision not to substantiate TIMCO’s performance on a contract for essentially the same service as here (i.e., HC-130H PSI work also performed for the Coast Guard) was improper.

In answer to this contention, the Coast Guard argues that the evaluators fully considered TIMCO’s past performance on the incumbent contract, despite not having a questionnaire, and despite not addressing the issue, but nonetheless rated the proposal acceptable. Contracting Officer Statement at 4-5. The agency, however, does not explain how the plain statements in the evaluation record support its contention. As noted above, the evaluators found that questionnaires were returned for only two of TIMCO’s past performance references, neither of which was for its incumbent work on the Coast Guard’s HC-130H aircraft. AR, Tab N, PEG Report, at 33. To the extent the agency considered TIMCO’s past performance regarding HC-130H PSIs, the evaluation was limited to the 2006 “in-progress” report. Id. The agency also stated that the lack of questionnaires made it “difficult to judge the reliability of TIMCO’s past performance assertions without further customer feedback.” Id. at 33. In addition, although the Coast Guard’s contemporaneous evaluation record acknowledges that “this Contractor Performance Report was never officially submitted,” id. at 33, it offers no explanation about why the Coast Guard reference did not respond, or why Coast Guard evaluators could not have provided an updated assessment of TIMCO’s performance on the HC-130H PSI effort.

While there is no legal requirement that an agency consider all past performance references, some information is simply “too close at hand” to require offerors to shoulder the inequities that spring from an agency’s failure to obtain and consider information. Shaw-Parsons Infrastructure Recovery Consultants, LLC; Vanguard Recovery Assistance, Joint Venture, B-401679.4 et al., Mar. 10, 2010, 2010 CPD ¶ 77 at 8; Int’l Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. For example, our Office has held that an agency may not ignore contract performance

by an offeror involving the same agency, the same services, and the same contracting officer, simply because an agency official fails to complete the necessary assessments or paperwork. Int'l Bus. Sys., Inc., supra at 4-5. For these reasons, we think the record shows that the agency either ignored or did not fully consider TIMCO's performance of the incumbent requirements for the Coast Guard regarding the HC-130H aircraft.⁹ We sustain this basis of protest.

Price Realism Evaluation

Next, TIMCO argues that the agency improperly considered the realism of its fixed-price offer by assigning a moderate risk to its proposal, which was not anticipated by the RFP evaluation criteria. For the reasons discussed below, we agree that the agency's evaluation was unreasonable.

Before awarding a fixed-price contract, an agency is required to determine that the price offered is fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). An agency's concern in making a price reasonableness determination focuses primarily on whether the offered prices are higher than warranted. See McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 9. Although not required, an agency may also provide for a price realism analysis in a solicitation for the award of a fixed-price contract for the purpose of assessing whether an offeror's low price reflects on its understanding of the contract requirements or the risk inherent in an offeror's approach. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5. However, where there is no relevant evaluation criterion pertaining to realism, a determination that an offeror's fixed-price is too low generally concerns the offeror's responsibility, *i.e.*, the offeror's ability and capacity to successfully perform the contract at its offered price. See Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 4-6; Milani Constr., LLC, B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 4-6; J.A. Farrington Janitorial Servs., B-296875, Oct. 18, 2005, 2005 CPD ¶ 187 at 4. Agencies therefore may not conduct a price realism analysis without first advising offerors that the agency intends to do so. Id.

Here, the protester contends, and the agency agrees, that the price evaluation factor in the RFP did not provide for considering price realism. See AR at 7-8. Instead, the RFP stated that the price evaluation would consider whether an offeror's proposed price was fair and reasonable, *i.e.*, whether the offeror's price

⁹ We also note that the agency's actions here stand in contrast to the treatment accorded to the awardee. The record shows that in evaluating DRS's past performance the evaluators validated claims made by DRS in its proposal relating to the awardee's performance of its Coast Guard contract, through contacts with Coast Guard personnel. See id. at 32.

was unreasonably high, and whether the price, including options, was unbalanced. RFP at 91.

Despite the absence of a specific price realism provision in the solicitation, the record shows that the agency's evaluation of TIMCO's proposed price considered the risk associated with its technical approach--that is, the agency assessed whether the protester's price was too low for its proposed technical approach. The agency's price evaluation contained analyses of the prices for hundreds of contract line item number (CLIN) prices proposed by the offerors, noting in many cases whether the price was above or below the IGCE, and the risk associated with the deviations. AR, Tab L, Price Evaluation Report, at 7-19; see also Tab N, PEG Report at 42-59. For example, the agency noted for fixed price CLIN No. 0223, wing to fuselage fitting attachment, that the protester's price was unrealistic "given the high number of labor hours historically required." AR, Tab L, Price Evaluation Report, at 15.

The price evaluation also raised concerns regarding TIMCO's understanding of the requirements, and under the heading "[a] discussion of any concerns regarding an offeror's understanding of the work or ability to perform the work based upon the analysis performed" states as follows:

For example, TIMCO has completed HC-130H PSIs on a FFP basis but this work does not include all of the requirements of the new Statement of Work (SOW). The new requirement includes completing a pre-inspection of the aircraft at the operational unit and then ordering the long lead time parts, de-painting and painting the aircraft. These three new requirements, which total hundreds of thousands of dollars, did not appear to be represented in TIMCO's [firm-fixed-price] for completing the PSI CLIN. The new requirement inserts [Coast Guard] Quality Assurance (QA) Inspectors, which routinely reject work not done to [Coast Guard] standards, and TIMCO is not experienced dealing with this type of relationship which could potentially add significant time and price to the completion of the PSI.

AR, Tab L, Price Evaluation Report, at 3.

Based on these and other concerns, and the differences between the protester's price and the IGCE, the PET assigned TIMCO's price proposal a "yellow/marginal" adjectival rating and high risk rating.¹⁰

¹⁰ In contrast, the PET found that despite DRS lacking experience with the de-painting and painting requirements, and having never performed the PSI requirement under a fixed-price contract, there was no concern because, "the risk is (continued...)"

In the selection decision, the SSA noted the evaluator's concerns regarding TIMCO's understanding of the requirements, and concluded that the protester's proposed price posed a "moderate risk" because it was "approximately 26% lower than the Independent Government Estimate." AR, Tab N, Selection Decision, at 5.

Although the Coast Guard argues that the agency did not perform a price realism analysis, the record belies this assertion. In this regard, the record shows, and the agency acknowledges, that it specifically assigned a risk rating based on the evaluation of the protester's price. AR, Tab L, Price Evaluation Report, at 23; Tab N, Selection Decision, at 5; Agency Response (July 29, 2013). The agency also argues that it did not find the proposed price "unreasonably low," because the agency found the price "fair and reasonable." Agency Response (July 29, 2013). As the FAR and our decisions make clear, however, price realism and price reasonableness are distinct concepts. Price realism measures whether a proposed price is so low that it poses a performance risk, whereas price reasonableness measures whether a proposed price is too high. Milani Constr. LLC, supra, at 4. Here, the agency's finding that TIMCO's price was fair and reasonable (i.e., not too high) has no bearing on whether it assessed the realism of the protester's price (i.e., too low). As the record shows, the agency assessed a performance risk based on the agency's conclusion that the protester's price was lower than the IGCE, and relied upon this risk, in part, in selecting DRS for award. AR, Tab N, Selection Decision, at 5-6.¹¹

(...continued)

on the contractor when using [firm-fixed price contracts], [and therefore] this risk appears to be incorporated in [DRS's] pricing." See id.

¹¹ The Coast Guard argues that, even though the solicitation did not provide for a price realism evaluation, it was appropriate to assess risk based on TIMCO's price based on weaknesses identified in its technical proposal, citing our decision in Advanced Construction Techniques, Inc., B-404847.6, Jan. 25, 2012, 2012 CPD ¶ 54 at 13. In Advanced Construction Techniques, Inc., however, we found that the agency's reference to the term "unrealistic" with regard to the protester's price did not denote a price realism analysis, but was instead a reference to the agency's concerns regarding the protester's assumptions in its technical proposal, including the prospect for additional payments by the agency beyond its fixed price. See id. at 4-5, 13. Our decision in Advanced Construction Techniques, Inc. did not state that agencies may conduct a price realism analysis in the absence of a specific solicitation term advising offerors of the possibility of such an assessment, nor was our decision intended to overrule our well-established precedents in Emergint Technologies, Inc., Milani Construction, LLC, J.A. Farrington Janitorial Services, and similar decisions.

Because below-cost prices are not inherently improper when offerors are competing for award of a fixed-price contract, companies must be given reasonable notice that their business decision to submit a low-priced proposal--and perhaps even to accept little or no profit or operate at a loss in order to win new work--will be viewed negatively by the government in assessing a company's understanding or the risk associated with its proposal. See Emergint Techs., Inc., supra, at 7; Milani Constr. LLC, supra, at 5. Since the agency failed to provide such notice, and because the selection decision clearly relies on an assessment of risk relating to the protester's fixed price, we conclude that the agency improperly applied an unstated evaluation factor in determining that the protester's proposed pricing was so low as to call into question its understanding of the solicitation requirements and its ability to perform. See Emergint Techs., Inc., supra, at 4-6; Milani Constr., LLC, supra, at 4-6; J.A. Farrington Janitorial Servs., supra, at 4.

Disparate Treatment Under the Technical Capability Factor

Next TIMCO argues that the Coast Guard unreasonably evaluated its proposal under the technical capability factor. TIMCO contends that the record demonstrates that the Coast Guard's evaluation of its proposal was the result of disparate treatment in the evaluation of TIMCO's and DRS's proposals. For the reasons discussed below, we conclude that the record indicates that the agency may not have treated the offerors equally with regard to one example cited by the protester concerning the characterization of DRS as the incumbent contractor for the agency's requirements.

In reviewing an agency's evaluation of offerors' technical proposals, our Office will not substitute our judgment for that of the agency; rather, we will question the agency's conclusions where they are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17. It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. LASEOD Group, LLC, B-405888, Jan. 10, 2012, 2012 CPD ¶ 45 at 4; Brican Inc., B-402602, June 17, 2010, 2010 CPD ¶ 141 at 4. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

As evidence of disparate treatment, the protester notes that the Coast Guard justified the evaluation and award, in part, based on a characterization of DRS as the incumbent contractor. In this regard, the agency's evaluation and its response to the protest were based on the agency's view that DRS performed 70 percent of the Coast Guard's prior work for PSIs, and TIMCO only 30 percent. See AR, Tab K,

Technical Evaluation Report, at 4; see also AR at 1-2, 7. TIMCO argues that the record demonstrates that the Coast Guard viewed only DRS as an incumbent and not TIMCO even though both were performing largely the same services and TIMCO also was an incumbent. The protester argues that the agency's characterization of DRS as the incumbent contractor led to improper credit for the awardee in the evaluation of its experience under the technical experience and corporate/commercial experience subfactors.

The protester provided analyses of the number of PSIs performed by TIMCO and DRS for the Coast Guard, and argued that the offerors completed comparable numbers of PSIs and performed comparable levels of effort. See Protester's Comments (July 8, 2013), at 5-7. Although the Coast Guard cites various calculations to support its characterization of the relative amounts of work performed by the offerors, the agency does not provide specific documentation to rebut the protester's arguments. See Coast Guard Response (Aug. 14, 2013). In this regard, the protester contends that its own data are reliable because, in addition to performing services as the PSI contractor for the HC-130H aircraft, TIMCO has also been a subcontractor to DRS since 2008 for all of the de-painting and painting tasks under DRS's PSI contract with the Coast Guard for the HC-130H and HC-130J aircraft. Protester's Comments (Aug. 19, 2013), at 7. Because the agency has not meaningfully responded to the protester's arguments, we find questionable the agency's view that DRS was the incumbent. For this reason, in light of our conclusions regarding the evaluation of TIMCO's past performance and proposed price, we think the agency should also consider whether the record supports the agency's characterization of DRS as the incumbent contractor as part of our recommended corrective action, discussed below.

With regard to the protester's remaining allegations regarding disparate treatment, we find none provides a basis to sustain the protest. For example, the protester argues that the Coast Guard attributed undue weight to experience with the HC-130J model under both the technical experience and the corporate/commercial experience subfactors of the technical capability factor. Here, the record does not evidence that the Coast Guard attributed undue weight to experience with the HC-130J, but that the agency found that despite TIMCO's PSI and other commercial experience, it lacked experience on the HC-130J aircraft, which was considered a weakness. See AR, Tab N, PEG Report, at 12-14, 19-21; Tab N, Selection Decision, at 5. We find such an evaluation to be reasonable under these subfactors. Although the protester argues that this was unreasonable and evidence of disparate treatment, we do not agree, given that the RFP required the PSIs to be performed on this specific aircraft. As noted above, disagreement with an evaluation does not establish that the evaluation was unreasonable. Because HC-130J work was a requirement under the RFP, we find that an offeror's experience with this aircraft properly could be considered under both the technical experience and corporate/commercial experience subfactors.

Conclusion and Recommendation

For the reasons discussed above, we conclude that the Coast Guard's evaluation of TIMCO's past performance and price was improper, and that these errors prejudiced the protester. With regard to the evaluation of past performance, we recommend that the agency reevaluate TIMCO's performance record, consistent with this decision. We also recommend that the agency either reevaluate or ensure better documentation of its evaluation of the relative percentages of work performed by TIMCO and DRS, under the corporate/commercial experience subfactor.

With regard to the evaluation of price, we recommend that the agency consider whether an evaluation of the realism of offerors' proposed prices is necessary. If the agency concludes that evaluation of offerors' proposed prices is not necessary, it should perform a new price/technical tradeoff, giving appropriate consideration to TIMCO's proposed price consistent with our decision here, and our other recommendations, above. Alternatively, if the agency decides that consideration of the realism of offerors' prices is necessary, the agency should amend the RFP to indicate that the agency will conduct such an evaluation, allow submission of revised proposals, reevaluate the revised proposals, and make a new source selection decision, consistent with our decision and our other recommendations, above. If, based on the new selection decision, DRS is not selected for award, the agency should terminate DRS's contract and make award to the company whose proposal is found to represent the best value.

We also recommend that the protester be reimbursed its costs of filing and pursuing its protest, including reasonable attorney fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2013). The protester's certified claim for costs, detailing time expended and costs incurred, must be submitted directly with the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel