



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: PWC Logistics Services, Inc.

File: B-299820; B-299820.3

Date: August 14, 2007

Michael R. Charness, Esq., Robert J. Rothwell, Esq., Suzanne D. Reifman, Esq., and Alexander O. Levine, Esq., Vinson & Elkins, LLP, for PWC Logistics Services, Inc. Thomas P. Barletta, Esq., Daniel C. Sauls, Esq., Paul R. Hurst, Esq., and Ana Holmes Voss, Esq., Steptoe & Johnson, LLP, for Science Applications International Corporation, an intervenor.

Benjamin G. Perkins, Esq., Robert E. Sebold, Esq., and Ed Murray, Esq., Defense Logistics Agency, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency applied unstated environmental risk management plan factor in its evaluation of management proposals is denied where record shows that agency provided all offerors identical information during discussions that effectively amended the evaluation criteria of the solicitation.
2. Protest that agency failed to provide protester discussions relating to the adequacy of its environmental risk management plan is denied where record shows (1) agency only assigned protester's proposal a minor weakness in the area--and therefore was not required to discuss the matter--and (2) agency, in fact, afforded protester discussions relating to this aspect of its proposal.
3. Protest relating to reasonableness of the agency's evaluation of protester's and awardee's proposals in the area of environmental risk management plan is denied where record supports agency's conclusions that there were qualitative distinctions between the proposals in this area.
4. Protest relating to the agency's finding that awardee's proposal offered superior past performance is denied where record shows that agency had a reasonable basis for finding the awardee's past performance more relevant than that of other offerors', and the protester's assertions relating to awardee's past performance are based on factually incorrect assumptions.

5. Protest relating to the reasonableness of agency's price evaluation is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

PWC Logistics Services, Inc. protests the award of a contract to Science Applications International Corporation (SAIC) under request for proposals (RFP) No. SPM4A2-06-R-0001, issued by the Defense Logistics Agency (DLA) for the supply, storage and distribution of chemicals, packaged petroleum, oil and lubricating products for military activities. PWC maintains that the agency improperly applied an unstated evaluation criterion, misevaluated proposals, and failed to engage in meaningful discussions.¹

We deny the protest.

BACKGROUND

DLA is responsible for the wholesale management of the Department of Defense's requirements for packaged petroleum products, oil, and lubricating products (referred to as POLs) under federal supply class (FSC) 9150, and chemical products under FSCs 6810, 6820, 6840 and 6850. To meet those requirements, the agency historically has maintained various field activities that were responsible for comprehensive inventory management (acquisition, storage, distribution and disposal) of the items. In 2005, the Base Realignment and Closure Commission recommended that DLA privatize the wholesale supply, storage and distribution of POLs. Pursuant to that recommendation, the agency engaged in market research, based on which it determined, among other things, to expand the current acquisition to include chemical products. In all, the RFP contemplates privatizing some 4,648 FSC items.

The RFP contemplates the award of an indefinite-delivery, indefinite-quantity contract for a base period of 5 years, with a 5-year option period, to provide comprehensive supply chain management for the described POLs and chemicals. Award was to be made on a "best value" basis considering four equally weighted considerations: technical proposal, management proposal, past performance, and price. The non-price considerations combined were significantly more important than price. RFP § M, at 1. There were numerous subfactors under the non-price

¹ In response to the agency's report, PWC filed a supplemental protest asserting that SAIC's proposal failed to conform to two material solicitation requirements. Supplemental Protest, July 9, 2007. The agency responded to these assertions and, by letter dated July 24, the protester withdrew these assertions.

factors. The technical proposal factor was comprised of four equally weighted subfactors: forecasting, purchasing, inventory management, and distribution. Id. at 2. The management proposal factor included three subfactors: risk management (most important), organization, and transition (equal in importance). Id. at 2-3. The past performance factor included three subfactors (in descending order of importance): substantially similar past performance, corporate experience (to be evaluated only where an offeror received a neutral rating under the substantially similar past performance subfactor), and past compliance with subcontracting goals. Id. at 3-4.² Under all non-price evaluation areas, the agency assigned adjectival ratings of highly acceptable (HA), acceptable (A), minimally acceptable (MA), deficient (D), or neutral (N) (for past performance only). Source Selection Plan at 6. Proposals also were assigned risk ratings of either high (H), moderate (M), or low (L) under each evaluation area. Id. at 6-7.

Proposed prices were to be evaluated for realism, fairness and reasonableness. RFP § M, at 4. For pricing purposes, the RFP distinguished between material prices (unit prices for the various items being purchased) and fees for contract performance.

The agency received four proposals, including PWC's and SAIC's. The agency evaluated the proposals and included three of the four in the competitive range. AR exh. 6. The agency then engaged in numerous rounds of discussions that led, ultimately, to the submission of final proposal revisions on March 8, 2007. AR at 14. The agency's source selection advisory group (SSAG) evaluated the FPRs and arrived at the following evaluation results:

	SAIC	PWC
--	------	-----

² The agency also identified numerous elements under each of the subfactors in rating proposals to arrive at its subfactor ratings. Agency Report (AR) exhs. 7, 15.

Overall Proposal Rating	Highly Acceptable	Low Risk	Highly Acceptable	Low Risk
Overall Technical Rating	Highly Acceptable	Low Risk	Highly Acceptable	Low Risk
Forecasting	Highly Acceptable		Highly Acceptable	
Purchasing	Highly Acceptable		Highly Acceptable	
Inventory Management	Highly Acceptable		Highly Acceptable	
Distribution	Highly Acceptable		Highly Acceptable	
Overall Management Rating	Acceptable	Low Risk	Highly Acceptable	Low Risk
Organization	Highly Acceptable		Highly Acceptable	
Transition Plan	Highly Acceptable		Highly Acceptable	
Risk Management	Acceptable		Highly Acceptable	
Overall Past Performance Rating	Highly Acceptable	Low Risk	Highly Acceptable	Low Risk
Substantially Similar Past Performance	Highly Acceptable		Highly Acceptable	
Compliance with Subcontracting Goals	Highly Acceptable		Acceptable	
Price, Best Case Scenario	\$2.355 Billion		\$2.346 Billion	
Price, Worst Case Scenario	\$5.652 Billion		\$5.667 Billion	

AR exh. 17 at 2.

The SSA used these evaluation results in making his award decision, but also made independent findings regarding the relative merits of the proposals in several specific areas. First, regarding the acceptable rating for SAIC’s management proposal, the SSA concluded that, because of several features that he viewed as strengths, the proposal was “just shy” of receiving a highly acceptable rating. AR exh. 17 at 5. Regarding the highly acceptable rating assigned to PWC’s management proposal, the SSA identified one feature as a weakness; he concluded that this weakness significantly detracted from the highly acceptable rating assigned by the SSAG, but did not warrant downgrading the rating to acceptable. *Id.* at 11. The SSA concluded that, notwithstanding their different adjectival ratings, the two offerors’ management proposals were essentially equal. *Id.* at 13. In a similar vein, the SSA found that, while PWC’s and SAIC’s past performance proposals received the same highly acceptable rating, SAIC’s past performance was better overall as compared to PWC’s. *Id.* at 13-14.

Based on these and other non-price evaluation findings, the SSA concluded that SAIC’s proposal was the strongest overall in the non-price areas. AR exh. 17 at 14. The SSA went on to consider price, and concluded that, based on all considerations, award to SAIC represented the best value to the government. The agency therefore made award to SAIC. Following a debriefing, PWC filed this protest.

UNSTATED EVALUATION FACTOR

PWC asserts that the agency improperly applied an unstated consideration when evaluating proposals. According to the protester, the agency considered environmental risk management under the management factor, even though such a consideration was never mentioned in the solicitation. PWC directs our attention to RFP section L-2.3.3 (instructions to offerors), which describes the information to be included in proposals regarding offerors' risk management plans. That section enumerates eight risks to be addressed, but does not include environmental risk management. PWC also notes that section M-3.3 of the solicitation's evaluation factors provides only that proposals should include a comprehensive risk management plan resolving every conceivable risk; according to the protester, this general requirement was inadequate to put offerors on notice that the agency would give significant consideration to the offerors' environmental risk management plans.

This argument is without merit. Agencies are required to advise offerors of the basis for evaluation and then to evaluate proposals consistent with that stated basis. STEM Int'l, Inc., B-295471, Jan. 24, 2005, 2005 CPD ¶ 19 at 3. Here, the RFP advised offerors that, in evaluating management proposals, the agency would consider the degree to which the proposals included a comprehensive risk management plan resolving every conceivable risk. RFP § M-3.3, Major Subfactor M3: Risk Management. Further, the agency provided all offerors with identical discussion materials relating to the solicitation's environmental requirements. Specifically, the agency advised all firms by e-mail dated November 30, 2006 that it was forwarding an attachment that contained additional environmental requirements that had to be addressed. AR exhs. 10A at 22; 10B at 25. The attachment provided as follows:

The final proposal revisions will be evaluated in accordance with Section M. Please note that included under paragraphs 2.4 [the RFP's technical evaluation subfactor for distribution] and 3.3 [the RFP's management subfactor for risk management], the government will address the offerors' capability to execute this contract's environmental requirements and the offerors' proposed management of environmental issues.

AR exhs. 10A at 26; 10B at 26. Thus, not only did the RFP highlight the need for offerors to address risk management generally, but the agency specifically advised offerors that it would consider the firms' environmental risk management plans under the risk management subfactor of the management factor. The evaluation in this area therefore was unobjectionable.³

³ PWC suggests that the agency could not properly revise the solicitation through discussions rather than through a formal amendment. Where, as here, an agency provides identical language or information to all offerors during discussions, its actions are tantamount to amending the RFP, even though no formal amendment has
(continued...)

ADEQUACY OF DISCUSSIONS

PWC asserts that the agency failed to engage in meaningful discussions with it in connection with its environmental risk management proposal. According to the protester, the agency identified its environmental risk proposal as a significant weakness in its management proposal, and ultimately used this as a discriminator in its source selection decision. PWC also notes that it was criticized during an environmental preaward survey, and that the agency's representative improperly failed to advise the firm of his concerns at that time. PWC maintains that the agency could not properly have downgraded its proposal in this area without advising it of this weakness during discussions.

While agencies are required to engage in meaningful discussions—that is, point out significant weaknesses and deficiencies that, unless corrected, would prevent an offeror from having a reasonable chance of receiving award—agencies are not required to afford offerors all-encompassing discussions, or to point out every aspect of a proposal that offers a relatively less desirable approach. Volmer Constr., Inc., B-270364, B-270364.2, Mar. 4, 1996, 96-1 CPD ¶ 139 at 4. Further, where a weakness in a proposal ultimately becomes a discriminator for source selection purposes among closely ranked proposals, but the weakness is minor in nature and did not render the proposal unacceptable, the agency's failure to have raised the matter in discussions is unobjectionable. Id. at 4-5.

The discussions here were unobjectionable. The record shows that each evaluator individually rated PWC's risk management proposal either highly acceptable or acceptable, AR exh. 15A, at BATES 407, 417, 432, 449, 471, and that the SSAG rated it—as well as its management proposal overall—highly acceptable. AR exh. 16A, at BATES 85, 88. The record also includes an environmental preaward survey recommending “no award” to PWC, primarily based on a conclusion that, while PWC's environmental subcontractor had experience in handling waste management at Department of Energy (DOE) facilities (where the primary work relates to the handling and disposition of nuclear waste), it had little experience handling hazardous materials in the context of a supply chain-type requirement such as the one here. AR exh. 11A, at BATES 17-18. The survey also observed that PWC was only now trying to get systems and procedures in place for the management of hazardous materials. Id. at 18.⁴ Against this backdrop, the SSA reached the following conclusion:

(...continued)

independently been issued. Phenix Research Prods., B-292184.2, Aug. 8, 2003, 2003 CPD ¶ 151 at 5.

⁴ PWC suggests that the individual that conducted the preaward survey was obligated during the survey to convey his reservations to the firm at that time in order for the
(continued...)

PWC proposes to use a subcontractor, Cornerstone/Weskem Services (CWS), to manage environmental, safety and health (ES&H) risks. The proposal suggests that CWS will establish ES&H processes at each PWC distribution site only after contract award. PWC identified CWS's facility in Oak Ridge, Tennessee, as an appropriate site to visit for the pre-award survey. The survey resulted in a 'no award' recommendation, because CWS has no existing experience managing hazardous materials like those involved in this effort; its experience at Oak Ridge relates to nuclear materials, which are not governed by the same regulatory bodies. While this is not sufficient to downgrade PWC's overall Management rating to the 'Acceptable' level, it significantly detracts from the 'Highly Acceptable' rating PWC's management proposal earned.

AR exh. 17 at 11. The SSA ultimately concluded that PWC's and SAIC's management proposals were essentially equal. Id. at 13.

The record thus shows that, despite the criticisms relating to PWC's environmental risk management proposal and the results of the environmental preaward survey, the firm's management proposal ultimately was viewed by the SSAG and the SSA as highly acceptable (albeit, ranked at the low end of the highly acceptable spectrum), and as essentially equal to the awardee's. In these circumstances, the agency was under no obligation to have discussions with PWC relating to its environmental risk management proposal.

In any event, the agency did, in fact, ask PWC several questions relating to its environmental management proposal that adequately led PWC into, and thus provided PWC an opportunity to improve, this area of its proposal. On November 30, 2006, after evaluating PWC's initial proposal, the agency presented discussion questions relating to several areas, including four questions relating to PWC's environmental management proposal, which asked PWC to: (1) identify its (and its subcontractor's) management personnel responsible for compliance with environmental rules and regulations identified in the SOW, including restrictions on storage and transportation of hazardous materials, occupational safety and health requirements and hazardous materials release response, AR exh. 10A, at BATES 26; (2) describe its team, at the prime and subcontractor level, that would be responsible

(...continued)

agency to have discharged its obligation to engage in discussions. However, since the agency was conducting a preaward survey--as opposed to engaging in oral discussions--the individual in question was under no such obligation.

for managing these requirements, id.; (3) identify and explain any notice of any major environmental non-compliance incident within the last 10 years, id.; and (4) respond to several environmental scenarios. Id. at BATES 26-27. On February 14, 2007, PWC was asked a follow-up discussion question relating to the roles and responsibilities of its environmental health and safety subcontractor, CWS. Id. at BATES 62.

ENVIRONMENTAL RISK MANAGEMENT EVALUATION

PWC asserts that the evaluation of its and SAIC's proposals in the area of environmental risk management was unreasonable. According to the protester, the agency unreasonably downgraded its proposal for offering CWS, a newly-created entity, to manage its environmental risk effort, and for proposing to establish environmental safety and health ES&H procedures only after award. The protester maintains that CWS existed prior to the source selection decision and that it had ES&H procedures at its disposal prior to award that it was prepared to use. PWC further maintains that the agency unfairly downgraded its proposal on the basis that its environmental risk management experience was primarily only in handling nuclear materials when, in fact, it also has ample experience in handling other hazardous materials. The protester also asserts that the agency unreasonably failed to take cognizance of the fact that SAIC proposed to provide environmental risk management through the use of a team comprised of [deleted] that would only enter into subcontracts after award of the prime contract, and that it would be more difficult to integrate these [deleted] team members than it would be to integrate the functions of CWS.

In reviewing protests challenging proposal evaluations and source selection decisions, it is not our role to reevaluate proposals; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. We find that the evaluation here was unobjectionable.

With respect to the establishment of CWS, the protester is correct that it was established on February 23, 2007, prior to the award to SAIC. Protester's Comments, July 9, 2007, exh, 1. However, the record shows that, in reaching its conclusion relating to the establishment of the new entity, the agency relied on PWC's own proposal materials submitted prior to that date; PWC's initial proposal was submitted in September 2006, and its answers to the agency's discussion questions were submitted in November 2006, and on February 22, 2007. AR exhs. 5A, 10A. None of these materials showed the existence of CWS as an entity at that point in time. Simply stated, there was nothing unreasonable in the agency's conclusion that PWC was proposing a newly-formed entity to perform its environmental risk management functions.

The record also supports the agency's conclusion that CWS apparently did not have existing ES&H policies and procedures in place, and that they would be establishing these policies and procedures after award. For example, in responding to the agency's discussion question asking PWC to provide a detailed description of its organizational team responsible for managing compliance with environmental rules and regulations, PWC stated:

[deleted]

AR exh. 10A, Discussion Responses, Dec. 18, 2006, at 13-14; see also, AR exh. 10A, Discussion Responses, Feb. 22, 2007, at 6-11 (wherein PWC describes the responsibilities of its ES&H personnel as including, among other things, developing and implementing ES&H policies); AR exh. 5A, at III.3.2-16 (PWC proposed to implement a comprehensive HAZMAT/HAZWASTE plan).⁵ PWC has not shown that its proposal elsewhere included information showing that it had pre-existing ES&H policies and procedures that it offered to use in performance of the contract and, based upon the materials presented, the agency reasonably concluded that PWC did not have an ES&H program in place.

In addition, the record shows that the agency reasonably concluded that CWS (predominantly Weskem Services) had experience principally in handling nuclear materials as opposed to managing chemicals and petroleum products in the context of a supply chain management contract. This conclusion was based primarily on the results of the environmental preaward survey conducted at DOE's facility at Oak Ridge, Tennessee, where Weskem Services performs hazardous waste disposition services. A slide presentation (included in the record) that was provided to the agency during the preaward survey describes Weskem's key capabilities and experience at various DOE facilities as the [deleted]. E.g., AR, exh. 11B, at BATES 62. While the protester is correct that the described activities are not exclusively associated with handling nuclear materials (as opposed to other hazardous materials), we think the description sufficiently emphasizes nuclear materials to support the agency's conclusion that this was the predominant area of CWS's experience. Moreover, none of the cited experience involves handling these materials in the context of a supply chain management requirement, as contemplated under the RFP. These considerations, together with CWS's apparent lack of pre-existing policies and procedures to manage the type of environmental risks presented by the subject requirement, led the agency to find that CWS's experience lay primarily in other hazardous materials related work. We find that the agency's conclusions were reasonable.

⁵ The agency report also contains materials gathered during the PWC preaward survey. Those materials include a proposal dated December 20, 2006 from a software concern, Dolphin Software, Inc., to sell chemical management software to the protester. AR exh. 11B, at BATES 67 et seq.

Finally, with respect to PWC's allegation that the agency failed to recognize that SAIC would need to integrate its team of contractors, nothing in the record shows that SAIC was dependent upon any of its teaming partners to develop and implement its ES&H policies and procedures, as was the case with the protester. Rather, the record shows that SAIC had pre-established, well-developed ES&H policies and procedures that it intended to use upon award. AR exh. 10B, at BATES 167-176. The fact that SAIC was partnering with other concerns was not relevant to the agency's conclusion that SAIC proposed the best environmental risk management proposal; in contrast, as concluded above, the agency was legitimately concerned that PWC's approach would require a newly-established entity to develop and implement an environmental risk management plan that did not exist. In sum, there was no basis for the agency to downgrade SAIC's proposal in this area simply because the firm was teaming with several contractors.

PAST PERFORMANCE EVALUATION

PWC maintains that the agency unreasonably determined that SAIC's past performance was more relevant than its own. In this regard, PWC's protest focuses on SAIC's six regional maintenance repair and overhaul (MRO) prime vendor contracts given as past performance examples. According to the protester, the agency erroneously concluded that these contracts were substantially similar to the current requirement. In this respect, the protester maintains that SAIC's MRO contracts do not have a critical element required under the current contract, namely, a requirement to handle vendor managed inventory (VMI). According to the protester, VMI contracts are unique in that they require the contractor to invest in inventory by purchasing goods in advance and selling them as orders are received. Protester's Comments, July 9, 2007, at 20. The protester maintains that the risks associated with this type of contract are markedly different from those under other kinds of supply contracts.

This argument is without merit. The protester is incorrect regarding both what constitutes VMI supply chain management services, and the services performed by SAIC under its MRO contracts. The RFP does not describe VMI as vendor-purchased-and-managed inventory. According to the RFP, "Vendor Managed Inventory (VMI) refers to DLA owned material stored at or managed through a vendor location based on contractual arrangements (see Section 3.1.4)." RFP § C, at 9. Section 3.1.4 of the SOW in turn describes how and when DLA-owned inventory will be transferred from government depots to the contractor's facilities to be sold as VMI. RFP § C, at 10-11.

As for SAIC's MRO contracts, the record shows that they are essentially identical to the current requirement in that they require precisely what the protester maintains are VMI services, as well as VMI services as described in the RFP. SAIC's proposal describes these contracts as:

Supply chain management, purchasing and distribution of facilities maintenance products (plumbing, electrical, heating/ventilating/air conditioning, tools, paints, containers, prefabricated structures, lumber, hardware and assorted industrial materials) for more than [deleted] ordering activities at federal installations in five geographic regions CONUS [continental United States] and one OCONUS [outside the continental United States]

SAIC Proposal, vol. 4, at 1-1. That same description goes on to state:

SAIC is performing CMS [chemical management services] for chemicals, POLs, aerosols, paints, epoxies, cleaners and sealants, including NSNs [national stock numbers] covered under the Chemicals/POLs contract (e.g. acetone, methyl ethyl ketone and solid film aerosol lubricant). We established chemical/HAZMAT storefront operations at [deleted], and transitioned chemical/HAZMAT management functions from the government to SAIC, which included the physical transfer of government-owned inventory to SAIC. We use SAIC's [deleted] system to perform forecasting, purchasing, inventory management, and distribution of chemicals/POLs to points-of-use (POU) lockers strategically located at production areas. [deleted] ensures adequate inventory levels are maintained to prevent stockouts. SAIC also inputs receipts into the [deleted], providing information to end-user's environment and safety departments for local, state, federal, EPA reporting, shelf-life management, reporting on government inventory levels and value, and compliance with depot environment and safety regulations.

Id. Thus, contrary to the protester's assertion, SAIC's MRO contracts include not only those services the protester incorrectly maintains are VMI services under the current solicitation, but also VMI services as defined under the RFP. Given that the protester has not advanced any evidence to show that SAIC's MRO contracts do not encompass essentially the same services as those called for under the RFP, we conclude that the agency reasonably found that SAIC's past performance--more specifically, its MRO contracts--was more relevant than PWC's.

PRICE EVALUATION

PWC objects to the agency's price analysis, specifically, its calculation of the offerors' material prices, maintaining that it provided an irrational basis for the award decision. The agency calculated the offerors' material prices by first establishing estimated total material prices without adjusting those prices to account for potential price increases due to application of the RFP's economic price adjustment (EPA) clauses. Those calculations showed that PWC's total evaluated price, including fees (unadjusted) was \$1,717,367,601.59, while SAIC's was

\$1,730,958,436.84.⁶ AR exh. 13 at 16. The agency then calculated prices using what it referred to as “best case” and “worst case” EPA scenarios. In calculating the best case scenarios, the agency applied an increase to the prices equal to the average historical increase in prices over the last 10 years for the commodities in question; for chemical prices, the agency applied an annual price increase of 3.5 percent, and for POLs 12.3 percent. *Id.* For the worst case scenarios, the agency applied a price increase equal to the highest annual increase in prices over the last 10 years;⁷ for chemicals, 10 percent, and for POLs, 38 percent. *Id.* The agency then calculated the prices using four combinations of these scenarios; best case chemicals/best case POLs (BCC/BCP), worst case chemicals/ best case POLs (WCC/BCP), best case chemicals/worst case POLs (BCC/WCP), and worst case chemicals/worst case POLs (WCC/WCP). *Id.* Finally the agency took an average of these calculations to arrive at a fifth price scenario. *Id.* The agency’s calculations showed the following:

	SAIC	PWC
	Price	Price
BCC/BCP	\$2.355B	\$2.346B
WCC/BCP	\$2.601B	\$2.600B
BCC/WCP	\$5.404B	\$5.414B
WCC/WCP	\$5.652B	\$5.667B
Average	\$4.003B	4.007B

Id. The agency found from these calculations that SAIC had the lowest evaluated price in three of the five scenarios (WCC/WCP, BCC/WCP and average), while PWC had the lowest evaluated price in two (BCC/BCP and WCC/BCP). The SSA concluded that, because SAIC had a price advantage in three of the five scenarios, it had a “razor thin” price advantage over PWC. AR exh. 17 at 16.

⁶ For purposes of establishing material prices, the RFP distinguished between “cost-driver” and “non-cost-driver” items. Offerors were required to propose unit prices for the cost driver items, while the government established the unit prices for the non-cost-driver items. These unit prices then were multiplied by anticipated demand quantities established by the agency, and then multiplied again by 10 (the number of years of contract performance) to arrive at an estimated material contract value, unadjusted by the RFP’s EPA clauses. RFP § M, at 4.

⁷ For POLs, the agency actually used the second highest, rather than the highest annual increase (49.92 percent) during the last 10 years, reasoning that, due to volatility, this would be more realistic. AR exh. 19, at BATES 67.

PWC asserts that its evaluated price was lower than SAIC's when calculated without adjustment for the EPA scenarios, and that the agency ignored its pricing advantage by employing the EPA scenarios. The protester also asserts that the agency unreasonably determined that the BCC/BCP scenario was the least likely to occur, and actually should have concluded that it was the most likely because it took into consideration price changes over a 10-year period. PWC argues additionally that the agency's worst case EPA scenarios were unrealistic, because they employed the highest historical rate of price increase for each of 10 years, a scenario that the protester maintains is not likely to occur. Finally, PWC asserts that the agency's conclusion that SAIC had a razor thin price advantage was irrational because it was based on consideration of the fifth, averaged, calculation; the protester maintains that, in fact, it was a dead heat between the two offerors, with each having lower evaluated prices in two of the four scenarios that were not averaged.

We have no basis to object to the price evaluation. First, the RFP specifically advised offerors that the evaluation would be based on these calculations, stating as follows:

Material Prices. Material prices will be evaluated by multiplying proposed price times average demand quantities (ADQ) times 10 to arrive at an estimated material contract value unadjusted by EPA. The SSA will be provided with various EPA scenarios to more fully appreciate the effect that EPA adjustments will have on material prices and the relative difference between offers.

RFP § M, at 4. In other words, the agency's actions were entirely consistent with the terms of the solicitation. It follows that, had the agency evaluated prices as PWC suggests--unadjusted for EPA scenarios--it would have failed to evaluate proposals in accordance with the RFP.

Second, while the protester speculates that the BCC/BCP scenario is the most likely because it is based on 10 years of historical data, there was no reason for the agency to conclude that any particular scenario was necessarily more or less likely to occur during performance than any other scenario; as a practical matter, the agency will only know after contract performance which of the various EPA scenarios most closely reflects the actual performance of these pricing indexes over the next

10 years.⁸ In any case, as noted, the RFP expressly indicated that the agency would calculate various EPA scenarios in order to more fully appreciate the effects EPA adjustments would have on material prices, and the agency's use here of various EPA scenarios enabled it to consider the potential cost to the government of differing rates of cost increase. This was both consistent with the terms of the solicitation, as well as reasonable in light of the fact that the government will bear the financial liability of price increases over time.

Third, as for the protester's assertion that the agency's worst case scenarios are unrealistic, the agency notes, correctly, that it is liable for price increases of up to 40 percent per year for chemicals and up to 150 percent per year for POLs. RFP § B, at 6. The agency's calculations of the worst case scenarios used annual increases of 10 percent for chemicals and 38 percent for POLs, figures well within the government's potential liability under the contract. We conclude that the agency reasonably calculated its worst case scenarios in a manner that would reflect some (but not all) of its potential liability in its effort to estimate the most probable cost to the government in light of possible price increases that are fully supported by historical examples.⁹

Finally, as to the protester's assertion that the agency unreasonably concluded that SAIC had a "razor thin" price advantage, its objection is premised upon the assertion that use of the "average" scenario was improper. As noted above, however, we find that the agency reasonably could have used all of the various EPA scenarios in its analysis of price. In any event, the record shows that the SSA appreciated the closeness of the two firms' prices, and recognized where PWC was found to have a

⁸ In an affidavit submitted with its comments on the agency report, the protester's consultant asserts that the agency calculated the "average" scenario used in the agency's price evaluation using a weighted average, assigning a 10 percent probability to the BCC/BCP scenario, a 20 percent probability to the WCC/BCP scenario, a 30 percent probability to the WCC/WCP scenario and a 40 percent probability to the BCC/WCP scenario. Protester's Comments, July 9, 2007, exh. 2 at 4. The protester's consultant is incorrect. The record shows that, in calculating the "average" scenario, the agency used a simple mathematic calculation that expressed the mean of the four scenarios. AR exhs. 13, at 16; 17 at 16. The protester's consultant also states in his affidavit that the agency performed its calculations using only 9 years of data instead of 10. Protester's Comments, July 9, 2007, attach. 2, at 3. This assertion also is not supported by the record, which shows that, in fact, the agency consistently used 10 years of data in performing its calculations. E.g., AR exh. 14, at 1-11.

⁹ We point out that the agency did not even use the highest historical increase in POL prices in making its calculations. That figure--49.92 percent--also is within the parameters of the government's liability under the EPA clause.

price advantage over SAIC under the BCC/BCP scenario; in that circumstance, he made a cost/technical tradeoff, finding that SAIC's technical superiority was worth the slight cost premium associated with its proposal. The SSA stated:

In Price, SAIC and PWC are extremely close, with SAIC's and PWC's pricing 0.5 percent or less apart under all five escalation scenarios. SAIC has a slight edge overall due to its better pricing in three of the five scenarios, including the average scenario price. Further, even considering that PWC may be as much as 0.4 percent less than SAIC in one case (BCC/BCP), SAIC's past performance provides greater assurance of successful performance under this contract that is worth more than that slight difference in price in that one pricing scenario.

AR exh. 17 at 17. Since the record thus shows that the SSA selected SAIC over PWC where PWC enjoyed a price advantage under the scenario that it maintains is the most likely, it follows that his decision would have been no different had the firms been found to have arrived at a 'dead heat' in terms of price, as asserted by the protester.

The protest is denied.

Gary L. Kepplinger
General Counsel