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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

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## **Decision**

**Matter of:** Vantage Associates, Inc.

**File:** B-290802.2

**Date:** February 3, 2003

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Brian J. Donovan, Esq., Jones & Donovan, for the protester.  
Randall B. Pennington, Esq., Naval Sea Systems Command, for the agency.  
Paul I. Lieberman, Esq., and Michael R. Golden, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Agency determination to make award on the basis of lower price under solicitation which provided that technical considerations were more important than price is unobjectionable where the technical proposals were reasonably evaluated as essentially equal.
  2. Favorable consideration of offeror's past performance and technical capability in producing item identical to that being procured with the exception of a change in the color of a required coating is reasonable under solicitation which contemplated evaluation of offeror's previous production of the same or similar item.
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### **DECISION**

Vantage Associates, Inc. protests the award of a contract to Raytheon Systems Company under request for proposals (RFP) No. N63394-02-R-4001, issued by the Department of the Navy, Port Hueneme Division, Naval Surface Warfare Center, for the production of certain radomes under a fixed-price contract. Vantage asserts that it has better experience and qualifications to produce the radomes than Raytheon, and that the Navy unreasonably evaluated Raytheon's technical proposal as equal to Vantage's and improperly determined to award to Raytheon on the basis of its lower price.

We deny the protest.

## BACKGROUND

The solicitation, issued on March 11, 2002, seeks the production and delivery of 60 search radar radomes, 60 track radar radomes, and related data for the MK 15 close-in weapon system (CIWS), known as the "Phalanx," a ship self-defense system designed to detect and engage high-speed incoming airborne threats. The 60-unit production requirements include first article test units. The currently deployed radomes are painted white, while the remainder of the Phalanx CIWS (for which the radomes provide protective cover) and the majority of the ships are painted haze gray. This solicitation is for Phalanx radomes painted gray in order to present a less conspicuous target. The radomes consist of a coated fiberglass sandwich structure with a foam core fabricated to provide watertight integrity for the CIWS mount while allowing transmission and reception of the search and track radar beams without loss of radio-frequency power, constructed to Navy specifications.

The solicitation sets forth five technical factors consisting of: (1) technical capability, (2) past performance, (3) production capability, (4) test equipment and (5) quality control system, and indicates that factors 2 and 3 are equal in importance and more important than factor 1, and that factors 4 and 5 are equal in importance and less important than factor 1. The RFP states that the five technical factors "combined are significantly more important than price," but that the importance of price "will increase with the degree of equality" of technical proposals, and "price may be the deciding factor between two or more highly rated Technical Proposals." RFP § M; RFP amend. 1, § M.

The agency received three proposals and, after conducting discussions, determined to award to Raytheon on the basis that it offered a higher technically rated proposal than Vantage, at a lower price. After receiving a debriefing, Vantage protested the propriety of the evaluation and award determination to our Office, in response to which the agency determined to take corrective action consisting of a reevaluation conducted by new evaluators, using a revised source selection plan modified to comport with the RFP evaluation criteria.<sup>1</sup> Our Office dismissed the protest on July 12, 2002, based on the agency's determination to take corrective action.

The agency conducted a reevaluation on October 7, as a result of which the technical proposals were both rated as "outstanding" overall. Agency Report (AR), Tab 15, Source Selection Board (SSB) Evaluation Summary, at 1. Raytheon's total price was \$1,621,080; Vantage's total price was \$[DELETED]. AR, Tab 16, Business Clearance Memorandum, at 9. The agency determined that because both proposals were rated

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<sup>1</sup> Under the corrective action, the reevaluation was limited to the Raytheon and Vantage proposals; the third proposal was excluded from the competitive range.

technically outstanding, price became the deciding factor and made award to Raytheon. After receiving a debriefing, Vantage filed this protest on November 12. Vantage again questions the propriety of the technical evaluation and also asserts that the agency improperly conducted a pure price competition.<sup>2</sup>

#### AWARD ON THE BASIS OF LOW PRICE

Raytheon's technical proposal was evaluated as "outstanding" under four factors, technical capability, past performance, test equipment and quality control system, and as "good" under one factor, production capability. Vantage's proposal was evaluated as "outstanding" under [DELETED] factors, [DELETED], and as [DELETED] under [DELETED] factors, [DELETED]. Overall, Raytheon's proposal was evaluated as "outstanding." With respect to Vantage's proposal, the SSB initially recommended an overall evaluation of [DELETED]," but eventually reached an overall rating of "outstanding" because of the relative importance of the [DELETED] factors under which Vantage's proposal was evaluated as "outstanding." AR, Tab 15, SSB Evaluation Summary, at 1. Nonetheless, the SSB determined that "[a]lthough both vendors are rated [o]utstanding, the Raytheon proposal was superior to the Vantage proposal." *Id.* The agency concluded that Raytheon's lower price was determinative in view of the "outstanding" evaluations received by both technical proposals. AR, Tab 16, Business Clearance Memorandum, at 9.

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<sup>2</sup> Vantage also argues for the first time that the agency should have disqualified Raytheon from receiving the award because the firm allegedly has an unavoidable organizational conflict of interest (OCI) based on Raytheon's participation in designing and preparing the radome specifications. This allegation is untimely. The solicitation contained design drawings for the radome that were designated as having been prepared by Raytheon, and the RFP designated Raytheon as a qualified source for the gray radomes. When Vantage received notice of the original award to Raytheon, it protested the technical evaluation and alleged that the determination to award to Raytheon was improperly made on the basis of low price, without raising the OCI issue, and the agency's subsequent corrective action in response to that protest consisted only of a technical reevaluation and resulting award determination. Vantage was aware of all of the relevant information pertaining to the alleged OCI at the latest when it received its initial debriefing on June 24, but did not raise the OCI issue until November 12, after it was apprised of the technical reevaluation results. Accordingly, the OCI allegation is untimely and will not be considered. 4 C.F.R. § 21.2(a)(2) (2002); *LeBoeuf, Lamb, Greene & MacRae*, B-283825, B-283825.3, Feb. 3, 2000, 2000 CPD ¶ 35 at 11.

Vantage asserts that the award to Raytheon on the basis of its low price is contrary to the RFP award criterion which provides that evaluation factors other than price are significantly more important than price, and impermissibly converted the procurement into a competition under which “low price wins.” Protester’s Comments at 8-9.

In a negotiated procurement with a “best value” evaluation plan where selection officials reasonably regard proposals as being essentially equal technically, price can become the determining factor in making award, notwithstanding that the evaluation criteria assigned price less importance than technical factors. M-Cubed Info. Sys., Inc., B 284445; B-284445.2, Apr. 19, 2000, 2000 CPD ¶ 74 at 8. Here, the RFP evaluation scheme explicitly provides that price would increase in importance as the technical proposals become close to equal, and that price may be the deciding factor between highly rated proposals. At best, Vantage’s technical proposal was evaluated as equal to Raytheon’s; in fact, the record reflects that the agency consistently evaluated the Raytheon proposal as technically superior, notwithstanding that the same “outstanding” ratings were given to both proposals. Accordingly, Vantage’s objection that the agency improperly considered price to be determinative is without merit because the agency’s decision to use low price as the determining factor between two equally highly rated technical proposals was fully consistent with the RFP award criteria.

#### TECHNICAL PROPOSAL EVALUATION

Vantage asserts that its technical proposal should have been evaluated as superior to Raytheon’s because Vantage is the only offeror that has successfully manufactured production units of the gray radomes for the Navy, and because Raytheon has allegedly supplied the Navy with a non-compliant gray radome unit. In these circumstances, Vantage contends that only its proposal could reasonably be evaluated as outstanding under the past performance and production capability factors, and it is irrational for Raytheon to have received a rating other than unsatisfactory under these two factors.

In reviewing a protest against an agency’s evaluation of proposals, we examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Support Servs., Inc., B-282407, B-282407.2, July 8, 1999, 99-2 CPD ¶ 30 at 3. The protester’s mere disagreement with the agency’s judgment does not establish that the evaluation was unreasonable. Hard Bodies, Inc., B-279543, June 23, 1998, 98-1 CPD ¶ 172 at 3. Here, as discussed below, the record establishes that the agency’s evaluation of Raytheon’s proposal under the past performance and production capability factors was reasonable and consistent with the RFP evaluation criteria.

The predicate to all of Vantage's evaluation arguments is its view that gray Phalanx radomes are "an item markedly differently from the white version," and that "gray Phalanx radomes are a unique item for which prior experience with white radomes was largely if not totally irrelevant." Protester's Comments at 1. The protester claims that this position is substantiated by the RFP's requirement for a first article test, which is not required under white Phalanx radome procurements, and because there was a question about the possible impact of the darker color on the radar frequency transmissions and the covered electronic equipment, as a result of which the Navy did not permit deployment of the gray radomes that had been produced by Vantage without first having a pilot lot inspection test conducted. Protester's Comments at 2. Vantage contends that this production history of the gray radomes "confirms what appears in the solicitation read as a whole, that expertise and experience with gray radomes was the essential requirement of this procurement action." Protester Comments at 3. Vantage also asserts that this view of the focus of this RFP is consistent with conversations that its representatives have had with agency officials concerning the focus of the procurement. Id.

The SSB chairman has explained that "there are no significant technical differences between the gray and white radomes," pointing out that the source control drawings for the white and gray radomes are virtually identical with the exception of a note calling for the use of light gray, low solar absorbency (LSA) gel coat. Supplemental AR, Tab 22, Statement of SSB, at 2. In his view, there are "no technical reasons why a manufacturer of white radomes could not produce gray radomes, assuming they use the LSA gray gel coat." Id. In our view, the solicitation evaluation criteria are consistent with the SSB chairman's view.

The protester correctly points out that the solicitation states that the production efforts for the contract will encompass the activities required to qualify the contractor to manufacture the low solar absorbent gray track and search radomes for the Phalanx CIWS in accordance with specified drawings in the RFP. However, this is within the context of what the solicitation states is a production effort for the gray track and search radomes. RFP § C. Nothing in the solicitation overall, or more particularly in the evaluation criteria substantiates Vantage's allegation that production of white Phalanx radomes was not relevant, or that production of gray radomes was a prerequisite to receiving a favorable evaluation.

Thus, while the protester insists that the evaluation of past performance should be limited to consideration of the production of gray radomes, the RFP simply does not contain any such limitation. On the contrary, the RFP requires the submission of past performance information for "current or previous contracts for the same or similar product(s)," RFP § L, with respect to which the past performance evaluation factor calls for an assessment of "the degree to which the Offeror has satisfied its customers." RFP § M(B). The record makes clear that Raytheon has a long history of producing the white Phalanx radomes under Navy contracts, and Vantage does

not question Raytheon's record of successful past performance in this regard, which the agency evaluated as consistently positive with no known problems. As to Vantage's assertion that Raytheon should have been downgraded for having supplied the Navy with a defective gray radome, this is based on the fact that in December 2001, the Navy had returned a dimensionally noncompliant gray radome to Vantage (which was the only entity that had supplied production radomes to the Navy), which Vantage states that it had not produced. Vantage asserts that it "learned that this was a radome produced by Raytheon," Protest at 4, and so advised the Navy.<sup>3</sup> However, with Navy authorization, the unit was destroyed. *Id.* at 5. The Navy states that it has no knowledge of any noncompliant gray radome supplied by Raytheon, and Vantage, which it is clear from record is the only company that has supplied any production units of the gray Phalanx radomes to the Navy, has not provided any meaningful evidence that the radome in question was a production item made by Raytheon. Vantage's speculation regarding the origin of this noncompliant unit provides no basis for our Office to find that the agency was required to downgrade Raytheon's technical proposal.

Vantage also asserts that Raytheon's proposal should have been rated as "unsatisfactory" rather than "good" under the production capability factor.<sup>4</sup> The RFP provides that the production capability factor will assess "capability to manufacture the [s]earch radome and [t]rack radome to the requirements of the US Navy drawings," and calls for the offeror to state what production tooling is in place and has to be procured to complete the effort. RFP § M(C). Raytheon's proposal was evaluated as good under production capability based on its possession of all the molds, tooling and test equipment in place to manufacture the gray radomes. AR, Tab 16, Business Clearance Memorandum, at 5. Vantage again bases its objection on the fact that Raytheon has not successfully produced the gray radome, which is simply not a requirement under the production capability criterion.

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<sup>3</sup> Vantage's belief that Raytheon produced this radome is based on its observation that the radome profile was "typical of the Raytheon profile and could not have been produced on Vantage's tooling," coupled with conversations with a Navy official indicating that Raytheon had "made a few gray radomes." Protester's Comments, Statement of Louis J. Alpinieri, at 6. Vantage reasons that "based on the fact that there is essentially a zero possibility that anyone else could have made a gray P[halanx] radome, since this is not a common item made by commercial sources or even other Government contractors, there is a 100% certainty that it was produced by Raytheon." *Id.* at 6-7.

<sup>4</sup> To the extent that this argument is also premised on Vantage's speculation that Raytheon has produced a noncompliant gray radome, as explained above, this provides no basis for objection.

In short, none of the RFP evaluation criteria require that an offeror have produced gray radomes in order to receive a favorable evaluation. In its evaluation of Raytheon's proposal, the agency recognized that in addition to a long history in design, manufacturing, testing and delivery of the white radomes, Raytheon participated in the development of the LSA gray radomes as well. Id. Vantage's premise that, as the only successful previous producer of LSA gray radomes, it is the only offeror whose proposal could be highly rated is not consistent with the RFP evaluation criteria, which were reasonably applied by the agency in its evaluation of Raytheon's proposal.<sup>5</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>5</sup> Vantage also objects that its proposal should have been evaluated as "outstanding" rather than [DELETED] under the [DELETED] factors in addition to the [DELETED] factors under which it was evaluated as "outstanding." Protester's Comments at 8. However, the Vantage proposal, like the Raytheon proposal, received an overall evaluation of "outstanding," the highest available rating. As noted above, the solicitation expressly contemplates award on the basis of low price where there are two or more highly rated proposals. Accordingly, even if Vantage's technical rating improved to a stronger "outstanding" overall, under the RFP award criteria no tradeoff would be required, and award to Raytheon would still be appropriate on the basis that Raytheon offered the lower priced of two highly rated proposals.