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**Comptroller General
of the United States**

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

Decision

Matter of: Gemmo Impianti SpA

File: B-290427

Date: August 9, 2002

Claudio Pilotto for the protester.

J. Page Turney, Esq., and Robert E. Little, Jr., Esq., Department of the Navy, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's source selection decision is unreasonable where the evaluation supporting the cost/technical tradeoff selection decision contains material defects under two of the three technical factors, and the tradeoff analysis is based on an erroneous assumption about the relative price difference.

DECISION

Gemmo Impianti SpA protests the award of a contract to Penauille Italia SpA under request for proposals (RFP) No. N33191-02-R-0402, issued by the Department of the Navy, Resident Officer in Charge of Construction (ROICC) Southern Italy, for various services at the Naval Support Activity, Naples, Italy. Gemmo protests the agency's evaluation and source selection decision.

We sustain the protest.

The RFP contemplated the award of a contract for a 4-month base period, one 8-month option period, and four 1-year option periods for the following services: janitorial, grounds maintenance, refuse collection and disposal, inspection/cleaning of sewer/drain systems, replacement of air filters for air conditioning systems, and service calls. Gemmo is the incumbent contractor for many of these services, although this RFP includes some services beyond those included in the incumbent contract. The RFP included line items for fixed-price requirements and separate line items for estimated indefinite-quantity requirements. Award was to be based on a "best value" determination, considering price and three technical factors--past performance, corporate capability and quality control. The corporate capability

factors had three equally weighted subfactors—performance plan, staffing plan, and organizational chart. The RFP stated that the three technical factors were of equal importance to each other, and that the combined technical factors were approximately equal in importance to price. The price evaluation was to include a review of the proposed prices for realism and unbalanced pricing.

After receiving and evaluating proposals, the agency established a competitive range that included the proposals of Gemmo and Penauille. The agency conducted discussions with the competitive range offerors, and requested and received revised proposals.

The price evaluation board (PEB) analyzed the price proposals. The PEB determined that Gemmo’s price, which was low, was reasonable and realistic. The PEB determined that Penauille’s higher price was slightly unbalanced because the proposed indefinite quantity prices were substantially higher than both the government estimate and the average prices of the other offerors. The PEB recommended that in the event Penauille were selected for award, the source selection board (SSB) examine the risks associated with the high indefinite-quantity prices proposed by that offeror. Agency Report, Tab 8, Final PEB Report, at 8-9. The SSB reviewed the PEB’s concern for unbalanced pricing and determined that any risks that might otherwise be associated with the high indefinite-quantity prices were mitigated to an acceptable level because the indefinite-quantity work did not constitute a material portion of the contract.¹ Agency Report, Tab 9, Final SSB Report, at 13-14.

The technical evaluation board’s (TEB) final evaluation rated Penauille’s proposal higher than Gemmo’s under each technical factor. The TEB rated Penauille’s proposal “superior” overall and Gemmo’s proposal “acceptable” overall, and recommended award to Penauille. Agency Report, Tab 7, Final TEB Report, at 2. In its report, the SSB took exception to some aspects of the TEB’s evaluation of Gemmo’s proposal; the SSB increased the past performance rating for Gemmo from “acceptable” to “acceptable plus” (the same past performance rating received by Penauille), and corrected what it perceived were some misstatements by the TEB concerning Gemmo’s staffing plan (although it generally agreed with the TEB that Gemmo’s proposed staffing may be inadequate in some respects). Agency Report, Tab 9, Final SSB Report, at 10-12.

¹ Gemmo protests that Penauille’s proposal should be rejected as unbalanced. However, the agency reasonably determined, pursuant to Federal Acquisition Regulation § 15.404-1(g), that Penauille’s unbalanced pricing did not pose an unacceptable risk to the government. See Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ __ at 3.

The SSB noted that Penauille's price was reasonable and that its technical rating was "superior" and supported by "numerous benefits to the Government." The SSB summarized Penauille's past performance as including "substantial experience at major facilities," specifically identifying by name three of the five facilities for which the TEB had interviewed contract references, including two located in Paris, France. The SSB stated, "Past Performance indicated in these facilities exceed requirements of the current RFP with respect to size, magnitude and complexity of scope." The SSB also found that the number of quality control personnel proposed by Penauille was more than sufficient, and that this benefit would be considered in the tradeoff analysis. The SSB concluded that the offeror's reasonable price and superior technical rating supports a "probable award to Penauille." Id. at 14-15.

The SSB prepared a source selection price/technical tradeoff analysis, which was adopted by the source selection authority. The tradeoff analysis compared the proposals of Gemmo and Penauille, focusing on past performance and quality control. The analysis stated that Gemmo's past performance experience included projects of size and complexity similar to the RFP requirements, and that the interviews of the firm's references were "very positive." For Penauille, the analysis stated that the firm's experience exceeded the size and complexity of the RFP requirements and that the references interviewed all rated the firm "superior." Here again, three of Penauille's referenced contracts were specifically identified, including the two in Paris. With regard to quality control, the tradeoff analysis stated that Gemmo's plan was adequate, but the TEB and SSB were concerned that the proposed staffing for quality control "appears minimal." In contrast, the analysis stated that Penauille's plan was "highly detailed" and proposed more quality control staff. The tradeoff analysis then "made . . . assumptions regarding the added value of additional [quality control staff] proposed by Panauille," which it calculated as the cost of this additional staff for their time working on this contract. The analysis then subtracted this cost from the price difference between the two offerors and determined after this adjustment the price difference between the proposals was only "marginal." The analysis concluded that the added benefits of Penauille's "superior" proposal offset the lower price of Gemmo's proposal and justified award to Penauille. Id. at 16-18. On April 15, the agency awarded a contract to Penauille. Following a debriefing, Gemmo protested the award. Contract performance has been stayed.

Gemmo alleges that the evaluation and selection decision were unreasonable and unfair. In reviewing a protest of an agency's evaluation and source selection decision, we will review the evaluation supporting that decision to ensure that it is reasonable and consistent with the stated evaluation criteria, and with law and regulation. Clement Int'l Corp., B-255304.2, Apr. 5, 1994, 94-1 CPD ¶ 228 at 5; SDA Inc., B-248528.2, Apr. 14, 1993, 93-1 CPD ¶ 320 at 9. Here, the agency's source selection decision was based on a number of unreasonable evaluation conclusions.

First, the agency unreasonably credited Penauille with performance under the two contracts in Paris that the SSB report and source selection analysis repeatedly

identified by name, even though these contracts had not been performed by the same corporate entity as the awardee. Penauille's proposal did not identify the name of the firm or firms that performed these contracts (even though this information was required), and the agency did not inquire about that identity, although it called the references for these contracts.² Gemmo pointed out this problem in its comments on the agency report and the agency has now conceded this to be true. The agency nevertheless now argues that since the corporate entity, which performed the Paris contracts, has the same parent corporation as Penauille, Penauille should receive past performance credit for these contracts because the corporate affiliates share two high-level management personnel.

In determining whether one company's performance should be attributed to another, the agency must consider not simply whether the companies are affiliated, but also the nature and extent of the relationship between the two--in particular, whether the proposal demonstrates that the workforce, management, facilities, or other resources of the affiliate may affect contract performance by the offeror. Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4-5; ST Aerospace Engines Pte. Ltd., B-275725, Mar. 19, 1997, 97-1 CPD ¶ 161 at 3. Here, the record shows that Penauille did not propose to use its corporate affiliate to perform the present contract. Although the agency now states that two high-level management personnel are shared by the two affiliates, Penauille's proposal did not commit either person to performance under the present contract. Thus, the proposal did not provide any basis for the agency to consider the experience of Penauille's affiliate in evaluating the past performance of Penauille. See ST Aerospace Engines Pte. Ltd., *supra* at 3-4 (shared top level management is not sufficient basis to credit a firm with an affiliated entity's past performance experience where the proposal does not show that these personnel would be involved in contract performance).

It is also notable that the agency did not offer this argument until late in the protest process. It clearly was not part of the evaluation upon which the award was based; rather it is a reevaluation of the proposal conducted in the heat of an adversarial process. As such, it may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process. We thus find it inappropriate to accord any significant weight to the agency's

² The RFP provided forms for offerors to identify relevant past performance experience, which included space for identifying the name of the contractor. Penauille did not complete this form correctly, and did not otherwise identify in its proposal the name of the entity that performed each contract. The agency did not ask Penauille to provide this information, and there is no evidence in the record that the agency attempted to obtain that information prior to award. The agency does not contend that it was reasonable for it to assume that Penauille performed the Paris contracts; given these facts, we have no basis to believe that the agency reasonably could have done so.

position. See Tennier Indus., Inc., B-286706.2, B-286706.3, Mar. 14, 2001, 2002 CPD ¶ 75 at 5 n.4; Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. Once the Paris contracts are removed from consideration, the record does not support a finding that Penauille's contracts exceeded the scope or complexity of the RFP requirements.

To the extent the source selection decision intended to reflect any qualitative difference between the assessments of references in the past performance interviews conducted, the agency's record of those interviews does not support such a distinction. Although the source selection analysis stated that all of Penauille's references rated the firm "superior," the record of those interviews never uses that word. In fact, the record of responses obtained from all interviews is very brief and reflects that references for Penauille and Gemmo rated the firms similarly. For example, the responses received for Penauille were statements of "quality is very good," "company is very responsive," "very cooperative," and "always available." The responses for Gemmo were statements of "very cooperative and responsive," "provides excellent service," "always willing to respond," "very professional," and "always [on schedule]." Agency Report, Tab 3, TEB Report, Company Reference Sheets. The record thus does not reasonably support that Penauille's past performance was in fact superior to Gemmo's, and this aspect of the cost/technical tradeoff is unreasonable.³

Another area where the agency's evaluation and cost/technical tradeoff were unreasonable concerns the agency's assessment of quality control. The RFP stated that this factor would be evaluated based on the offeror's ability to provide sufficient and continual quality control through the duration of this contract. RFP § M-3.c. As indicated above, a significant consideration in the selection decision was the difference in the sufficiency of proposed quality control staffing between the offerors. We find the distinction drawn by the agency in this respect was unreasonable.

Specifically, the award selection statement essentially found that Penauille proposed twice the number of quality control representatives as did Gemmo. Though factually accurate, the difference was not as large as this characterization suggests. In the case of Penauille's quality control representatives, quality control constituted only 50 percent of their work responsibilities. In contrast, Gemmo's quality control staff was proposed solely for quality control responsibilities, and the majority of the representatives were proposed as full-time positions. Thus, in terms of labor hours

³ At the debriefing and in its report, the agency referenced some alleged past performance difficulties that Gemmo had on an ROICC contract. However, it does not appear that this contract was considered in the evaluation and Gemmo has provided detailed explanations regarding these difficulties.

for quality control, the difference between the proposals would seem to be much smaller than assumed in the selection decision.

Moreover, as noted above, the award selection analysis's calculation of the salary cost of half of Penauille's proposed quality control representatives was used to reduce the magnitude of the difference between Penauille's proposed price and Gemmo's lower price. However, Penauille's proposal did not offer to provide quality control staff at no cost to the agency; therefore, there was no basis to deduct the salary of this staff from Penauille's higher price to determine in the cost/technical tradeoff that Gemmo's price was "only marginally" lower than Penauille's, while still giving Penauille credit in the technical evaluation for proposing more staff.

In sum, the source selection decision is based on a defective evaluation under at least two of the three technical evaluation factors, and on a defective assumption about the relative price difference. Given that a reasonable evaluation of these aspects of the evaluation would make the evaluated technical difference between the proposal narrower, and the magnitude of the price difference assumed in the tradeoff analysis greater, there is a substantial chance for Gemmo to receive the award under a reasonable evaluation. We therefore conclude that the errors were prejudicial to the protester. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

We recommend that the Navy reopen discussions if necessary, request and evaluate revised proposals, and make a new source selection decision. If another firm's proposal is selected for award, the agency should terminate the contract with Penauille. We also recommend that the Navy reimburse the protester its costs of pursuing this protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d) (2002). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel