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# Decision

**Matter of:** Seaward Services, Inc.

**File:** B-420580; B-420580.2

**Date:** June 13, 2022

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Davis Young, Esq., Patrick Mayette, Esq., DJ Thornley, Esq., Ann Caroline M. Calabrese, Esq., Courtney E. Hall, Esq., and James L. Johnsen, Esq., Department of the Navy, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging agency's evaluation of proposals and source selection decision is sustained where record shows that agency's evaluation and source selection was unreasonable and not consistent with the terms of the solicitation.

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## DECISION

Seaward Services, Inc. (SSI), of Norfolk, Virginia, protests the award of a contract to TOTE Services, LLC, of Jacksonville, Florida, under request for proposals (RFP) No. N32205-20-R-3004, issued by the Department of the Navy, Military Sealift Command, for services in connection with the worldwide operation, maintenance and repair of the USNS Guam. SSI maintains that the agency unreasonably evaluated proposals and made an unreasonable source selection decision.

We sustain the protest.

## BACKGROUND

The RFP contemplates the award of a fixed-price contract on a best-value tradeoff basis for a 1-year base period and four 1-year options. Firms were advised that the agency would evaluate proposals and make award based on price, as well as several non-price

factors. The non-price factors were divided among several pass/fail considerations (not relevant to the protest issues), and two “tradeoff” factors, technical approach and past performance (deemed relatively equal in importance); the two non-price “tradeoff” factors together were deemed significantly more important than price. RFP at 212-218.<sup>1</sup>

The agency received proposals from SSI and TOTE. The agency evaluated the proposals, engaged in two rounds of discussions, and solicited, obtained and evaluated final proposal revisions.<sup>2</sup> After completing its evaluation, the agency assigned the following ratings:

	<b>Pass/Fail Considerations</b>	<b>Technical Approach</b>	<b>Past Performance</b>	<b>Price</b>
SSI	Pass/Acceptable	Good	Satisfactory	\$45,606,758
TOTE	Pass/Acceptable	Good	Satisfactory	\$39,066,900

Agency Report (AR) Exh. 63, Source Selection Decision Document (SSDD), at 4. On the basis of these evaluation results, the agency made award to TOTE, finding that its proposal represented the best value to the government. After being advised of the selection decision and requesting and receiving a debriefing, SSI filed this protest.

## DISCUSSION

The USNS Guam, the ship that the successful contractor will operate, maintain and repair here, is a large, high-speed transport vessel with a catamaran (dual) hull constructed of aluminum, categorized as an expeditionary fast transport craft capable of sustained, high-speed travel in an open ocean environment. Because of its unique characteristics, the RFP specifically provided for evaluation of the offerors’ experience and past performance in connection with operating and maintaining aluminum-hulled vessels. SSI’s allegations are confined to the evaluation of proposals in this area.

Broadly speaking, SSI--the incumbent for the solicited requirement--maintains that the agency unreasonably evaluated proposals as they relate to the offerors’ respective experience and past performance operating and maintaining large, high-speed ocean-going aluminum-hulled craft.

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<sup>1</sup> All references to the RFP are to the conformed version of the RFP provided by the agency with its report.

<sup>2</sup> Under the technical approach factor, proposals would be assigned adjectival ratings of outstanding, good, acceptable, marginal or unacceptable. RFP at 216. The agency would assign adjectival relevancy ratings of very relevant, relevant, somewhat relevant, or not relevant to the offerors’ past performance examples, and would assign overall adjectival past performance confidence ratings of substantial confidence, satisfactory confidence, neutral confidence, limited confidence or no confidence. RFP at 217-218.

We discuss SSI's allegations in detail below, but note at the outset that, in reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. *Science Applications International Corporation*, B-420005, B-420005.2, Oct. 21, 2021, 2021 CPD ¶ 372 at 5. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations, or otherwise not reasonably based. *Id.*

We conclude that the agency unreasonably evaluated proposals under the technical evaluation factor, but reasonably evaluated the offerors' past performance. Before discussing our conclusions in detail, we note that the agency prepared an extensively redacted report that included only selected documents and, within those selected documents, only very circumscribed portions thereof. While our Bid Protest Regulations, 4 C.F.R. § 21.3(d), only require agencies to produce documents in response to a protest that are relevant to the allegations raised, an agency's overly aggressive effort to limit document production can, as here, frustrate the mandate of the Competition in Contracting Act, 31 U.S.C. §§ 3551-3557, for our Office to meaningfully resolve bid protests. Because of the lack of an adequate record in the instant case, our Office cannot conclude that the agency's evaluation, and by extension its source selection decision, were reasonable. *CALNET, Inc.*, B-413386.2, B-413386.3, Oct. 28, 2016, 2016 CPD ¶ 318 at 9 n.10; *CORTEK, Inc.*, B-412047, *et al.*, Dec. 17, 2015, 2015 CPD ¶ 397 at 3.

#### Technical Approach Evaluation

The RFP specified that the agency would evaluate the technical approach factor as a single factor, but identified four areas that would be included in the evaluation. RFP at 215. These areas were technical management approach; staffing approach; training plan; and aluminum experience. *Id.* at 215-216. SSI's protest relates to the evaluation of the offerors' respective aluminum experience.

SSI argues that it has extensive experience operating, maintaining and repairing large high-speed ocean-going aluminum-hulled craft, such as the USNS Guam. In contrast, SSI alleges that TOTE has no experience operating, maintaining or repairing large high-speed ocean-going aluminum-hulled craft. In light of this alleged disparity in the firms' respective experience, SSI argues that the agency unreasonably found the proposals comparatively equal under the technical approach factor and assigned both proposals ratings of good. SSI maintains that the evaluation fails to capture the sharp distinction between the firms' comparative aluminum experience, and therefore is unreasonable.

We sustain this aspect of SSI's protest.

The RFP provided as follows with respect to the evaluation of aluminum experience:

## Aluminum Experience [:]

- i. Offeror provided a detailed narrative that describes their aluminum operation, maintenance and repair experience.
- ii. For evaluation purposes, experience with aluminum hull material may be considered a strength.

RFP at 216.

The record shows that SSI's proposal included a detailed description of its experience operating, maintaining and repairing large, high-speed ocean-going aluminum-hulled craft. Of note, SSI's proposal described its experience operating, maintaining and repairing, among other craft, three particular ships, the HSC Westpac Express, the HSC Alakai (a "sister" ship to the USNS Guam) and the USNS Guam (the ship for which the current services are being solicited), all of which are large, high-speed ocean-going aluminum-hulled vessels. AR, Exh. 32, SSI Initial Proposal, at 27-30; Exh. 35, SSI Revised Proposal, at 49-53. SSI provided details relating to both the operation of these three ships (along with several other aluminum-hulled craft), as well as the maintenance and repair performed on these ships, including the dates and details surrounding performance of numerous dry dock repair services performed on all three ships.<sup>3</sup> *Id.*

Ultimately, the record shows that the agency's technical evaluators found that SSI's proposal demonstrated significant experience operating, maintaining and repairing aluminum-hulled ships, and assigned the SSI proposal a single strength in this area.<sup>4</sup> AR, Exh. 40, SSI Final Technical Evaluation Report, at 9.

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<sup>3</sup> SSI's proposal also notes that the firm served as the owner representative for the supervision of the building of both the HSC Alakai and the USNS Guam. AR, Exh. 32, SSI Initial Proposal, at 27-28; Exh. 35, SSI Revised Proposal, at 51-52.

<sup>4</sup> The record shows that the technical evaluators assigned the SSI proposal a rating of unacceptable under the technical approach factor. The final technical evaluation report is largely redacted, so we are unable to determine the specific bases for the technical evaluators' findings. Nonetheless, the source selection evaluation board (SSEB) disagreed with the technical evaluators' findings, and concluded that SSI's proposal merited a good (rather than unacceptable) rating for the technical approach factor. AR, Exh. 62, SSEB Report, at 20-22.

The SSEB Report describes a finding in this area of the evaluation apparently made in a memorandum prepared by the source selection authority (SSA) that also disagreed with the findings of the technical evaluators. AR, Exh. 62, SSEB Report, at 22. There are two versions of what appear to be the SSA's memorandum in the record, AR, Exhs. 7 and 37, SSA Memoranda. The document that appears to be the one discussing the deficiency found in the SSI proposal, AR, Exh. 37, SSA Memorandum, is almost entirely

In contrast, the record shows that TOTE has little to no experience with large, high-speed, ocean-going aluminum-hulled vessels. TOTE listed experience with just one aluminum-hulled vessel, the USNS Fast Tempo, a 155-foot aluminum-hulled vessel used in connection with the operation and maintenance of an offshore petroleum discharge system.<sup>5</sup> AR, Exh. 2, TOTE Technical Proposal, at 29. The evaluators found that TOTE's experience with the USNS Fast Tempo constituted only "limited operations" with aluminum-hulled vessels. AR, Exh. 3, TOTE Initial Technical Evaluation Report, at 14. Nonetheless, the evaluators assigned TOTE's initial proposal a strength for having subcontracted with a firm called [deleted] to provide expertise in operating, maintaining and repairing aluminum-hulled vessels. *Id.* At the same time, the evaluators assigned a weakness to the TOTE proposal for failing to provide details about the scope of technical expertise or reliance on [deleted].<sup>6</sup>

After concluding discussions with TOTE, the technical evaluators assigned the proposal a rating of good under the technical approach evaluation factor, and assigned it two strengths for aluminum experience, one for its use of [deleted] as a subcontractor and a second for the experience of TOTE's port manager based on the perceived aluminum ship experience of that individual. AR, Exh. 10, TOTE Final Technical Evaluation Report, at 13-14. The evaluators concluded that TOTE itself had only limited experience operating aluminum vessels based on its experience operating the USNS

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redacted, and in any case does not include a discussion of this aspect of the evaluation. We discuss the other version of this document, Exh. 7, SSA Memorandum, below.

<sup>5</sup> The USNS Fast Tempo is not a high-speed, ocean-going transport vessel like the USNS Guam. The USNS Fast Tempo is an offshore tug/supply ship that operates in support of a larger ship, the USNS Vice Admiral K.R. Wheeler, an offshore petroleum distribution system ship. See AR, Exh. 11, TOTE Past Performance Narrative, at 2; see *also*, <http://www.navsource.org/archives/09/49/495002.htm>. At 155 feet in length, the USNS Fast Tempo is less than half the size of the USNS Guam, which measures 373 feet in length. See <https://www.msc.usff.navy.mil/Ships/Ship-Inventory/High-Speed-Transports>.

<sup>6</sup> In evaluating TOTE's initial proposal, the evaluators assigned the firm a second strength for the aluminum vessel related experience of an individual identified as TOTE's engineer manager/lifecycle manager. AR, Exh. 3, TOTE Initial Technical Evaluation Report, at 14. However, those portions of TOTE's revised technical proposal submissions that are not redacted made no further mention of its engineer manager/lifecycle manager, and no further mention of this strength was made in any of the subsequent evaluation materials. See, AR, Exh. 5, TOTE Revised Proposal, at 10-12; Exh. 6, TOTE Revised Technical Evaluation Report, at 13-14; Exh. 10, TOTE Final Technical Evaluation Report, at 13-14. (The record includes a final proposal revision submitted by TOTE, AR, Exh. 9, but the entire document has been redacted.)

Fast Tempo, and that TOTE's proposal failed to address any dry docking experience with aluminum vessels.<sup>7</sup> *Id.* at 13.

We have several concerns with the evaluation of the TOTE proposal. As noted, in assigning the first strength, the agency relied on the fact that TOTE retained [deleted] as a subcontractor, and concluded that this fact provided adequate assurances that TOTE has aluminum experience. However, TOTE's proposal contains no information about [deleted] experience operating, maintaining or repairing aluminum-hulled vessels. The information in TOTE's proposal relating to [deleted] is confined to a one-paragraph description of the types of communications that TOTE anticipates would occur between the two firms (such as e-mail, voice communication and soliciting on-site expertise), and a bulleted list of areas where TOTE claims it could obtain [deleted] guidance. AR, Exh. 5, TOTE Revised Proposal, at 10.

There is no information in TOTE's proposal demonstrating or describing what aluminum-hulled vessel experience [deleted] has; no past performance examples of contracts performed by [deleted] where it operated, maintained or repaired aluminum-hulled vessels; and no information of any sort to support a conclusion that [deleted] has ever operated, maintained or repaired aluminum-hulled vessels. In fact, the TOTE proposal--at least that portion of the proposal that has been provided to our Office--also does not include a copy of the subcontracting agreement that TOTE claims to have entered into with [deleted].<sup>8</sup>

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<sup>7</sup> TOTE's initial proposal submission made reference, without any elaboration, to having performed two successful dry dockings of the USNS Fast Tempo. AR, Exh. 2, at 29. TOTE was asked two questions during the first round of discussions: first, to provide a narrative describing the unique maintenance aspects of aluminum-hulled vessels (which TOTE provided in limited form, AR, Exh. 5, TOTE Revised Proposal, at 10-11); and second, to address its experience with dry docking aluminum-hulled vessels, if any. In response to the second question, TOTE represented that: "TOTE Services has conducted dry-dock and hull inspections on the USNS Fast Tempo in 2015, 2017 and 2020. Each time the vessel was dry-docked with the USNS WHEELER using the builder's dry-dock blocking arrangement." *Id.* at 11. TOTE further represented in that same response that it had performed a single repair to the USNS Fast Tempo in 2015, replacing a 10 x 14 foot midships side shell section and some internal framing that had been damaged on the vessel. *Id.* at 12. This appears to be the entirety of TOTE's description of its dry docking experience with an aluminum-hulled vessel, and to be the basis for the evaluators' finding that TOTE lacked experience with dry docking an aluminum-hulled vessel.

<sup>8</sup> TOTE's proposal does make reference to a particular [deleted] employee (whom we refer to here as Captain X), that TOTE states has experience in ocean-going high-speed aluminum craft. AR, Exh. 5, TOTE Revised Proposal, at 10. The proposal states that Captain X's resume is included with the proposal, but the heavily redacted versions

In assigning the second strength, the agency relied on the fact that TOTE's proposed port engineer has experience as a first assistant engineer with aluminum-hulled vessels. AR, Exh. 10, TOTE Final Technical Evaluation Report, at 14. This individual's resume, however, lacks any detail about the individual's experience, or assigned duties, in relation to aluminum-hulled vessels. AR, Exh. 2, TOTE Initial Proposal, at 33-34.

The resume includes a list of ships to which the individual was assigned as first assistant engineer, and that list includes three entries that appear to be high-speed, ocean-going aluminum-hulled vessels: The USNS Fall River (the individual was assigned to that vessel for approximately 2 months); the USNS Millinocket (the individual was assigned to that ship for approximately 4 months); and the USNS Carson City (the individual was assigned to that ship for approximately 3½ years). AR, Exh. 2, TOTE Initial Proposal, at 33. However, the individual's duties and responsibilities in connection with the vessels are not described at all, and there is no basis to conclude from a review of the resume that the individual has any meaningful experience in operating, maintaining or repairing the identified ships.<sup>9</sup> *Id.*

In sum, the record shows that the agency assigned TOTE's proposal two strengths for having experience with aluminum-hulled vessels, but a review of the proposal does not support the underlying evaluation conclusions. TOTE's proposal does not contain any information that reasonably could lead the agency to conclude that TOTE itself has any meaningful aluminum-hulled vessel experience beyond its experience operating the USNS Fast Tempo; the evaluators characterized that experience as "limited," and also noted that TOTE does not have any dry dock experience with aluminum-hulled vessels. And, as noted, TOTE's proposal--at least the heavily redacted version of it submitted by the agency with its report--lacks even the most basic information that might demonstrate that its apparent subcontractor, [deleted], or its port engineer, have any meaningful experience operating, maintaining or repairing aluminum-hulled craft.

In contrast to its evaluation of the TOTE proposal, and as discussed above, the agency assigned just a single strength to the SSI proposal, notwithstanding the fact that SSI presented extensive, detailed information about its experience operating, maintaining and repairing numerous high-speed ocean-going aluminum-hulled vessels, and more specifically, operating, maintaining and repairing the USNS Guam, the exact ship for which the solicited services are to be provided.

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of TOTE's proposal submissions provided by the agency do not include a copy of this resume.

<sup>9</sup> In contrast, the resume includes a separate list of ships to which the individual was assigned as port engineer (none of which appears to be an ocean-going, high-speed aluminum-hulled ship), and that separate list includes some limited details about the individual's responsibilities, such as managing and overseeing dry dock operations on two vessels, as well as a list of additional duties and responsibilities performed by the individual while working as a port engineer. AR, Exh. 2, TOTE Initial Proposal, at 33-34.

On this record, we conclude that the agency's evaluation was unreasonable.

As a final matter we note that, in the course of responding to the protest, the agency suggested that the RFP did not require firms to have actual experience operating, maintaining and repairing aluminum-hulled vessels. According to the agency, firms had "two paths" to satisfying the RFP requirements, either having and describing their actual aluminum experience, or adequately describing their approach to meeting the RFP requirements. Agency Report at 27-29. According to the agency, firms without adequate experience with aluminum-hulled vessels, such as TOTE, could satisfy the requirements of the RFP simply by describing how they would meet the RFP's requirements.

The agency misreads the terms of the solicitation. The section of the RFP relied on by the agency is the instructions to offerors, rather than the aluminum hull experience area of the technical approach evaluation factor. The instructions to offerors provide as follows:

If an offeror does not have experience operating or maintaining vessels comprised of aluminum hull material, offeror shall provide:

- i. A narrative explaining how the offeror will successfully perform all the requirements of Section C, specifically as they relate to the unique nature of operating and maintaining an aluminum-hulled vessel. This should be sufficiently detailed to demonstrate that the offeror understands and has considered the unique challenges presented by the operation and maintenance of an aluminum-hulled vessel and will be able to perform this contract successfully.

RFP at 208-209 (Instructions to Offerors). In contrast, as noted above, the aluminum experience evaluation factor provides--in its entirety--as follows:

Aluminum Experience [:]

- i. Offeror provided a detailed narrative that describes their aluminum operation, maintenance and repair experience.
- ii. For evaluation purposes, experience with aluminum hull material may be considered a strength.

RFP at 216 (Aluminum Hull Experience Evaluation Factor).

Agencies are required to evaluate proposals based exclusively on the evaluation factors stated in the solicitation. While a solicitation may establish additional informational, technical, administrative, or other requirements in the instructions for proposal preparation, those requirements may not properly be considered in connection with the evaluation of proposals unless those additional requirements also are specified as a

basis for proposal evaluation. *McCann-Erickson USA, Inc.*, B-414787, Sept. 18, 2017, 2017 CPD ¶ 300 at 4.

While the RFP asked offerors for information relating to their experience with aluminum-hulled vessels, or an explanation of how they would meet the requirements of the RFP if they lacked relevant experience with aluminum-hulled vessels, the RFP's evaluation factor was confined to consideration of an offeror's actual experience in operating, maintaining, and repairing aluminum-hulled vessels. Thus, to the extent the agency now claims that its evaluation was based on findings relating to the adequacy of TOTE's description of how it would meet the RFP's requirements, such an evaluation was inconsistent with the terms of the solicitation.<sup>10</sup>

Notwithstanding the agency's position during the protest, the contemporaneous record shows that the SSA appears to have understood this distinction. In a memorandum to the file disagreeing with a finding by the evaluators that TOTE failed to describe adequately its methods of aluminum repair, the SSA noted:

I disagree with this assessment as *we did not ask for them to describe the methods of aluminum repair, but their experience with same*. TOTE has provided this information [that is, the information discussed above relating to [deleted], and TOTE's port manager] and described in a general way some of the considerations that need to be taken when working with aluminum.

AR, Exh. 7, SSA Memorandum to the File, at 8 (*emphasis supplied*).

In light of the foregoing discussion, we sustain this aspect of SSI's protest.

#### Past Performance Evaluation

SSI next challenges the agency's evaluation of past performance. SSI does not take issue with the substantive or qualitative findings of the past performance evaluation. Rather, SSI's challenge relates to the agency's relevancy determinations made in connection with the past performance examples it reviewed. According to the protester, the agency unreasonably failed to find all of its past performance examples sufficiently relevant, and unreasonably found TOTE's past performance examples relevant.

As with its allegations relating to the agency's evaluation of proposals under the technical approach factor, SSI's challenge centers on the offerors' past performance of contracts involving aluminum-hulled craft. SSI essentially maintains that the RFP

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<sup>10</sup> As noted, TOTE's proposal included a description of its limited experience performing dry dockings on the USN Fast Tempo, AR, Exh. 5, TOTE's First Revised Proposal, at 11-12, which the evaluators concluded failed to show that TOTE had any meaningful experience with dry docking an aluminum vessel. AR, Exh. 10, Final Technical Evaluation Report, at 13.

required the agency to find any contract performed in connection with the operation, maintenance and repair of aluminum-hulled vessels more relevant, and maintains that the agency erred in assigning relevancy ratings based on other considerations. We find no merit to this aspect of SSI's protest.

In connection with the relevance determination, the RFP provided:

Relevancy Assessment. Each recent past performance effort will be assessed for relevancy in accordance with the definitions and past performance relevancy table below. The Government may use data provided in the offeror's proposal and data obtained from other sources to establish the relevancy of past performance efforts.

- i. Scope: The similarity of the type of experience (e.g., mission type, vessel type, hull type, hull material type, similar operating environment) to the PWS [performance work statement].
- ii. Magnitude: The similarity of the volume (e.g., number of vessels), dollar value, and/or duration of the work performed to the PWS.
- iii. Complexity: The similarity of technical difficulty, managerial intricacy, and/or required coordination of tasks to the PWS.

RFP at 217. SSI focuses on that portion of the language quoted above relating to hull type and hull material type in support of its position that the agency necessarily was required to rate any contract involving an aluminum-hulled vessel more relevant than other types of contracts.

We have reviewed all of SSI's allegations in connection with the past performance evaluation and conclude that the relevancy determinations were reasonable and consistent with the relevancy considerations outlined in the RFP's past performance evaluation factor. In a word, the record shows that the agency considered all of the enumerated relevancy considerations outlined in the RFP, not only those relating to hull type and hull material type. Based on this more holistic review of the past performance examples, the record shows that the agency made reasonable determinations with respect to the relevancy of the past performance examples reviewed. We discuss two examples for illustrative purposes.

The record shows that one of SSI's past performance examples is an ongoing contract with Austal USA, a shipbuilding firm that constructs new expeditionary fast transport and littoral combat ships for the Navy. SSI's contract with Austal is to provide officer crews to man these newly-constructed ships during sea trials. AR, Exh. 42, SSI Past Performance Narrative, at 10-12.

The record shows that the agency found this past performance example not relevant. While the agency expressly noted that the ships being crewed under this contract were similar to the USNS Guam (both the USNS Guam and the crewed ships were similar in

size, hull material and construction, propulsion systems etc.) the agency determined that the mission, complexity, size and scope of this contract differed significantly from the solicited requirement.

For example, the agency determined that, under the Austal contract, SSI performed an average of 3.5 sea trials per year, which the agency found translated to approximately 28 days per year for contract performance, compared to full-time operation of the USNS Guam. AR, Exh. 61, Past Performance Evaluation Report, at 9-11. The agency also found that the missions were not comparable, with the sea trials requiring only the provision of crews for the ships for intervals of 2 weeks or less out of Austal's Mobile, Alabama facility, compared to the full-time operation, maintenance and repair of the USNS Guam in the Far East. *Id.*

The agency further found that the crews performing the sea trials for Austal were much smaller than the crew required to operate the USNS Guam, with the sea trials being performed by crews ranging from four to six individuals, compared to the full-time crew of 18 individuals for the USNS Guam. *Id.* The agency finally found that the Austal contract was not of the same magnitude compared to the solicited requirement, averaging a contract value of just [deleted] per year, compared to the anticipated value of the USNS Guam contract of approximately \$22 million per year. *Id.*

On this record, we conclude that the agency's relevancy determination for this past performance example was reasonable. The contract was much smaller than the solicited requirement; was performed locally for a much smaller interval of time annually; utilized much smaller crews; and did not involve providing ship maintenance or repair services. While SSI is correct that the vessels under the Austal contract are similar to the USNS Guam, the mission size, scope and complexity of the contract were not comparable to the mission size, scope or complexity of the solicited requirement.

As a second example, the record shows that one of TOTE's past performance examples is an ongoing contract for operating and maintaining a fleet of six fast sealift ships for the Department of Transportation's Maritime Administration that was rated somewhat relevant.<sup>11</sup> AR, Exh. 14 TOTE Past Performance Narrative.

The agency determined that, although these ships differed in construction from the USNS Guam (the ships are mono-hulled and constructed of steel), the contract nonetheless involved larger vessels (the ships are 288 meters in length, compared to the USNS Guam, which is 107 meters in length) with a large payload capacity (the ships have the capacity to carry over 700 military vehicles and 55 total crew and passengers, compared to the USNS Guam which has a total capacity to carry 881 personnel and associated equipment). AR, Exh. 61, Past Performance Evaluation Report, at 18.

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<sup>11</sup> TOTE's past performance narrative explains that it was originally awarded a single contract in 2011 for the management of two fast sealift ships, and that in 2016 it was awarded two contracts that collectively require it to manage a fleet of six fast sealift ships. AR, Exh. 14, TOTE Past Performance Narrative, at 2.

The agency also determined that, although these ships are in a reserve operating status (compared to the USNS Guam, which is in a full operating status), they can be deployed worldwide at any time. AR, Exh. 61, Past Performance Evaluation Report, at 18. In addition, the agency found that the management of the fleet of ships was more complex than the solicited requirement, specifically concluding:

For complexity, TOTE provides ship management services for FSS [fast sealift ships] vessels, which includes maintenance, repair, OEM [original equipment manufacturer] directed repairs, modifications, inspections, lifecycle management and shore[-]side staff, which are similar to the requirements of the RFP. The technical difficulty is more complex due to [the fact that the] six vessels . . . utilize steam propulsion. Steam propulsion [system maintenance] is more complex due to their age and higher maintenance requirements. Managerial difficulty and coordination of tasks is inherently more complex due to managing six vessels versus one vessel of the RFP.

*Id.* at 18-19. The agency also found that the magnitude of the effort was similar to the magnitude of the solicited requirement (the contract's annual value was approximately \$21 million versus the solicited requirement, which has an anticipated annual value of approximately \$22 million), and that the total crew size for the ships was collectively greater than the crew size for the USNS Guam (each ship includes a crew of 9-10 individuals, or a total of 54-60 crew members, compared to the USNS Guam, which has a crew of only 18 individuals).

On this record, we conclude that the agency's finding that this past performance example was somewhat relevant was reasonable. Although the ships in question are mono-hulled steel ships, the vessels are larger than the USNS Guam, involve greater complexity in terms of managing their propulsion systems, and the overall effort required the coordination of multiple vessels and crews.

In sum, we conclude that the agency's past performance evaluation was reasonable and consistent with the terms of the RFP's past performance relevancy requirements. We therefore deny this aspect of SSI's protest.<sup>12</sup>

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<sup>12</sup> SSI also alleges that the agency failed to consider TOTE's ownership and operation of a vessel called the El Faro, which sank during a storm in 2015. However, the record shows that the agency was aware of this incident, but concluded that it would not be indicative of TOTE's management and operation of the USNS Guam. The agency found the incident was not indicative of how TOTE might operate the USNS Guam because the USNS Guam will be under the command of military personnel that will control the ship's sailing, routing, and weather avoidance through the Navy's optimum tracking and ship routing of the vessel, and because the agency, as the owner of the vessel, has an independent inspection process that ascertains the material condition of

## Source Selection Decision

As discussed above, we find that the agency unreasonably evaluated proposals under the technical approach factor as it relates to the consideration of the offerors' respective experience with aluminum-hulled vessels. As also noted above, the technical approach factor included four areas of consideration, only one of which was aluminum experience.

The record shows that the agency ultimately found the two proposals comparatively equal under the technical approach factor, and assigned both proposals ratings of good under that factor. However, many details underlying the agency's findings relating to the comparative merits of the proposals are not discernible from the record because it is so heavily redacted. See *e.g.*, AR, Exh. 62, SSEB Report; Exh. 63, SSDD.

The record also reflects disagreements among the technical evaluators, the SSEB and the SSA, but the bases for these disagreements also are largely not discernible from the record because it is so heavily redacted. (For example, as discussed, the record shows that the SSA disagreed with the technical evaluators' finding that the SSI proposal was technically unacceptable, but the document memorializing that finding is largely redacted, and we cannot determine how the SSA resolved that disagreement. AR, Exh. 37, SSA Memorandum.)

Finally, as noted, the agency elected to heavily redact the TOTE proposal, and we cannot ascertain basic details of the TOTE offer--for example, whether there even exists a subcontracting agreement between TOTE and [deleted].

As we explained in *CALNET Inc., supra*:

[T]he record furnished by the Navy in response to the protest includes documents that are heavily redacted, despite the issuance of a protective order in this case. Consequently, the record provided to our Office shows that the agency made its finding of equivalency based entirely on the adjectival ratings assigned under the non-cost evaluation factors. Although it is possible that some other portion of the agency's source selection decision [or other evaluation materials]--not produced despite the protective order--may provide a more detailed analysis supporting the conclusion that these proposals are comparatively equal, the record presented to our Office does not include such information. In the absence

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the vessel. AR, Exh. 61, Past Performance Evaluation Report, at 27. The record therefore shows that the agency considered the incident and had a reasoned basis for discounting any concerns about it in light of the totality of circumstances. We also note that the incident occurred in 2015, which was outside of the 5-year time frame for consideration of past performance examples specified in the RFP. RFP at 217.

of an adequate record, our Office cannot conclude that the agency's finding was reasonable.

Here, too, in the absence of an adequate record, we cannot determine whether the agency's finding of comparative equality between the proposals was reasonable, or made in accordance with the terms of the RFP. Although the agency provided a record it represented to be the relevant documents responsive to the protest allegations, what we can determine from the limited record presented, is that the agency unreasonably found the two proposals comparatively equal in terms of demonstrating experience with aluminum-hulled vessels. What impact that finding had on the agency's source selection decision, and what impact a corrected finding in this area might have on the source selection decision, is a matter that we cannot discern from the record presented. Accordingly, we also sustain this aspect of SSI's protest.

## RECOMMENDATION

We recommend that the agency reevaluate proposals in a manner consistent with the terms of the RFP, as well as the above discussion, and make a new source selection decision based on that reevaluation. Should the agency determine that the proposal SSI submitted rather than the proposal submitted by TOTE represents the best value to the government, we further recommend that the agency terminate the contract awarded to TOTE for the convenience of the government, and that award be made to SSI, if otherwise proper. Finally, we recommend that the agency pay SSI the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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General Counsel