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

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## Decision

**Matter of:** Patriot Taxiway Industries, Inc.

**File:** B-403690

**Date:** December 6, 2010

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Jon W. van Horne, Esq., Jon W. van Horne Law Office, for the protester.  
James H. Roberts, III, Esq., Van Scoyoc Kelly PLLC, for Tactical Lighting Systems, Inc., an intervenor.  
Maj. Sondra B. Nensala, Department of the Air Force, for the agency.  
Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging evaluation of protester's and awardee's past and present performance is denied where record shows that evaluation was reasonable and in accordance with solicitation's evaluation criteria.
  2. Protest challenging sufficiency of agency's evaluation of price reasonableness is denied where evaluation was based upon a comparison of pricing received in response to solicitation and a determination that adequate price competition existed.
  3. Protest that agency's pricing discussions were misleading and not meaningful is denied where agency did not find protester's pricing unreasonable and agency brought its only pricing concern to protester's attention.
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### DECISION

Patriot Taxiway Industries, Inc., of Lomira, Wisconsin, protests the award of a contract by the Department of the Air Force, Warner Robins Air Logistics Center, to Tactical Lighting Systems, Inc., of Addison, Illinois, for the design and production of a portable airfield lighting system under request for proposals (RFP) No. FA8533-10-R-25009.

We deny the protest.

## BACKGROUND

The solicitation, which was issued on March 2, 2010 as a total small business set-aside, sought the design and production of a portable airfield lighting system known as Expeditionary Airfield Lighting System II (EALS II). RFP at 1-3. The EALS II is an airfield lighting system that provides the crews of incoming aircraft with visual cues needed to approach and land at night or in low-visibility conditions. RFP Purchase Description § 3.2. Once an aircraft has landed, the EALS II also provides visual cues needed for maneuvering around the runway and taxiway. Id.

The solicitation anticipated the award of an indefinite-delivery, requirements-type contract with fixed unit prices for a 2-year base term and four 1-year options. RFP at 3-42; Agency Report (AR), Tab 4, Streamlined Acquisition Strategy Summary, at 1. The agency estimated the total contract value, including the base term and four 1-year options, to be \$44.1 million. AR, Tab 4, Streamlined Acquisition Strategy Summary, at 1. The agency also estimated that 24,428 airfield light fixtures would be delivered under the contract.<sup>1</sup> AR, Tab 7, Performance Confidence Assessment Group (PCAG) Report, at 4.

The solicitation announced that the agency would utilize a “technically acceptable–performance/price tradeoff” source selection procedure, under which the agency first would evaluate proposals for technical acceptability and then, for those proposals deemed technically acceptable, conduct a best value tradeoff analysis between past and present performance and price. RFP amend. 3 at 7. The solicitation stated that for purposes of the best value determination, “[p]ast and present performance is considered **significantly more important than price** though price remains an important consideration.” Id. (emphasis in original).

With respect to price, the solicitation stated that the agency would evaluate proposed prices for reasonableness and balance and calculate a total evaluated price for each proposal. Id. at 10-11. The solicitation also stated that “[t]he existence of adequate price competition is expected to support a determination of reasonableness.” Id. at 11.

With respect to past and present performance, offerors were to provide information regarding three active or completed contracts that the offerors considered relevant to the EALS II requirement. Id. at 5. The solicitation stated that the contracts should involve at least 1 year of performance. Id. Offerors were required to submit the same type of past and present performance information for their “critical subcontractors,” defined as subcontractors that would be responsible for performing 25 percent or more of the EALS II requirement. Id. at 5, 8.

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<sup>1</sup> This number includes the fixtures to be delivered under the contract’s options.

The solicitation explained that the agency would evaluate offerors' and their critical subcontractors' past and present performance information and assign each past or present effort a relevancy rating of very relevant, relevant, somewhat relevant, or not relevant based upon the number of airfield light fixtures delivered in the effort and the degree to which the effort involved the same "magnitude of work and complexities" as the EALS II requirement. Id. at 8-9. The solicitation notified offerors that in evaluating the similarity of the "magnitude of work and complexities" between an offeror's and its critical subcontractors' past or present efforts and the EALS II requirements, the agency would consider the quantity of fixtures produced, contract dollar values, contract type, the period of performance, testing requirements, and the type and complexity of data requirements. Id. at 9.

The solicitation advised that for the purpose of evaluating the relevancy of offerors' and their critical subcontractors' past and present efforts, the agency might consider past and present efforts in the aggregate when the efforts "are performed concurrently (in part or in whole)." Id. at 10. After the agency completed the evaluation of individual past and present efforts, the solicitation explained, offerors' proposals would be assigned an overall performance confidence assessment rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id.

The agency received six proposals by the solicitation's closing date and evaluated three of the proposals, including those submitted by Patriot and Tactical, as technically acceptable. AR, Tab 9, Source Selection Authority (SSA) Decision Document, ¶¶ 3, 4. The agency received past and present performance information for one Patriot contract and five contracts of Patriot's critical subcontractor. AR, Tab 7, PCAG Report, at 19-25. The agency also received past and present performance information for three Tactical contracts and three contracts of Tactical's critical subcontractor. Id. at 29-33. After evaluating the information, the agency assigned the following relevancy ratings to the contracts:

	<b>PATRIOT</b>	<b>TACTICAL</b>
<b>Offeror Past and Present Performance Relevancy Ratings</b>	Somewhat Relevant	Relevant Somewhat Relevant Not Relevant
<b>Critical Subcontractor Past and Present Performance Relevancy Ratings</b>	Very Relevant Relevant Somewhat Relevant Not Relevant Not Relevant	Somewhat Relevant Not Relevant Not Relevant

Id. at 19-33. The agency assigned both Patriot's proposal and Tactical's proposal overall performance confidence assessment ratings of satisfactory confidence. Id.

at 28, 37. The third technically acceptable proposal received an overall performance confidence assessment rating of limited confidence. Id. at 18.

With respect to price, the agency compared the line item pricing found in each technically acceptable proposal. AR, Tab 8, Price Competition Memorandum, at 5, 6, 11. This evaluation identified disparity and discrepancies in the offerors' proposed pricing. Id. Accordingly, the agency opened discussions through issuance of evaluation notices (ENs) to the three offerors. Id. After receiving what it deemed to be satisfactory responses to the ENs, the agency determined each offeror's proposed pricing to be balanced. Id. at 6, 11, 12. The agency also determined the offerors' pricing to be reasonable on the basis that multiple proposals were submitted independently of each other, and, therefore, adequate price competition existed. Id. at 12; AR, Tab 9, SSA Decision Document, ¶ 18.

The agency solicited and received final proposal revisions and calculated final total evaluated prices. AR, Tab 9, SSA Decision Document, ¶ 18. The final total evaluated price of Patriot's proposal was \$127,224,128. Id. The final total evaluated price of Tactical's proposal was \$64,440,029. Id. The final total evaluated price of the third technically acceptable proposal was higher than that of either Patriot or Tactical. Id.

In her source selection decision, the SSA noted that both the proposals of Patriot and Tactical received performance confidence assessment ratings of satisfactory confidence while the third technically acceptable proposal received a performance confidence assessment rating of limited confidence. Id. ¶ 19. Citing the solicitation's provision that price would be an important consideration in the best value determination, the SSA determined that Tactical's lower-priced offer provided the best value to the agency. Id. ¶¶ 22, 24.

On August 5, the agency awarded the contract to Tactical. Contracting Officer's Statement ¶ 7. Patriot received a written debriefing on August 6 and filed a protest with the agency on August 10. Id. After receiving notice on August 17 that the agency had denied its protest, Patriot on August 27 filed this protest with our Office.

## DISCUSSION

Patriot challenges various aspects of the agency's past and present performance evaluation. Patriot also asserts that the agency's price reasonableness determination was improper and that the pricing discussions were misleading and not meaningful. Based upon our review of the record, we find that each of Patriot's challenges lacks merit.<sup>2</sup>

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<sup>2</sup> In its protest, Patriot also asserts that Tactical cannot comply with the solicitation's limitations on subcontracting clause. Protest at 3. The agency addressed this issue in its report, AR, Tab 1, Memorandum of Law, at 3-4, and the

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## The Past and Present Performance Evaluation

Patriot raises four specific objections to the agency's past and present performance evaluation. Our Office examines an agency's evaluation of past and present performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' proposals are primarily matters within the contracting agency's discretion. JSW Maint., Inc., B-400581.5, Sept. 8, 2009, 2009 CPD ¶ 182 at 3; Command Enters., Inc., B-293754, June 7, 2004, 2004 CPD ¶ 166 at 4. In this regard, our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. JSW Maint., Inc., *supra*; Command Enters., Inc., *supra*. Moreover, a protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. JSW Maint., Inc., *supra*; Command Enters., Inc., *supra*.

Patriot first asserts that, in its evaluation of the relevancy of efforts performed by Tactical's critical subcontractor, the agency improperly aggregated the number of airfield light fixtures that the critical subcontractor produced under two efforts that were presented separately in Tactical's proposal. Comments at 4; Supplemental Comments at 1-2. In Patriot's view, because the second effort was a follow-on to the first, the two efforts were performed consecutively rather than concurrently and, therefore, should not have been aggregated. Comments at 4. The record, however, shows that there was a 2-week period of overlap in the critical subcontractor's performance of the two efforts at issue. AR, Tab 12, Tactical Proposal, at 170, 174. Given that the solicitation expressly permitted the agency to evaluate in the aggregate separate efforts performed concurrently, in whole or in part, by an offeror's critical subcontractor, RFP amend. 3, at 10, we do not find unreasonable the agency's determination to aggregate the two efforts.<sup>3</sup>

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protester did not rebut the agency's arguments in its comments. Consequently, we consider this protest ground to be abandoned. Washington-Harris Group, B-401794, B-401794.2, Nov. 16, 2009, 2009 CPD ¶ 230 at 5 n.3.

<sup>3</sup> One of the efforts at issue was a cooperative research and development agreement (CRADA) between the critical subcontractor and the Air Force under which the critical subcontractor developed a contingency airfield lighting system. AR, Tab 12, Tactical Proposal, at 170. The other effort was a purchase order under which the critical subcontractor designed and produced a second generation version of the lighting system developed under the CRADA. *Id.* at 174. The record indicates that the agency may have aggregated the two efforts not because their periods of performance overlapped, but because the agency determined one effort to be a "follow-on" to the other. Tab 7, PCAG Report, at 32, 36. Given the close

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Patriot next complains that the agency unequally evaluated past and performance information submitted by Patriot and Tactical. Specifically, Patriot argues that the agency's evaluation of the relevancy of a contract under which Patriot delivered a portable airfield lighting system (PALS) to the Air Force was unequal as compared to the agency's evaluation of the relevancy of a contract under which Tactical is providing an EALS to the Air Force of Taiwan. Comments at 4-5.

As noted above, the period of performance of the EALS II contract, including options, is 6 years, and its estimated value is \$44.1 million. RFP at 3-42; AR, Tab 4, Streamlined Acquisition Strategy Summary, at 1. The estimated number of airfield light fixtures to be delivered under the EALS II contract is 24,428. AR, Tab 7, PCAG Report, at 4. The solicitation informed offerors that the agency's evaluation of the relevancy of past and present efforts would include consideration of the period of performance of the effort, the value of the effort, and the number airfield light fixtures involved in the effort. RFP amend. 3, at 9.

The record reflects that Patriot's PALS contract had a period of performance of 7 months, a value of \$7.7 million, and involved the delivery of 500 airfield light fixtures, whereas Tactical's Taiwan Air Force EALS contract has a period of performance of 6 years (including options), an estimated value of \$11.2 million, and involves the delivery of 1988 airfield light fixtures. AR, Tab 11, Patriot Proposal, at 589; AR, Tab 12, Tactical Proposal, at 150, 164; AR, Tab 7, PCAG Report, at 19, 29. The agency here considered and documented the relative differences between the periods of performance, value, and scope of Patriot's PALS contract and Tactical's Taiwan Air Force EALS contract on the one hand, and the EALS II requirements on the other hand. See AR, Tab 7, PCAG Report, at 19, 27, 29, 36. Based on our review of the record, we find reasonable the agency's relevancy determinations, and we see no basis upon which to sustain this protest ground.

Patriot also asserts that the agency should have considered only the number of airfield light fixtures that Tactical already has delivered under the Taiwan Air Force contract, rather than the number of fixtures to be delivered by the end of the contract. Comments at 5. The solicitation, however, expressly contemplated the evaluation of "present" experience and permitted offerors to submit information regarding "active" efforts. RFP amend. 3, at 8-9. Moreover, in evaluating Tactical's Taiwan Air Force EALS contract, the agency considered that Tactical already had delivered three of the nine airfield light systems to be produced under the contract. AR, Tab 7, PCAG Report, at 30; see also AR, Tab 12, Tactical Proposal, at 150-51. The agency also confirmed through communications with Tactical's customer that

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relationship between the two efforts, the agency's determination to aggregate the two efforts does not on its face appear to be unreasonable.

Tactical was performing the contract in a very satisfactory manner and that there was no indication that Tactical would not timely deliver all nine of the airfield light systems. Id. at 173-74. Accordingly, we find reasonable this aspect of the evaluation.

Patriot's final challenge to the agency's past and present performance evaluation asserts that the evaluation was unreasonable because Patriot's proposal received a greater number of positive past and present performance relevancy ratings than did Tactical's proposal, yet both offerors' proposals received the same overall performance confidence assessment rating. Comments at 5-6. As shown in the table above, Patriot's proposal received one somewhat relevant rating for one past effort that Patriot performed and ratings of very relevant, relevant, and somewhat relevant for three past and present efforts that Patriot's critical subcontractor was or is performing, whereas Tactical's proposal received ratings of relevant and somewhat relevant for two past and present efforts that Tactical was or is performing and one somewhat relevant rating for a past effort that Tactical's critical subcontractor performed. AR, Tab 7, PCAG Report, at 19-33. The record reflects that the agency carefully considered both Patriot's and Tactical's past and present performance information in assessing these ratings, and there is no evidence that the agency's evaluation was unequal or inconsistent with the solicitation's past and present performance evaluation criteria. Accordingly, we find no basis to sustain the protest on this ground.

#### Price Reasonableness

The protester contends that the agency's price reasonableness determination relied solely upon the existence of adequate price competition and was therefore flawed. Comments at 9; Supplemental Comments at 3-4. A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that we will question only where it is unreasonable. Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8. Where, as here, a fixed-price contract is anticipated, the government may use various price analysis techniques and procedures to ensure a fair and reasonable price, including the comparison of proposed prices received in response to the solicitation. Federal Acquisition Regulation (FAR) § 15.404-1(b)(2); Comprehensive Health Servs., Inc., supra. Agencies may rely upon adequate price competition alone to assess price reasonableness. See FAR § 15.404-1(b)(2)(i); Comprehensive Health Servs., Inc., supra; Business Consulting Assocs., LLC, B-299758.2, Aug. 1, 2007, 2007 CPD ¶ 134 at 7.

The price reasonableness evaluation here was unobjectionable. Contrary to the protester's assertion, the record reflects that in addition to determining that adequate price competition existed, AR, Tab 8, Price Competition Memorandum, at 12; AR, Tab 9, SSA Decision Document, ¶ 18, the agency's evaluation of price reasonableness also included a comparison of the line item pricing within each of the three technically acceptable proposals, AR, Tab 8, Price Competition

Memorandum, at 5, 6, 11. This comparison revealed disparity in the pricing, and the agency therefore opened discussions and requested that offerors re-examine the solicitation's requirements and confirm or correct their pricing. Id. The agency determined that the offerors' responses to the discussion questions—including Patriot's response—were satisfactory. AR, Tab 8, Price Competition Memorandum, at 5, 6, 11. The agency also determined that because multiple proposals were submitted independently of each other, adequate price competition existed, and, therefore, the proposed pricing was reasonable. AR, Tab 8, Price Competition Memorandum, at 12; AR, Tab 9, SSA Decision Document, ¶ 18. Although Patriot asserts that the pricing was too far above the agency's estimated contract value to be considered reasonable, we find no basis to conclude that the agency's price evaluation was unreasonable.

The protester further asserts that the "complexity and circumstances" of this acquisition obliged the agency to engage in a more detailed price analysis. Comments at 9. In this regard, the protester cites FAR § 15.404-1(a)(1), which states in part that "[t]he complexity and circumstances of each acquisition should determine the level of detail of the analysis required." Comments at 9. The protester also points out that FAR §15.404-1(b)(2)(i) provides that "[n]ormally, adequate price competition establishes prices reasonableness" and contends that the circumstances in this acquisition were not normal because of the degree to which the proposed pricing exceeded the agency's estimate. Id.

As noted above, the solicitation stated that the existence of adequate price competition was expected to support the agency's determination of price reasonableness. RFP amend., 3 at 11. The agency's price reasonableness determination involved both an affirmative finding that adequate price competition existed and a comparison of the pricing proposed in competitive proposals. AR, Tab 8, Price Competition Memorandum, at 5, 6, 11, 12. Although the protester alleges that the agency should have conducted a more detailed analysis of the pricing, we find no legal requirement for the agency to have done a more detailed analysis than was undertaken here, and the protester's disagreement with the agency's judgment does not make the analysis unreasonable.

## Discussions

Patriot argues that discussions were misleading and not meaningful because the agency did not specifically inform Patriot that its pricing was significantly higher than the agency's estimate of the total contract value. Comments at 7-8. In this regard, Patriot asserts that the pricing discussions were misleading because they suggested to Patriot that Patriot's pricing failed to include all of the solicitation's requirements. Id. Patriot also asserts that the discussions were not meaningful because the agency was obligated to convey "what should have been the agency's concern," that Patriot's pricing was nearly three times the agency's estimate. Id.

As a general matter, although discussions must address deficiencies and significant weaknesses in a firm's proposal, the precise content of discussions is largely a matter of the contracting officer's judgment. FAR § 15.306(d)(3); General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 6-7. We review the adequacy of discussions to ensure that agencies point out weaknesses or deficiencies that, unless corrected, would prevent an offeror from receiving award. General Dynamics-Ordnance & Tactical Sys., *supra*. In terms of discussing price, agencies are not required to advise a firm that its prices are considered high, unless it has determined that the offeror's pricing is unreasonably high, such that the pricing would preclude award to the firm. Karrar Sys. Corp., B-310661, B-310661.2, Jan. 3, 2008, 2008 CPD ¶ 51 at 3.

The protester's discussions challenge is without merit. Patriot's argument hinges upon a showing that the agency considered the firm's pricing unreasonably high so as to preclude award to Patriot. The record does not support such a showing. Although the record reflects that Patriot's pricing was considerably higher than both the agency's estimate and Tactical's pricing, the record also reflects that the agency determined Patriot's pricing to be reasonable. AR, Tab 8, Price Competition Memorandum, at 11, 12. The record additionally reflects that Patriot's detailed response<sup>4</sup> to the agency's pricing discussions question satisfactorily resolved the agency's concern regarding Patriot's pricing; namely, the concern that because there was disparity among the offerors' pricing, Patriot may not have understood the solicitation's requirements or may have submitted inaccurate pricing. *Id.* at 8.

Finally, there is no evidence in the record that the agency considered Patriot's pricing to be a deficiency or a significant weakness. To the contrary, the SSA's source selection decision states that Patriot's pricing was found to be reasonable, and her determination to make award to Tactical essentially turned upon the findings that Tactical's proposal, like Patriot's proposal, received a performance confidence assessment rating of satisfactory and that Tactical's proposal offered the lowest price. AR, Tab 9, SSA Decision Document, ¶¶ 8, 22. Accordingly, Patriot's protest that pricing discussions were misleading and not meaningful is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>4</sup> In its response to the discussion question, Patriot confirmed its pricing and submitted an in-depth, four-page written description of how Patriot estimated its pricing. AR, Tab 11, Patriot Response to EN No. PR-P-2.