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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Bruce Bancroft--Agency Tender Official; Sam Rodriguez--Designated Employee Agent

File: B-400404.7; B-400404.8; B-400404.9; B-400404.10; B-400404.11

Date: November 17, 2009

Pennie C. Leachman, Esq., United States Marine Corps, for Bruce Bancroft--Agency Tender Official; and Angela B. Styles, Esq., and Gunjan R. Talati, Esq., Crowell & Moring LLP, and Diana Price, Esq., American Federation of Government Employees, for Sam Rodriguez--Designated Employee Agent, for the protesters.

Johnathan M. Bailey, Esq., and David C. Bowman, Esq., Bailey & Bailey, P.C., for Phoenix Management, Inc., an intervenor.

Sean McBride, Esq., Department of the Navy, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of agency tender in public-private competition under Office of Management and Budget Circular A-76 is sustained where the record establishes that the agency's evaluation of the private sector offeror's staffing plan was not adequately documented, and the protester was prejudiced by the error.

DECISION

Bruce Bancroft, the designated agency tender official (ATO) for the U.S. Marine Corps Installation West's tender in a public-private competition under Office of Management and Budget (OMB) Circular A-76, and Sam Rodriguez--Designated Employee Agent (DEA), President of the American Federation of Government Employees Local 1881, protest the award of a contract to Phoenix Management, Inc. (PMI), of Austin, Texas, by the Naval Facilities Engineering Command, Department of the Navy, for bulk fuel storage and distribution services at the Marine Corps Air Station, Miramar, California. The protesters argue that the Navy's evaluation of offerors' proposals and the award decision were improper.¹

¹ We recognize that the ATO submits a "tender" and not a proposal. For ease of reference, however, we will use the term "proposal" to refer to all public and private entity submissions received by the Navy in response to its solicitation here.

We sustain the ATO's protests in part and deny them in part; we deny the DEA's protests.

BACKGROUND

On February 7, 2006, the Navy announced its intent to conduct a standard multi-function competition to compare the cost of continued in-house performance of the requirements at issue, involving approximately 54 full-time equivalent (FTE) positions, with obtaining those services by contract.² Agency Report (AR), Tab 5, Public-Private Competition Notice, Feb. 7, 2006. On December 5, the Navy issued request for proposals (RFP) No. N62467-06-R-0080 in connection with the pending competition. The solicitation contemplated the award of a fixed-price contract for a 9-month base period (as well as a 3-month phase-in period) together with four 1-year options. In general terms the RFP required the successful offeror to provide all personnel, equipment, tools, and materials necessary to perform the bulk fuel storage and distribution service requirements as set forth in the performance work statement (PWS).

The RFP set forth contract line item numbers (CLIN) for the various contract performance periods; the CLINs were in turn comprised of exhibit line item numbers (ELIN), which represented categories of tasks. Relevant to the protest here, ELIN 0005 was for Fuel Sampling and Testing, and included specification item (Spec Item) 3.3.1, Fuel Sampling and Testing (Mobile Refuelers). Among the many requirements of the PWS was that “[m]obile aircraft refuelers shall be sampled and tested in accordance with [Military Standard] MIL-STD-3004 and [Naval Air Systems Command] NAVAIR 00-80T-109,” to ensure quality fuel was available for issue in a timely manner.³ RFP at 278. The solicitation also provided offerors with historical workloads for the various fuel storage and distribution services. With regard to Spec Item 3.3.1, the total number of mobile aircraft refueling samples completed had been 5,824 annually for each of the three preceding years. RFP at 391.

As part of the competition here, the Navy had developed an independent government estimate (IGE), which included a detailed staffing estimate. The IGE “built up” a

² The OMB A-76 Circular establishes the standard competition procedures at Attachment B, Section D. Under this process, the contracting agency issues a solicitation, obtains offers from private-sector firms and the ATO (which includes a staffing plan—referred to by the Circular as a most efficient organization (MEO)), performs a source selection, and then, based on the results of the competition, either makes an award to a private-sector offeror or enters into a letter of obligation with an agency official responsible for performance of the MEO.

³ The mobile refueler trucks were government-furnished property to be provided to the service provider, whether a contractor or the in-house workforce. *Id.* at 75.

staffing estimate for each Spec Item and ELIN by determining the estimated number of workload occurrences per year, the performance time (hours) per occurrence, the straight time hours, overtime labor hours, and total labor hours. Based on the total computed labor hours, the IGE then estimated the number of FTEs that would be required for the staffing of each task. The Navy's IGE for Spec Item 3.3.1 was as follows:⁴

PWS Element	Annual Workload Occurrences	Performance Time (Hrs)/ Occurrence	Straight Time Labor Hours	Overtime Labor Hours	Total Labor Hours
Spec Item 3.3.1	5,824	.67	3,902.08	43.90	3,945.98

AR, Tab 51, IGE, May 29, 2007, at 71.

As indicated above, the Navy's original staffing estimate for the mobile refueler fuel sampling and testing requirement was premised on 5,824 fuel samples annually (consistent with its historical data) and a performance time per occurrence of 40 minutes (.67 hours) per sample.

The RFP established five evaluation factors: past performance, corporate experience, small business subcontracting effort, technical and management approach (technical approach), and price.⁵ Award was to be made to the public or private entity whose proposal represented the lowest-priced, technically acceptable offer to the government. RFP § M.2-3.

Six offerors, including PMI and the ATO, submitted proposals by the February 23, 2007, closing date.⁶ Offerors' proposals were to include a staffing matrix for each

⁴ The IGE contained one estimate for the 9-month base period, and a second estimate for the 12-month option periods (the sole difference being that the expected number of task occurrences was prorated for the 9-month base period). Unless stated otherwise, we refer to the estimates for the 12-month performance period.

⁵ The technical approach factor consisted of five subfactors: resources to accomplish the work; key project personnel; corporate management support; technical understanding and approach; and phase-in/phase-out plan. The past performance, corporate experience, and small business subcontracting effort evaluation factors applied only to private offerors, and not the ATO. RFP § M.3.

⁶ Under the A-76 process, the ATO does not directly compete against the private sector offerors until the final cost comparison stage of the study process. Nevertheless, the ATO was also required to submit a technical proposal identifying its approach to accomplishing the PWS requirements, and the Navy evaluated the ATO's proposal concurrently with the private sector proposals.

Spec Item and ELIN, organized in the same manner as the Navy's IGE. In its initial proposal for Spec Item 3.3.1, PMI's staffing estimate was based on 5,824 sample tests annually at .165 hours (or 9.9 minutes) per occurrence, for a total labor hour amount of 960 hours (to be staffed by .5 FTEs). AR, Tab 9, PMI Proposal, Feb. 27, 2007, Staffing Matrix, at 3.

A Navy technical evaluation board (TEB) evaluated offerors' proposals as to the nonprice factors using an adjectival rating scheme that was set forth in the RFP: acceptable; marginal; poor; and with regard to the past performance factor, neutral (a separate price evaluation board (PEB) evaluated offerors' price submissions).⁷ Among other things, the TEB considered PMI's staffing for Spec Item 3.3.1 to be a deficiency. Specifically, the Navy evaluators found that the "performance time of 10 minutes appears too low considering the scope and physical locations of the function." *Id.*, Tab 11, TEB Report, Mar. 30, 2007, at 30, 34.

After completing its initial evaluation, the Navy established a competitive range which included the PMI and ATO proposals. The agency then held multiple rounds of discussions with offerors regarding the identified weaknesses and deficiencies. The Navy's discussions with PMI included the TEB's concerns regarding the offeror's staffing of Spec Item 3.3.1. *Id.*, Tab 16, Navy Discussions with PMI, Apr. 26, 2007, at 5.

PMI's response to the Navy discussion question regarding Spec Item 3.3.1 was as follows:

We have revisited our initial [staffing matrix] submittal for this spec item as well as the associated requirements in both NAVAIR 00-80T-109 and Mil Std 3004. NAVAIR requires that mobile refuelers be sampled prior to the first refueling of the day, while Mil Std 3004 requires that sampling be performed daily for each refueler as well as monthly. Based on our decision to accept all ten refuelers from the government, we would potentially have to accommodate 12 samples a day except on or near the 1st of the month where an additional sample per truck would be required. We currently have 720 hours allocated for 2,720 mobile refueler samples. This results in a performance time of 15.88 minutes per sample, an increase of 59% over our original submittal.

AR, Tab 18, PMI Responses to Technical Discussion Questions, at 16.

⁷ In order to be found eligible for award, a proposal had to receive an "acceptable" evaluation rating for each of the applicable technical evaluation factors and subfactors.

PMI's proposal also included a revised staffing matrix as follows:

PWS Element	Annual Workload Occurrences	Performance Time (Hrs)/ Occurrence	Straight Time Labor Hours	Overtime Labor Hours	Total Labor Hours
Spec Item 3.3.1 (9 mos)	2,720	3.78	720	0	720
Spec Item 3.3.1 (12 mos)	2,720	3.78	960	0	960

AR, Tab 18 PMI Proposal, May 27, 2007, Staffing Matrix, at 3.

PMI's revised proposal here contained various defects and ambiguities. As a preliminary matter, it appears that PMI's use of the figure "3.78" in its staffing matrix represents occurrences per hour rather than the required hours per occurrence: 2,720 occurrences x 3.78 hours per occurrence = 10,281.60 hours (not 720 hours), while 60 minutes / 3.78 = 15.88 minutes (consistent with PMI's narrative discussion response). Further, while PMI's staffing matrix indicated 2,720 fuel sample tests for the 9-month base period, it also indicated the same number of fuel sample tests for the 12-month performance periods. Even assuming that PMI's 12-month figure is in error and should be adjusted upward to 3,626 samples annually (2,720 x 1.33), it is still considerably lower than the Navy's IGE. This aspect of PMI's proposal did not change in any of the offeror's subsequent submissions. See id., Tab 112, PMI Proposal, Apr. 23, 2009, Staffing Matrix, at 3.

PMI's proposal did not explain how it had determined the number of fuel test samples required. PMI's proposal also did not explain how it had determined that 15.88 minutes was adequate to perform the fuel sample testing, stating only that it had raised its time per occurrence 59% as compared to its original proposal. Further, as written, PMI's narrative discussion response appears to have first allocated a certain number of labor hours and then "reverse-engineered" the time per occurrence, rather than deriving the labor hours from a preliminary determination of the requisite time per occurrence.

The TEB evaluated PMI's revised proposal, which included both the offeror's narrative response to discussions questions and revised staffing table.⁸ With regard to PMI's technical approach and staffing plan generally, the TEB stated,

⁸ It is unclear whether the TEB recognized the various inconsistencies in PMI's revised staffing matrix as to the number of fuel sample test occurrences for Spec Item 3.3.1; the TEB never identified the issue in its evaluation reports or raised it in subsequent discussions with the offeror.

The offeror provided a technical approach and understanding to each performance based spec item. After discussions the offeror addressed the specific and inherent work involved and outlined plans to demonstrate capability to meet performance standards and comply with applicable Federal, State, and local laws, [Department of Defense] policy, instructions, and regulations.

AR, Tab 19, TEB Report, June 27, 2007, at 26. Further, with regard to Spec Item 3.3.1, the TEB stated only that “[t]he deficiencies have been adequately corrected.”⁹ Id. at 28.

The TEB report contains no explanation as to why the TEB concluded that PMI’s proposed time occurrence of 15.88 minutes per fuel sample test was adequate, when the agency’s staffing estimate was based on 40 minutes per occurrence. The TEB report also contains no support for the TEB’s conclusion that PMI’s determination that only 2,720 fuel test samples were required was acceptable, when both the Navy’s IGE and historical amounts utilized 5,824 fuel test samples annually. As a result, the TEB report contains no explanation as to why it concluded that PMI’s proposed 960 labor hours were sufficient to perform Spec Item 3.3.1, when the IGE at the time considered 3,945.98 hours required.

Offerors submitted final proposal revisions by April 7, 2008, and the final ratings for the proposals of PMI and the ATO were as follows:

Factor	PMI	ATO
Past Performance	Acceptable	NA
Corporate Experience	Acceptable	NA
Small Business Subcontracting	Acceptable	NA
Technical Approach	Acceptable	Acceptable
Overall	Acceptable	Acceptable
Price	\$11,588,541	\$16,411,672
Adjusted/Evaluated Price	\$13,337,525	\$16,411,672

AR, Tab 33, TEB Report, Oct. 25, 2007, at 12; Tab 43, PEB Report Addendum, Apr. 15, 2008, at 2, 11; Tab 46, Standard Competition Form, May 8, 2008, at 5.

⁹ Moreover, where the TEB stated as to Spec Item 3.3.1 that “the deficiencies have been adequately corrected,” the evaluation report concerned another identified defect (i.e., PMI’s lack of a clear narrative as to how the integrated maintenance program would provide a systematic approach to planning, scheduling, documenting, reporting, and managing functions), and not the fuel sample performance time deficiency. Id.

On May 8, the agency determined that PMI's proposal represented the lowest-priced, technically acceptable offer and certified the standard competition form selecting PMI; a contract was awarded to PMI on June 9.

Beginning July 28, the ATO and DEA filed a series of protests with this Office, asserting that the agency's evaluation of offerors' proposals was unreasonable and the award decision to PMI improper. By letter to our Office dated September 12, the Navy announced its intent to take certain corrective action with regard to the ATO and DEA protests. AR, Tab 54, Navy Letter to GAO, Sept. 12, 2008. Our Office then dismissed the ATO and DEA protests; the agency's planned corrective action rendered certain issues academic, and the protesters were not interested parties to pursue their remaining protest issues. Bruce Bancroft--Agency Tender Official, B-400404, B-400404.4, Sept. 24, 2008; Sam Rodriguez--Designated Employee Agent, B-400404.2, Sept. 24, 2008; Bruce Bancroft--Agency Tender Official; Sam Rodriguez--Designated Employee Agent, B-400404.2 et al., Oct. 31, 2008, 2008 CPD ¶ 200.

The Navy then amended the RFP and held additional rounds of discussions with the offerors.¹⁰ Relevant to the issue here, in its April 23, 2009, response to discussions, the ATO attempted to amend its staffing for Spec Item 3.3.1 based on the belief that it had overestimated the time per occurrence required to conduct fuel sample testing. Specifically, the ATO stated, "[t]he analyst who did the original calculations assumed that the workload of 5,824 [annual occurrences] represented separate sampling events or evolutions. Because each evolution includes the taking of two samples, this assumption erroneously resulted in the 3.012 FTEs of Refueling Technicians resourced to fuel testing and sampling in Spec Item 3.3.1." AR, Tab 113, ATO Response to Discussions, Apr. 23, 2009, at 2. The ATO then recomputed its staffing for the task here based on an estimate of 30 minutes per evolution (or 15 minutes per fuel sample), for a total of 1,529 labor hours.

The TEB evaluated the ATO's April 23 revised proposal as to Spec Item 3.3.1 and stated that:

During discussions, the ATO adjusted Spec Item 3.3.1, Mobile Refueler Sampling and Testing by reducing the cycle time; overall reducing Spec Item 3.3.1 Total Productive Labor Hours from 5351 to 1529. . . . The ATO re-evaluated ELIN C005 and the time required to re-circulate the mobile refueler fuel tanks, take samples, and deliver samples to the lab; stating 30 minutes per evolution. The ATO proposed 1529 (1456 and 73 QC) Total Productive Labor Hours to perform mobile fuel sampling and testing as described in Spec Item 3.3.1. Within C005, the TEB concurs with the 30 minute performance time as a minimum for

¹⁰ The RFP amendments dealt primarily with the staffing requirements for a different PWS task (i.e., Spec Item 3.2.2, within a different ELIN) and not Spec Item 3.3.1.

recirculating the tanks, however, the ATO failed to add the time to run and document the tests. The IGE estimates 60 minutes (= recirculation + travel + water test + particulate test + log) per 2912 evolutions or 30 minutes per 5824 samples. The IGE estimates 2956 (= 2912 evolutions x 1.0 hours + 44 overtime hours) Total Productive Labor Hours are required to adequately perform daily Mobile Refueler Fuel Sampling and Testing. Therefore, the ATO's proposed hours are inadequate to meet the requirements of the solicitation.

AR, Tab 114, TEB Report, May 1, 2009, at 36.

The evaluators also went further in determining the time per occurrence required to perform the fuel sampling and testing here: “[t]he TEB verified with [Headquarters Marine Corps] Fuel Liaison Officer and [Marine Corps Air Station] Miramar Fuel Director that no less than 60 minutes per evolution can be achieved with the current configuration and capacity of the testing equipment.” *Id.* at 41. Lastly, the evaluators stated, “[t]he ATO has not provided additional information that would justify how they propose to accomplish these tests in 30 minutes given the limitations of the equipment they propose to use.” *Id.* The record also reflects that although the staffing for Spec Item 3.3.1 was the one identified deficiency in the ATO's April 23 revised proposal, the TEB rated the proposal as “poor” (i.e., unacceptable) under the technical approach factor and overall. *Id.* at 10, 34-38.

The Navy raised the issue here with the ATO during subsequent discussions, after which the ATO adjusted its time estimates and labor hours for the mobile refueler fuel sampling and testing task back to the prior, higher levels. The TEB subsequently found the ATO's staffing for Spec Item 3.3.1 to be acceptable. *Id.*, Tab 121, TEB Report, June 5, 2009, at 36.

On June 5, the agency completed its evaluation of offerors' final revised proposals, with the following final revised ratings for the proposals of PMI and the ATO:

Factor	PMI	ATO
Past Performance	Acceptable	NA
Corporate Experience	Acceptable	NA
Small Business Subcontracting	Acceptable	NA
Technical Approach	Acceptable	Acceptable
Overall	Acceptable	Acceptable
Price	\$12,921,723	\$17,237,928
Adjusted/Evaluated Price	\$15,513,861	\$17,237,928

Id., Tab 121, TEB Report, June 5, 2009, at 11; Tab 122, PEB Report, June 10, 2009, at 2, 11; Tab 125, Standard Competition Form, July 2, 2009, at 5.

On July 2, the Navy again determined that PMI's proposal represented the lowest-priced, technically acceptable offer, and certified the standard competition form selecting PMI. These protests followed.

DISCUSSION

The ATO and DEA protests raise numerous issues regarding the Navy's public-private competition and the selection of PMI. The protesters argue, among other things, that the Navy's evaluation of PMI's technical and price proposals was unreasonable, that the agency's discussions with the ATO were not meaningful, and that the Navy's corrective action improperly limited the aspects of proposals that offerors could revise. The protesters also argue that the contract award to PMI is improper because the Navy failed to complete the public-private competition study here within the required 30-month statutory timeframe regarding the expenditure of appropriated funds for such studies.

As detailed below, we find the agency's evaluation of PMI's staffing plan—a protest ground raised only by the ATO—was improper. Although we do not specifically address the protesters' remaining challenges to the Navy's evaluation of proposals, we have fully considered all of them and find that they are without merit.

An agency that fails to adequately document its evaluation of proposals bears the risk that its determinations will be considered unsupported, and absent such support, our Office may be unable to determine whether the agency had a reasonable basis for its determinations. Rosemary Livingston—Agency Tender Official, B-401102.2, July 6, 2009, 2009 CPD ¶ 135 at 10, recon. denied, Department of the Navy—Request for Modification of Remedy, B-401102.3, Aug. 6, 2009, 2009 CPD ¶ 162 at 4; Rhonda Podojil—Agency Tender Official, B-311310, May 9, 2008, 2008 CPD ¶ 94 at 4; Matrix Int'l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 5.

In this case, as explained above, the Navy's original staffing estimate for the mobile refueling fuel sampling and testing requirement (Spec Item 3.3.1) was predicated on the historical number of samples completed (5,824) and an estimated 40 minutes per occurrence, which (together with overtime) resulted in a total of 3,946 labor hours. When the Navy later changed its estimate to 30 minutes per occurrence, the Navy then concluded that 2,956 total labor hours were required to adequately perform mobile refueler fuel sampling and testing requirement.

The TEB determined that PMI's original proposal with regard to the staffing of Spec Item 3.3.1 was deficient, insofar as the 9.9 minutes per fuel sampling and testing occurrence was too low. PMI's response to discussions revised the fuel sampling and testing time upward to 15.88 minutes, but the offeror also reduced the number of fuel sampling and testing occurrences to 2,720. However, PMI's proposal did not

explain how it had determined that the PWS required only 2,720 fuel samples annually,¹¹ or how it had determined that 15.88 minutes per occurrence was adequate to perform the requirements; it also appears that the offeror “backed into” its fuel sampling time by first allocating the total number of labor hours.

The TEB subsequently concluded that PMI’s revised proposal had remedied all deficiencies and that its proposed staffing for Spec Item 3.3.1 (and ELIN 005) was adequate. However, the record does not indicate why it was reasonable for the TEB to conclude that PMI’s proposed time of 15.88 minutes per fuel sample test was adequate, when it differed substantially from the Navy’s time estimate. The record also does not indicate why it was reasonable for the TEB to conclude that PMI’s assumption that only 2,720 fuel test samples per year were required was acceptable, when it differed substantially from the agency’s IGE and the historical number of 5,824 annual fuel test samples. As a result, the record does not support the TEB’s conclusion that PMI’s proposed 960 labor hours were sufficient to perform Spec Item 3.3.1, given that the Navy believed an offeror’s staffing had to be based on at least 2,956 total hours.

Further, the record shows that when the ATO attempted to revise its staffing for Spec Item 3.3.1 by using a 15-minute sampling time, the TEB expressly disagreed and found that it made the ATO’s proposal technically unacceptable.¹² In this regard, while the TEB found that the ATO’s proposal had failed to adequately support how the MEO would accomplish the fuel tests in 15 minutes per sample, the record shows that PMI’s proposal—which the TEB found acceptable—likewise failed to provide any information to support how it would accomplish the same tests in 15.88 minutes per sample, referring only to the increase from its original, lower time per sample. Similarly, with regard to the number of fuel samples required, the record shows that while the TEB found that PMI’s assumption and the corresponding staffing were acceptable, the TEB used the higher IGE number (5,824 samples) and corresponding staffing when assessing the adequacy of the ATO’s proposed staffing for the

¹¹ As explained above, PMI’s proposal was unclear regarding whether the 2,720 fuel-sample figure was for the 9-month base period or the 12-month performance periods. As we noted, even assuming it represented the samples for the 9-month base period and was revised upward to account for a 12-month performance period, the resulting number of fuel samples (3,626) is still substantially lower than the IGE figure (5,824).

¹² Specifically, the Navy evaluators stated that, “[t]he IGE estimates 60 minutes (= recirculation + travel + water test + particulate test + log) per 2912 evolutions, or 30 minutes per 5824 samples,” and “[t]he TEB verified with [Headquarters Marine Corps] Fuel Liaison Officer and [Marine Corps Air Station] Miramar Fuel Director that no less than 60 minutes per evolution can be achieved with the current configuration and capacity of the testing equipment.” AR, Tab 114, TEB Report, May 1, 2009, at 36.

requirement. In sum, while the TEB evaluated the ATO's proposal based on a required minimum of 2,956 labor hours for Spec Item 3.3.1 (and concluded that the 1,529 labor hours proposed by the ATO were unacceptable), the TEB concluded without explanation that the 960 labor hours proposed by PMI for the same task were sufficient. There is no explanation in the record for the inconsistencies in the agency's evaluation of PMI's and the ATO's proposals in this area.

The agency argues that it reasonably determined the adequacy of PMI's staffing for all of ELIN 0005, and that it was at the ELIN-level (and not the underlying Spec Item-level) that staffing adequacy was measured. The record does not support this argument. As a preliminary matter, the record reflects that the IGE had staffing estimates for each Spec Item, and that the ELIN staffing estimates were based on the Spec Item staffing estimates. The record also reflects that the Navy assessed the adequacy of offerors' staffing plans at both the Spec Item and ELIN levels. Moreover, when determining that the ATO's staffing plan for Spec Item 3.3.1 was insufficient, the TEB's evaluation did not extend beyond the one specific task and consider the offeror's staffing for the entire ELIN. The agency also found PMI's original staffing for Spec Item 3.3.1 to be a deficiency, and there is nothing in the record to suggest that it was remedied by PMI's staffing of other aspects of ELIN 0005.

The Navy also argues that the evaluation record was adequate to support its determination that PMI's staffing for Spec Item 3.3.1 was acceptable; the agency essentially argues that "not much need be said" when determining a proposal meets (as opposed to failing to meet) the requirements. We disagree. An agency's evaluation of proposals must be adequately documented in order to establish the reasonableness of its determinations. See Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. This requirement applies equally to evaluation determinations of proposal acceptability and determinations of proposal unacceptability, weakness, or deficiency. Here, the TEB concluded without explanation or other support that PMI's revised proposal had adequately staffed Spec Item 3.3.1 notwithstanding the fact that the underlying number of fuel sample occurrences, time per occurrence, and labor hours, differed materially from the Navy's estimates. To the extent some other aspect of PMI's proposal made its staffing for the mobile refueler fuel sampling and testing requirement acceptable (e.g., cross-utilization of labor from other Spec Items), such analysis is not part of the TEB's conclusory determination of PMI's staffing adequacy.

Given the inadequate documentation in the record before us to support a key finding that PMI's staffing plan was acceptable, we sustain the protest on this basis.¹³

¹³ Because we sustain the protest on this issue, we need not decide whether the contract award to PMI is improper because the Navy failed to complete the public-
(continued...)

RECOMMENDATION

Ordinarily, in sustaining a protest challenging an agency's evaluation of proposals, we recommend that the agency review the procurement and take appropriate actions to rectify any improprieties. Under the specific circumstances here, our recommendation would be for the Navy to reopen discussions if deemed necessary, reevaluate PMI's proposal, explain and document its conclusion regarding whether or not PMI's staffing plan for Spec. Item 3.3.1 was acceptable, and then take appropriate action based on its findings. If PMI's proposal was again found to be the lowest-priced/technically acceptable offer, the agency would allow the contract award to PMI to remain in place.

Implementation of such a recommendation in this case appears to be barred by the plain language of the current annual defense appropriations act, which states as follows:

None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A-76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 30 months after initiation of such study for a multi-function activity.

Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, div. C, title VIII, 122 Stat. 3619, 3626 (Sept. 30, 2008), extended to Fiscal Year 2010 by means of the Continuing Appropriations Resolution, 2010, Pub. L. No. 111-68, Div. B, § 104, 123 Stat. ___ (Oct. 1, 2009).¹⁴ As relevant here, the effect of the provision is to bar the Navy from using funds appropriated under the statute to perform any multi-function study more than 30 months after the study was initiated. In our view the 30-month deadline has plainly passed for this study.¹⁵

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private competition study within the required 30-month statutory timeframe regarding the expenditure of appropriated funds for such studies.

¹⁴ During all periods relevant to this protest, the annual defense appropriations act contained the same language. See Department of Defense Appropriations Act, 2006, Pub. L. No. 109-148, § 8021, 119 Stat. 2680, 2703 (2005); Department of Defense Appropriations Act, 2007, Pub. L. No. 109-289, § 8019, 120 Stat. 1257, 1277 (2006); Department of Defense Appropriations Act, 2008, Pub. L. No. 110-116 § 8021, 121 Stat. 1295, 1319 (2007); Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, div. C, title VIII, 122 Stat. 3619, 3626 (Sept. 30, 2008).

¹⁵ For standard competitions, as here, the start date is the day that the agency makes a formal public announcement, and the end date is the day that all standard

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Accordingly, because any recommendation by our Office to correct the evaluation here would result in the Navy expending funds to continue to perform the study at issue, we will not make such a recommendation. New Dynamics Corp., B-401272, July 8, 2009, 2009 CPD ¶ 150 at 13-14; see also Rosemary Livingston–Agency Tender Official, supra, at 13-14. Nevertheless, it would be improper to leave in place a contract award for which we cannot find adequate support in the record. We therefore recommend that the agency terminate the contract award to PMI for the convenience of the government.

The ATO's protests are sustained in part and denied in part; the DEA's protests are denied.

Lynn H. Gibson
Acting General Counsel

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competition form certifications are complete, signifying a performance decision. OMB Circular A-76, Attach. B, B.1, B.2. The Navy announced the competition on February 7, 2006, and completed the certification here on July 2, 2009, approximately 41 months later.