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**Comptroller General
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**United States General Accounting Office
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Decision

Matter of: Crofton Diving Corporation

File: B-289271

Date: January 30, 2002

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DIGEST

Agency evaluation of proposals and resulting determination to make a combined award are unobjectionable where they are reasonable and consistent with the solicitation evaluation and award criteria; protest that agency was required to conduct procurement in a manner that would afford preference to a split award to different offerors for each of two zones being solicited is denied where solicitation does not provide for such preference and states that either a combined or a split award could be made, based on which is most advantageous to the government.

DECISION

Crofton Diving Corporation protests the award of a combined contract to Seaward Marine Services for waterborne hull cleaning and associated services for both zones solicited under request for proposals (RFP) No. N00024-00-R-4091 by the Department of the Navy, Naval Sea Systems Command. Crofton contends that the Navy failed to conduct the procurement in a manner that implemented the agency's goal of making a split award for the two zones in order to develop multiple sources, and otherwise improperly implemented the evaluation and award determination in various respects that adversely affected Crofton.

We deny the protest.

BACKGROUND

The solicitation, issued on July 24, 2000, contemplated the award of either one or two fixed-price, indefinite-delivery/indefinite-quantity contracts for a base year with four 1-year options. The RFP divided the work into Zone A, encompassing the East Coast and related areas, and Zone B, encompassing the West Coast and related areas. Within the two zones, separate regions were designated, for which the RFP specified 19 contract line item numbers (CLINs) for the performance of specified services, of which CLIN 0001, for full hull cleaning, and CLIN 0002, for interim cleaning (of propellers, rudders, shafts and the like), constituted the largest portion of the work. The solicitation contained estimated quantities or man-hours for each CLIN, by region. The RFP explained that “[t]he purpose of this procurement is to obtain one or two contracts for the performance of [specified underwater] hull cleaning, hull inspections, and other related ship husbandry services,” and stated that “[i]t is the Government’s intention to award either two separate contracts (one for Zone A and one for Zone B) . . . or one combined contract (Zones A and B combined), whichever is most advantageous to the Government.” RFP § L-3.0, at 89. The RFP permitted the submission of proposals for either zone or for a combined award, with offerors submitting a combined proposal required to also submit separate individual zone proposals. Id.

The RFP evaluation section contemplated a “best-value” award in which “[t]he technical factors, taken together, are significantly more important than Evaluated Price.” RFP § M-4.0, at 114. The total evaluated price was the grand sum of the total estimated extended CLIN prices for base and option years calculated, as applicable, by single zone and by combined zones. The solicitation did not call for a price realism analysis¹; it did warn that a proposal which was materially unbalanced with respect to CLIN base and option prices could be rejected. RFP § M-3.0, at 114.

The RFP listed the following four technical evaluation factors: experience/management/organization; equipment/facilities; comprehensive execution plan (technical problem No. 1); and quiz (technical problem No. 2), in descending order of importance, with stated relative weights that placed substantial emphasis (45 percent) on the experience/management/organization factor. RFP § M-2.0, at 110-12. Within the first two technical factors, subfactors and elements were also listed, for which the RFP specified the relative weighting. Id. at 112. The RFP further stated that risk would be evaluated within these factors. RFP § M-1.0, at 110.

¹ The RFP reserved the government’s right to perform a cost realism analysis solely with respect to CLIN 0018, a support reimbursement item for services such as travel, for which the agency provided set pricing and the offeror inserted a burden factor, which was inapplicable where the contractor stipulated that its burden factor was a ceiling rate. RFP § M-3.0, at 114. [DELETED]

With respect to the award determination, specifically as to whether a combined zone contract or separate zone contracts would be awarded, the RFP provided:

As stated in SECTION L-3, the Government intends to award either two separate contracts (one for Zone A and one for Zone B), or one combined contract covering both Zones, whichever is determined to be the best value to the Government. The Government will apply a multi-step process to enable comparison between single zone and combined zone offers. Each step of the process uses the best value methodology discussed above.

The Government will determine which single zone offer represents the best value to the Government for each of the two Zones, Zone A and Zone B.

Next, for the purposes of the evaluation, the best value offer for Zone A will be paired with the best value offer for Zone B to result in a 'paired best value' for the whole requirement. For purposes of evaluation, the evaluated price of the 'paired best value' will be the sum of the evaluated price for each component offer of the 'paired best value' as determined in accordance with Section M. The technical score of the 'paired best value' will be a simple average of the weighted technical scores assigned to the two component offers.

If necessary, the Government will determine a 'combined best value,' i.e., the combined zone offer that represents the best value to the Government for a single contract for the whole requirement.

Finally, the Government will compare the 'paired best value' and the 'combined best value' to determine which of the two is a better value, and thereby, the best value overall.

RFP § M-5.0, at 114-15.

Four offerors submitted proposals by the August 9 closing date. Crofton's proposal was for Zone A only. The other three offerors, including Seaward, each submitted combined proposals and separate proposals for Zones A and B. After oral presentations relating to offerors' proposed solutions to the technical problems, as provided for under the RFP, the agency performed an initial evaluation. The technical proposals were evaluated under a narrative and point scheme in which all of the listed factors, subfactors and elements were assessed as follows: unacceptable/0; marginal/1-2; acceptable/3-4; good/5-6; excellent/7-8; outstanding/9-10. Agency Report (AR) at 8. As a result of this evaluation, the proposals submitted by one of the offerors were rejected as technically unacceptable and discussions were conducted with the three offerors whose proposals were

included in the competitive range. After two rounds of discussions were conducted, final proposal revisions (FPRs) were submitted on July 31. The agency contract selection panel (CSP) performed an evaluation and submitted its recommendations to the source selection authority (SSA) on September 25. The evaluation results were as follows:

	Zone A	Zone B	Combined Zones A & B
Seaward Marine Services, Inc.	Outstanding (932) Low Risk Price: \$77,085,785	Outstanding (924) Low Risk Price: \$68,501,633	Outstanding (924) Low Risk Price: \$114,892,193
[DELETED]	Good (628) Medium Risk Price: \$55,792,385	Good (618) Medium Risk Price: \$55,807,618	Good (613) Medium Risk Price \$111,600,003
Crofton Diving Corp.	Good (532) Medium Risk Price: \$53,321,682	No Proposal	No Proposal

AR at 10.

In making the final award determination, the agency went through the comparison sequence set forth at RFP § M-5.0, quoted above. For Zone A, Crofton’s proposal was selected as the best value in a comparison with Seaward’s Zone A proposal, on the basis that Seaward’s technical superiority did not warrant payment of the associated substantial (approximately \$24 million) price premium. AR , Tab 65, CSP Final Report, at 32. For Zone B, the agency selected [DELETED] proposal as representing the best value, again concluding that Seaward’s evaluated technical superiority did not warrant payment of the substantial (\$13 million) associated price premium. Id. In the combined proposal comparison, the agency concluded that Seaward’s proposal represented the best value in comparison to the [DELETED] proposal, on the basis that Seaward’s substantial technical superiority outweighed the relatively small (\$3 million) associated price premium. Id. at 38.

Finally, the SSA compared the paired best value proposals with the best value combined proposal. All of the various possible combinations are summarized as follows:

SCENARIO	OFFEROR(S)	TECHNICAL SCORE	EVALUATED PRICE
A	Seaward Combined	924	\$115 Million
B	Crofton (A), [DELETED] (B)	575	\$109 Million
C	[DELETED] Combined	613	\$112 Million
D	Crofton (A), Seaward (B)	728	\$122 Million
E	[DELETED] (A), Seaward (B)	776	\$124 Million
F	[DELETED] (B), Seaward (A)	775	\$133 Million

AR at 11.

The SSA determined that the technical superiority of the combined Seaward proposal warranted payment of the associated price premium in comparison with the Crofton/[DELETED] paired proposals. In particular, the SSA concluded that the approximately \$6 million price differential was “considered insignificant when compared to the vastly superior technical quality gained by awarding scenario (A).” AR, Tab 65, CSP Final Report, at 33. In support of this determination, the SSA provided a detailed narrative explaining the basis for determining that Scenario A was superior to Scenario B under every RFP factor, subfactor and element except for facilities, in which the two scenarios were evaluated as substantially equal. *Id.* at 33-38. Accordingly, the SSA made the determination to make a combined award to Seaward for Zones A and B. After receiving an agency debriefing, Crofton timely filed this protest with our Office.

PROTEST

Crofton initially raised what it characterizes as nine separate protest issues. The issues, which overlap and are interrelated, generally pertain to and question the agency’s application of the solicitation price and technical evaluation and award criteria, the reasonableness of specific areas of evaluation of Crofton’s and Seaward’s proposals, and the agency’s conduct of discussions.²

² We have carefully reviewed all of Crofton’s protest allegations, many of which, such as the assertion that its proposal was excluded from award consideration as technically noncompliant (Protest at 8), or for posing an unacceptable risk (Protest at 7), are simply factually wrong, as is clear from the agency evaluation record. While we find each of Crofton’s protest allegations without merit, this decision will discuss only the more material allegations.

The gravamen of Crofton's protest arises from the protester's claim that Seaward "has maintained a monopoly over NAVSEA's hulling cleaning procurements for many years," which "three decade monopoly is chronicled in a series of [GAO] decisions." Protester's Supplemental Comments at 1, 3 n.2. In Crofton's view, this protracted "monopoly" incumbency has given Seaward an unfair competitive advantage which Crofton believes the agency was required to, and intended to, mitigate by conducting this procurement in a manner which gives a preference to making a split award in order to foster competition. This premise pervades Crofton's protest and is either articulated as, or in some instances presumed to provide, the underlying foundation for most of Crofton's protest allegations.

ADVANTAGE OF INCUMBENCY

A particular offeror may possess unique advantages and capabilities due to its prior experience under a government contract or otherwise and the government is not required to attempt to equalize competition to compensate for it, unless there is evidence of preferential treatment or other improper action. Crux Computer Corp., B-234143, May 3, 1989, 89-1 CPD ¶ 422 at 5. The existence of this advantage, by itself does not constitute preferential treatment by the agency, nor does it otherwise represent an unfair competitive advantage. Government Bus. Servs. Group, B-287052 et al., Mar. 27, 2001, 2001 CPD ¶ 58 at 10.

Here, other than recapitulating the 21-year period during which the Navy has consistently made awards to Seaward to perform the services in question, the only purported evidence that Crofton presents to suggest that the agency acted unfairly to favor that firm consists of a recitation that five bid protest decisions have been issued by our Office relating to those contract awards.³ However, despite Crofton's assertion that this record shows that "the Navy has abdicated its duty to foster competition" (Protester's Supplemental Comments at 3 n.2), in fact, none of the cited cases was sustained by our Office, because we did not find the agency's actions legally objectionable in any instance. There is simply no basis to conclude that the Navy has demonstrated an improper preference for the incumbent, or otherwise acted unfairly so as to favor that firm, such that the Navy was required to equalize any competitive advantage that Seaward may enjoy. Whatever advantage Seaward may have derive from its performance under the prior contracts, and its familiarity with agency requirements, not from any improper or unfair agency action. Such an advantage is commonly enjoyed by incumbents and is not unfair, since it does not result from preferential treatment or other unfair action by the agency.

³ The five decisions cited by Crofton actually concern three solicitations or award determinations; two of the referenced decisions are associated reconsideration requests.

Based primarily on this premise that the agency was obligated to mitigate Seaward's advantages of incumbency, Crofton assumes that the agency had, in fact, planned the procurement and structured the solicitation in a manner designed and intended to prevent a combined award to Seaward, and that the agency failed to implement this preference in its conduct of the competition. In Crofton's view, "NAVSEA consciously created a procurement model that would allow for the establishment of viable second sources to Seaward, which has maintained a monopoly over NAVSEA's hulling cleaning procurements for many years. This procurement model was well conceived and provided for split contact awards to an East Coast service provider and a West Coast service provide[r] based on best value considerations." Protester's Supplementary Comments at 1.

Crofton's only support for this alleged model consists of references to nonspecific conversations with unnamed agency officials who purportedly advised Crofton that the agency "sought to develop two reliable sources for the services sought in the RFP." Protest at 9. This unsubstantiated allegation does not provide any meaningful support for Crofton's position where, as here, the solicitation does not contain any requirement or preference for a split award.⁴ In the absence of any RFP provision setting forth a preference for a split award, it would have been improper for the agency to implement such a preference, since to do so would have been inconsistent with the stated solicitation evaluation and award criteria. Lear Siegler Servs., Inc., B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 7. In short, the premise on which Crofton bases its protest arguments lacks any legal and factual basis.

UNBALANCING

Crofton's explication of its allegation that Seaward's single zone and combined proposals are unbalanced vis-à-vis each other provides a good example of the protester's application of this underlying premise. Crofton asserts that the Navy was required to reject Seaward's proposal as materially unbalanced because of the substantial difference between the sum of Seaward's single zone prices and its combined price. In particular, Crofton points out that Seaward's combined price of approximately \$115 million is \$31 million lower than the sum of its individual zone proposal prices of \$69 million and \$77 million. Crofton asserts that "the Navy has no pricing evaluation data that would justify this significant pricing discrepancy. Obviously, the strategic and practical effect of this pricing scheme made it virtually

⁴ To the extent that Crofton's real basis for protest is a contention that the solicitation should have required split awards or otherwise penalized Seaward, this constitutes an alleged solicitation impropriety which is untimely under our bid protest regulations, since the protest was not filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2001). Moreover, as explained above, there is no legal basis to require the agency to take steps to eliminate an incumbent's advantage in the circumstances presented here.

impossible for the Government [to] make an award to more than one contractor. The Awardee elevated its Zone B price so high [to \$77 million]⁵ that any price combination with the Awardee in the ‘paired best value process’ would be too expensive to merit consideration.” Protest at 6.

This argument provides no legal basis to consider whether Seaward’s proposals should have been rejected as unbalanced. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated. Federal Acquisition Regulation (FAR) § 15.404-1(g)(1). An agency's acceptance of a proposal with unbalanced pricing is not, in and of itself, improper. An agency may lawfully award a contract on the basis of a proposal with unbalanced pricing, provided it has concluded that the pricing does not pose an unacceptable level of risk, and the prices the agency is likely to pay under the contract are not unreasonably high. FAR § 15.404-1(g)(2), (3).

These unbalancing considerations are not applicable to the relative pricing under the three separate proposals submitted by Seaward. The FAR analysis (and the solicitation language used here to caution against unbalancing) is designed to address a possible award based on a proposal in which the CLIN pricing within the proposal is unbalanced, which may raise a performance risk or a risk that the eventual contract amount actually received by the awardee will be higher than the evaluated price. Here, Seaward’s combined proposal price is unaffected by its prices for the individual zone proposals. Seaward’s proposals are separate, and the pricing under one has no impact on the amount that may actually be paid under the others. That is to say, each zone or combined award would be a complete contract. These awards are not like CLINs within a contract awarded to one offeror, where unbalanced CLIN prices coupled with possible inaccuracies in the respective CLIN estimates can have possible total price consequences. Here, the separate and combined zone offers are distinct, and do not pose potential total price consequences arising from overstated or understated total pricing. Stated differently, Crofton’s objection is that Seaward’s total evaluated prices for its separate Zone A and Zone B proposals are relatively high, unrelated to the CLIN pricing within each proposal. Accordingly, the concept of unbalancing has no application.

Crofton’s real objection, upon which its “unbalancing” argument is predicated, seems to be that Seaward’s individual zone pricing strategy essentially precluded Crofton

⁵ This argument is based in part on Crofton’s erroneous transposition of Seaward’s proposed single zone prices; Seaward’s \$69 million Zone B price (the Zone with which Crofton’s single zone proposal was combined for purposes of the agency award determination) is actually significantly lower than its \$77 million Zone A price. This substantially undermines the protester’s argument, separate and apart from the otherwise flawed legal analysis.

from obtaining the benefit of having its proposal paired with Seaward's highest technically rated single Zone B proposal. Thus Crofton contends that "under the scheme created by the Agency Crofton's ability to compete for a single zone award was significantly dependent on the Agency's willingness to . . . penalize the incumbent for submitting unreasonable and/or unbalanced proposals." Protester's Supplemental Comments at 10. This argument does not raise a legally adequate claim of unbalancing, and does not provide any basis to object to Seaward's pricing strategy; it merely reflects Crofton's erroneous underlying presumption that the solicitation requires that the agency apply an evaluation preference for split awards.

SEAWARD PRICE DISCUSSIONS

Crofton's argument regarding the propriety of the agency's conduct of discussions with Seaward is similarly based on the same unfounded presumption. Citing as authority FAR § 15.306(d)(3), Crofton asserts that, in light of Seaward's unreasonable single Zone B price, the contracting officer was required during discussions to have "negotiated a bona fide zone B price in his negotiations with Seaward." Protester's Comments at 16. This argument misconstrues the discussion requirements. The FAR requires that contracting officers discuss with each offeror being considered for award "significant weaknesses, deficiencies, and other aspects of its proposal . . . that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award." FAR § 15.306(d)(3). While the precise scope and extent of discussions are a matter of contracting officer judgment, the agency should tailor its discussions to each offeror's proposal. FAR § 15.306(d)(1); The Pragma Corp., B-255236 et al., Feb. 18, 1994, 94-1 CPD ¶ 124 at 9.

Here, the protester would impose on the agency the requirement to conduct discussions with Seaward for the purpose of negotiating a price change to Seaward's competitive detriment; that is, to encourage Seaward to make a change that would reduce Seaward's chances of receiving the largest possible (combined) award, in order to enhance the possibility that Crofton's Zone A proposal would become more competitive. Even as articulated by Crofton, this constitutes an "allegation that the Agency failed to negotiate price with Seaward, to Crofton's detriment." Protester's Supplemental Comments at 17. This proposition is without merit as it is based on the erroneous premise that the agency was required to take all possible steps to ensure a split award, rather than a combined one.

SINGLE ZONE PROPOSAL EVALUATION

Crofton contends that "[t]he Government's evaluation of Crofton's [s]ingle [z]one [o]ffer [f]ailed to [c]omply with the [t]erms of the RFP." Protest at 13. The only support that Crofton offers for this assertion consists of reciting the RFP provisions permitting the award of one combined or two separate contracts, whichever was most advantageous to the government, and the provisions setting forth the best value

evaluation methodology, which are quoted above. After doing so, without providing any explanation of how the agency failed to apply the award criteria, the protester pronounces that “Crofton submitted a proposal for Zone A only. The Government’s evaluation of Crofton’s proposal failed to comply with the terms of the solicitation recited above. Specifically, the Government’s application of the methodology for the combined technical evaluation and combined price evaluation was flawed. Additionally, the Government’s best value comparisons were flawed.” Protest at 14. Other than to state the allegation, the protester’s pleadings provide no explanation or basis; again this reflects only Crofton’s assumption that the agency was required to apply a preference that would ensure a split award, which presumably would entitle Crofton to an award because its Zone A proposal was evaluated as offering the best value under the preliminary separate zone evaluation.

TECHNICAL EVALUATION

Finally, Crofton raises a variety of objections to various specific aspects of the agency’s evaluation of the Seaward and Crofton technical proposals. An agency’s method for evaluating the relative merits of competing proposals is a matter within the agency’s discretion, since the agency is responsible for defining its needs and the best method for accommodating them. Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3. Where an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Lear Siegler Servs., Inc., supra, at 7. The fact that the protester disagrees with the agency’s judgment does not render the evaluation unreasonable.

Seaward’s combined technical proposal was evaluated as outstanding/low risk overall, and outstanding under every subfactor and element other than personnel experience and facilities, under which the proposal was evaluated as excellent. Crofton’s proposal was evaluated as good/medium risk overall, with subfactor and evaluation ratings of acceptable, good, or excellent, except for one outstanding rating under a corporate experience/past performance element, and one marginal rating under the quiz factor. Crofton’s real objection is its contention in performing the evaluation “[the agency had] a preconceived notion that the successful contractor must look like the 21-year incumbent.” Protester’s Comments at 7. Crofton expands this assertion to complain that “[t]he Government improperly concluded that the successful offeror must present a mirror image of Seaward, the 21-year incumbent . . . [which] results in a situation in which the procurement is essentially sole sourced or any company which wants to compete must hire away Seaward’s employees.” Protester’s Comments at 14. Thus, Crofton complains that the government simply favored a high volume of repetitive ship cleaning experience (Seaward’s proposal evidenced high quality performance on more than 1,000 ships) and did not sufficiently credit Crofton’s “diverse experience” for which Crofton’s proposal “provided evidence of perfect performance on 54 ships over a 4 year time

period.” Protester’s Supplemental Comments at 5. Crofton views this as inconsistent with the evaluation criteria.

Contrary to Crofton’s assumptions, the RFP evaluation criteria expressly called for credit for such extensive, relevant experience. Under the corporate experience factor, the RFP provided for evaluation of “the amount of experience the offeror has . . . as well as the type of experience (i.e., the size and type of vessels worked on, the type of equipment used, and how it relates to the services to be performed under this procurement).” RFP § M-2.0, at 112. Similarly, the facilities factor provided for evaluation related to “adequacy to support the [performance of] operations to be performed under the resultant contract as described in SECTION C-WORK STATEMENT.” *Id.* at 113-14. The other evaluation criteria were similarly directed, in large measure, to the particular work to be performed under the contract, as well.

In short, notwithstanding Crofton’s contention that the evaluation criteria are general and could be equally satisfied by any sort of hull cleaning work, the criteria focused on the specific work to be performed under the contract. Accordingly, the agency evaluation properly took into consideration Seaward’s extensive experience and favorably rated performance history. Similar considerations also obtained with respect to the relative evaluations under the other criteria. Again, Crofton’s real objection is to the incumbent’s inherent advantage. The agency reasonably evaluated the respective proposals consistent with the evaluation criteria, under which Seaward’s performance as incumbent and its knowledge of appropriate procedures helped it to achieve an outstanding evaluation, while Crofton’s lesser experience and familiarity with the specific work at issue resulted in a lower technical score. Accordingly, the agency’s evaluation and resulting award determination are consistent with the RFP criteria, and are unobjectionable.

The protest is denied.

Anthony H. Gamboa
General Counsel