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## Decision

**Matter of:** Glenn Defense Marine-Asia PTE, Ltd.

**File:** B-402687.6; B-402687.7

**Date:** October 13, 2011

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Mark W. Golden, Esq., Department of the Navy, for the agency.

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### DIGEST

Protest challenging agency's technical and past performance evaluation of proposals is denied where agency's evaluation was reasonable and supported by the record.

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### DECISION

Glenn Defense Marine-Asia PTE, Ltd., (GDMA) of Singapore, protests the award of a contract by the Department of the Navy, to Multinational Logistics Services Ltd., (MLS), of Malta, under request for proposals (RFP) No. N62649-09-R-0041 for maritime husbanding support to United States Navy and other ships visiting ports in South Asia, including services in support of Operations Other Than War (OOTW). The protester challenges the evaluation of the proposals.

We deny the protest.

The RFP, issued on November 3, 2009, contemplates the award of four separate fixed-price, indefinite-delivery/indefinite-quantity (IDIQ) contracts for a base year, with four 1-year options. The solicitation was issued to cover the following four regions within the Western Pacific and Indian Ocean: South Asia, Southeast Asia, Australia and the Pacific Islands, and East Asia. Offerors were required to submit a separate proposal for each region in which they were interested. The RFP contemplated four awards, one for each region. RFP at 3.

The award under the South Asia region is the subject of this protest. This region includes seven countries and four major ports: Bangladesh, Bhutan, Burma, India, Maldives, Nepal, and Sri Lanka. Three of the four major ports are in India (Chennai, Goa, Mumbai) and the fourth major port is in Maldives (Male). Id.

The RFP provided that the contract would be awarded on a best-value basis, considering, in descending order of importance, the factors of technical approach, past performance and price; the non-price factors, combined, were deemed to be significantly more important than price. RFP at 162. The solicitation described the evaluation of technical approach as follows:

The Government will evaluate the offeror's Technical Approach based on the offeror's understanding of what is required by the proposed contract, including the level of risk associated with the proposal. Technical Approach will be comprised of three parts: Understanding the Requirement; Management Approach; and Quality Assurance. Under the Technical Approach factor, each of the parts to be reviewed will be given equal consideration. Within each part, the elements making up the part will be given equal consideration. Equal consideration means equal importance.

Id. The solicitation required that offerors describe their technical approach in two separate parts. Offerors were required to provide an oral presentation addressing their understanding of the requirement, purchasing process, and port cost management/customer service practices. RFP at 156-158. Offerors were also required to submit written information with their proposals that further described their technical approach. The solicitation advised offerors to address in their written submissions their understanding of the requirement, including a description of key activities, work processes, major challenges, management approach, and quality assurance process. RFP at 159.

With regard to past performance, the solicitation required offerors to submit a Past Performance Matrix. The solicitation stated in this regard:

The Offeror's Past Performance Matrix shall list and describe all directly related or similar Government or commercial contracts or subcontracts currently being performed, or completed in the past three years which are similar in scope, magnitude and complexity to that which is detailed in this solicitation.

RFP at 160. The four equally-weighted areas that would be evaluated under this factor were: level of capability, efficiency, and effectiveness in providing service; conformance to the terms and conditions of the contract; level of reasonableness

and cooperation; and level of commitment to good customer service. RFP at 162. The solicitation required that each offeror provide information concerning the subcontractors that it intended to use; the past performance of subcontractors was to be considered with the past performance of the offeror. RFP at 160. The solicitation also stated that the offeror must provide Past Performance Reference Sheets with contact information for at least three of the listed customers. Id. The solicitation provided notice that the government reserved the right to obtain information for use in the evaluation of past performance from any or all sources, including sources outside the government. Id.

The solicitation also required that each offeror submit a security plan. This plan covered three areas: protection of ship schedule information, security screening of contractor and subcontractor employees, and contractor/subcontractor identification. RFP at 161. The security plan was to be rated as acceptable or unacceptable. RFP at 162.

The total evaluated price was calculated by applying the offerors' proposed unit prices for "targeted lots" to a sample of logistical requirements based upon historical port visit data for those "targeted lots."

Four offerors, including GDMA and MLS, responded to the South Asia section of the solicitation. Only GDMA's and MLS's proposals were included in the competitive range. After discussions were conducted and final proposal revisions received, the proposals of GDMA and MLS were evaluated as follows:<sup>1</sup>

<b>Offeror</b>	<b>Evaluated Price</b>	<b>Technical`</b>	<b>Past Performance</b>	<b>Security Plan</b>
GDMA	\$1,548,200	Better	Less Than Satisfactory	Acceptable
MLS	\$2,537,414	Better	Better	Acceptable

AR, Tab 8, Post Negotiation Business Clearance Memorandum, at 6.

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<sup>1</sup> The source selection plan provided that the following adjectival ratings would be used in evaluating the technical approach of each offeror: outstanding, better, acceptable, marginal, and unacceptable. Agency Report (AR), Tab 8a, attach. 2, Source Selection Plan, at 6-7. The source selection plan also stated that the following adjectival ratings would be used by the past performance evaluation team (PPET): outstanding [very low performance risk], better [low performance risk], satisfactory [moderate performance risk], less than satisfactory [high performance risk], and neutral. Id. at 9-10.

The technical evaluation board identified numerous strengths and major strengths that supported each proposal's "better" rating under the technical approach factor. Id. at 7-8. When comparing the technical approaches of MLS and GDMA, the agency noted that many of the strengths for the two offerors were similar in nature regarding the understanding of the requirements, subcontractor control, support of OOTW, and quality assurance. Id. at 16. The "major differing strength" for GDMA was its "investment in a substantial amount of assets that can be readily deployed to the region, providing significant capability to support visits with minimal infrastructure." Id. A major differing strength for MLS was its "robust information systems and port cost management systems, which should facilitate increased transparency of prices being paid by the Government beyond the minimum contract requirements." Id. Based on his analysis of the foregoing, the contracting officer determined that the proposals of GDMA and MLS were technically equal. Id. at 17.

The PPET found significant differences between the past performance of the two proposals, which it documented in some detail. GDMA was rated as less than satisfactory due to "past performance issues regarding responsiveness to Government inquiries, late and/or incomplete pre-port visit cost estimates, lack of transparency into prices that were not pre-priced in the contract and communication difficulties." Id. at 17. In contrast, MLS had no such reported problems in its past performance, and was found to have been responsive with solutions and to have provided a very high level of customer service. Id. The agency's tradeoff analysis explained in detail why it considered GDMA a "high" performance risk, why this risk would be harmful to the government, and why the agency has a high degree of confidence in MLS with regard to the same performance areas. Id. at 18-19. The agency thus determined that MLS's proposal offered the best value to the government and that the evaluated benefits of MLS's proposal merited the additional cost. Id. at 19. The agency made award to that firm and this protest followed.

The protester has attacked virtually every aspect of the technical and past performance evaluations. We have reviewed all of the protester's arguments regarding the propriety of the agency's evaluation of the protester's and awardee's proposals and the source selection, and have found none that provide a basis to sustain GDMA's protest. We discuss some examples below.

### Technical Evaluation

GDMA contends that the agency could not reasonably have rated its and MLS's proposal technically equal under the technical approach factor, and should have rated GDMA's proposal superior. For example, GDMA argues that certain strengths were improperly attributed to MLS's proposal, while GDMA was not given strengths for similar responses or strengths that were otherwise warranted.

The evaluation of proposals, including the determination of the relative merits of proposals, is primarily a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. In reviewing an agency's evaluation, we will not reevaluate the proposals or make a new source selection, but rather will examine the record of the evaluation and source selection to ensure that they were reasonable and consistent with the stated evaluation criteria as well as with procurement law and regulation. Id. A protester's mere disagreement with a procuring agency's judgment is insufficient to establish that the agency acted unreasonably. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

For example, the protester argues that MLS's proposal was improperly assigned a "major strength" for having "strong OPSEC [operational security] understanding and processes." See id. at 8. GDMA contends that this strength was improperly assigned because security plans were to be evaluated as either "acceptable" or "unacceptable" under the terms of the RFP. See RFP at 162. GDMA also argues that had its security plans been evaluated by the TEB and assigned an adjectival rating, then it too would have been entitled to a "major strength" in this area. Protester's Supp. Comments at 11.

The agency explains that the designation of this feature of MLS's proposal as a major strength was based on features described in MLS's technical approach proposal, rather than from an evaluation of MLS's security plan. In this regard, the RFP expressly invited the offerors to describe key activities to meet the Government's needs and to identify major challenges/problems. RFP at 159.

MLS's technical proposal identified [deleted]. See AR, Tab 3a, MLS Proposal, Technical Approach, at 8. The technical evaluation board identified this policy as a strength in MLS's technical approach. AR, Tab 5b, Final Technical Evaluation Board Report on MLS's Proposal, at 10.

MLS's technical proposal also identified four major challenges in performing the contract. One of the challenges identified and discussed involved [deleted]. In discussing this challenge, MLS stated:

[deleted]

AR, Tab 3a, MLS Proposal, Technical Approach, at 18. The Technical Evaluation Board identified MLS's proposed solutions to the force protection challenges as a strength. AR, Tab 5b, Final Technical Evaluation Board Report on MLS's Proposal, at 10.

Thus, the record shows that the two strengths involving operational security were derived from information in MLS's technical proposal, rather than from an evaluation of MLS's security plan. These strengths were rolled up into a major strength in the Post Negotiation Business Clearance Memorandum: "[s]trong OPSEC understanding and processes." AR, Tab 8, Post Business Clearance Memorandum, at 8. Based on our review, we find the assignment of this major strength to MLS's proposal was reasonable and consistent with the RFP's evaluation scheme.<sup>2</sup>

Another major strength in MLS's proposal contested by GDMA was its [deleted]. See id. The technical evaluation board summarized this strength as follows:

[deleted]

AR, Tab 5b, Final Technical Evaluation Board Report on MLS's Proposal, at 12. GDMA states that its proposal also described its process for integrating with other providers yet received no major strength.

The agency responds that MLS's proposal was given a major strength in this area because it not only described its process for [deleted], but explained that it would, among other things, [deleted]. See AR, Tab 3a, MLS Proposal, Technical Approach, at 33. The agency notes in this regard that port access for other U.S. Government service providers has been a continuing issue at several ports in the Western Pacific and Indian Ocean. Supp. AR at 4. While GDMA suggests that crediting MLS with this strength is somehow inconsistent with the RFP, we find the agency's evaluation in this area to be reasonable and consistent with the RFP's request that offerors [deleted]. RFP at 159.

MLS was also assigned the following major strength, "[s]trong port cost management processes supported by an information system." AR, Tab 8, Post Business Clearance Memorandum, at 8. The technical evaluation board explained this strength as follows: "Sound port cost management. Established software that is fully compatible with US Navy's CRAFT and LogSSR." AR, Tab 5b, Final Technical Evaluation Board Report on MLS's Proposal, at 14. GDMA contends that the agency improperly assigned MLS's proposal a major strength in this area, and notes that GDMA's proposal, which contained similar information, did not receive a significant strength.

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<sup>2</sup> We also note that GDMA received the major strength, "[s]trong understanding of force protection requirements." AR, Tab 8, Post Negotiation Business Clearance Memorandum, at 7. Thus, GDMA would not be prejudiced even if the assignment of the major strengths related to force protection was not consistent with the RFP.

MLS's technical proposal explained that its information system provides [deleted]. AR, Tab 3a, MLS Proposal, Technical Approach, at 44. The agency notes, and our review confirms, that there was no indication in GDMA's technical proposal that its information system was designed or available to be used by the contracting officer or other Navy users for such [deleted]. Supp. AR at 6. We find no reason to question the agency's determination that MLS's proposal warranted a major strength here.

As illustrated by the foregoing examples, we find the agency's evaluation of the proposals as technically equal was reasonable.

### Past Performance

As noted, the key discriminator in the source selection decision was GDMA's "less than satisfactory" past performance as compared to MLS's "better" past performance. The protester challenges the evaluation of GDMA's and MLS's past performance.

The evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless unless it is inconsistent with the solicitation's evaluation criteria. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4. The evaluation of experience and past performance, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10.

The protester notes that the PPET initially found GDMA's past performance to be satisfactory, based upon a review of the questionnaires returned by each reference; the PPET then changed GDMA's rating to "less than satisfactory" after the Initial Business Clearance Memorandum (reflecting the initial satisfactory rating) was presented to the Contract Review Board (CRB). Protester's Comments at 44-49. The protester characterizes the CRB's involvement as "an instruction from on high," and suggests that the PPET may have updated its overall rating under pressure and without a valid basis. Protester's Comments at 66.

The agency responds that the purpose of the CRB is to provide an independent review of the acquisition and to highlight areas that are inconsistent, or otherwise of concern. Contracting Officer's Statement at 24. The agency provided a declaration by a member of the CRB which stated the following:

After reviewing the reported past performance information on which the [PPET] had made its decision, I was concerned that the Business

Clearance package didn't provide sufficient documentation to justify the "Satisfactory" past performance rating assigned to GDMA.

Supp. AR, Declaration of CRB Member, at 1. In this regard, the CRB noted that several specific performance concerns had been expressed regarding the only contract that the PPET viewed as highly relevant; much of the PPET evaluation turned on these concerns. The CRB member explained that the panel wanted to ensure that those concerns had been properly considered in the evaluation. Id.

Responding to the CRB's guidance, the PPET again reviewed the past performance information, and determined that GDMA's overall past performance rating should be "less than satisfactory." AR, Tab 6c, Final PPET Report for GDMA, at 7. This report detailed the reasons why this rating was warranted. The agency provided a declaration by a member of the PPET, who addressed the CRB interactions as follows:

While the PPET was asked on two separate occasions to review the "Satisfactory" rating that had been initially assigned to GDMA's past performance, I did not feel I was being pressured to amend the PPET rating from "Satisfactory" to "Less than Satisfactory." Rather, I understood that the PPET was being asked to look at the past performance information to confirm whether the evaluation was appropriate.

Supp. AR, Declaration of PPET Chairman, at 1-2. Thus, there is no evidence that the CRB directed the PPET to a particular outcome; rather it asked the PPET to ensure that its satisfactory rating was supported by the underlying past performance information.

This type of review by higher-level agency officials is entirely appropriate. Source selection officials and higher-level agency evaluators may reasonably disagree with the evaluation ratings and results of lower-level evaluators. See, e.g., Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 6-8. In this regard, a source selection official has broad discretion in determining the manner and extent to which technical and cost evaluation results are used, is permitted to make an independent evaluation of offerors' proposals, and may disagree with or expand upon the findings of lower-level evaluators provided the basis for the evaluation is reasonable and documented in the contemporaneous record. KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13-14; Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 2 n.1. The issue is not whether the agency's final assessments are consistent with earlier assessments, but whether they reasonably reflect the relative merits of the proposals, consistent with the solicitation. Sig Sauer, Inc., B-402339.3, July 23, 2010, 2010 CPD ¶ 184 at 6.



While GDMA contends that its past performance rating should have been better than the “Less than Satisfactory” rating it ultimately received, we note that GDMA does not disagree with many of the negative remarks regarding its past performance. Protester’s Supp. Comments at 65. Rather, GDMA primarily disagrees with the weight those negative remarks were given by the PPET. However, GDMA’s disagreement with the weight accorded to its past performance problems does not mean that they were improperly evaluated. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3. Absent a showing of why the conclusions were unreasonable, we have no basis to conclude that the agency evaluated GDMA’s past performance in a manner inconsistent with the RFP’s evaluation scheme.

The protester also questions the agency’s evaluation of MLS’s past performance. In particular, GDMA questions the determination by the PPET that the past performance references of MLS’s subcontractors were for “highly relevant” contracts because none of the referenced contracts were for military vessels.<sup>3</sup> According to the protester this is important because military vessels have unique requirements, such as submarine husbanding services and force protection requirements. Protester’s Supp. Comments at 13.

We first note that the record shows that the past performance of MLS’s subcontractors were for husbanding services at many of the same ports as those covered by this contract. In addition, the services performed by the subcontractors were for a variety of sizes of vessels that spend the majority of their useful life traveling from port to port rather than remaining berthed at a home location. As here, the subcontractors had to provide services on short notice, and be prepared for frequent ship schedule changes. The subcontractors also had to have flexibility and be able to provide varying services depending on the type of ship that comes into port. Supp. AR at 19.

In addition, while the PPET noted that MLS had “moderately relevant” contracts, and MLS’s subcontractors had performed “highly relevant” contracts, the rest of the PPET report discussed the consistently positive past performance of MLS and its subcontractors without further discussion of the relevance of that past performance.<sup>4</sup> AR, Tab 7c, Final PPET Report for MLS, at 35-36. Moreover, the Post Business Clearance Memorandum, which documented the source selection, did not make any

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<sup>3</sup> In contrast to MLS’s subcontractors, the PPET found that the contracts for MLS itself were only “moderate[ly] relevant.” AR, Tab 7c, Final PPET Report on MLS Past Performance, at 11.

<sup>4</sup> We note that MLS’s past performance did not receive the highest possible past performance rating of outstanding, despite the consistently positive past performance references.

specific reference to the relevance of the contracts of MLS and its subcontracts, but focused on the consistently positive past performance information obtained from the references. AR, Tab 8, Post Negotiation Business Clearance Memorandum, at 10-11. In our view, the Navy reasonably concluded that MLS's past performance offered a clear advantage over the past performance of GDMA, and the Navy reasonably documented its decision to select MLS over GDMA for this reason.

The protest is denied.

Lynn H. Gibson  
General Counsel