



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: AIA-Todini-Lotos

File: B-294337

Date: October 15, 2004

Michael A. Lewis, Esq., Braude & Margulies, for the protester.
Damon Martin, Esq., Department of the Navy, for the agency.
Jonathan L. Kang, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's joint venture proposal is denied where agency (1) reasonably identified risk based on the new joint venture partners' lack of experience working together; (2) reasonably identified risk consistent with the evaluation criteria concerning lack of coordinated oversight among the joint venture partners; and (3) reasonably disregarded two of protester's alternative construction schedules that did not follow the critical path method prescribed in the solicitation. Record does not indicate whether agency adequately considered protester's third early completion schedule; however, even maximum credit for that schedule would not sufficiently raise protester's score to establish prejudice.

DECISION

AIA-Todini-Lotos (ATL) protests the award of a contract under request for proposals (RFP) No. N33191-02-R-1078, issued by the Department of the Navy, Naval Facilities Engineering Command to the Cooperative Muratori e Cementisi-C.M.C. di Ravenna (CMC) for construction of the MEGA 4 project at the Naval Support Activity, Sigonella, Italy. ATL challenges the Navy's evaluation of its proposal and the source selection decision.

We deny the protest.

BACKGROUND

The RFP was issued on May 6, 2004 and contemplated the award of a fixed-price contract for construction of a new elementary and high school facility, temporary

classrooms, a base operations support building, and a public works administration building, and for demolition of existing facilities. The RFP identified the following four technical evaluation factors: (1) organizational experience; (2) organizational past performance; (3) engineering-construction plan (ECP); and (4) schedule. RFP amend. 2, § 202, at ¶¶ 1.1–1.3. The technical evaluation factors were equal in importance and together were approximately equal to price. Available ratings for the technical evaluation factors were excellent, good, satisfactory, marginal, and poor. Award was to be made to the offeror who provided the best value to the government. The RFP advised offerors that “an acceptable proposal with the lowest price may not be selected if award to a higher-priced proposal affords the Government a greater overall benefit.” *Id.* at ¶ 1.1. The RFP also advised that the agency intended to award without discussions.

The agency timely received four technical proposals (a fifth was rejected as untimely), including proposals from ATL and CMC. ATL is a joint venture formed by three construction companies, Todini Costruzioni Generali S.p.A., A.I.A. Costruzioni Generali S.p.A., and Lotos S.r.l. CMC is a single-entity offeror.

The technical evaluation panel (TEB) reviewed offerors’ past performance and experience references and developed technical ratings for all evaluation factors. The TEB ranked the offerors, finding CMC “excellent” and ranked first overall and ATL “satisfactory” and ranked second overall. Agency Report (AR), Tab 5, TEB Report, at 4. The price evaluation board (PEB) reviewed offerors’ price proposals, conducted a price analysis, and compared offerors’ prices to the government estimate. AR, Tab 6, PEB Report, at 2-4. The PEB found both CMC’s and ATL’s prices to be reasonable. ATL was the overall low-priced offeror and CMC was the second low-priced offeror. *Id.*

The source selection board (SSB) then reviewed the technical and price evaluations to select the proposal which offered the best value to the government. As relevant here, the overall ratings and prices of the protester and awardee were as follows:

	CMC	ATL
Evaluated Price ¹	€67,199,147.80	€62,965,402.69
Overall Technical	Excellent	Satisfactory
1. Organizational Experience	Excellent	Satisfactory
2. Organizational Past Performance	Excellent	Good
3. Engineering-Construction Plan	Excellent	Satisfactory
4. Schedule	Good	Satisfactory

The SSB determined that CMC was the “best value” offeror “since [CMC] submitted the best value proposal with second lowest price and the highest rated technical

¹ All prices were proposed and evaluated in euros (€).

proposal where price and technical are approximately equal.” AR, Tab 7, SSB Report, at 6, 17. The SSB found that “CMC’s proposal is €4,234,745.11 or 6.5% more than [ATL]’s but was rated Excellent, providing numerous enhancements, compared to [ATL]’s Satisfactory overall rating.” *Id.* at 6. The balance of the SSB report identifies under each technical factor the areas in which CMC’s proposal was found superior to other offerors, particularly ATL.² For example, the SSB noted as strengths the experience of CMC’s on-site engineering staff, early completion of past projects, and an innovative and flexible technical approach to the construction. *Id.* at 7-8.

As permitted under the RFP, the agency did not conduct discussions with the offerors. CMC was awarded the contract on July 7. ATL was notified of the award to CMC on July 8 and requested a debriefing on July 9, which the agency provided on July 13. This protest followed.

DISCUSSION

ATL challenges the agency’s technical evaluation of its proposal in three primary areas. First, ATL argues that the agency unreasonably determined that its proposal as a joint venture posed risk to the successful performance of the contract because the joint venture partners lacked experience working together. Second, ATL argues that the agency unreasonably determined that its proposal lacked a “layer of management” for construction oversight and quality control that ATL contends was not required by the RFP. Third, ATL argues that the agency failed to give proper credit for ATL’s proposal to meet early completion dates in its construction schedules. Additionally, although ATL does not challenge the agency’s evaluation of CMC’s proposal, ATL challenges the rationality and reasonableness of the agency’s price/technical tradeoff and best-value determination.

In reviewing a protest of a procuring agency’s evaluation of offerors’ technical proposals, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. Our Office will not question an agency’s evaluation judgments absent evidence that those judgments are unreasonable or contrary to the stated evaluation criteria. Kay & Assocs., Inc., B-291269, Dec. 11, 2002, 2003 CPD ¶ 12 at 4.

As discussed below, we find, based on the record, that the agency’s evaluation of ATL’s proposal was reasonable, with the exception of a potential flaw in the agency’s review of one of ATL’s proposed construction schedules. That flaw, however, was

² The SSB report effectively served as the source selection decision, as that document contained a best-value determination and was approved and signed by the contracting officer.

not prejudicial to ATL and, therefore, we find no basis to disturb the agency's best-value determination and the award to CMC.

Factors 1 and 2: Organizational Experience and Past Performance

ATL challenges the agency's determination that its proposal posed a "great risk" to successful performance because the three ATL joint venture partners had not previously worked together. Both factor 1, organizational experience, and factor 2, organizational past performance stated, with regard to joint venture offerors, that

[p]rojects submitted by Joint Venture offerors, where the joint venture partners performed together (either as joint venture partners or in a prime-sub relationship), will be given more weight than submitted projects in which the Joint Venture offerors did not perform together.

RFP amend. 2, § 202, at ¶ 1.2, Factors 1 and 2.

ATL interprets the RFP's guidance regarding joint venture offerors as providing for additional credit for joint ventures with prior work experience performing as a joint venture. ATL contends, however, that the RFP language does not permit the agency to downgrade joint venture offerors without such prior experience based on perceived performance risk. ATL argues that the agency's evaluation constitutes an unstated evaluation criterion that disfavors new joint ventures.

The SSB found with regard to factor 1, organizational experience, that "the fact that these three firms [in the ATL joint venture] have not worked together as a JV [joint venture] on previous projects [is] a great risk to the successful and timely completion of the MEGA 4 projects." SSB Report at 10. With regard to the overall determination of ATL's technical score, the SSB concluded that "[e]ven though the TEB did not identify any risk with [ATL]'s proposal, the SSB finds a greater amount of risk awarding to a JV composed of three separate firms than awarding to one firm solely responsible for the success or failure of completing the project on time." *Id.* at 9.

The protester argues, and we agree, that the agency did more than simply decline to grant "additional credit" for past performance and experience. The SSB specifically downgraded ATL's proposal because of a perceived "great risk" posed by the joint venture partners' lack of work as a single team. The SSB found that "the fact that these three firms [i.e., the ATL joint venture partners] have not worked together as a JV on previous projects [presents] a great risk to the successful and timely completion of the MEGA 4 projects." SSB Report at 10.³

³ Although ATL initially protested that the agency had failed to evaluate the joint venture based on the experience and past performance of the individual joint venture partners, the record demonstrates that the agency did, in fact, evaluate the

(continued...)

Based on the record, we think that the agency's evaluation was reasonable. First, to the extent that ATL argues that risk, in and of itself, was an undisclosed evaluation criterion, we note that agencies may always consider a proposal's risk to successful performance where that risk is intrinsic to the stated evaluation factors. Ridoc Enter., Inc., B-202962.4, July 6, 2004, 2004 CPD ¶ __ at 7; Davies Rail & Mech. Works, Inc., B-278260.2, Feb. 25, 1998, 98-1 CPD ¶ 134 at 10. Next, although an agency may consider the separate qualifications of individual partners in evaluating a joint venture's experience or past performance, there is no converse requirement that an agency disregard a lack of experience or past performance by the joint venture. Transventures Int'l, Inc., B-292788, Nov. 4, 2003, 2003 CPD ¶ 195 at 7; Global Eng'g & Constr. Joint Venture, B-275999 *et al.*, Oct. 6, 1997, 97-2 CPD ¶ 125 at 9; MR&S/AME, An MSC Joint Venture, B-250313, B-250313.2, Mar. 19, 1993, 93-1 CPD ¶ 245 at 9. Further, we do not think that the RFP's statement that joint ventures whose partners had prior experience working together would receive more weight, or any other language in the RFP, in any way prohibited the agency from reasonably considering that a joint venture whose partners lacked prior work experience together might pose a risk to successful performance.⁴

(...continued)

references for each partner and used those ratings to assign a composite score for the joint venture. TEB Report at 7-8; SSB Report at 9-10. We have held that the use of such an evaluation method is within an agency's discretion. *See, e.g., ITT Fed. Servs. Int'l Corp.*, B-283307, B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 14 (agency may reasonably evaluate a joint venture proposal based on the individual joint venture partners' experience and past performance where the joint venture itself has no prior performance).

⁴ ATL cites H.J. Group Ventures, Inc., B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203, for the proposition that agencies may not attribute risk to new joint ventures without explicitly disclosing such an evaluation preference in the solicitation. In H.J. Group Ventures, however, our Office did not find that the agency improperly downgraded the protester for merely being a new joint venture without experience. Rather, we found in that case that the agency improperly applied disproportional weight in the evaluation process in finding that the protester's status as a new joint venture posed a "moderate" performance risk, despite the fact that the "performance risk" criterion was identified as only an unweighted "general consideration" in addition to the stated evaluation factors. We sustained the protest in H.J. Group Ventures because the difference in performance risk between the protester and awardee proved to be the determinative factor in the source selection where the technical ratings were otherwise equal, thus outweighing a significant price difference. Here, by contrast, the agency properly related its risk assessments to the disclosed evaluation factors of organizational experience and organizational past performance.

The SSB risk assessments here were well within the agency's discretion, as they reasonably related to the stated evaluation factor of organizational experience, which required offerors to demonstrate "the degree to which an offeror has completed recent 'new construction' projects that are similar in scope, construction features, monetary value and complexity," and also to the stated evaluation factor of organizational past performance, which required offerors to demonstrate that "the offeror has managed projects submitted under Factor 1 ... [that are relevant based on the criteria of] 'new construction' projects physically completed within the past five years, have somewhat similar construction features, and are somewhat similar in dollar value and complexity." RFP amend. 2, § 202, at ¶ 1.2, Factors 1 and 2.

ATL submitted the required five experience references, two each for AIA and Todini projects and one for a Lotos project. The SSB was specifically concerned that although Todini, based on its experience, would have been able to perform the contract on its own, AIA and Lotos could not perform the work themselves individually or collectively. SSB Report at 9-10. The references submitted by ATL demonstrated that the three joint venture partners had never performed together as a group. AR, Tab 3, ATL Proposal at §§ 1, 2. The agency acknowledged that two joint venture groups had worked together before, but expressed its concern that the three had never worked together before. ATL notes in its protest that Todini and AIA had worked together in a prior joint venture, and that AIA and Lotos had worked together in a different joint venture. Protest at 4. However, as ATL's proposal confirms, none of the projects in which Todini and AIA or AIA and Lotos had performed as joint ventures were listed among the past performance or experience references in the ATL proposal. See AR, Tab 3, ATL Proposal "Introduction," at 1. In any case, the fact that the joint venture partners had worked in groups of two each on prior projects does not render unreasonable the agency's concern that the joint venture is here comprised of three partners that lacked prior work experience together.

Of the five references submitted by ATL, the SSB found that only two were similar in size--both of which were performed by Todini without the participation of AIA or Lotos. SSB Report at 10.⁵ The SSB determined with regard to factor 3, as discussed in further detail below, that ATL intended for AIA and Lotos to each perform at one of the two construction sites and that Todini would act in a supervisory general contractor role. *Id.* at 10-11. ATL does not dispute any of the SSB's findings with regard to the evaluation of its experience or past performance information, nor does it challenge the characterization of its intended technical approach as calling for AIA and Lotos, which lacked relevant experience, to each take primary responsibility for one of the two construction sites. Based on the record, we conclude that the agency reasonably evaluated the protester's experience and past performance.

⁵ By comparison, all five of CMC's references were found relevant under every one of the relevance factors. TEB Report at 7.

Finally, ATL complains that “[n]either the SSB report nor the TEB report explains or provides any empirical basis for a presumption that joint ventures are inherently more risky enterprises than single entities.” Protester’s Comments at 3. ATL further contends that the agency’s determination was irrational because a joint venture proposal actually decreases the risk of unsuccessful performance. *Id.* at 3-4. However, other than to state its belief that a joint venture should be considered inherently less risky, ATL does not offer any specific basis to disturb the agency’s evaluation conclusions. We view the protester’s position as mere disagreement with the agency’s assessment of its proposal, which does not render the evaluation unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

Factor 3: Engineering-Construction Plan

ATL next challenges the agency’s determination that its ECP does not provide adequate quality control and project management, thereby posing a “significant risk” to successful performance based on what the agency perceived to be a “fragmented management structure.”⁶ The RFP stated that offerors must present an “integrated” ECP to “manage the project through the construction process.” RFP amend. 2, § 202, at ¶ 1.2, Factor 3. In particular, the RFP required offerors to demonstrate how they would meet the following “standard of acceptability”:

The government will evaluate the extent to which the contractor presents an integrated Engineering/Construction team to manage the project through the construction process and demonstrates the degree to which the offeror’s technical approach reflects an understanding of technical challenges, in particular, logistics and schedule challenges (multiple sites, phasing requirements, and strict schedule requirements

⁶ ATL also alleged in its protest that the agency improperly downgraded its proposal for failing to provide “an ‘engineering team’ that would ferret out ‘problems’ arising from the Navy’s plans and specifications.” Protest at 6. Although the agency responded to this protest ground in its memorandum of law, ATL did not address the matter in its comments. To the extent that the protester intended for this allegation to be a separate protest ground, we deem it abandoned for failure to comment. See Bid Protest Regulations, 4 C.F.R. § 21.3(i) (2004); SDS Int’l, B-285821, Sept. 21, 2000, 2000 CPD ¶ 162 at 6. We note, however, that the record indicates that ATL was not downgraded regarding the lack of an engineering team; instead, as stated in the debriefing, ATL did not receive any additional credit under the RFP provision which stated that “Additional consideration will be given for the following: (1) Technical proposals that commit to the active participation of engineers on site during construction” RFP amend. 2, § 202, ¶ 1.2, Factor 3. See AR, Tab 11, Debriefing, at 3.

of school year) and describes a plan to successfully respond to those challenges and resolve any areas of concern that may arise on a real-time basis.

Id.

The technical requirements of the RFP stated that there would be two separate work sites--the P-220 construction project at site one and the P-635 and P-640 construction projects at site two. The agency interpreted ATL's ECP as providing that AIA and Lotos would each perform work at one site, with oversight and management by Todini. SSB Report at 10-11. The SSB found that ATL's approach posed a risk to successful performance because there was a lack of coordinated quality control and project management between the two construction sites. The SSB stated that

[o]ne weakness in the response concerned the relationship of the three firms within the JV. It appears from the cross referenced project staffing from Factor 1 that only one team member from the firm Todini is actively participating in the construction management. Also the structure of the team appears to be fractured in that the two teams have separate QC [quality control] and safety organizations that work completely independently and not coordinated in any higher QC management structure. Both teams report directly to the president of the JV Mr. Crini with no intermediate QC manager. This arrangement is also repeated on the project management or production side of the house. It appears that these two sites will be working completely independent of each other and that their first level of integration is at the President of the JV level. The SSB considers the fragmented management structure between the three firms to be a significant risk to the successful and timely completion of the MEGA 4 project.

Id.

ATL argues that the RFP's requirement for an "integrated" ECP refers to integration between engineering personnel and construction personnel at each of the two sites, but did not require "integration" between the two separate sites. ATL contends that the agency's criticism amounted to an unstated solicitation requirement for a level of quality control and project management supervision to supervise and coordinate between the two sites that was above and beyond that required under the RFP.

Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor which might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. Gentex Corp.-W. Operations, B-291793 et al., Mar. 25, 2003, 2003 CPD ¶ 66 at 24. We do not think, as the protester argues, that the term "integrated" in the RFP is necessarily limited to the on-site integration between engineers and the construction team. Rather, the

RFP under evaluation factor 3 specifically set forth in its “standard of acceptability” a requirement for an “integrated approach” that addressed challenges such as “multiple sites.” RFP amend. 2, § 202, at ¶ 1.2, Factor 3.

We think that the agency was reasonably concerned that ATL’s ECP posed a significant risk to successful performance, given its lack of a unified structure to deal with the challenge of performing at multiple sites. This concern was particularly relevant to ATL in light of the fact that ATL proposed as a joint venture that would perform the contract by staffing each of the two work sites with one of the joint venture partners, each of which had a separate quality control and oversight system. In particular, ATL’s proposal demonstrates that each of the two worksites had a different “Quality Control Manager” and “Project Managers.” See AR, Tab 3C, ATL Proposal Organization Charts. Although the protester generally implies that the technical specifications at RFP sections 1310 (quality control) and 1450 (administrative requirements) only require quality control and project management systems for each site, the protester does not identify any specific provisions to support its argument. We find nothing in the RFP provisions cited by the protester that in any way contradicts the plain language of evaluation factor 3, which the agency reasonably relied upon in determining that the protester’s ECP lacked sufficiently integrated and coordinated quality control and project management.

Factor 4: Schedule

The RFP stated that offerors would be given “additional consideration” for proposing construction schedules that were shorter than the schedules set forth in the RFP. ATL protests that the agency failed to give credit for three early completion dates proposed under its schedule, as follows: (1) the P-220 project for demolition of existing classrooms, construction of temporary classrooms, and construction of the new elementary and high schools (RFP schedule phases A1-A2 and B1-B3); (2) the P-635 project for construction of the new operations support building (RFP schedule phase C); and (3) the P-640 project for construction of the new public works administration building (RFP schedule phase D).

The RFP required offerors to submit a “single computer generated CPM [critical path method] schedule (with number of days to complete), with two separate sub-schedules for each Building/Site utilizing the Projects Group feature of Primavera’s P3 software.” RFP amend. 2, § 202, ¶ 1.1, Factor 4 (b)(2). The RFP stated that offerors would be given “additional consideration” for “innovative approaches to completing early.” *Id.* at Factor 4 (a). The agency later clarified as part of the offeror question and responses that

additional consideration will be given for a schedule that provides a shorter construction duration than the maximum duration stipulated by the contract, i.e. delivers a facility to the Government for Beneficial Occupancy in advance of the contract maximum.

RFP amend. 5 at ¶ 2.1. Amendment 5 to the RFP also stated that, if offerors proposed early completion schedules, “a description of an innovation that is likely to succeed, will make these proposed time savings gain full ‘additional consideration.’” Id.

The RFP instructed offerors to assume, for purposes of their schedule proposals, that notice to proceed for all projects and options would take place on August 30, 2004. RFP amend. 2, ¶ 1.2, Factor 4. The agency developed “government completion” dates for each project phase based on the number of days allotted in the RFP for that phase. See TEB Report at 4-5. The agency then compared each offeror’s date of completion to the government dates. Id.

The SSB found that, although ATL proposed certain early schedule completion dates, there was not a clear “commitment” to these dates. The SSB stated that “[ATL] mentioned in its proposal that it had the potential for early completion dates however [ATL] did not commit to the early completion dates.” SSB Report at 11. Thus, ATL was not given any additional credit under the schedule factor. Id.

The protester argues that the agency either “misapprehended or failed to fully review” the proposed alternative completion schedules. Protester’s Comments at 6. The agency argues that, because ATL’s proposed CPM schedule did not actually offer any shorter delivery dates, its proposal was “ineligible for the ‘additional consideration’ reserved for proposals that included the prescribed shortened CPM schedule.” Memorandum of Law at 10. The SSB and TEB evaluations do not make clear exactly how the agency reviewed the ATL schedules. The evaluations do not, for example, state whether the agency determined that ATL proposed early completion dates, but failed to adequately describe “innovative approaches” to meeting those dates, or whether the agency simply disregarded any schedule information that was not in the CPM format.

The CPM schedule for P-220 set forth in ATL’s proposal shows a “Contract Completion” date of March 31, 2008, resulting in a total of 1,309 days. AR, Tab 3F, P-220 Schedule, Phase A, at 1, and Phase B, at 3. The TEB determined that the government completion date was March 30, 2008, which results in a total of 1,308 days, and evaluated ATL based on its proposed CPM date of March 31, 2008. TEB Report, ATL Evaluation for Factor 4. ATL’s proposal also contains a “Proposal for Early Completion of P-220” narrative explanation accompanying the CPM schedule for P-220. AR, Tab 3E, Technical Proposal, at 60. This alternative proposal is not reflected in the CPM schedule, but suggests that a shift in certain move-in dates would accelerate the schedule, resulting in the 129 days savings cited in ATL’s protest. Id.

The protester argues that although the RFP required a “single computer generated CPM schedule,” ATL’s approach of explaining its alternative schedules dates in the narrative accompaniment to the CPM schedules was acceptable under the RFP. Id.

ATL claims that its proposed alternative schedule for the P-220 project provided a savings of 129 days over the RFP schedule. Protester's Comments at 6.

We think that the agency is correct that the RFP language instructed offerors to include all dates in the CPM schedule format for purposes of evaluation and that the narrative explanations were intended to further explain and justify the "innovative approaches" that enabled the early completion. In this regard, the RFP clearly instructed offerors to provide a "single" CPM schedule for each building. RFP amend. 2, § 202, ¶ 1.1, Factor 4. The clarification in amendment No. 5 to the RFP, stating that offerors should provide "a description of an innovation that is likely to succeed," RFP amend. 5 at ¶ 2.1, does not contradict or supersede the basic RFP requirement for a CPM schedule. Thus, although there is limited documentation in the record concerning the agency's evaluation of ATL's alternative proposal for early completion of P-220, we do not think that the failure to give ATL credit was improper or unreasonable because ATL's proposal did not clearly offer a shorter delivery schedule in accordance with the RFP requirements.

ATL next claims that its proposed schedule for P-635 was 45 days shorter than the 960 days set forth in the RFP. ATL's CPM schedule shows a P-635 proposal "Contract Completion" date of April 16, 2007, yielding 959 days to complete the project. AR, Tab 3F, P-635 Schedule, Phase C, at 1-2. As was the case with its P-220 schedule, the protester's schedule for P-635 included additional narrative explanations, detailing March 2, 2007 as "Works Completion Date"—a 46-day savings over the government completion date and 960-day schedule. AR, Tab 3E, Technical Proposal, at 61-62; AR, Tab 3E, P-635 "Narrative Report." It is not clear from the CPM schedule or the narrative whether ATL was treating the March 2, 2007 date as the "real" end of the contract. The fact, however, that the April 16, 2007 date is listed as the "Contract Completion" date under the required CPM schedule renders reasonable the agency's apparent treatment of this later date as the completion date for purposes of evaluation. Thus, as with the P-220 schedule, we do not think that the failure to give ATL credit for its alternative proposal for early completion of P-635 was improper or unreasonable because ATL did not clearly offer a shorter delivery schedule in accordance with the RFP requirements.

With regard to the P-640 schedule (Phase D), we find that the agency may have failed to give proper credit for an early completion proposal set forth in ATL's CPM schedule. AR, Tab 3F, P-640 Schedule, at 1-3. Unlike the P-220 and P-635 CPM early completion proposals, the P-640 schedule contains dates that were presented in the CPM schedule format that result in an earlier completion date.

The RFP specified that P-640 was to be completed within 600 days. RFP § 710, at 19. ATL's CPM schedule for P-640 shows a "Contract Completion" date of April 21, 2006, which yields 599 total days. AR, Tab 3F, P-640 Schedule, at 1-3. However, unlike ATL's CPM schedules for P-220 and P-635, the CPM schedule for P-640 also listed a separate "Scheduled Completion P-640" date of March 14, 2006, which yields a total of 561 days, for a savings of 39 days. *Id.* This savings is corroborated in the narrative

sections of the P-640 schedule, albeit with a slightly different date, March 13, 2006, which yields a total of 560 days, for a savings of 40 days. AR, Tab 3E, Technical Proposal, at 62-63; AR, Tab 3F, at P-640 “Narrative Report.” Although there is a discrepancy between the CPM schedule and narrative dates (March 14 vs. March 13), we think that the ATL proposal for P-640 reasonably expressed an intent to complete the work early and demonstrated that ATL intended to meet a schedule for P-640 that was 39 or 40 days shorter than the RFP completion schedule.

There is no evidence in the record how the agency evaluated ATL’s proposed early delivery for P-640, aside from the TEB’s general comment, cited above, that ATL failed to demonstrate an adequate “commitment” to the early proposed completion dates. Neither the evaluation documents nor the agency memorandum of law specifically addresses the P-640 schedule. We think, therefore, based on the record, that the agency may not have adequately considered whether ATL should have received credit for its proposed 40-day early delivery.

Despite the potential error in evaluating ATL’s P-640 schedule, however, we find that ATL was not sufficiently prejudiced to warrant sustaining the protest on this ground. Competitive prejudice is an essential element of every viable protest and we will not sustain a protest unless prejudice is evident from the record. To succeed in its protest, the protester must demonstrate not only that the agency failed to follow established procedures, but also that the failure could have materially affected the outcome of the competition. McDonald Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). The agency found, and ATL does not dispute, that CMC was substantially earlier than ATL on every completion date other than the P-640 (Phase D) project (*i.e.*, Phases A1, A2, B1, B2, B3, and C). See TEB Report, CMC Evaluation, at Factor 4; SSB Report at 7-8. In our view, even if the maximum possible credit were given to ATL for early completion of the P-640 project, this would not, standing alone, be sufficient to create a reasonable possibility that ATL would have received the award, in light of the substantial advantages for CMC in all other areas of the technical evaluation and our determination that the other areas of ATL’s protest are without merit.

Finally, ATL argues that the agency was obligated to seek clarifications to the extent it believed that ATL was not clear in its commitment to provide early schedule completion. Clarifications are “limited exchanges” between the agency and offerors that may occur when award without discussions is contemplated. FAR § 15.306(a)(1). Such exchanges may allow offerors to clarify certain aspects of proposals or to resolve minor clerical errors. FAR § 15.306(a)(2). Agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no automatic right to clarifications regarding proposals. See A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6. In any event, a request for clarifications would not have allowed ATL to improve its competitive position, as clarifications do not permit revisions to proposals. FAR § 15.306(a)(2); A.G. Cullen, supra, at 5-6.

Best-Value Decision

ATL challenges the SSB's decision to pay a price premium in selecting CMC's higher technically rated proposal. ATL argues that the best-value determination was unreasonable because it relied upon what ATL argues were flawed technical evaluations that did not justify selection of CMC over ATL's lower-priced proposal. Additionally, ATL argues that the agency failed to reasonably justify the selection of a higher-priced proposal.

Where, as here, the RFP allows for a price/technical tradeoff, the selection official retains discretion to select a higher-priced, but higher technically-rated submission if doing so is reasonably found to be in the government's best interest and is consistent with the solicitation's stated evaluation scheme. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10. Here, the agency reasonably documented its determination that CMC's technically superior proposal merited a price premium over ATL's lower-priced, lower technically rated proposal. See SSB Report at 6-9. Although we identified a potential error in the agency's evaluation of ATL's schedule proposal, as explained above, we have no basis to conclude that the error prejudiced ATL.

The protest is denied.

Anthony H. Gamboa
General Counsel