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Decision

Matter of: Parmatic Filter Corporation

File: B-285288; B-285288.2

Date: August 14, 2000

Claude P. Goddard, Jr., Esq., and Hal J. Perloff, Esq., Wickwire Gavin, for the protester.
Kenneth A. Martin, Esq., and Jennifer C. Adams, Esq., Martin & Adams, for Hunter Manufacturing, Inc., the intervenor.
Jeffrey I. Kessler, Esq., and Joseph M. Picchiotti, Esq., Department of the Army, 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

1. Agency reasonably downgraded the protester's proposal under the technical capability subfactor of the technical factor in a solicitation for the acquisition of filters, where it reasonably concluded, based on the protester's proposal, that there was some doubt that the offeror had the capability or capacity to produce the filters at the required level.

2. Agency reasonably did not consider an offeror's experience and past performance in evaluating the technical capability subfactor of the technical factor where the solicitation did not contemplate that experience and past performance would be so considered and provided for the evaluation of past performance under a separate evaluation factor.

3. Agency reasonably rated the awardee's past performance superior to the protester's, even though both offerors had problems in timely and successfully performing prior relevant contracts, where the agency reasonably concluded that the awardee had a significantly better record of recovering from contract delays.

4. The protester was not prejudiced by the agency's consideration of the awardee's initial proposal which exceeded the page limitations on proposals stated in the solicitation, where the proposal contained only three pages beyond the limitations, no page limits were placed on the discussions conducted with the offerors, and there was no evidence that the awardee gained an unfair competitive advantage by exceeding the page limits.

5. The limitation on subcontracting contained in Federal Acquisition Regulation (FAR) § 52.219-14, which was incorporated into a small business set-aside solicitation by reference, does not apply to individual line items, but to the contract as a whole.

6. Protest is sustained where the agency unreasonably and unequally evaluated the quality programs of the awardee and the protester and this was a significant factor justifying the award selection.

DECISION

Parmatic Filter Corporation protests the award of a contract to Hunter Manufacturing, Inc. under request for proposals (RFP) No. DAAE20-00-R-0015 issued by the Department of the Army, Tank-automotive and Armaments Command (TACOM), Rock Island, Illinois, for gas and particulate filters and filter canisters. Parmatic protests TACOM's evaluation of the proposals and source selection decision.

We deny the protest in part and sustain it in part.

BACKGROUND

The RFP, issued as a total small business set-aside on January 6, 2000, contemplated the award of one or more fixed-price, indefinite-delivery, indefinite-quantity contracts for 1 year with 4 option years. RFP at 5. One or more contracts would be awarded for a total of three items: contract line item number (CLIN) 0001 for M48A1 gas particulate filters, CLIN 0002 for 200 cubic feet per minute (cfm) gas and particulate filters, and CLIN 0003 for hermetically sealed filter canisters. Id. The RFP stated an estimated quantity for each CLIN for the base year and each option year.[1] Id. at 6.

The RFP stated the following basis for award:

> The award of a contract will be made to the offeror whose proposal offers the best value to the government based on an integrated assessment of technical, past performance, quality, small business participation and price. Technical, past performance and quality are of equal importance and individually are more important than price. Small business participation is of least importance among all non-price factors and is of less importance than the price. Because this a best

[1] The estimated base-year quantities were 1,925 for CLIN 0001, 6,252 for CLIN 0002, and 412 for CLIN 0003. RFP at 6.

> value procurement, the government reserves the right to make an award(s) to someone other than the low priced offeror.

Id. at 46.

The technical factor had two subfactors: carbon-fill/manufacturing process and manufacturing capability. The quality factor also had two subfactors: quality program and process control system. For each non-price factor and subfactor, the RFP generally stated a five-place adjectival rating scale with ratings (ranging from best to worst) of excellent, good, adequate, marginal, and unacceptable or poor, and specified the standards for achieving each of these ratings with regard to each factor or subfactor.[2] Id. at 46-48. The RFP stated that price would be evaluated to ensure that it was fair and reasonable. Id. at 49. The RFP also provided under price that CLIN 0001 would be evaluated separately, and CLIN 0002 and CLIN 0003 were to be evaluated together. The RFP also reserved to the government the right to make multiple awards. Id.

TACOM received initial proposals from Hunter and Parmatic by February 14. Hunter proposed to manufacture the products under CLINs 0002 and 0003 at its own facilities in Ohio, and to manufacture the M48A1 filters under CLIN 0001 at the facilities of Hunter Protective Systems (HPS), a subsidiary company, in California. Agency Report, Tab 11, Source Selection Decision, at 8; Tab 4, Hunter's Proposal, at 14.

The agency conducted discussions with both offerors and requested final proposal revisions. An evaluation team evaluated the proposals. The source selection authority (SSA) reviewed the proposals and accepted the evaluation team's ratings and conclusions. Contracting Officer's Statement at 2. The SSA's source selection decision document presented the evaluation results as follows:

Evaluation Factors/Subfactors	Hunter	Parmatic
Technical: Carbon Fill/Manufacturing Process	Excellent	Excellent
Technical: Manufacturing Capability	Excellent	Good (Excellent for award based on CLIN 0001 only)
Past Performance	Good	Adequate
Quality: Quality Program	Good	Adequate

[2] One subfactor, carbon-fill/manufacturing process, had a four-place rating scale, with the middle rating of adequate omitted. RFP at 46-47.

Quality: Process Control System	Excellent	Good
Small Business Participation	Excellent	Good
Price – CLIN 0001	$ 7,235,779	$ [DELETED]
Price – CLINs 0002 & 0003	$16,569,023	$[DELETED]

Agency Report, Tab 11, Source Selection Decision, at 12. After discussing the basis for each of the ratings, the SSA stated the following cost-technical tradeoff analysis:

> I have reviewed the results of the evaluations and the discriminators between proposals and find that Hunter's proposal for CLIN 0001 and for CLIN's 0002 and 0003 offers the greatest value to the Government. Hunter scored better in five of the six non-priced areas or factors considered by the Government. Hunter's superior ratings under these areas or factors indicates that there is essentially no doubt that Hunter can timely produce these items in accordance with the technical requirements of the solicitation. I believe that the level of risk mitigated through Hunter's offer merits the payment of a [DELETED]% premium under CLIN 0001 and a [DELETED]% premium under CLIN 0002 and CLIN 0003. The solicitation stated that Technical, Past Performance, and Quality were of equal importance and that, individually, they were more important than Price. Given the importance of these non-price factors relative to price, I believe that Hunter's superior non-price ratings more than outweigh the price premiums associated with its offer. Parmatic essentially merited a rating of Excellent in the Technical area when it was considered for CLIN 0001 only. This brings the differences between its proposal and Hunter's closer together and warrants additional consideration. However, Hunter's superior ratings under Past Performance and Quality still outweigh Parmatic's relatively lower price. Hunter received a higher rating under Small Business Participation, but I see these differences as being relatively minor and they did not impact my selection decision.
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> . . . . .
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> Based on the foregoing, I find that Hunter's prices are reasonable and realistic. I further find that it is in the Government's best interest to make one award, rather than two, since Hunter's proposal is clearly superior relative to CLIN 0001 and CLIN's 0002 and 0003, which were evaluated as a unit.

Id. at 13-14.

TACOM awarded the contract to Hunter on April 19. By letter of April 20, Parmatic requested a debriefing. TACOM conducted a debriefing with Parmatic on May 1. On May 5, Parmatic protested to our Office.

PROTEST SUMMARY

Parmatic alleges that TACOM's evaluation was unreasonable under every one of the non-price evaluation factors for either or both offerors' proposals. Parmatic also alleges that an award to Hunter under CLIN 0001 violates the limitation on subcontracting because the majority of work would be performed by a subcontractor, HPS; that the agency treated offerors unequally by allowing Hunter's initial proposal to exceed the page limitations stated in the RFP without advising Parmatic that it could submit a proposal that exceeded the stated page limitations; and that the first article test requirements were improperly waived for Hunter under CLIN 0001.

We will examine an agency's evaluation and selection decision to ensure that they are reasonable and consistent with the terms of the solicitation. Sarasota Measurements & Controls, Inc., B-252406.3, July 15, 1994, 94-2 CPD ¶ 32 at 4. A protester's disagreement with the agency does not render the evaluation unreasonable. Id. It is fundamental that the contracting agency must treat all offerors equally, which includes providing a common basis for the preparation and submission of proposals, and not disparately evaluating offerors with respect to the same requirements. Sci-Tec Gauging, Inc.; Sarasota Measurements & Controls, Inc., B-252406, B-252406.2, June 25, 1993, 93-1 CPD ¶ 494 at 8.

We have examined all of Parmatic's numerous, specific allegations falling under the various protest issues, although not all contentions are specifically discussed in this decision. We conclude that most of Parmatic's allegations do not provide a basis for sustaining its protest. However, in the case of TACOM's evaluation of both proposals under the quality factor, the record shows that the evaluations were unreasonable and treated the two offerors' proposals unequally, such that the selection decision as it relates to CLIN 0001 is not supported by the record. We first address Parmatic's unsuccessful protest allegations.

TECHNICAL FACTOR EVALUATION

The protester alleges that TACOM unreasonably rated its proposal good, instead of excellent, under the manufacturing capability subfactor of the technical factor. Protest at 5; Protester's Comments at 3-4. Parmatic also alleges that TACOM unreasonably rated Hunter excellent under the two technical subfactors, given that Hunter lacks significant experience in manufacturing M48A1 filters and has encountered production problems on other contracts. Protest at 5; Protester's Comments at 4.

The RFP states that a proposal warrants an excellent rating under manufacturing capability where "no doubt exists that the offeror has the capability and capacity to perform the required effort"; a good rating is warranted where "little doubt exists." RFP at 47. The agency considered that Parmatic [DELETED], which creates "a little doubt" concerning Parmatic's capability or capacity to produce at the required level until [DELETED]; this translated into Parmatic's proposal receiving a good rating for this subfactor.[3] Agency Report, Tab 11, Source Selection Decision, at 3-4. We think this assessment of risk and the resultant good rating under this subfactor are reasonable; although Parmatic may be able to meet the required production schedule [DELETED], the agency could reasonably conclude that Parmatic's capability and capacity to address production contingencies will be weaker than if [DELETED].

With regard to the protester's contentions that the agency did not consider the relative experience and past performance of either offeror in connection with the manufacturing capability subfactor, the RFP did not provide for consideration of experience or past performance under this subfactor; instead, past performance was a separate evaluation factor. RFP at 43, 47; Agency Report at 6. Thus, the agency reasonably did not consider such experience or past performance in evaluating the proposals under the technical subfactors. See Management Tech. Servs., B-251612.3, June 4, 1993, 93-1 CPD ¶ 432 at 4, 7.

PAST PERFORMANCE FACTOR EVALUATION

The protester alleges that, under past performance, TACOM should not have rated Hunter higher than Parmatic because Parmatic allegedly had the more relevant and better record of contract performance. Protest at 5-6; Protester's Comments at 7-12; Supplemental Protest at 16-18; Protester's Supplemental Comments at 13-20.

The record shows that both offerors had problems with production failures and late deliveries on prior contracts for the same or similar filters; however, in the agency's view, Hunter has a better record of getting production back in line with contract schedules than Parmatic. Agency Report, Tab 11, Source Selection Decision, at 4-7. Although the SSA considered both offerors to be acceptable under past performance, she found that the difference in recovering from contract delays between the offerors was significant, and warranted a good rating for Hunter's past performance and only an adequate rating for Parmatic's past performance. Id. at 14. Based on our review, since Parmatic has not shown that the past performance evaluation was

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[3] However, the SSA recognized that Parmatic's [DELETED] production issue does not apply if Parmatic only received an award for the production of M48A1 filters alone, and thus rated Parmatic excellent under this subfactor in considering a separate contract award for CLIN 0001.

unreasonable, we find the agency's past performance ratings of the offerors were reasonable.[4]

SMALL BUSINESS PARTICIPATION FACTOR EVALUATION

The protester challenges the evaluation under the small business participation factor, where Hunter's proposal received an excellent rating and Parmatic's proposal a good rating. Parmatic contends that TACOM rated Parmatic's same small business participation approach higher under another solicitation. Parmatic also claims that there are no substantive differences between the proposed approaches of Parmatic and Hunter under this factor to warrant different ratings. Protest at 6, Protester's Comments at 12; Supplemental Protest at 18-21; Protester's Supplemental Comments at 20-21.

We first note that since each procurement stands on its own, evaluation ratings under another solicitation are not probative of the alleged unreasonableness of the evaluation ratings under the present RFP. Copy Graphics, B-273028, Nov. 13, 1996, 96-2 CPD ¶ 185 at 4 n.3.

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[4] Much of Parmatic's protest of its past performance evaluation concerns ongoing disagreements with the agency regarding current contracts. For example, Parmatic states that it has shown that one production problem was caused by an agency design flaw which Parmatic has identified through the process of elimination. Protester's Comments at 8-9; Protester's Supplemental Comments at 13-15. The agency states that, although production has successfully resumed under that contract, it remains concerned that Parmatic cannot demonstrate that the design is flawed and, absent some evidence of an actual flaw, there remains a risk that the same production problem will resurface. Supplemental Contracting Officer's Statement at 6; Agency Report, Tab 11, Source Selection Decision, at 7. Absent resolution of this dispute, or perhaps more concrete identification of the alleged design flaw, we cannot adopt the protester's view that the agency's position is unreasonable. See Quality Fabricators, Inc., B-271431, B-271431.3, June 25, 1996, 96-2 CPD ¶ 22 at 7 (agency's past performance evaluation may be based on reasonable perception of inadequate prior performance, even though agency's interpretation of underlying facts is disputed). Additionally, the protester submitted TACOM's response to a Parmatic settlement proposal, which was prepared by TACOM several months after the date of evaluations and the source selection decision under this RFP. Protester's Document Production, July 25, 2000, attach. 1, Letter from TACOM to Protester (July 17, 2000). The protester offers this settlement correspondence as evidence that the agency assumes responsibility for contract delays in dispute. Hearing Transcript (Tr.) at 349-50. The letter does not evidence any such assumption of responsibility by the agency; in fact, the letter states that the government does not "necessarily agree" with Parmatic's position and, in fact, expressed total disagreement with Parmatic on one issue.

As for Parmatic's allegation that there was little difference between the small business participation proposals of these two small business offerors so that the proposals' relative ratings were unreasonable, the record shows that the SSA made a similar determination, concluding that the higher rating for Hunter reflected only minor differences between the two proposals and stating that the ratings under this factor had no impact on the source selection decision. Agency Report, Tab 11, Source Selection Decision, at 13. In other words, the SSA's decision essentially considered the proposals equivalent under this relatively low weighted factor, which the protester asserts is the appropriate evaluation. Thus, there is no basis to challenge the agency's consideration of this factor in the source selection.

PAGE LIMITATIONS

The protester alleges that the agency waived the proposal page limitations stated in the RFP for Hunter, and not for Parmatic, by accepting Hunter's initial proposal with pages in excess of the stated limitations, without informing Parmatic of the waiver and giving it an opportunity to submit additional pages. Supplemental Protest at 3-5; Protester's Supplemental Comments at 10-12.

The RFP stated page limitations of 20 pages for the technical section, 10 pages for past performance, 10 pages for quality, and 3 pages for small business participation. RFP at 43. It is clear that Hunter's initial proposal exceeded the page limitations by a few pages overall. According to the protester, Hunter's initial proposal exceeded the technical page limit by 1 page, and the small business participation limit by 2 pages, for a total of 3 pages over the limits.[5] Supplemental Protest at 3-4; Protester's Supplemental Comments at 11.

The agency never stated that the page limit on initial proposals was waived, but it did conduct discussions with both offerors and did not place page limitations on information provided during discussions, nor did the agency restrict the content of information that an offeror could submit during discussions. Although the protester alleges, without providing any supporting evidence, that the agency prohibited

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[5] Initially, the protester also alleged that Hunter's proposal exceeded the page limit for the past performance section by 16 pages, and for the quality section by 28 pages. Supplemental Protest at 3. However, the record shows that 20 pages of Hunter's past performance information were test results--information that was explicitly excluded from the page limitation for the past performance section. RFP amend. 0002 at 2. Also, the agency report erroneously included HPS's 34-page quality assurance manual behind Hunter's initial proposal, when in fact Hunter did not submit this manual until discussions had started. Contracting Officer's Supplemental Statement at 1; Agency Report, Tab 6, Letter from HPS to TACOM (Feb. 28, 2000). Thus, it is now undisputed that the past performance and quality sections in Hunter's initial proposal were well under the applicable page limits.

submission of material related to technical or small business participation, Protester's Supplemental Comments at 11-12, there is no such prohibition evident from the record. See, e.g., Agency Report, Tab 5, Discussions with Parmatic, Letter from TACOM to Parmatic (Mar. 3, 2000) (unrestricted request for proposal revisions). We note also that Parmatic provided a large number of pages of information during discussions that clearly exceeded the initial proposal page limitations.

We have held that the conduct of discussions, in and of itself, cannot negate a competitive advantage that an offeror gains when it materially exceeds initial proposal page limitations, and the agency considers such excess material without announcing that those page limitation are waived and giving the other offerors a reasonable opportunity submit proposals accordingly. Electronic Design, Inc., B-279662.2 et al., Aug. 31, 1998, 98-2 CPD ¶ 69 at 10-11(consideration of 1,700 excess pages created an unequal competition); ITT Electron Tech. Div., B-242289, Apr. 18, 1991, 91-1 CPD ¶ 383 at 9-10 (consideration of 83 excess pages of one proposal, where page limits applied throughout discussions for the other proposals, created an unequal competition).

However, we do not think that the three extra pages in Hunter's initial proposal, particularly in light of the unrestricted discussions with the offerors, were material or prejudicial here. The two extra pages in the small business participation section resulted in no prejudice, since, as explained above, the SSA considered the evaluated advantage of Hunter under that factor to be minor and essentially considered the two offerors equal in that area. The remaining surplus page fell under the technical section. However, there is nothing in the record to suggest that Parmatic could have eliminated the distinguishing weakness found in its proposal, relating to [DELETED], by submitting more proposal pages. Nor is there any evidence that Hunter's technical ratings would have been lower without the extra page. The record thus shows that the agency's failure to enforce the initial proposal page limitations did not provide Hunter with an unfair competitive advantage or otherwise prejudice the protester, and thus there is no basis to sustain Parmatic's protest on this basis.

SUBCONTRACTING LIMITATION

Parmatic alleges that Hunter was ineligible for an award under CLIN 0001, or should have been rated unacceptable under the manufacturing capability subfactor relative to that portion of the award, because, by subcontracting the manufacture of the filter to HPS, Hunter's proposal necessarily exceeds the 50 percent subcontracting limitation for small business offerors stated in Federal Acquisition Regulation (FAR) § 52.219-14 and incorporated into the RFP by reference. Supplemental Protest at 7-8; Protester's Supplemental Comments at 9-10.

Generally, an agency's judgment as to whether a small business offeror will comply with this subcontracting limitation is a matter of responsibility, and the contractor's

actual compliance with the provision is a matter of contract administration. Global Assocs. Ltd., B-271693, B-271693.2, Aug. 2, 1996, 96-2 CPD ¶ 100 at 5. However, we have considered, as a challenge to the technical acceptability of an offer, protests that allege that the terms of an awardee's proposal take exception to the subcontracting limitation. Id. Nevertheless, we have recognized that the subcontracting limitation stated at FAR § 52.219-14 only applies to a contract as a whole. See Lockheed Martin Fairchild Sys., B-275034, Jan. 17, 1997, 97-1 CPD ¶ 28 at 5.

In the present case, although the RFP permitted a separate award for CLIN 0001, it did not require a separate contract award for that CLIN and the agency did not award a separate contract for CLIN 0001.[6] The protester does not allege, nor would the record support an allegation, that Hunter's proposal for all the CLINS together, which was the contract awarded to Hunter, takes exception to the subcontracting limitation. Thus, there is no merit to this protest basis.

WAIVER OF FIRST ARTICLE TEST REQUIREMENT

Parmatic also alleges that TACOM improperly waived the first article test requirement for Hunter under CLIN 0001. Supplemental Protest at 8 n.5; Protester's Supplemental Comments at 12-13. The waiver of the first article test requirement is only relevant here to the price evaluation, since it is not covered by any of the non-price evaluation factors. The RFP required offerors to propose base year prices with and without the first article test requirement for each CLIN. RFP at 45. Hunter proposed the same price with or without the first article test requirement. Agency Report, Tab 4, Hunter Proposal, Cover Letter, attach. 1, at 1. The first article test waiver for CLIN 0001 thus had no impact on the evaluation of Hunter's price and thus did not prejudice Parmatic in this competition. Since there is no prejudice to the protester, we will not consider the allegation further.

For the above reasons, we deny the majority of Parmatic's protest bases.

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[6] The protester contends that Lockheed Martin Fairchild Sys., supra, which was a protest of a single delivery order under a contract that the protester asserted should be subject to the subcontracting limitation, should not apply here because, unlike with delivery orders, the solicitation here contemplates a separate evaluation and award under CLIN 0001. Protester's Supplemental Comments at 9. However, since the limitation in FAR § 52.219-14, by its language, only applies to contracts, we think the protester's distinction would have merit only if the agency awarded a separate contract for that CLIN.

PROTEST OF EVALUATION UNDER THE QUALITY FACTOR

We now turn to the protest concerning the evaluation of the quality factor. Under the quality factor, Parmatic alleges that TACOM's evaluation of the quality programs and process control systems of the two proposals was unreasonable and unequal. Protest at 5; Protester's Comments at 5-7; Supplemental Protest at 9-16; Protester's Supplemental Comments at 4-8, 22-23; Protester's Post-Hearing Comments at 2-18. We agree and sustain the protest on this basis.

Evaluation of Hunter's Proposal under Quality Program Subfactor

The RFP stated in pertinent part that proposals would be rated under the quality program subfactor as follows:

> 1) Excellent: Contractor is CP2 certified.
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> 2) Good: Contractor is certified to [International Standardization Organization (ISO)] 9001 or ISO 9002 or meets those requirements.
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> 3) Adequate: Contractor has a previously approved quality system with milestones for upgrading to meet ISO 9001 or ISO 9002 prior to start of production.
>
> 4) Marginal: Contractor has an inspection system but no plan for meeting ISO 9001 or ISO 9002.
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> 5) Unacceptable: Contractor has an inadequate inspection system or does not provide any information in his proposal.

RFP at 47.

TACOM's quality evaluator initially rated Hunter's program as good because Hunter's proposal stated that it was certified as compliant with ISO 9002, as evidenced by a certificate from the Defense Contract Management Command (DCMC), Cleveland, Ohio. Agency Report, Tab 4, Hunter's Proposal, at 23, attach. F; Tr. at 22-23, 380-81 (testimony of evaluator). However, Hunter proposed HPS to manufacture the M48A1 filters under CLIN 0001, and since HPS's facilities were to be the place of performance for this CLIN, the SSA required the separate evaluation of HPS's quality program. Tr. at 194-97, 270-72, 282-84 (testimony of SSA); see Tr. at 129, 133-34 (testimony of evaluator).

After gathering information on this matter during discussions, the evaluator determined that HPS's quality program was equivalent to ISO 9002 and rated HPS as good under the subfactor. Agency Report, Tab 8, Evaluation of Hunter's Proposal, Quality Evaluator's Memorandum at 1 (Apr. 14, 2000). The SSA relied on the evaluator's determination that HPS has a quality system equivalent to ISO 9002, and

did not obtain additional supporting information from the evaluator or conduct her own evaluation of quality programs. Tr. at 210-11, 223-28, 248 (testimony of SSA). In fact, based solely upon the evaluator's advice and to justify Hunter's good rating for the quality program subfactor in making her source selection decision, the SSA adopted the evaluator's conclusions as follows:

> HPS is currently successfully manufacturing using a modified MIL-I-45208A program, designed with requirements integrated from ISO 9001 and Mil-Q-9858 Quality Systems. The modified system meets the evaluation criteria defined in the solicitation and [source selection plan] for a Good evaluation. HPS has not yet completed its audit for ISO 9001 certification; however, its current system is equivalent to ISO 9002.

Agency Report, Tab 11, Source Selection Decision, at 8.

The record, however, does not support the evaluator's conclusion that HPS's quality system was compliant with, or equivalent to, ISO 9002. In fact, the record shows that the evaluator initially determined that, based on the agency's actual experience with HPS, HPS's facility "is not . . . compliant with the quality system requirements of ISO 9002." Agency Report, Tab 6, Discussions with Hunter, Letter from TACOM to Hunter attach, at 1 (Feb. 25, 2000). TACOM thus asked Hunter to provide information about HPS's quality program. Id. Hunter provided a copy of a quality assurance manual depicting an ISO 9001 quality program that HPS was in the process of implementing, and stated:

> [HPS's quality assurance] manual is 100 [percent] compliant with ISO 9001 . . . A progress report indicating the status of implementation of this ISO 9001 [quality assurance] system is also included. . . .
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> In response to your specific questions:
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> 1) HPS is currently qualified . . . to Mil-I-45208A. HPS is currently 76% in compliance with ISO9001.
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> 2) HPS currently operates under strict procedural control due to the nature of the products they produce (carbon filters). Our technical response submitted in accordance with the solicitation requirements indicates the level of control required to successfully produce carbon filters.
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> 3) Full implementation of ISO9001 is scheduled for completion by 1 May 00. DCMC San Diego has requested that the Quality Assurance Operating Procedures for all twenty ISO elements be finalized and the data for a full six months of operation under the new ISO9001 system be generated before they complete an audit. Hunter . . . will audit HPS for compliance no later than 15 May 00.

Agency Report, Tab 6, Discussions with Hunter, Letter from Hunter to TACOM at 1 (Feb. 29, 2000). The progress report attached to this letter listed 20 items for compliance with ISO 9001,[7] and, for each item, provided a bar graph covering various portions of a timeline from March 2000 through April 2000, followed by a percentage figure labeled "percent complete." Id. attach. The bar graph did not state the date to which the percent-complete figure applied and none of the figures indicated 100 percent completion.[8] Thus, although Hunter asserted that HPS's quality assurance manual is compliant with ISO 9001, Hunter did not assert that HPS had implemented a quality program that is compliant with ISO 9001, and made no assertions whatsoever about HPS's quality program and ISO 9002.[9] To the contrary, Hunter only stated that HPS's program was currently qualified under MIL-I-45208A.

Notwithstanding that Hunter's proposal did not claim that HPS's quality system was equivalent to ISO 9002, see Tr. at 55, the evaluator determined on his own that HPS's quality program was fully compliant with ISO 9002. Tr. at 13. Essentially, the evaluator based his determination on a limited review of 3 of the 19 ISO 9002 items that he believed to have been implemented by HPS--item 9 (process controls), item 11 (inspection, measuring, and test equipment), and item 18 (training). Tr. at 29-48. Considering that the evaluator's determination is contrary to Hunter's repeated representations during discussions that HPS had not completed implementing any of the ISO items in question, the evaluator's determination, based

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[7] These 20 items are: (1) management responsibility, (2) quality system, (3) contract review, (4) design control, (5) document and data control, (6) purchasing, (7) control of purchaser-supplied product, (8) product identification and traceability, (9) process control, (10) inspection and testing, (11) inspection, measuring and test equipment, (12) inspection and test status, (13) control of nonconforming product, (14) corrective/preventive action, (15) handling, storage, packaging, preservation, and delivery, (16) control of quality records, (17) internal quality audits, (18) training, (19) servicing, and (20) statistical techniques. Agency Report, Tab 6, Discussions with Hunter, Letter from Hunter to TACOM attach (Feb. 29, 2000).

[8] The figures ranged from 10 to 95 percent complete. Agency Report, Tab 6, Discussions with Hunter, Letter from Hunter to TACOM attach (Feb. 29, 2000). On March 17, Hunter submitted the same information to TACOM; the percent-complete numbers did not change for either the overall figure (i.e., 76 percent compliant) or the figures for the individual items. Agency Report, Tab 6, Discussions with Hunter, Letter from Hunter to TACOM attach., at 2, exh. T (Mar. 17, 2000).

[9] ISO 9001 is comprised of the 20 items identified on Hunter's progress report for HPS's quality program. Tr. at 12; Protester's Submission of Documents, July 25, 2000, attach. 3, ISO 9001:1994(E). ISO 9002 is comprised of 19 of these item--i.e., all of the items except design control. Tr. at 12, 27; Protester's Submission of Documents, July 25, 2000, attach. 4, ISO 9002:1994(E), at 3.

on this limited review, that HPS had a quality program equivalent to ISO 9002, was not supported by the record and was therefore unreasonable.[10]

The agency and intervenor now argue that, since the RFP rating scale refers specifically to the quality program of the "contractor," RFP at 47, only Hunter's quality program, and not HPS's, should be considered under the evaluation. Agency's Post-Hearing Comments at 4, Agency's Post-Hearing Legal Memorandum at 5; Intervenor's Post-Hearing Comments at 5-11. They also argue that Hunter's ISO 9002 quality program flows down to HPS, and thus only Hunter's program should be evaluated for purposes of the source selection. Agency's Post-Hearing Comments at 4, Agency's Post-Hearing Legal Memorandum at 6; Intervenor's Post-Hearing Comments at 5-11. The record supports neither argument.

The SSA determined that evaluation of HPS under the quality factor was necessary to evaluate Hunter's proposal because Hunter proposed HPS as the place of manufacture of the M48A1 filters under CLIN 0001. Tr. at 194-97, 238-39, 271-72, 279-84, 333-34 (testimony of SSA). After instructing the evaluator to perform such an evaluation, the SSA relied upon the evaluator's determination that HPS's quality program was equivalent to ISO 9002 in concluding that Hunter and HPS merited a good rating for the quality program subfactor and to support her judgment that Hunter's proposal was superior to Parmatic's under the quality factor, even when considering a separate award of CLIN 0001.

We think that the SSA's contemporaneous judgment that HPS's quality program should be considered apart from Hunter's quality program, was reasonable and

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[10] We also note that the quality of evidence in Hunter's submissions from which the evaluator concluded that HPS's quality system was compliant with even the three items that he reviewed is questionable at best. For example, to determine compliance with ISO 9002 for the training item, he testified that he reviewed two reports of quality assurance tests of welds. Tr. at 39-40; see Agency Report, Tab 6, Discussions with Hunter, Letter from Hunter to TACOM exh. K, Weld Tests--HPS (Mar. 17, 2000). These do not appear to be certificates of training. The evaluator states that, although the reports appear to be a little different than the training certificates submitted for Hunter's employees, the reports are certificates of training for "[DELETED]." Closer examination of the test reports show that this individual is an inspector employed by a quality assurance testing and inspection firm; he is not employed by HPS. Moreover, while the evaluator also stated that he based his judgment that HPS's quality program was compliant with ISO 9002 on his review of HPS's quality assurance manual, he also admitted that the HPS represented that it was only 76 percent complete in implementing the manual. Tr. at 44-45. In addition, as discussed below, the evaluator's reliance upon the one-page HPS work instructions to find HPS's process control is equivalent to ISO 9002 was highly questionable.

appropriate, notwithstanding that the rating scale for the quality program stated in the RFP only mentioned the "contractor's" quality program, given that HPS, not Hunter, was responsible for the actual manufacturing of the M48A1 filters under CLIN 0001 and inasmuch as the RFP contemplated the possibility of a separate award of CLIN 0001.[11] A key purpose of a quality program, such as ISO 9002, is to ensure that adequate manufacturing controls are in place. Tr. at 165-66, 367-76, 385-97 (testimony of evaluator). Although Hunter's proposal indicated that its own quality standards would flow down to its subcontractors and vendors through its purchasing and inspection procedures, it did not similarly indicate that it would put its quality program in place at HPS's manufacturing facility. See Agency Report, Tab 4, Hunter's Proposal, at 14, 23-26; Tab 6, Discussions with Hunter, Letter from Hunter to TACOM attach., at 1-2 (Mar. 17, 2000). In fact, during discussions, the agency informed Hunter that it would evaluate the quality program of HPS, and Hunter cooperated with such an evaluation without objection by describing HPS's separate quality program without asserting that Hunter ISO 9002 quality program would be imposed on HPS. See Agency Report, Tab 6, Discussions with Hunter, Letter from TACOM to Hunter (Feb. 25, 2000), Letter from Hunter to TACOM (Feb. 29, 2000).

To the extent the agency's and intervenor's responses to the protest seek to amend the way the evaluation and source selection were actually conducted, by discounting either the need for considering HPS's quality program in the evaluation or the SSA's reliance on the unreasonable determination that HPS had a quality program that was equivalent to ISO 9002, we give little weight to these arguments. These arguments were first presented during the heat of the adversarial process and may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process.[12] See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

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[11] We note that the SSA also reasonably conducted a similar, CLIN-specific technical analysis for Parmatic's proposal under the manufacturing capability subfactor of the technical factor, and rated Parmatic's proposal higher under this subfactor if it received the award of only CLIN 0001. Agency Report, Tab 11, Source Selection Decision, at 3, 13.

[12] In addition to the agency's written submissions, the SSA testified that, if the evaluation of HPS's quality program proved unreasonable, she would consider the evaluation of Hunter's quality program controlling. Tr. at 206-11. On the other hand, she testified that HPS's quality program, and the extent to which it may be equivalent to ISO standards, would be relevant to her selection decision, and that such consideration was difficult and required time for thought. Tr. at 209-10, 218-23. Rather than providing support for the intervenor's and agency's newly asserted alternative evaluation, we think the SSA's reluctance to opine on this matter shows that such matters should be referred back to the agency for reasoned consideration outside of the adversarial protest process.

In sum, the record evidences that Hunter's proposal was overrated under the quality program subfactor at least insofar as CLIN 0001 was concerned.

Evaluation of Parmatic's Proposal under Quality Program Subfactor

As discussed below, the record evidences that the same evaluator, who rated the quality factor for Hunter's proposal and unreasonably concluded that HPS's quality program was equivalent to ISO 9002, unequally and unreasonably evaluated Parmatic's proposal under the quality factor with regard to Parmatic's quality program's equivalency to ISO 9002 and under the process control system subfactor.

Although Parmatic's initial proposal did not state that its quality program was compliant with, or the equivalent of, ISO 9002, it did state that it maintains a program in accordance with MIL-I-45208A (i.e., the same standard that Hunter stated HPS was currently satisfying) under the surveillance of DCMC and listed a number of customers that had approved or certified Parmatic's program. Agency Report, Tab 3, Parmatic's Proposal, Quality, at 1, 3. TACOM requested copies of letters from two of these customers "which validate adherence or equivalency of Parmatic's in-house MIL-I-45208A (Modified) to the ISO 9002 program." Agency Report, Tab 5, Discussions with Parmatic, Letter from TACOM to Parmatic at 1 (Feb. 25, 2000). TACOM also asked:

> 6) Is Parmatic contemplating upgrading to the ISO . . . standard or CP2 Government Program, if so, when will this be accomplished?

Id.

Parmatic provided the two letters requested, along with additional information. Agency Report, Tab 5, Discussions with Parmatic, Letter from Parmatic to TACOM at 1-4, and attachs. C, D, E, F (Feb. 29, 2000). Both of the requested letters indicated that the respective customers had approved Parmatic's quality program, although neither letter referenced ISO 9002. Id. attachs. C, D. In response to the inquiry about upgrading its quality program, Parmatic stated:

> 6) Parmatic is in the process of upgrading its quality assurance system into the ISO international standard. Essentially [Parmatic's] quality assurance system is in general compliance with ISO-9002, but lacks the formal certification. [Parmatic] is evaluating which consultant and certifier to use for this project. In addition, [Parmatic] [DELETED]. We expect implementation of the upgraded systems within a year.

Id. at 4. Parmatic also attached to its response a letter from DCMC, Picatinny, New Jersey, that stated the following:

> The system review of Parmatic Filters quality system was conducted to insure compliance with MIL-STD 45208A. This also included a higher level of quality to the requirements of ANSI/ISO/ASQC Q9002.[13]

Id. attach. F. DCMC's system review of Parmatic's quality program, as described in this letter, did not identify any deficiencies.

The evaluator's assessment did not account for DCMC's system review or the protester's statement that it was in general compliance with ISO 9002. Rather, he stated that the offeror's program lacked ISO 9002 certification and concluded that "[b]ased on the data available the Offeror's current Quality Program is not equivalent to the ISO 9002 cited in the solicitation." Agency Report, Tab 7, Evaluation of Parmatic, Quality Evaluator's Memorandum, April 13, 2000, at 1. The evaluator thus rated Parmatic's quality plan as adequate.

However, under the RFP evaluation scheme, a good rating does not require ISO 9002 certification; it only requires the quality program to be equivalent to ISO 9002.[14] RFP at 47; Tr. at 295 (testimony of SSA). DCMC's review, which was provided to TACOM during discussions, supports Parmatic's statement that it is in general compliance with ISO 9002 but lacked certification. On these facts, Parmatic's quality program appears to deserve a rating of good, rather than the adequate rating it actually received.

To the extent the evaluator states that he relied on other information to determine that Parmatic's quality program was not equivalent, his evaluation documentation does not indicate any such deficiencies or weaknesses, and his testimony on this undocumented evaluation and the record of discussions with Parmatic does not support such a conclusion. For example, except for his conclusory testimony that Parmatic's "manual did not follow the 9002 elements," Tr. at 83, neither the written record of evaluations nor the evaluator's testimony demonstrated how the evaluator could reach such a conclusion.

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[13] The protester states that ISO 9002 is published in the United States as ANSI/ASQC Q9002. Protester's Comments at 5. The RFP accepts identification of compliance with either ISO 9002 or ANSI/ASQC Q9002 as an adequate description of an offeror's quality program without need for the offeror to describe its program. RFP at 43.

[14] As discussed above, the evaluator did not require an ISO 9002 certification to determine that HPS's quality program should be rated as good under the RFP evaluation plan, but determined (albeit unreasonably) that HPS's quality program was equivalent to ISO 9002.

Unequal Evaluation of Proposals under the Process Control System Subfactor

Under the process control system subfactor of the quality factor, the agency rated Parmatic's proposal only good (as compared to Hunter's proposal's excellent rating) in part because the information on work instructions provided by Parmatic during discussions was not sufficiently detailed relative to what tasks are to be performed. Agency Report, Tab 7, Evaluation of Parmatic, Quality Evaluator's Memorandum, Apr. 13, 2000, at 1; Tr. at 84-86.

The record shows that during discussions Parmatic provided TACOM with a description of how it generates work instructions, and how it references all specific procedures to be used on the work order or "process routing sheet." Agency Report, Tab 5, Discussions with Parmatic, Letter from Parmatic to TACOM at 1-2 (Mar. 17, 2000). The work order and the applicable drawing accompany the part as it proceeds through the fabrication and assembly process. Id. at 2. Parmatic provided TACOM with three samples of such work orders. One example, work order number 29489, stated, "Weld per [blueprint No.] D5-19-7437. Use weld procedure [No.] 1826T . . ." Id., attach. 1. Parmatic also provided TACOM with the referenced welding procedure (a two-page document), which stated relevant welding instructions and information, including such things as the joint design, base metal type and grade, thickness range of the base metal groove, filler metal type and size, position of groove, temperatures, gas composition and flow rate, and the welding technique to be used. Id. attach 4.

In contrast to his evaluation of Parmatic's work instructions, the evaluator determined that HPS's work instructions showed that its process controls were equivalent to the requirements for ISO 9002.[15] Tr. at 29-35 (testimony of evaluator). However, this evaluation was entirely based on a single one-page example of HPS's instructions submitted during discussions that contained much more limited and nonspecific information than either Parmatic's or Hunter's work instructions, Agency Report, Tab 6, Discussions with Hunter, Letter from Hunter to TACOM exh. D (Mar. 17, 2000), and even the evaluator stated that he could not tell from HPS's document what detailed steps a person would have to take to complete the instructions.[16] Tr. at 69 (testimony of evaluator).

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[15] Since process control is one of the 19 elements of ISO 9002, Protester's Document Production, July 25, 2000, attach. 4, ISO 9002:1994(E), at 5, it may also be relevant to the evaluation of the quality plan subfactor.

[16] The intervenor has sought to classify this HPS document as a "router" and thus an incomplete work instruction. Tr. at 73-74. Incomplete or not, the agency's evaluation of HPS's work instructions rests entirely on that one-page document. Tr. at 29-35. (testimony of evaluator).

This example evidences that the evaluator conducted unreasonable evaluations and, in particular, treated Parmatic and HPS unequally in evaluating the proposals under the quality factor. Since this unequal evaluation concerned both subfactors under the quality factor, we conclude that the quality evaluation was unreasonable and unequal overall.

Unreasonable Cost/Technical Tradeoff

In making her source selection, the SSA relied on the unsupported conclusions that HPS had a quality program that was equivalent to ISO 9002 and Parmatic did not, and that HPS's quality program and process control system were superior to Parmatic's. Agency Report, Tab 11, Source Selection Decision, at 8; Tr. at 210-11, 248 (testimony of SSA). Her cost-technical tradeoff analysis, as stated in the source selection decision, considered the two offerors closely competitive under CLIN 0001, where HPS was manufacturing the filters, and she based her selection in significant part on the Hunter/HPS evaluated superiority under the quality factor. Agency Report, Tab 11, Source Selection Decision, at 13; Tr. at 194-95 (testimony of SSA). Moreover, she recognized that Parmatic had a significant price advantage for CLIN 0001. Agency Report, Tab 11, Source Selection Decision, at 13. Since the quality evaluation upon which the SSA relied was unreasonable and unequal pertaining to HPS and Parmatic, the source selection for CLIN 0001 lacks a reasonable basis.[17] See CRAssociates, Inc., B-282075.2, B-282075.3, Mar. 15, 2000, 2000 CPD ¶ 63 at 4.

RECOMMENDATION

We recommend that the agency reevaluate proposals, conduct discussions if appropriate, and make a new source selection decision with respect to CLIN 0001. If Parmatic is selected for award of this line item, the agency should terminate the CLIN 0001 portion of Hunter's contract and award a separate contract for CLIN 0001 to Parmatic. We also recommend that the agency reimburse the protester its reasonable costs of filing and pursuing the protest bases that were sustained,

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[17] Although we conclude that the evaluation of Parmatic's proposal was unreasonable and unequal under the quality factor, the protester has not demonstrated, and it is not otherwise apparent, that a reasonable evaluation would raise Parmatic's quality rating above Hunter's as it pertains to the selection decision with regard to CLINs 0002 and 0003 where HPS is not involved. Considering that Hunter was reasonably rated higher than Parmatic under the other two most important evaluation factors, that the difference in price was relatively small for these CLINs, and that the SSA's tradeoff decision in favor of Hunter was much more conclusive for these two CLINs, the record evidences that Parmatic was not prejudiced by the quality factor evaluation with regard to the source selection for CLINs 0002 and 0003. Thus, we see no basis to sustain Parmatic's challenge to the award of CLINs 0002 and 0003.

including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2000). The protester should file its claims for costs, detailing the time expended and costs incurred, with the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is denied in part and sustained in part.

Anthony H. Gamboa
Acting General Counsel