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United States Government Accountability Office  
Washington, DC 20548

Comptroller General  
of the United States

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## Decision

**Matter of:** Laerdal Medical Corporation

**File:** B-297321; B-297321.2

**Date:** December 23, 2005

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Craig P. Murphy, Esq., and John D. Holden, Esq., Windels Marx Lane & Mittendorf, LLP, for the protester.

Kathleen E. Karelis, Esq., W. Jay DeVecchio, Esq., and David B. Robbins, Esq., Jenner & Block LLP, for Medical Education Technologies, Inc., an intervenor.

Duncan Butts, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging evaluation of offerors' technical proposals is denied where record shows that agency's evaluation was reasonable.

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### DECISION

Laerdal Medical Corporation protests the award of a contract to Medical Education Technologies, Inc. (METI) under request for proposals (RFP) No. N61339-05-R-0119, issued by the Department of the Navy for medical simulator training devices. Laerdal challenges the Navy's evaluation of the offerors' technical proposals.

We deny the protest.

### BACKGROUND

The combined synopsis/solicitation was posted on the Federal Business Opportunities website on August 16, 2005. The RFP contemplated the award of an indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base year and three option periods. As relevant here, the RFP required the following medical training devices: contract line item number (CLIN) 0001--breathe/bleed simulator<sup>1</sup> and

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<sup>1</sup> The breathe/bleed simulator is a full-sized, human-like mannequin with anatomically correct features, which is computer controlled. Agency Report (AR), Tab 18, Statement of Work (SOW) at 2.

CLIN 0003--human-weighted mannequin trainer. The RFP required offerors to include in their proposals a technical description of the items being offered in sufficient detail to enable the agency to determine compliance with the requirements in the SOW. Agency Report (AR), Tab 6, RFP at 6. Part II of the RFP also contained the following:

The offeror shall complete the Requirements Checklist(s) (Attachment 2) which clearly demonstrates how their product meets the requisite requirements. Offerors shall identify in the notes section of the Requirements Checklist(s), the page number of the offer that demonstrates how their product(s) meet the Government requirement. Failure to meet the Government stated requirement is a deficiency, which may render an offeror ineligible for award.

Offerors were advised that the agency intended to award up to two ID/IQ contracts without discussions. The RFP provided for a two-step evaluation approach. First, the agency would evaluate technical proposals on a pass/fail basis. Second, for those offerors whose proposals were found technically acceptable, the agency would then evaluate the past performance of these offerors and perform a trade-off between the competing offerors on the basis of past performance and price, with past performance being significantly more important than price.

Laerdal and METI submitted proposals. As required, METI's requirements checklist identified the pages in METI's proposal where the specific requirements were addressed. Based on its evaluation of METI's proposal, the agency concluded that METI's proposal met all of the requirements listed on the checklist. In contrast, on its checklist form, Laerdal did not reference the specific pages in its proposal where the company showed compliance with the requirements. The agency reviewed Laerdal's technical proposal and concluded that Laerdal failed to address certain requirements under CLINs 0001 and 0003. To ensure that the agency had not inadvertently missed a relevant technical description in Laerdal's proposal, on September 12, Laerdal was asked to provide the exact section and page numbers in its proposal for the requirements that the evaluators determined had not been met by Laerdal. The agency sought information for the following four items:

1. The SOW paragraph 3.1.3 requires "needle decompression sites shall allow multiple punctures with a minimum of ten (10) punctures at each site prior to the requiring replacements parts." Please indicate where you have addressed this requirement in your proposal, specifically by section and page number.
2. The SOW paragraph 3.1.4 requires "the pulse strength shall mimic blood pressure in a clinically accurate manner." Please indicate where

you have addressed the pedal pulse requirement in your proposal, specifically by section and page number.

3. The SOW paragraph 3.1.8 requires “each breathe/bleed simulator shall be delivered with hard sided transit cases to facilitate the transfer of equipment to different locations.” Please indicate where you have addressed this requirement in your proposal, specifically by section and page number.

4. The SOW paragraph 4 requires “it [the mannequin] shall weigh a minimum of 150 pounds with water resistant skin, rust resistant joints and no pinch points.” Please indicate where you have addressed the rust resistant joints and no pinch points requirement in your proposal, specifically by section and page number.

AR, Tab 23, E-mail from Agency to Laerdal, Sept. 12, 2005.

Laerdal responded with reference cites for the first three items. However, for the fourth item, Laerdal stated that it was not “referenced.” AR, Tab 24, E-mail from Laerdal to Agency, Sept. 12, 2005 .

The agency reviewed the sections of Laerdal’s proposal identified by Laerdal in its e-mail response and determined that the requirements in question were not addressed in these sections of the proposal. Since the agency found that Laerdal’s proposal failed to demonstrate compliance with four of the RFP’s technical requirements, Laerdal’s proposal was determined to be technically unacceptable and its proposal was eliminated from further consideration. The agency subsequently evaluated METI’s past performance and rated METI as low risk. After determining METI’s price was fair and reasonable, the agency awarded a contract to METI on September 21. Laerdal filed this protest with our Office on September 29.

#### LAERDAL’S TECHNICAL EVALUATION

Laerdal argues that the agency unreasonably determined that its proposal was technically unacceptable. Laerdal maintains that it manufactures medical simulators that are the “industry standard,” and argues that the agency’s rejection of its proposal for failing to satisfy 4 of the more than 45 separate technical specifications was unreasonable. Where a protester challenges an agency’s evaluation of a proposal’s technical acceptability, our review is limited to considering whether the evaluation is reasonable and consistent with the terms of the RFP and applicable procurement statutes and regulations. National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. As with any evaluation review, our chief concern is whether the record supports the agency’s conclusions. Innovative Logistics Techniques, Inc., B-275786.2, Apr. 2, 1997, 97-1 CPD ¶ 144 at 9.

Clearly stated RFP technical requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is technically unacceptable and may not form the basis for award. National Shower Express, Inc.; Rickaby Fire Support, *supra*. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶8 at 5.

As set forth above, the solicitation informed offerors that technical proposals must include a technical description of the items being offered in sufficient detail to determine compliance with the requirements in the SOW. Under the RFP, an offeror was required to identify on the requirements checklist the page number of its proposal that showed how its product met the specific agency requirements. The RFP also warned offerors that their failure to meet a stated requirement was a deficiency, which could render their proposal ineligible for award. Under the RFP scheme, therefore, the agency reserved for itself the right to reject a proposal because the offeror failed to meet any of the stated requirements. Based on our review of the record, the agency's evaluation here was reasonable.

For CLIN 0001—the breathe/bleed simulator—the SOW required that needle decompression sites allow for multiple punctures with a minimum of 10 needle punctures at each site prior to requiring replacement parts. AR, Tab 14, SOW, ¶ 3.1.3. The evaluators found that Laerdal's proposal failed to meet this requirement.

Laerdal contends that sections 3.1.3 and 3.1.7 of its proposal respond to this requirement. However, the agency found, and the record confirms, that section 3.1.3 of Laerdal's proposal discusses how the product simulates multiple respiratory patterns and states that "Bi-lateral tension pneumothorax can be simulated and treatment with either needle decompression or chest tube insertion can be practiced." While the section mentions needle decompression, it never addresses the needle puncture requirement. The record also confirms the agency's determination that section 3.1.7 of Laerdal's proposal does not address the SOW requirement. This section states that the Laerdal training system includes consumables for continuous training that will support the training of 80 students.

The protester argues that since its proposal stated that 80 students can be trained continuously, the requirement of a minimum of 10 needle punctures before replacement of parts clearly could be satisfied. However, while section 3.1.7 of Laerdal's proposal states that its training system includes consumables for continuous training that will support the training of 80 students, as the agency correctly points out, this proposal language does not indicate how often "consumables" must be replaced or otherwise establish that Laerdal's product permits a minimum of 10 needle punctures prior to requiring replacement parts. We agree with the agency that Laerdal did not establish in its proposal its compliance with the 10 needle puncture requirement.

Next, the evaluators found that Laerdal failed to comply with the requirement for a hard-sided transit case for the breathe/bleed simulator. The agency specifically amended the SOW to require hard-sided transit cases based on previous problems encountered with Laerdal's "portability kit bag." AR, Tab 11, E-mail from Agency to Laerdal, Aug. 24, 2005.<sup>2</sup> In response to the agency's request that Laerdal identify where in its proposal it addressed this requirement, Laerdal stated that this requirement was addressed on page 15 of its proposal and in its price quote. However, the agency found that while both of these proposal references mention transit cases, they do not identify the cases as "hard-sided." While Laerdal, in its initial protest, argued that the agency should have known that "transit case" is universally understood in the industry to mean a hard-sided transit case, Protest at 7, Laerdal provides no support for its position that hard sided cases are the industry standard, and, in fact, the record suggests that both hard-sided and soft-sided transit cases are available for this equipment. We find reasonable the agency's conclusion that Laerdal's proposal did not establish that the firm was offering the required case.

The SOW for CLIN 0003--the human-weighted mannequin trainer--required that the mannequin weigh a minimum of 150 pounds and have water resistant skin, rust resistant joints, and no pinch points. AR, Tab 14, SOW at 4. In response to CLIN 0003, Laerdal proposed its "Tuff Kelly Manikin." In describing the functions of its mannequin in its proposal, Laerdal failed to address these requirements. As described above, the agency asked Laerdal to provide the specific section and page number where these requirements were addressed in its proposal. Laerdal's response was that it was "not referenced." AR, Tab 14, E-mail from Laerdal to Agency, Sept. 12, 2005. In our view, the agency evaluators reasonably decided that this response confirmed that Laerdal's proposal had failed to demonstrate that the firm's mannequin meets these requirements.<sup>3</sup>

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<sup>2</sup> Laerdal argues that the addition of the hard-sided case requirement was prejudicial to Laerdal because it was based upon prior perceived weaknesses in Laerdal's transit case. To the extent the protester is alleging that the agency did not have a legitimate requirement for hard-sided cases, the objection is untimely. A protest based upon alleged improprieties in a solicitation which were apparent prior to the time set for receipt of proposals but not filed until after award, as in this case, is untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2005).

<sup>3</sup> Laerdal argues in its protest that its proposal shows that its mannequin was rust-resistant because it stated in section 3.1.1 of its proposal for CLIN 0001 that its mannequin could withstand light mist and light rain. However, even assuming that this language indicates that Laerdal's product is rust-resistant, CLIN 0001 was for the breathe/bleed simulator, which is a different mannequin from the human-weighted mannequin trainer required under CLIN 0003. Again, the record shows that, when describing the features of its mannequin submitted in response to CLIN 0003, the  
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In sum, we find that, consistent with the RFP terms, the agency reasonably determined that Laerdal's proposal was technically unacceptable because it failed to meet SOW requirements.<sup>4</sup>

#### METI'S EVALUATION

In a supplemental protest filed with our Office on October 31, Laerdal challenges the agency's evaluation of METI's proposal. Laerdal argues that METI's proposal failed to meet the requirements of the SOW, including the requirements for a life-like mannequin, a computer-driven breathe/bleed simulator, hard-sided cases, and the 10 needle punctures prior to requiring replacements parts. The agency specifically addressed and refuted these contentions in its supplemental report, explaining in detail where and how METI addressed the specific requirements in its proposal and explaining why METI's proposal was properly determined to be technically acceptable. For example, the record shows that METI in its proposal provided for hard-sided transit cases, computer-controlled simulators, and addressed the 10 needle puncture requirement. In its comments, Laerdal expresses disagreement with the agency supplemental report, but makes no substantive rebuttal to the agency's position. Our review of the record provides no basis to find the agency's evaluation here unreasonable or otherwise objectionable.<sup>5</sup>

#### CONFLICT OF INTEREST

In its supplemental protest, Laerdal argues that two of the four agency evaluators had an alleged conflict of interest and were biased against the protester. According to the protester, one evaluator had a long-standing and inappropriate relationship with METI and the other evaluator was a former Laerdal employee.

Contracting agencies are responsible for reviewing potential conflicts of interest posed by relationships between evaluators and offerors in order to ensure the impartiality in the evaluation and to preserve the integrity of the procurement

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agency correctly concluded that Laerdal did not show that its human-weighted mannequin had water-resistant skin, rust-resistant joints, and no pinch points.

<sup>4</sup> In light of our conclusion, we do not address the additional area of noncompliance.

<sup>5</sup> Laerdal further argues that METI should have been disqualified because METI failed to complete the checklist item for hard-sided cases. This argument is without merit. As they did in connection with Laerdal's proposal, the evaluators reviewed METI's proposal to determine if technical requirements were satisfied and did not rely solely on the checklist. METI in its proposal specifically stated that its transit cases were hard-sided. AR, Tab 20, METI's Proposal, at 34.

process. DRI/McGraw-Hill, B-261181, B-261181.2, Aug. 21, 1995, 95-2 CPD ¶ 76 at 3. Where a protester asserts that an evaluator is biased because of the individual's experiences or relationships, we will examine the nature of the relationship and whether the evaluator exerted improper influence in the procurement on behalf of the awardee or against the protester. Id. We will not sustain a protest based upon an evaluator's alleged conflict of interest, where there is no showing that the protester's competitive position was affected by the alleged conflict of interest. See Creative Mgmt. Tech., Inc., B-266299, Feb. 19, 1996, 96-1 CPD ¶ 61 at 7.

Here, the agency has provided evaluation documentation to support its evaluation of the proposals of both Laerdal and METI. As explained above, the agency's technical evaluation was conducted on a pass/fail basis and the protester's proposal was determined to be technically unacceptable because the firm failed to demonstrate in its proposal that it satisfied several requirements of the RFP. As discussed above, we have no basis on this record to find that the agency's evaluation was unreasonable, there is no basis to believe that any of conflict of interest or bias, assuming it existed, affected the protester's competitive position. Competitive prejudice is an essential element of every viable protest. Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5. Given Laerdal's failure to identify any evaluation errors attributable to its allegations of conflict of interest or bias, we have no basis to question the award.<sup>6</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>6</sup> Laerdal raises several additional issues. For example, it argues that METI is "buying in" to win this contract. With respect to a fixed-price award, a protester's claim that an offeror submitted an unreasonably low price—even that the price is below the cost of performance—is not a valid basis for protest. An offeror, in its business judgment, properly may decide to submit a price that is extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375 at 2. An agency decision that the firm can perform the contract at the offered price is an affirmative determination of responsibility, which we will not review except in circumstances not alleged here. 4 C.F.R. § 21.5(c). We have reviewed all of Laerdal's protest grounds not specifically addressed in this decision and we conclude that they are without merit.