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**Comptroller General  
of the United States**

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

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## **Decision**

**Matter of:** Blue Rock Structures, Inc.

**File:** B-293134

**Date:** February 6, 2004

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Command, and Kenneth Dodds, Esq., and John W. Klein, Esq., Small Business  
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General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Under request for proposals providing for award of multiple contracts, source selection authority's (SSA) decision to select lower technically rated, lower-priced proposals instead of protester's higher technically rated, higher-priced one was inadequately documented and thus could not be determined reasonable where SSA failed to furnish any explanation as to why he did not consider protester's higher-priced proposal to offer technical advantages or why he did not consider these advantages to be worth a price premium.

2. Agency properly did not apply Historically Underutilized Business Zone (HUBZone) price evaluation preference in evaluating proposals where HUBZone small business's price exceeded the price of the lowest responsive and responsible offeror by more than 10 percent.

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### **DECISION**

Blue Rock Structures, Inc., a Historically Underutilized Business Zone (HUBZone) small business, protests the award of contracts to six other firms under request for proposals (RFP) No. N62470-03-R-0839, issued by the Department of the Navy for construction services at the Marine Corps Air Station (MCAS), Cherry Point, North

Carolina.<sup>1</sup> The protester contends that the source selection authority's (SSA) "best value" determination was flawed.

We sustain the protest.

The RFP sought proposals for general construction services and contemplated the award of up to six indefinite-delivery/indefinite-quantity (ID/IQ) contracts for a base and 3 option years. In addition, the RFP described a "seed project," *i.e.*, repairs to MCAS Building 199, and sought a lump-sum price for accomplishment of this work.<sup>2</sup> The solicitation provided for award of contracts to those offerors whose proposals were determined most advantageous to the government, price and technical factors considered, with technical factors significantly more important than price in the evaluation and price to be evaluated on the basis of the price for the seed project. Technical proposals were to be evaluated on the basis of three equally weighted technical factors: past performance, management and organization, and small business subcontracting effort.<sup>3</sup> The RFP incorporated by reference Federal Acquisition Regulation (FAR) § 52.219-4 (Notice of Price Evaluation Preference for HUBZone Small Business Concerns).

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<sup>1</sup> The six firms are Virtexco Corporation, C Construction Co., Inc., C.L. Price & Associates, Joyce and Associates Construction, Inc., Shaw Beneco, Inc., and Tesoro Corporation.

<sup>2</sup> While the solicitation did not define the scope of the construction services to be furnished, a solicitation synopsis published on ESOL, the Naval Facilities Engineering Command's web site for solicitations, explained that "the work will consist of new construction, additions, renovations, alterations and repairs to buildings and structures" at the MCAS. The synopsis also furnished the following guidance with regard to award of the seed project and subsequent task orders:

After award of the initial contract(s), up to six contractors will compete for task orders based on best value, low price or low price technically acceptable to the Government. . . . The Best Value Contractor of the six IDIQ contracts will be awarded the seed project with the initial award. All six contractors will compete on subsequent task orders.

<sup>3</sup> The RFP provided for use of adjectival ratings (Excellent, Good, Satisfactory, Marginal, and Poor) in the evaluation and permitted the further differentiation of proposals through application of plus (+) or minus (-) to the adjectival ratings.

Seventeen offerors submitted timely proposals. A technical evaluation board (TEB) rated the proposals and forwarded its findings to a source selection board (SSB).<sup>4</sup> To arrive at final proposal ratings, the SSB adjusted the TEB's ratings in accordance with the following scheme: the ratings of the lowest priced proposal and all proposals with proposed prices within 10 percent of the lowest proposed price were raised one step (e.g., from Good Plus to Excellent Minus); the ratings of all proposals with proposed prices 10 to 20 percent higher than the lowest proposed price were not adjusted; and the ratings of all proposals with prices more than 20 percent higher than the lowest proposed price were lowered one step. Ratings (both before and after adjustment) of the 10 firms rated by the TEB as Good Minus or better were as follows:

<b>Offeror</b>	<b>Past. Perf.</b>	<b>Mgmt./Org.</b>	<b>Small Bus.</b>	<b>Overall</b>	<b>Adjusted overall</b>	<b>Price</b>
Tesoro	Good +	Good	Exc	Good +	Exc -	\$199,471
Joyce	Exc -	Good	Exc -	Good +	Exc -	\$210,705
CL Price	Exc -	Good	Exc -	Good +	Good +	\$229,100
Sauer	Exc -	Sat +	Exc	Good +	Good	\$293,182
Blue Rock	Good +	Good -	Exc -	Good +	Good	\$422,000
Shaw	Good +	Good -	Good	Good	Good +	\$204,694
Offeror A	Good +	Good +	Sat	Good	Good -	\$286,901
C Constr.	Sat +	Sat +	Good	Good -	Good	\$197,000
Offeror B	Sat +	Sat -	Exc -	Good -	Sat +	\$249,410
Virtexco	Good	Good -	Sat	Good -	Good	\$194,167

Technical Evaluation Board Report, Aug. 21, 2003, at 83; Source Selection Board Report, Aug. 27, 2003, at 7-9.

As noted in the table, because its proposed price was more than 20 percent higher than the lowest proposed price, Blue Rock's rating of Good Plus was lowered to Good. The adjustment scheme resulted in nine firms receiving final ratings of Good Minus or better. The SSB recommended that all nine firms be awarded contracts. It also recommended that the seed project be awarded to Virtexco, which had proposed the lowest price of \$194,167.

The SSA rejected the SSB's recommendation for nine awards, determining that six should be made instead. He also "ignored the mechanics" of the SSB's rating adjustment process and instead performed his own price/technical tradeoff to determine which proposals represented the best value to the government. SSA

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<sup>4</sup> A price evaluation board also reviewed offerors' pricing, but the only evaluation it performed was a comparison of the proposed prices for the seed project to the government estimate.

Memorandum for the File, Sept. 25, 2003, at 1. The SSA concluded that awards should be made to the four firms whose proposals the SSB had rated as Excellent Minus or Good Plus, i.e., Joyce & Associates, Tesoro Corporation, C.L. Price & Associates, and Shaw Beneco. For the remaining two awards, the SSA considered the four proposals to which the SSB had assigned adjusted ratings of Good. He analyzed the four proposals as follows:

Four firms (Sauer, Blue Rock Structures, C Construction and Virtexco) had the next highest overall rating. There is a clear distinction between these four firms based on the price differential above the Government estimate of \$468,824.<sup>5</sup> Using Virtexco, the lowest offeror, as the base price of 1.0 you have

<u>Offeror</u>	<u>Tech. Rating</u>	<u>Price</u>	<u>Price Variance</u>
Virtexco	G-	\$194,167	1.0
C Construction	G-	\$197,000	1.05
Sauer	G+	\$293,182	1.51
Blue Rock Structures	G+	\$422,000	2.17

The four offerors have price variances from 1.0 to 2.17. Based on price there is a clear break between Virtexco and C Construction who are very close in price, and Sauer and Blue Rock Structures who are considerably higher in price. Sauer and Blue Rock Structures have price variances of 1.51 and 2.17, respectively. The Source Selection Plan stated that technical was significantly more important than price. However, price still needs to be considered in the final overall ratings. Even though Sauer and Blue Rock Structures are rated higher technically than Virtexco and C Construction, when price considerations are added to the analysis, they fall below Virtexco and C Construction overall. This is due to Sauer and Blue Rock Structures having large price variances from Virtexco and C Construction. This makes Sauer and Blue Rock Structures seventh and eighth, respectively, of possible awards in my opinion.

Id. at 1-2. The SSA concluded that the remaining two awards should be made to Virtexco and C Construction and that the seed project should be awarded to Virtexco.

The protester challenges the SSA's price/technical tradeoff decision, arguing that the SSA inadequately documented his rationale for deviating from the SSB's recommendation that it be awarded a contract and for finding that the proposals of

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<sup>5</sup> This is a misstatement on the part of the SSA since all four proposed prices were in fact lower than the government estimate.

Virtexco and C Construction represent a better value to the government than its own.<sup>6</sup>

Where solicitations provide for award on a “best value” or “most advantageous to the government” basis, price and technical factors considered, agencies may make price/technical tradeoffs, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. Shumaker Trucking and Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 6. Where a price/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs. FAR § 15.308. The source selection official may furnish the explanation in the award decision, or it may be evident from the documents on which the source selection decision is based. Id. The propriety of the price/technical tradeoff decision turns not on the difference in the technical scores or ratings per se, but on whether the selection official’s judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP’s evaluation scheme. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. An agency that fails to document adequately its source selection decision runs the risk that our Office may be unable to determine that the decision was reasonable. Id.

In our view, the SSA has failed to furnish an adequate rationale for his tradeoff determination here, and thus we are unable to conclude that the determination was reasonable. As the excerpt from his selection decision quoted above shows, the SSA simply concludes, without any mention of the technical advantages of Blue Rock’s

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<sup>6</sup> The protester further argues that the Navy’s selection process here was inconsistent with its selection process under a highly similar RFP that we considered in C Constr. Co., Inc., B-291792, Mar. 17, 2003, 2003 CPD ¶ 73. According to the protester, we made it clear in that decision that where a solicitation provides for the award of multiple ID/IQ contracts, with technical merit of greater importance than price, “the correct procedure is to select the top tier offerors for award, based on technical merit, not on price for the seed project.” Protester’s Comments, Dec. 12, 2003, at 7.

While it is true that in the procurement protested by C Construction, the Navy made award to the eight offerors with the highest technical rankings, apparently without taking into consideration their seed project pricing, we were not asked to address the propriety of that determination in our decision. Instead, the protester challenged the technical evaluation of its own and other offerors’ proposals; accordingly, these are the matters that we addressed in our decision. Thus, we offered no guidance as to the correct procedure for selecting awardees under a solicitation providing for the award of multiple ID/IQ contracts, where technical was more important than price and price was to be evaluated on the basis of the price for a seed project.

higher-rated proposal or a finding that despite its higher rating, Blue Rock's proposal was essentially equal to those of Virtexco and C Construction in technical merit, that the latter two proposals represent better value than the protester's because they are significantly lower in price. A tradeoff analysis that fails to furnish any explanation as to why a higher-rated proposal does not in fact offer technical advantages or why those technical advantages are not worth a price premium does not satisfy the requirement for a documented tradeoff rationale, particularly where, as here, price is secondary to technical considerations under the RFP's evaluation scheme.<sup>7</sup> See Preferred Sys. Solutions, Inc., B-292322 et al., Aug. 25, 2003, 2003 CPD ¶ 166.

In addition to failing to furnish an adequate rationale for his selection of Virtexco and C Construction for award, the SSA failed to furnish an adequate rationale for his selection of Shaw Beneco. The SSA justified his selection of Shaw on the grounds that it had "a technical rating of Good+ and low competitive pricing." SSA Memorandum for the File, Sept. 25, 2003, at 1. Shaw's technical rating of Good Plus resulted from the SSB's technical score adjustment scheme, however; *i.e.*, Shaw's original technical rating (of Good) was raised one step as credit for its low price. Accordingly, the SSA in essence gave Shaw double credit for its low price by considering both its adjusted rating and its price. Since Shaw's technical rating, as unadjusted, was lower than the technical ratings of both Blue Rock and Sauer, and its price was higher than the prices of Virtexco and C Construction, we think that it was unreasonable for him to select Shaw for award without comparing its combination of technical merit and price to those of the other four offerors.

Next, the protester argues that the agency improperly failed to apply the HUBZone price evaluation preference (PEP) provided for in 15 U.S.C. § 657a(b)(3)(A) (2000) and FAR § 19.1307, and incorporated into the RFP via FAR § 52.219-4, in evaluating the prices offered by Virtexco and Shaw Beneco, which are large businesses.<sup>8</sup>

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<sup>7</sup> While, as noted above, the rationale for an SSA's tradeoff determination may be evidenced in the documentation on which the SSA relied in reaching his conclusion, such as the SSB report, that was not the case here. The SSB engaged in no tradeoff analysis with regard to the Blue Rock, Virtexco, and C Construction proposals; rather, it recommended awards to all.

<sup>8</sup> The protester also contends that the agency awarded its proposal an unreasonably low rating of Satisfactory Minus for bonding capability, which was a subfactor under the management and organization evaluation factor. As noted by the agency in its report, it is clear from the record that improving the protester's rating on the bonding capability subfactor, which was the least important of the four listed under management and organization factor, would not have raised the protester's overall rating under the factor. Accordingly, we agree with the agency that even assuming arguendo that the rating of Satisfactory Minus was in error, it resulted in no prejudice to Blue Rock.

Section 657a(b)(3)(A) of 15 U.S.C. provides that:

Subject to subparagraph (B) [which applies to purchases of agricultural commodities by the Secretary of Agriculture], in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

FAR § 19.1307 provides in relevant part as follows:

- (a) The price evaluation preference for HUBZone small business concerns shall be used in acquisitions conducted using full and open competition. The preference shall not be used—
  - (1) In acquisitions expected to be less than or equal to the simplified acquisition threshold;
  - (2) Where price is not a selection factor so that a price evaluation preference would not be considered (e.g., Architect/Engineering acquisitions);
  - (3) Where all fair and reasonable offers are accepted (e.g., the award of multiple award schedule contracts).
  
- (b) The contracting officer shall give offers from HUBZone small business concerns a price evaluation preference by adding a factor of 10 percent to all offers, except—
  - (1) Offers from HUBZone small business concerns that have not waived the evaluation preference;
  - (2) Otherwise successful offers from small business concerns;
  - (3) Otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in 25.403; and
  - (4) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government (. . .).<sup>9</sup>

The agency maintains that it properly did not apply the PEP in evaluating proposals here because the statute establishing the preference, noted above, limits its

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<sup>9</sup> FAR § 52.219-4, which was incorporated into the RFP by reference, contains language substantially similar to FAR § 19.1307(b).

application to circumstances in which the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror, and the protester's price here was more than 10 percent higher than any of the six awardees. The Small Business Administration (SBA), from whom we solicited comments on this issue, agreed with the agency's analysis, further noting that "to the extent FAR § 19.1307 and FAR clause 52.219-4 imply that there is no requirement that a HUBZone SBC's price must be within 10 percent of the lowest offeror's price in order for the HUBZone PEP to be applicable, these provisions must be read in the context of the clear statutory language that [they] implement[]," which makes clear that "[t]he HUBZone PEP is not applied if a HUBZone SBC's price exceeds the price of 'the otherwise lowest, responsive, and responsible offeror' by more than 10 percent." Letter from SBA to GAO, Feb. 3, 2004, at 3.

An agency's interpretation of a statute that it is responsible for implementing is entitled to substantial deference. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). If the agency's interpretation is reasonable, it should be upheld. Appalachian Council, Inc., B-256179, May 20, 1994, 94-1 CPD ¶ 319 at 16. Here, the SBA is responsible for implementing the statutory HUBZone preferences, and, given the deference that we afford the SBA's view in these circumstances, we cannot conclude that the SBA has unreasonably interpreted § 657a(b)(3)(A) as providing for application of the PEP only where a HUBZone SBC's price exceeds the price of the otherwise low, responsive, and responsible offeror by less than 10 percent.<sup>10</sup>

We recommend that the SSA make a new source selection decision containing a comparative analysis of the proposals and the rationale for any price/technical tradeoffs. If the new source selection decision determines that the proposal of an offeror or offerors other than the six originally selected represents the best value to the government, the agency should terminate the awards to any offerors not again selected and make award to any additional offerors selected. We also recommend that the protester be reimbursed for the costs of filing and pursuing its protest. 4 C.F.R. § 21.8(d)(1) (2003). In accordance with our regulations, Blue Rock's

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<sup>10</sup> The Navy also argued that it was proper for it not to apply the PEP in evaluating the proposals here because, pursuant to FAR § 19.1307(a)(3), the PEP does not apply to a multiple award contract. We disagree. Section 19.1307(a)(3) provides for non-application of the PEP in only a subgroup of multiple award procurements, *i.e.*, those in which "all fair and reasonable offers are accepted (*e.g.*, the award of multiple award schedule contracts.)" Here, as noted by the SBA in its comments to our Office, the agency did not accept all fair and reasonable offers; thus, the PEP was not rendered inapplicable to the procurement by virtue of FAR § 19.1307(a)(3).



certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of the decision.

The protest is sustained.

Anthony H. Gamboa  
General Counsel