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## Decision

**Matter of:** National Steel and Shipbuilding Company

**File:** B-281142; B-281142.2

**Date:** January 4, 1999

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Michael Hordell, Esq., Brian A. Darst, Esq., and Laura L. Hoffman, Esq., Gadsby & Hannah, for the protester.

Daniel R. Weckstein, Esq., Howard W. Roth, Esq., and Arthur Serratelli, Esq., Vandeventer Black, for Norfolk Shipbuilding & Drydock Corporation, the intervenor. Daniel W. Wentzell, Esq., and Michelle C. Simms, Esq., Department of the Navy, for the agency.

Henry J. Gorczycki, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Discussions regarding protester's significantly understated staffing estimates were meaningful where the protester was generally advised of a number of significant shortfalls in its estimates, specifically informed of the single-most significant area of concern, and advised to provide detailed support for its estimates.
2. Technical evaluation that concluded that the protester's proposal's staffing estimates for ship conversion work evidenced a lack of understanding was reasonable where the proposed staffing was significantly less than that reflected in the independent government estimate, which was based on actual data from completed contracts for similar ship conversion work, as well as the contract cost experiences on conversion work on sister ships, and the protester's proposal did not provide adequate support for the claims of substantial efficiencies as would justify such low staffing estimates.
3. Agency's application of an "intrinsic value" cost evaluation factor included in a solicitation for ship conversion work to credit offerors for proposed early completion of ship repair was unobjectionable.
4. Where the solicitation gave significant evaluation weight to determining the realism of staffing estimates to assess understanding of the scope of work, the

agency properly selected a higher-rated, higher-cost proposal that was determined to exhibit superior understanding instead of a lower-cost proposal, which was reasonably found to lack understanding as evidenced by its offer of staffing levels significantly below those reasonably determined to be necessary to perform the contract work.

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## **DECISION**

National Steel and Shipbuilding Company (NASSCO) protests the award of a contract to Norfolk Shipbuilding & Drydock Corporation (Norshipco) under request for proposals (RFP) No. N00033-98-R-4000, issued by the Department of the Navy, Military Sealift Command (MSC), for the voyage repairs, overhaul and habitability arrangements, and maintenance and repair of the USNS Shasta. RFP at C-1. NASSCO alleges that it received inadequate discussions, and that the agency's technical evaluation of NASSCO's proposal, the agency's cost evaluation of NASSCO's and Norshipco's proposals, and the source selection decision were unreasonable.

We deny the protest.

The Shasta is one of a group of Navy ammunition ships, which have been transferred to MSC to be operated by civilian crews to provide direct support and underway replenishment for Navy combatant ships. Agency Report, October 26, 1998, at 1-2. MSC has or will have civilian modification (CIVMOD) conversions performed on these ships. *Id.* The Shasta is in the AE-26 class of ships, along with the USNS Mount Baker and the USNS Kiska. *Id.* at 2, 9 n.6, Tab 31 at 2, 4. Contracts for similar CIVMOD work have been recently completed by Norshipco on the Mount Baker and by South West Marine (SWM) on the Kiska. *Id.*

The RFP, issued on December 23, 1997, contemplated award of a cost-plus-award-fee contract for CIVMODs to the Shasta. RFP at B-1, L-9.<sup>1</sup> The RFP identified more than 50 work items, including option items. RFP, at B-1, Attachment J-1.

Award was to be made to the offeror whose offer represented the best value to the government as follows:

### **M-1.2 Evaluation Factors**

General. In selecting the best value, the following factors will be considered[:] 1. Technical and 2. Price to the Government. The technical evaluation factors and factors other than cost or price, when combined, are

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<sup>1</sup>The cover page of the RFP stated that the procurement was being conducted under the recently revised Federal Acquisition Regulation (FAR) Chapter 15. See FAR Part 15 (FAC 97-02).

significantly more important than cost or price. Price will not be a numerically weighted factor in the evaluation of proposals, neither does the importance of price bear a linear relationship to the technical proposal nor to the offeror's past performance record. Cost or price will be compared to technical competence to determine the combination of the price and technical/management approach that is most advantageous to the Government and award will be made on this basis. Cost or price shall receive less consideration than technical competence; however, price is an important factor and its importance as an evaluation factor will increase as the degree of equality of technical competence between proposals increases. If the two or more highest rated technical proposals are considered to be essentially equal in terms of technical competence, cost or price may become the determinative factor[.]

**b. Technical.** The following technical evaluation factors are listed in decreasing order of importance. Subfactors are in decreasing order of importance unless otherwise noted within each factor.

- 1.0 Understanding the Scope of Work
  - 1.1 Overall Scope of Work
  - 1.2 Manpower/Material Estimates and Critical Path Schedule
  - 1.3 Engineering
  - 1.4 Performance Period
  - 1.5 Logistics
- 2.0 Management of Resources  
[five subfactors]
- 3.0 Past Performance
- 4.0 Experience
- 5.0 Planning and Control  
[Eight subfactors, the last seven equal in importance to each other]

**c. Cost/Business**

1.0 Cost to the Government. The cost to the Government will be evaluated using cost analyses techniques. The cost evaluation will cover all costs to the Government including, but not necessarily limited to: (1) The cost elements as outlined in Attachments J-3 and J-4 of the solicitation, (2) Costs incurred by the Government from towing the ship from the shipyard to its final destination and (3) The intrinsic value of the ship to the Government. The amount of Base Fee proposed by the offeror shall be considered in the evaluation of cost; however, the amount of proposed award fee shall not be considered as part of the evaluation of cost. The results of the manloading evaluation will be compared to the cost proposal to ensure that the manloading has been accurately and adequately costed in the cost proposal. Cost analyses

techniques will be used to determine the realism and reasonableness of the proposed costs. Proposed costs may be adjusted, for purposes of evaluation, based upon the results of cost realism evaluations.

RFP at M-1 to M-2, Amendment 0003 at 4-5, Amendment 0007 at 2.

Section M-1.3 "Realism" stated:

Offers must be realistic in both technical approach and total cost. Offers that are unrealistic in terms of technical or schedule commitments or unrealistically low in terms of proposed costs will be considered indicative of a lack of understanding of the complexity and risk in the contract requirements. Unrealistic offers will not be considered for award.

RFP at M-2.

The RFP proposal instructions for subfactor 1.1, Overall Scope of Work required offerors to discuss the overall scope of work, and to identify and provide greater detail for the work items which they considered critical. RFP at L-12. Under subfactor 1.2, Manpower/Material Estimates and Critical Path Schedule, offerors were to provide staff-hour estimates and material cost estimates for each work item, as well as staff-hour estimates at the craft level for the critical path schedule. RFP at L-12-L-13.

The proposal instructions for subfactor 1.4, Performance Period, stated that offerors must propose a completion date of not more than 420 days. Offerors could propose shorter performance periods if doing so would not increase the overall cost of the proposal. The RFP stated that proposals with performance periods shorter than 420 days may receive a more favorable technical rating for this category, provided the proposal demonstrated that the offeror could successfully achieve the proposed schedule. RFP, Amendment 0003 at 3.

As indicated, the offerors' proposed costs and staff-hour and material estimates were considered both to evaluate the offerors' understanding and to determine the offerors' evaluated costs. These evaluations were based in part on an independent government estimate (IGE), which was based on similar CIVMOD ship conversion programs on four other ships. Although CIVMOD conversions on the Mount Baker and the Kiska had not been completed at the time the IGE was prepared, and thus were not reflected in the IGE, Agency Report at 9 n.6, when these conversion contracts were completed, their cost experience was used in this evaluation. Agency Report, Tab 32 at 2.

Four offerors submitted initial proposals by the due date of March 17, 1998. Agency Report at 4. After initial evaluations by the source selection evaluation board (SSEB) and the cost evaluation committee, the source selection authority

(SSA) approved a competitive range of three proposals submitted by NASSCO, Norshipco, and SWM. Agency Report, Tab 33. Each of the competitive range proposals received an overall rating of marginal overall, and more information was required of each offeror on their staff-hour/material estimates, both from a technical and cost evaluation standpoint. Id.

The SSEB identified concerns related to NASSCO's understanding the scope of work as reflected by NASSCO's staff-hour and material estimates. The SSEB's initial technical report found that NASSCO's overall staff-hour estimate of [DELETED] hours was just [DELETED] percent of the IGE's [DELETED] staff-hours, and the material estimate was [DELETED] percent of the IGE. The staff-hours for the critical path work items were also considerably lower than, that is [DELETED] percent of, the IGE.<sup>2</sup> The work items numbered 501, 502, 503, 504, and 505 (500-series) were of particular concern because they were [DELETED] staff-hours lower than, or [DELETED] percent of, the IGE. Work item 503, Soil and Waste Drains, was the initial work item that must be accomplished in the overhead of the habitability spaces and it was considered underestimated by [DELETED] percent. The SSEB found that the foregoing staffing and material shortfalls raised concern with NASSCO's understanding or appreciation of the complexity of the scope of work. Agency Report, Tab 31 at NASSCO subfactor 1.2. The cost evaluation similarly raised concerns with NASSCO's proposed costs for critical path items. Agency Report, Tab 32 at 9.

Prior to the initial evaluations, Norshipco redelivered the Mount Baker to MSC, and thus the agency also used the Mount Baker actual cost experience to evaluate Norshipco's technical and cost proposals. Agency Report, Tab 32 at 2. Norshipco's proposed cost was higher than the IGE, but lower than that actually experienced on the Mount Baker. Since the actual cost experience on the Mount Baker reflected an effort much higher than the IGE, Agency Report, Tabs 10, 11, 13, 32, there was some evaluated risk associated with Norshipco's proposed costs and estimates, even though they were higher than the IGE. Agency Report, Tab 31 at Norshipco subfactor 1.2, Tab 32 at 11-12, 14.

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<sup>2</sup>The critical path work items were identified as 301, 302, 501, 502, 503, 504, 505, 601, 602, 603, and 801. Agency Report, Tab 31 at NASSCO subfactor 1.2.

Written and oral discussions were conducted and final proposal revisions (FPR) requested. MSC evaluated the FPRs as follows:

	NASSCO	Norshipco	SWM
Technical	Marginal	Good	Good
Proposed Cost	[DELETED]	\$26,669,776	[DELETED]
Evaluated Cost	\$29,236,229	\$25,413,031	[DELETED]

Agency Report, Tab 40B; Tab 44A at 1.

The key technical difference among the proposals was reflected in NASSCO's proposal's marginal/unacceptable rating, as compared to Norshipco's acceptable rating, under the second most important subfactor (manpower/material estimates and critical path schedule) under the most important factor (understanding of the scope of work).<sup>3</sup> This resulted in NASSCO's proposal receiving a marginal rating under the most important factor, as well as an overall marginal rating, as compared to Norshipco's good rating for both this most important factor and overall. Agency Report, Tabs 40B, 40C, 40D, 40E, 40F, 45.

With regard to NASSCO's FPR's proposed costs and estimates, the SSEB report stated:

While [NASSCO] provided revised estimates . . . there are still several items that differ considerably from the IGE such that the NASSCO estimate is [DELETED] [percent] below the IGE in manhours and [DELETED] [percent] below in material costs. . . . [T]he critical path items, 503, 504 and 301 are of the largest concern. Due to the fact that their estimates are considerably different than the IGE, there is concern that the contractor does not understand or appreciate the complexity of the scope of work. . . . This could be due to the contractor's unfamiliarity with the ship and with similar CIVMOD work. Based on this discrepancy for the critical path work, there is a high level of risk.

Agency Report, Tab 40F at 6.

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<sup>3</sup> Under the source selection plan, this marginal rating was converted to an unacceptable rating because it remained marginal after the submission of the FPRs. Agency Report, Tab 9 at 12, Tab 40F at 6.

The SSEB also performed a technical realism analysis of the FPRs which found that NASSCO's proposal reflected a shortfall of [DELETED] hours for the critical path items as compared to the IGE, which was most significant in work items 301, 503, 504 and 801. The SSEB found that, even considering NASSCO's approach and claimed efficiencies, this proposed staffing level would not allow its proposed schedule to be met, and the resulting large staffing increase, which would be required if NASSCO received the award, would necessitate a total revamping of NASSCO's approach to the job (e.g., supervisor/worker ratio, personnel density in the various work areas, planning and sequencing of activities, etc.) Although it was anticipated that NASSCO had more efficient production processes for [DELETED] than were considered in preparing the IGE, the SSEB determined that the offeror's engineering approach and lack of experience in CIVMOD conversions offset these efficiencies. The SSEB found that NASSCO did not present sufficient information to demonstrate that it could perform the critical path work items for less than the IGE.

The SSEB concluded:

NASSCO's proposal is unrealistically low in terms of proposed costs which is indicative of a lack of understanding of the complexity and risk in the contract requirements.

Agency Report, Tab 40D at 7.

The final cost evaluation, specifically the upward cost adjustments, of NASSCO's FPR reflected essentially the same concerns for NASSCO's proposed costs as did the technical evaluation and the technical realism evaluation. See Agency Report, Tab 44B.

Norshipco's and SWM's FPRs addressed the agency's initial concerns about their proposed costs and estimates. In evaluating these proposals, the actual costs each offeror experienced in performing the Mount Baker or Kiska CIVMOD conversions were considered. Although some adjustments to the evaluated costs were made, both of these proposals were considered generally consistent with their cost experiences on their CIVMOD conversion contracts.<sup>4</sup> Agency Report, Tabs 40C, 40D, 44C, 44D.

As contemplated by the RFP, the cost evaluation considered the costs that may be incurred by the government in towing the Shasta from the contractor's shipyard to the Shasta's home port and the "intrinsic value of the ship to the government." While the agency calculated such costs, it did not include them in the reported total

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<sup>4</sup> SWM had returned the Kiska to MSC prior to submission of FPRs, and thus both offerors had successfully completed similar CIVMOD conversions on similar ships.

evaluated cost. Specifically, the agency calculated a return towing cost for Norshipco (whose facility is located on the East Coast) of \$893,849.<sup>5</sup> The intrinsic value of the ship was evaluated under each proposal by multiplying the daily intrinsic value (\$37,746) by the number of days by which proposed delivery was less than the required maximum performance period. Norshipco proposed the earliest delivery (87 days early) for an intrinsic value of \$3,283,902, whereas NASSCO proposed the second earliest delivery [DELETED] for an intrinsic value of [DELETED]. Thus, the net effect of applying these other evaluated costs was determined to be minimal, that is, Norshipco's evaluated cost advantage would be increased by \$49,801. Agency Report, Tab 45 at 2, and attachment.

The SSA reviewed the evaluation reports and selected Norshipco's proposal as the best value among the three proposals. The source selection decision summarized the technical and cost evaluations of each proposal and then stated the cost/technical tradeoff analysis for selecting Norshipco over each of the other offerors. In considering Norshipco over NASSCO, the decision stated:

The proposal submitted by NORSHIPCO represents a well-conceived approach for the accomplishment of the SHASTA CIVMOD project that translates to low performance and cost risk. The proposal submitted by NASSCO demonstrates a significant underestimation of several critical path work items. The interrelationship and level of complexity associated with those Work Items on the Critical Path of the SHASTA CIVMOD project presents significant risk exposure to the Government if award were to be made to an offeror that did not possess a thorough understanding and appreciation of the labor effort required in accomplishing this primary segment of the project. The Government's evaluation (technical and cost) has resulted in a determination that the performance risk associated with the NASSCO proposal represents an additional \$3,823,198 [evaluated] cost to the Government as compared to the proposal submitted by NORSHIPCO. The NORSHIPCO proposal represents the better value to the Government.

Notwithstanding, if the proposed prices of the offerors were validated by the cost evaluation report and accepted, award to NASSCO would represent considerable risk to the Government. The seven percent cost savings in the NASSCO proposal does not outweigh the increased risk associated with NASSCO's technically marginal proposal when compared to Norshipco's proposal, which was rated good with low risk to the Government. Specifically:

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<sup>5</sup>The Shasta's home port is on the West Coast. The other competitive range offerors' facilities are located near the Shasta's home port and no return towing cost was calculated.



- Having had successful, prior experience and good past performance doing similar work on the Mount Baker, and [USNS] Flint, NORSHIPCO has a better understanding and insight, as evidenced by their technical proposal and specifically their man-hour/material estimates, into the requirements of this particular solicitation than NASSCO.

Agency Report, Tab 45 at 3.<sup>6</sup>

MSC awarded the contract to Norshipco on September 11. NASSCO requested and received a debriefing. NASSCO's protest followed.

NAASCO first challenges the adequacy of discussions, claiming that the agency did not inform it about a concern that the overall or key work items staff-hour estimates were considered unrealistically low. See Initial Protest, September 25, 1998, at 23-25; Initial Comments, November 12, 1998, at 40-43.

In a negotiated procurement where discussions are held with offerors, they must be meaningful, which means that sufficient information must be furnished to offerors in the competitive range as to the areas in which their proposal are believed to have significant weaknesses, deficiencies, or other areas that could, in the opinion of the contracting officer, be altered or explained by an offeror to enhance materially the proposal's potential for award. FAR § 15.306(d)(3); Techniarts Science & Tech. Corp., B-280521.2, B-280521.4, Oct. 15, 1998, 98-2 CPD ¶ 97 at 5. The scope and extent of discussions are matters of the contracting officer's judgment. FAR § 15.306(d)(3). Although discussions should be as specific as practicable, E.L. & Hamm Assocs., Inc., B-250932, Feb. 19, 1993, 93-1 CPD ¶ 156 at 3-4, they need not be all encompassing nor overly specific in describing the extent of the agency's concerns, but rather must generally lead offerors into the areas of their proposals which require amplification or correction without being misleading. Renaissant Dev. Corp., B-260947, Aug. 7, 1995, 95-2 CPD ¶ 58 at 5.

The written cost discussion questions sent to NASSCO included a list of every work item. For every item on which NASSCO's estimates "significantly" deviated from the IGE, the list stated whether NASSCO staff-hour and/or material estimates were "over" or "under" the IGE. Agency Report, Tab 25, question 1 and attachment. These questions also stated:

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<sup>6</sup>The post-negotiation business clearance memorandum notes six or seven additional reasons for awarding to Norshipco even if the offeror's costs were accepted as proposed and Norshipco's proposal represented a higher-cost/higher-rated proposal in comparison to NASSCO's proposal. Agency Report, Tab 46 at 11-12.

2. Of the work items highlighted as being significantly 'high' or 'low' relative to the IGE (man-hours or material), the following [work items] have been designated as critical to the overall success of the availability: 101, 301, 302, 409, 501, 502, 503, 504, 505, 601, 602, 603 and 801. The above mentioned items will be analyzed as part of the technical realism analysis. During discussions, you should be prepared to discuss in detail your estimate, including engineering/technical approach and material requirements, for the completion of the above items.

Agency Report, Tab 25, question 2.

The technical discussions questions for NASSCO stated:

7. The excessively low manhours for the 500 work items raises concern with NASSCO's understanding of the scope of work. Work item 503, Soil and Waste Drains, is the initial work item that must be accomplished in the overhead of the habitability spaces and it is significantly underestimated. Please clarify.

Agency Report, Tab 26.

Finally, the agency states that during oral discussions it advised NASSCO that its overall staff-hours were too low, as documented by the cost evaluation chairperson's handwritten notes.<sup>7</sup> Agency Report at 20, Tab 27.

We believe that discussions with NASSCO were meaningful. Although NASSCO disputes that the agency ever informed it that NASSCO's estimates were low "overall," Initial Comments at 41, the discussions specifically informed NASSCO of the most significant deficiency in its proposal--i.e., excessively low estimates for the 500-series work items--as well as identifying virtually all of the work items for which the proposed estimates significantly deviated from the IGE.

Specifically, NASSCO was informed that its "excessively low manhours for the 500 work items raises concern with NASSCO's understanding of the scope of work."

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<sup>7</sup>The cost evaluation chairperson's handwritten notes of the discussions stated:

[NASSCO] questioned how they could prove to us that manhours & material costs valid--I said concentrate on making a case on critical path items, convince us of that & we would probably accept for rest [of the work items]. Said we had concerns that overall \$'s [manhours and material] were low.

Agency report, Tab 27.

Agency Report, Tab 26 at 2, question 7. This was without doubt the most significant agency concern, given the relatively high level of effort for these work items, their criticality to the overall project, and the large amount that NASSCO's estimated staff-hours for these work items fell below the IGE. See Agency Report, Tab 31 at NASSCO subfactor 1.2. NASSCO's initial staff-hour estimate for the 500-series items, particularly work items 503 and 504, were so far below the IGE, as compared to the other work item groups, that the total differential for the 500-series items from the IGE constituted well over half of the total staff-hour shortfall from the IGE for the combined critical path items.<sup>8</sup> See *Id.* (agency analytical comparison of estimates to IGE).

Also, the list identifying estimates which were "significantly" over or under the IGE was itself sufficient to advise NASSCO of the areas to address in its FPR. While the protester asserts that it interpreted this question to mean that the agency was concerned that NASSCO's proposal may be unbalanced between items, neither the list nor the corresponding discussion question stated or implied a concern over unbalancing.<sup>9</sup>

Moreover, the record shows that NASSCO had been fairly informed that it needed to address the agency's concerns that NASSCO's hours were understated by either justifying its proposed staff-hours or raising them. The written discussions informed NASSCO to be prepared to discuss its estimates in detail for all of the critical work items. Agency Report, Tab 25, question 2. During oral discussions, NASSCO stated that it was in the process of reviewing its estimates and asked how it could demonstrate the validity of its estimates. Agency Report, Tab 27, Tab 28, question 7. In response to NASSCO's question during oral discussions, the agency stated that

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<sup>8</sup> Contrary to NASSCO's contention, the agency clearly advised NASSCO that its staffing and material estimates for item 504 were considered low. The agency discussion questions stated that the estimates for the 500-series work items were excessively low and NASSCO's staff-hour and material estimates for item 504 were both stated to be "significantly under" the IGE. To the extent NASSCO interpreted the agency's more detailed identification of its concerns for item 503 as an indication that there was no concern for other items, such interpretation was unreasonable.

<sup>9</sup> To the extent NASSCO alleges that discussions needed to more precisely address the magnitude of the estimate deficits in order to be meaningful, we note that the RFP was structured to evaluate the offerors' understanding of the scope of work in part through the offeror's estimates, and more specific questions could defeat this purpose. See *Versar, Inc.*, B-254464.3, Feb. 16, 1994, 94-1 CPD ¶ 230 at 12.

NASSCO should concentrate on making its case on the critical path items, and stated an example of the detail which the agency contemplated.<sup>10</sup> Agency Report, Tab 27.

Finally, although the agency did not specifically advise NASSCO that its proposed staff-hours for work item 801 were considered understated,<sup>11</sup> this provides no basis for sustaining the protest. As noted, discussions need not be all-encompassing so as to cover every work item which was considered to be understated. While the award selection documentation notes this work item as one of the areas of concern, the record shows that the agency considered NASSCO's proposed understaffing, without adequate explanation, as indicative of the lack of understanding and high risk pervading NASSCO's proposal. Thus, even if the agency had listed during discussions the staff-hours on work item 801 as one of the items of concern and NASSCO had responded adequately for that one item, the record evidences that this would not have affected the award selection, such that we cannot conclude that NASSCO was prejudiced by the agency's failure to list this item during discussions. See Mar, Inc., B-255309.4, B-255309.5, June 8, 1994, 94-2 CPD ¶ 19 at 8.

In sum, we find the discussions were meaningful.

The protester also challenges its evaluation under the manhour/material estimates and critical path schedule subfactor of the understanding the scope of work factor. As indicated, offerors were requested to provide staff-hour and material cost estimates with an emphasis on the critical path items to evaluate the offerors' understanding of the scope of work. NASSCO alleges that the agency unreasonably relied on the IGE to evaluate NASSCO's proposed estimates rather than on the proposed approach and efficiencies reflected in NASSCO's proposal. See Initial Protest at 9-13; Initial Comments at 7-16; Supplemental Protest, November 5, 1998, at 23-27; Supplemental Comments, December 1, 1998, at 33-36.

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<sup>10</sup>The notes of oral discussions taken by NASSCO's Senior Proposal Coordinator state:

Summation of estimates: Address Risk to the Government - primarily unders on Critical Path.

Protester's Letter, December 11, 1998, Affidavit of [DELETED], Exhibit 1 at 21.

<sup>11</sup>The list of work items stating which items were significantly over or under the IGE included work item 801, but only for materials, not for staff-hours. Agency Report, Tab 25. The agency's initial evaluation apparently did not focus on the smaller percentage staffing shortfall for this work item, but in the final evaluation it became a matter of additional concern because this was one of the major critical path work items, which required a large amount of staff-hours, and NASSCO's proposal offered somewhat less staff-hours for this item. Agency Report, Tab 40D at 6-7.

In reviewing an agency's technical evaluation, we will not reevaluate the proposals; we will only consider whether the agency's evaluation was reasonable and consistent with the evaluation criteria listed in the solicitation. SDS Int'l, Inc., B-279361 et al., June 8, 1998, 98-2 CPD ¶ 7 at 3. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Id.

The record shows that the agency's evaluation of NASSCO's proposal under this subfactor was reasonable and that the IGE was a reasonable standard against which to assess NASSCO's understanding. As noted, the IGE was developed based on actual contract returns on similar CIVMOD work on several other ship conversions. Agency Report at 9 n.6. The contract returns on the Shasta's sister ships, Mount Baker and Kiska, became available after the IGE was prepared and were much higher than the IGE. See Agency Report, Tabs 10, 11, 12, 13. Thus, absent some explanation in NASSCO's proposal, the agency had a reasonable basis to believe that NASSCO's estimates, which were significantly lower than even the already low IGE, were excessively low and did not reflect an understanding of the work requirements.

Contrary to the protester's contention, the agency in fact evaluated the protester's proposed approach and efficiencies and did not simply rely upon the IGE. In doing so, it found that NASSCO's proposal simply did not persuasively justify the relative low staff-hour and material cost estimates. Agency Report, Tab 40D at 2-3, 6-7. In this regard, NASSCO's proposal and FPR did not reasonably justify that NASSCO had particular capabilities, efficiencies or approaches that would allow it to expend fewer staff-hours than previously had been expended on similar ship repairs. Moreover, the agency reasonably determined that the difference in estimates could be attributable to NASSCO's unfamiliarity with this ship and similar CIVMOD work of this complexity.<sup>12</sup> Agency Report, Tab 40F at 5-6.

For example, the IGE for item 503, soil and waste drains modifications, was [DELETED] staff-hours and [DELETED] for materials. Agency Report, Tab 11. NASSCO initially proposed [DELETED] staff-hours and [DELETED] for materials and subcontractors. Agency Report, Tab 17 at 1-12. NASSCO's FPR proposed [DELETED] staff-hours and [DELETED] for materials and subcontractors. Agency Report, Tab 38 (estimate changes summary table), Tab 39 at 1-12 (rev.). By comparison, the actual returns for this work item on the Kiska conversion, which was the same design proposed by NASSCO for the Shasta, were [DELETED]

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<sup>12</sup>This conclusion is supported by NASSCO's proposal, which states:

[DELETED]

Agency Report, Tab 16 at 19.

staff-hours and [DELETED] for materials. Agency Report, Tab 12. The actual returns for this work item on the Mount Baker conversion were [DELETED] staff-hours and [DELETED] for materials and subcontractor costs. Agency Report, Tab 13.

NASSCO's proposal and FPR did not reasonably justify the extremely low proposed staff-hours. NASSCO's initial proposal generally described its estimating process, including a comparison of estimates and actual returns on prior repair contracts and a general discussion of possible cause for differences between the proposal and the IGE. Agency Report, Tab 16 at 11-15. NASSCO then briefly described aspects of its facilities and capabilities, which it claimed would result in efficiencies. The most detailed description was for [DELETED], which stated:

[DELETED]

Agency Report, Tab 16 at 16-17.

Elsewhere, NASSCO's proposal states that the estimates for work item 503 reflects the efficiencies of [DELETED.] Agency Report, Tab 16, Appendix A, WI 503. NASSCO's proposal also stated that [DELETED.] Id.

During discussions, the agency requested NASSCO to provide more details about its critical item estimates, and specifically stated that item 503 was significantly underestimated. Agency Report, Tab 25, Tab 26, question 7. In response, NASSCO's FPR included a copy of the pages from the initial price proposal. Agency Report, Tab 38. The only new information submitted was a table identifying NASSCO's estimate revisions for the critical items, accompanied by a brief comment on the revision. For work item 503, the comment stated:

[DELETED]

Agency Report, Tab 38.

The record shows that the agency considered NASSCO's claimed efficiencies, in particular [DELETED], but found they were essentially offset by NASSCO's lack of experience in CIVMOD work, and that the proposal did not provide sufficient information from which the agency could find that NASSCO's low proposed staff-hours for work item 503 were justified or that NASSCO understood the complexity of the work. Agency Report, Tab 40D at 2-3, 6-7, Tab 40F at 6. As indicated above, the information in NASSCO's proposal and FPR does not go beyond a general claim of efficiencies since no support, such as historical data detailing such efficiencies, was provided.

None of the information which NASSCO provided in either its initial proposal or its FPR for any other item was any more detailed than that provided for work item 503. Since both the IGE and the actual returns on the Kiska and the Mount Baker indicate

that NASSCO's estimates were significantly below what the agency can reasonable anticipate, and because NASSCO did not present persuasive information to support its starkly different estimate of the magnitude of the work requirements, the agency's concern about NASSCO's understanding of the scope of work was reasonable.<sup>13</sup>

NASSCO also alleges that it was improper for the agency to change the marginal rating under subfactor 1.2 to unacceptable and alleges that the final rating for that subfactor was not consistent with the individual evaluators' worksheets.

Under a best value evaluation scheme, evaluation ratings and scores are only guides to assist source selection officials in evaluating proposals. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 12. Source selection officials, which includes officials at an intermediate level, are not bound by the recommendations or evaluation judgments of lower-level evaluators, even though the evaluators normally may be expected to have the technical experience required for such evaluations. Id. at 7.

Here, the evaluation documentation clearly informed the SSA of the basis for assigning an unacceptable rating to NASSCO's proposal under subfactor 1.2. See Agency Report, Tab 40F at 6 (note in bold-face type). The SSA did not eliminate NASSCO's proposal from consideration, but conducted a detailed tradeoff analysis between NASSCO's and Norshipco's proposals. The unacceptable rating simply identified for the SSA the fact that NASSCO's marginal subfactor rating did not improve after discussions and submission of its FPR. We do not object to evaluation ratings used in this manner. See Support Sys. Assocs., Inc., B-232473, B-232473.2, Jan. 5, 1989, 89-1 CPD ¶ 11 at 4-5.

In addition, although the final evaluation report assigned different ratings than those reflected on the individual evaluator worksheets, the report fully explains the basis for each rating. The report, prepared by the deputy chairperson of the SSEB, presented the consensus ratings; no evaluator dissented from the consensus evaluation ratings or the stated rationale for these ratings. See Supplemental Report, November 24, 1998, at 10. In contrast to the detailed explanations in the SSEB

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<sup>13</sup> Although the protester presents sundry other examples of alleged unreasonableness in the agency's evaluation of its estimates, it presents nothing which rises above mere disagreement with the agency's evaluation. Moreover, contrary to the protester's assertion, the fact that its proposal received acceptable or good ratings on the other understanding of the scope of work subfactors in no way undercuts the marginal/unacceptable rating for the manhour/material estimates and critical path schedule subfactor or the marginal rating for the understanding of the scope of work factor, since each of the subfactors judged a different aspect of the offeror's understanding.

report, the individual evaluators' worksheets have few supporting explanations and, where explanations are given, they provide little detail to support the rating given.<sup>14</sup> See Agency Report, Tab 51. The protester has not demonstrated that the final technical evaluation stated in the report was unreasonable for any proposal under any subfactor. See General Research Corp., B-253866.2, Dec. 17, 1993, 93-2 CPD ¶ 325 at 6-7 n.3 (final consensus ratings must reflect actual merits of proposals, not ratings given by individual evaluators).

In sum, the agency reasonably rated NASSCO's proposal under the manhour/material estimates and critical path schedule subfactor of the understanding the scope of work factor.

NASSCO makes numerous allegations regarding the agency's cost evaluation. Specifically, NASSCO claims that the agency did not apply a 10-percent growth rate to the other proposals as it did to NASSCO's proposal, and that the agency improperly adjusted the fixed base fees in its evaluated cost calculations. NASSCO also alleges that the agency's intrinsic value calculation for Norshipco's proposal was overstated because the credit given for its early delivery of the ship did not consider the time for the return tow and did not consider the cost of insurance for the tow. NASSCO also alleges that the agency unreasonably used an average of the Kiska and Mount Baker actual contract returns, instead of the IGE, for evaluating and upwardly adjusting NASSCO's costs for the 500-series items. Finally, NASSCO alleges that in evaluating Norshipco's proposed costs based on the Mount Baker actual contract returns, the agency unreasonably reduced the amount of these actual figures for the critical path items to justify a downward adjustment in Norshipco's evaluated costs. See Initial Protest at 13-20; Initial Comments at 17-39; Supplemental Protest at 3-21; Supplemental Comments at 7-30.

In response to the protest, the agency now agrees that the 10-percent growth rate should have been applied uniformly in the cost evaluation of all of the proposals and that the cost evaluation should not have adjusted the offerors' proposed base fees. Supplemental Report at 7, 9. The agency corrected the evaluated costs for all proposals and concluded that the evaluated cost of Norshipco's technically superior

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<sup>14</sup> For example, one evaluator initially rated NASSCO's proposal marginal under the manhour/material estimates and critical path schedule subfactor due to NASSCO's low estimates and noted that, if the contractor provided adequate documentation after discussions, the rating would increase to good. His final evaluation raised the rating to good, noting that the information provided in NASSCO's FPR was good and thorough and constituted what was lacking from its initial proposal. Agency Report, Tab 51. However, as previously explained, NASSCO's FPR provided little more than copies of pages from its initial proposal, and those pages themselves did not provide the detailed information to validate the enormous efficiencies which the offeror claimed.



proposal remained low by more than \$1.6 million, and thus argued that its source selection was unaffected by these errors. Id. at 7, 9, Attachment 1.

NASSCO contests the agency's recalculation, arguing that it understates Norshipco's evaluated costs because [DELETED], which resulted in an understatement of the final evaluated cost of more than \$500,000. Supplemental Comments at 10-11. In this regard, NASSCO references the agency's original cost evaluation of the FPRs, which [DELETED], and Norshipco's proposal, which NASSCO alleges [DELETED]. Supplemental Comments at 11; Protester's letter dated December 4, 1998 at 2; see Agency Report, Tab 44C at chart 2.<sup>15</sup>

The agency explains that its original cost evaluation of Norshipco's FPR incorrectly [DELETED], given that [DELETED] was inconsistent with Norshipco's proposal, and that its recalculation of the costs correctly [DELETED]. Agency Letter dated December 3, 1998 at 2; see Supplemental Report, Attachment 1 at Norshipco chart. Our review confirms that Norshipco's proposal and FPR clearly stated that [DELETED], and that Norshipco's computations in its FPR consistently [DELETED]. See Agency Report, Tab 36, section III at 8, B-1, J-3, J-4. Thus, NASSCO's contention that [DELETED] is meritless, and the agency's calculation of the corrected evaluated costs presented in the Supplemental Report showing Norshipco's evaluated costs to be low by more than \$1.6 million is essentially reasonable.<sup>16</sup>

NASSCO contests the agency's evaluation of intrinsic value of the ship to the government in determining the evaluated costs. The RFP does not state what this intrinsic value is or how it would be determined. The source selection decision states that, in addition to the cost realism evaluation of proposed costs, the agency "also evaluated costs it would incur outside the contract and placed a monetary value on each day saved from the maximum performance period of 420 days[.]" Agency Report, Tab 45 at 2, paragraph 4 (emphasis added). This analysis identified

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<sup>15</sup> NASSCO incorrectly referenced chart 1 in Tab 44C of the agency report as evidence of the agency's cost evaluation. Chart 1 is a table of the proposed costs taken directly from Norshipco's proposal which, consistent with the proposal, [DELETED].

<sup>16</sup> We note that this recalculation projects total evaluated cost using the evaluated cost and base fee for the 13 critical items, and thus uses a projected base fee instead of the proposed base fee. Since it is agreed that the proposed base fee should not be adjusted, we recalculated total evaluated cost using the projection formula applied to the cost for the critical items exclusive of base fees and then added the total base fee as proposed by each offeror. The results varied slightly with Norshipco's evaluated cost being slightly lower than MSC's recalculation and NASSCO's being slightly higher. The total adjustment would be approximately \$8,000 in Norshipco's favor and is immaterial to our decision. Supplemental Report Attachment A, Tab 36 at B-1, Tab 38 at B-1.

intrinsic value as a measure for each day of an early delivery and calculated a daily intrinsic value of \$37,746. Id. Attachment 1 at 1-2. The agency states that this is a measure of the daily value of the ship as a capital asset. Agency Report at 16 n.14.

NASSCO protests that Norshipco should not be given credit for the intrinsic value of the ship for the 25-day period during which the Shasta is supposed to be towed back to its home port on the West Coast because during this period there is no probable cost to the agency, or probable savings, other than the return towing costs.<sup>17</sup> Initial Protest at 17; Supplemental Protest at 28.

The agency responds that the Shasta's operational readiness is not affected by a possible return towing period, and that the intrinsic value factor should be evaluated based on when the ship is tendered back to the MSC at the contractor's shipyard. Supplemental Report at 2. While the agency projects that it will tow the Shasta back to the West Coast and has evaluated a cost for this contingency, it notes that the return tow is not part of this contract and argues that this contingency is not relevant to evaluating the intrinsic value of early delivery. Agency Report at 16; Supplemental Report at 2. MSC explains that once the ship is in the custody of the government, it is available for any contingency that may occur, regardless of its physical location. Agency Report at 16.

While we do not believe the RFP adequately disclosed how intrinsic value to the government would be evaluated,<sup>18</sup> we find no basis to sustain the protest, given the protester's failure to object to the application of this criteria to measure the value of early delivery and given the agency's explanation as to why there is intrinsic value to

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<sup>17</sup> NASSCO does not protest the use of intrinsic value of the ship to the government as an evaluation factor, its application to calculate the value to the government of early completion of the contract, or the agency's computation of daily intrinsic value and application to NASSCO's early delivery. See Initial Comments at 19-24; Supplemental Comments at 27-29.

<sup>18</sup> A protest that the intrinsic value evaluation criterion is unclear or otherwise improper would be an untimely challenge to alleged improprieties in the solicitation that were apparent prior to time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1998). We note, however, that where cost-related factors are to be evaluated, the solicitation should state as specifically as possible the basis for evaluation, so that offerors can intelligently compete on an equal basis. See *AM Int'l, Inc.*, B-200200, Apr. 6, 1981, 81-1 CPD ¶ 258 at 5-6. Here, we think that the solicitation should have disclosed that intrinsic value to the government meant the value of early completion with an evaluation credit of \$37,746 per day for each day under the maximum delivery time.

gaining possession of the ship, even if it is not located at its home port.<sup>19</sup> In this regard, just having the contract completed and back under the agency's control, regardless of the ship's location, provides the agency with options not available to it during contract performance.<sup>20</sup> We do not object under these circumstances to the agency's application of the daily intrinsic value to each day of early delivery to include the projected period during which the ship may be towed back to its home port.

NASSCO also alleges that the cost of insurance for the return tow of the Shasta should be included in the intrinsic value evaluation. The agency states that there is no requirement for a contractor to carry insurance for the ship at any time during the contract, whether it is in the contractor's facility or under tow. Supplemental Report at 3. The agency states that it did consider this issue and determined that due to there being little if any risks based on the agency's towing experience, and due to the agency assuming the risk of loss or damage by self-insuring, there is no measurable value in the agency assuming the risk. *Id.* We find no basis to disagree with the agency's determination in this regard.

NASSCO's remaining objections to the cost evaluation, even if each were sustained, are not sufficient to justify sustaining NASSCO's protest. This is so because, as discussed below, the source selection decision included an alternate tradeoff analysis, accepting the proposed cost of each proposal, which reasonably determined that the technical superiority of Norshipco's proposal over NASSCO's proposal was worth the associated \$1,815,368 cost premium. *See* Agency Report, Tab 45 at 3. As detailed below, assuming NASSCO's remaining cost evaluation issues were sustained, we calculate that NASSCO's evaluated cost would be only \$1,712,808 less than Norshipco's evaluated cost.

The effect of the alleged errors in the agency's cost realism analysis of NASSCO's proposal, as quantified by NASSCO, is a total deduction of \$1,727,702 from NASSCO's evaluated cost. *See* Supplemental Comments at 30. The only allegation remaining about Norshipco's cost evaluation is that the agency improperly reduced

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<sup>19</sup> Moreover, while in support of its protest NASSCO references internal agency memoranda that indicate that the agency may not receive any intrinsic value by early contract completion because the Shasta may not be placed into service prior to March 2000, we note that NASSCO's proposed accelerated schedule, for which it accepts evaluation credit, would have resulted in the completion of the ship renovation well prior to that date. *See* Agency Report, Tab 30 (July 6, 1998 e-mail message); Supplemental Comments at 30.

<sup>20</sup> This is consistent with the plain meaning of the term "intrinsic." *See* The Random House College Dictionary 700 (rev'd ed. 1980) (belonging to a thing by its very nature).

the actual returns from the Mount Baker contract in calculating Norshipco's evaluated cost. See Initial Comments at 30-31. Although NASSCO did not quantify the effect on the cost evaluation of this alleged impropriety, we calculate this amount as \$1,621,554 by determining the cost difference between the figures used by the agency in determining Norshipco's evaluated costs for the critical path items and the actual returns from the Mount Baker contract for these items.<sup>21</sup> This amount would be an addition to Norshipco's evaluated cost were NASSCO to prevail on this basis. Should NASSCO prevail on its remaining cost evaluation allegations, the adjustments are as follows:

	Norshipco	NASSCO
Agency-corrected Evaluated Cost	\$27,405,177	\$28,991,824
Deduct Intrinsic Value of Early Delivery	3,283,902 (87 days)	DELETED
Add Cost of Return Tow	893,849	-0-
Subtotal	25,015,124	DELETED
Deduct Alleged Improperities in NASSCO's Cost Evaluation	-0-	1,727,702
Add Alleged Improperities in Norshipco's Cost Evaluation	1,621,554	-0-
Adjusted Total	\$26,636,678	DELETED
Difference	\$ 1,712,808	

<sup>21</sup>To calculate this cost difference we first determine the difference in staff-hours, which is [DELETED] hours. Norshipco's cost rates [DELETED] are applied to this figure to determine the total labor cost difference. The difference in prime material and subcontractor costs is [DELETED]. The 10-percent growth rate is multiplied by the sum of these cost differences to produce a total additional evaluated cost for the 13 critical items of [DELETED]. This amount is divided by the agency's cost projection ratio of [DELETED] (percentage of critical item costs to total costs), which results in a total addition to Norshipco's evaluated cost of \$1,621,554. See Agency Report, Tabs 13, 44C at chart 2; Supplemental Report, Attachment 1 at Norshipco chart.

Since the reasonably-based alternate trade-off analysis concluded that award based on Norshipco's technically superior proposal would be justified even at a \$1,815,368 cost premium, we find that there is not a reasonable possibility that NASSCO was prejudiced by the remaining allegations of impropriety in the agency's cost evaluation; thus, the alleged improprieties do not provide a basis for sustaining the protest. See Prospect Assocs., Inc., B-260696, July 7, 1995, 95-2 CPD ¶ 53 at 15.<sup>22</sup>

Finally, NASSCO alleges that the cost/technical tradeoff analysis and source selection decision were unreasonable because its proposal should have been considered technically equal or superior to the other proposals and its proposal represented the lowest cost to the government. NASSCO also alleges that the agency's reliance on a single evaluation subfactor in determining the overall technical rating for NASSCO, and ultimately in the tradeoff analysis and source selection decision, were inconsistent with the weight assigned to that subfactor in the stated evaluation scheme. Initial Protest at 26-29; Initial Comments at 43-49; Supplemental Protest at 27-29; Supplemental Comments at 31-32, 36-38. In negotiated procurements, unless the RFP so specifies, there is no requirement that the award be based on lowest price. Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 et al., Dec. 6, 1996, 97-1 CPD ¶ 41 at 10. Cost/technical tradeoffs can be made in deciding between competing proposals; the propriety of such tradeoff turns not on the differences in technical scores or ratings per se, but on whether the agency's judgment concerning the significance of the difference is reasonable and adequately justified consistent with the stated evaluation scheme. Kay and Assocs., Inc., B-258243.7, Sept. 7, 1995, 96-1 CPD ¶ 266 at 6. A procuring agency has the discretion to select a higher-rated proposal if doing so is reasonable and consistent with the stated evaluation scheme. Israel Aircraft Indus., Ltd., MATA Helicopters Div., supra.

The protester has not shown that its proposal was technically equal or superior to Norshipco's proposal. As discussed above, we found reasonable the agency's evaluation that the NASSCO's significantly low estimates, which were well below the agency's experience on similar CIVMOD conversions, reflected a lack of understanding. Norshipco's estimates fell between the IGE and the actual returns on the Mount Baker, thus providing a reasonable basis to support the SSA's conclusion that Norshipco had a significantly better understanding of the scope of work.

In an alternate tradeoff analysis included in the source selection decision, the agency found that, even accepting the proposed costs as realistic, the acceptance of

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<sup>22</sup> Our standard of review for prejudice requires that the protester demonstrate a reasonable possibility that it was prejudiced by the agency's actions, that is, but for the agency's actions, it would have a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

NASSCO's marginal proposal represented a technical risk, as compared to Norshipco's good/low risk proposal, and that Norshipco's superior understanding of the scope of work would justify the payment of the associated \$1,815,368 cost premium. Contrary to the protester's argument, even though the technical discriminator was encompassed in a single subfactor, this did not elevate the importance of this heavily weighted subfactor beyond that contemplated by the solicitation, considering the technical disparity between the proposals under this subfactor. Given that the manhour/material estimates and critical path schedule subfactor was the second most important technical subfactor of the most important understanding the scope of work technical factor, and that technical was significantly more important than cost, we find that the selection of Norshipco's proposal with significantly more realistic estimates at a higher cost is reasonable and consistent with this evaluation scheme. See Red River Serv. Corp.; Mark Dunning Indus., Inc., B-253671.2 et al., Apr. 22, 1994, 94-1 CPD ¶ 385 at 6-7.

The protest is denied.

Comptroller General  
of the United States