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# Decision

**Matter of:** Austal USA, LLC

**File:** B-417593

**Date:** August 28, 2019

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Brian A. Darst, Esq., Odin Feldman Pittleman PC, for the protester.  
John W. Chierichella, Esq., Keith R. Szeliga, Esq., Katie Calogero, Esq., and Adam A. Bartolanzo, Esq., Sheppard Mullin Richter & Hampton LLP, for Huntington Ingalls, Inc., the intervenor.  
Rhonda L. Russ, Esq., and Mayank Dixit, Esq., Department of the Navy, for the agency.  
Kasia Dourney, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging an agency's assignment of moderate risk to protester's technical proposal for its intended use of subcontractors is denied where the solicitation provided that reliance on subcontractors would invite higher scrutiny in the evaluation process.
2. Protest challenging an agency's evaluation of an awardee's technical proposal as meriting low risk for its intended use of a wholly-owned subsidiary is denied where the solicitation did not provide that proposals would be downgraded for relying on a corporate affiliate in performing the contract, and the agency's conclusion was reasonable.

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## DECISION

Austal USA, LLC (Austal) of Mobile, Alabama, protests the award of a contract to Huntington Ingalls, Inc. (HII) under request for proposals (RFP) No. N00024-18-R-4313 issued by the Department of the Navy, Naval Sea Systems Command for planning yard support for littoral combat ships. Austal objects to the Navy's evaluation of its own and HII's technical proposals. The protester also challenges the agency's evaluation of the awardee's cost proposal.

We deny the protest.

## BACKGROUND

The solicitation, issued on July 12, 2018,<sup>1</sup> sought proposals for planning yard support services to include engineering, technical, planning, ship configuration, data, and logistics lifetime support efforts required for littoral combat ships (LCS).<sup>2</sup> AR, Tab 1, RFP at 59. The RFP, as amended, contemplated the award of a cost-reimbursement contract with a 1-year base period, and five 1-year options. RFP at 2-43, 169.

The RFP advised that proposals would be evaluated on the basis of cost, and the following five non-cost factors, in descending order of importance: (1) technical approach; (2) management approach; (3) efficiencies; (4) transition plan; and (5) past performance.<sup>3</sup> RFP at 240-41. The first three non-cost factors included multiple equally-weighted subfactors, as follows:

### Factor I: Technical Approach

Subfactor 1 – Planned Maintenance System (PMS) Planning

Subfactor 2 – Chief of Naval Operations (CNO) Availability Planning

Subfactor 3 – Capabilities and Facilities

Subfactor 4 – Quality Assurance (QA) Processes, Procedures and Management

Subfactor 5 – Scheduling and Orchestrating Maintenance and Modernization

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<sup>1</sup> The solicitation was subsequently amended four times, before it closed on September 5, 2018. Agency Report (AR), Tab 2, amends. to the RFP; AR, Tab 1, RFP at 1.

<sup>2</sup> Specifically, planning yard efforts include, but are not limited to, fleet modernization program planning; ship change planning and development; operating cycle integration program management; work integration package engineering; ship configuration logistics support information system support and configuration data management; research engineering and modeling; provisioned items order and other integrated planning yard material support; technical documentation maintenance and updates including engineering operational sequencing system and combat system operational sequencing system; naval standard engineering data repository system input and data management; interface and coordination with regional maintenance centers; and managing documentation related to selected class ship record and efforts regarding standardization of hull mechanical and electrical engineering. AR, Tab 1, RFP at 59.

<sup>3</sup> Section M of the RFP stated that the “Technical Approach (Factor I) is significantly more important than Management Approach (Factor II), which is more important than Efficiencies (Factor III), which is more important than Transition Plan (Factor IV), which is more important than Past Performance (Factor V).” RFP at 241.

Factor II: Management Approach  
Subfactor 1 – Management Plan  
Subfactor 2 – Subcontract Management  
Subfactor 3 – Staffing Personnel

Factor III: Efficiencies  
Subfactor 1 – Lifecycle Cost Reduction Initiatives  
Subfactor 2 – Incorporation of Previous Experience/Lessons Identified.

RFP at 240.

Regarding the cost factor, the solicitation provided offerors with the level of effort in terms of estimated numbers of labor hours for each year of the contract, and offerors were to propose direct and indirect rates for those hours. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2.

The solicitation stated that, for purposes of award, all non-cost factors, when combined:

are significantly more important than the Total Evaluated Cost (Factor VI). However, the significance of Total Evaluated Cost as an evaluation factor will increase with the degree of equality in overall merit of competing proposals under the non-cost factors.

RFP at 241 (emphasis in original). The solicitation described the adjectival ratings and definitions to be used in evaluating the proposals, anticipating a combined technical/risk method of assessment of proposals, to include "consideration of risk in conjunction with the strengths, weaknesses, significant weaknesses, uncertainties and deficiencies" identified in the proposals, and the degree of risk of unsuccessful performance. RFP at 242-43. The RFP provided that a proposal "need not have all of the attributes of the rating definitions . . . to be eligible for the rating adjective specified." RFP at 242.

As relevant here, the RFP advised offerors that their reliance on subcontractors could result in an increased risk assessment:

Risk will be increased the more the Offeror's experience and understanding is based primarily upon subcontractor team members rather than the Offeror themselves. The Government considers that personnel who are not well established employees of the Offeror increase the Risk Assessment.

Id. at 243 (emphasis added). Moreover, the RFP advised that the evaluation of risk would be based upon a subjective assessment rather than a mechanical tallying of weaknesses:

Risk assessment will be based on a subjective judgment of the likelihood that the Offeror will be able to successfully perform the contract in the manner proposed. Consideration for the degree that the

Offeror has demonstrated the ability to perform, in the manner proposed, is part of the proposal risk assessment analysis and the resulting adjectival rating.

Id. (emphasis added).

The Navy received proposals from three offerors: HII, General Dynamics-Bath Iron Works (GD-BIW) and Austal. COS/MOL at 7. GD-BIW is the incumbent contractor on the planning yard for LCS class vessels. Id. After evaluating the initial proposals, the Navy opened discussions on December 20, 2018, with all three offerors, and subsequently requested final proposal revisions (FPRs) by February 19, 2019. Id. at 8. All three offerors submitted timely responses. Id.

As relevant here, the agency evaluated the FPRs of HII and Austal as follows:

	HII	Austal
<b>TECHNICAL CAPABILITY</b>	GOOD	ACCEPTABLE
Subfactor 1: PMS Planning	Acceptable	Good
Subfactor 2: CNO Availability Planning	Outstanding	Good
Subfactor 3: Capabilities and Facilities	Good	Acceptable
Subfactor 4: QA Processes, Procedures, and Management	Good	Acceptable
Subfactor 5: Scheduling and Orchestrating Maintenance and Modernization	Good	Acceptable
<b>MANAGEMENT APPROACH</b>	GOOD	ACCEPTABLE
Subfactor 1: Management Plan	Outstanding	Acceptable
Subfactor 2: Subcontract Management	Good	Acceptable
Subfactor 3: Staffing Personnel	Acceptable	Acceptable
<b>EFFICIENCIES</b>	GOOD	ACCEPTABLE
Subfactor 1: Lifecycle Cost Reduction	Good	Acceptable
Subfactor 2: Incorporation of Previous Experience/Lessons Identified	Good	Acceptable
<b>TRANSITION PLAN AND SCHEDULE</b>	GOOD	ACCEPTABLE
<b>PAST PERFORMANCE</b>		
Relevancy	Very Relevant	Somewhat Relevant
Confidence	Satisfactory Confidence	Satisfactory Confidence
<b>TOTAL EVALUATED COST</b>	\$937,416,022	\$926,554,156

Supplemental AR (SAR), Source Selection Advisory Council Report (SSAC Report), at 6, 11.

Specifically, Austal's proposal received 14 strengths and 5 weaknesses. Id. at 10. HII's proposal received 16 strengths and no weaknesses. Id. at 8. The agency assigned 12

moderate risk and 2 low risk ratings to Austal's proposal, and 3 moderate risk and 11 low risk ratings to HII's proposal. AR, Source Selection Evaluation Board (SSEB) Report for Austal at 1; SAR, SSEB Report for HII at 1. In its proposal, Austal indicated it would perform 43.5 percent of the work, while the remaining 56.5 percent would be performed by its four main subcontractors: [DELETED]. AR, Tab 3, Austal's FPR Non-Cost Proposal at I-85. Furthermore, of the 43 percent of work that was to be allocated to [DELETED], [DELETED] would perform approximately 41 percent, with the remaining 59 percent subcontracted to lower tier subcontractors: [DELETED], and various original equipment manufacturers. COS/MOL at 15.

The awardee, on the other hand, proposed to utilize its wholly-owned subsidiary, AMSEC, LLC,<sup>4</sup> with HII maintaining "overall responsibility for management and accountability to the Navy." SAR, HII Tech. Proposal at FII-S2-85. In this regard, HII planned to self-perform 37 percent of the work and to perform the other 63 percent of the work through AMSEC. HII's proposal specified that it would use an Interdivisional Work Order (IWO) agreement with Ingalls Shipbuilding division and AMSEC to facilitate the intercompany work. Id.

On April 26, 2019, the Navy notified Austal that it had selected HII for award. COS/MOL at 8; Protest at 13. After requesting and receiving a debriefing, Austal filed this protest with our Office.

## DISCUSSION

Austal raises several challenges to the Navy's award to HII, largely concentrating on the allegedly improper evaluation of its own and HII's non-cost proposals, and unreasonable evaluation of HII's cost proposal. Austal primarily challenges the agency's assessment of moderate risk for Austal's proposed use of subcontractors while not assessing a higher degree of risk to HII, which proposed to delegate more work to its corporate affiliate; such differing assessments, the protester alleges, amount to disparate treatment. For the reasons discussed below, we find no basis to sustain the protest.<sup>5</sup>

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<sup>4</sup> AMSEC, LLC is a wholly-owned subsidiary of HII, and is now called HII Fleet Support Group, LLC. SAR, encl. 3, HII Tech. Proposal at FII-S2-87.

<sup>5</sup> Austal also raises other collateral arguments. For example, Austal argues that the Navy unreasonably assigned multiple weaknesses and improperly ignored or discounted important advantages in Austal's proposal using evaluation side "notes," and that this approach was inconsistent with the evaluation methodology in section M of the RFP. Protest at 15-16, 20-21. While our decision does not specifically address every argument, we have considered them all and find that none provides a basis upon which to sustain the protest.

## Assignment of Moderate Risk to Austal's Proposal

Austal objects to the agency's overall assessment of moderate risk to multiple factors and subfactors of its proposal.<sup>6</sup> Specifically, the protester challenges the agency's assignment of a moderate risk rating for three of the subfactors under the technical approach factor, on the basis that the agency did not identify any significant weaknesses or other weaknesses for two of those subfactors. Protest at 20. Austal contends that such an assessment is inconsistent with the solicitation's definition of moderate risk, which, according to Austal, limited the assignment of moderate risk to proposals containing a "significant weakness or combination of weaknesses which may potentially cause disruption to schedule, increased cost or degradation of performance." Protest at 21. In addition, the protester claims that the assignment of moderate risk, under multiple subfactors, for its proposal's significant reliance on subcontractors, was an improper double-counting. Id. at 29. Finally, Austal challenges, as inconsistent with the evaluation criteria, the agency's assignment of a strength for "leverag[ing] the knowledge and experience of [DELETED] . . . and [DELETED]" under the technical approach factor while, at the same time, assigning moderate risk for the same aspect of Austal's proposal under the management approach factor. Id. at 43.

The agency responds that strengths and moderate risk can both be assigned to the same aspect of a proposal, as long as such an assessment is reasonable and consistent with the terms of the solicitation. COS/MOL at 13. With respect to Austal's reading of the RFP's moderate risk definition, the Navy explains that a solicitation must be read as a whole and in a manner that gives effect to all of its provisions, contending that here, the protester "conveniently ignores" the language from the solicitation advising of an increased risk assessment "the more the offeror's experience and understanding is based primarily upon subcontractor team members rather than the offeror themselves." Id. at 10.

In support of its response, the agency also points to the solicitation's language stating that the overall risk assessment was to be based on the "subjective judgment" of the evaluators, assessed on the basis as to whether the offeror would be "able to perform the contract in the manner proposed," and the solicitation language providing that a proposal "need not have all of the attributes of the rating definitions . . . to be eligible for the rating adjective specified." Id. at 11. Hence, according to the Navy, it would be unreasonable to interpret the RFP's definition of moderate risk as limiting the assignment of moderate risk to instances of a significant weakness or a combination of weaknesses under a factor or subfactor. Id. at 10. Instead, the solicitation's language afforded the evaluators certain flexibility in this regard, and was based on various factors beyond the presence of weaknesses or significant weaknesses. Id.

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<sup>6</sup> Austal characterizes the agency's risk assessment as "the same pattern of downgrading Austal" under all non-cost factors, in spite of its recognized strengths and in the absence of any significant weaknesses or weaknesses. Protest at 22.

The evaluation of proposals is a matter within the discretion of the contracting agency. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4; Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. In reviewing an agency's evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. MicroTechnologies, LLC, *supra*; STG, Inc., B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7. A protester's disagreement with the agency's judgment, by itself, does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

Here, as an initial matter, we reject the protester's suggestion that the definition of "moderate risk" used in the solicitation precluded the agency from assessing Austal's proposal a moderate risk rating under any of the various factors or subfactors where the agency did not also identify a corresponding significant weakness or weaknesses. As noted by the Navy, the solicitation clearly afforded the agency great flexibility in the assignment of ratings where it established that a proposal "need not have all of the attributes of the rating definitions . . . to be eligible for the rating adjective specified." RFP at 242. Such language is consistent with the long standing principle that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. *See, e.g., Epsilon Sys. Solutions, Inc.*, B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 8. Where the evaluation and source selection decision reasonably consider the underlying basis for the ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable, and consistent with the terms of the solicitation, the protester's disagreement over the actual numerical, adjectival, or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. General Dynamics, Am. Overseas Marine, B-401874.14, B-401874.15, Nov. 1, 2011, 2012 CPD ¶ 85 at 10.

Turning to the protester's challenge to the agency's assessment of moderate risk to Austal's proposal, we have no basis to question the agency's assessment in this regard. The solicitation defined risk as the "potential for unsuccessful contract performance" based on the probability of "disruption of schedule, increased cost or degradation of performance, the need for increased government oversight, and the likelihood of unsuccessful contract performance." RFP at 242. That definition was further refined by specific language regarding the risk to be associated with a potential offeror's reliance on subcontractors. Specifically, the solicitation provided as follows:

Risk will be increased the more the offeror's experience and understanding is based primarily upon subcontractor team members rather than the offeror themselves. The Government considers that personnel who are not well established employees of the offeror increase the risk assessment.

RFP at 243.

Moreover, the solicitation afforded the evaluators the discretion to assess, based on their “subjective judgment,” the likelihood of an offeror’s successful performance of the requirements in the manner proposed. Id. Furthermore, the RFP clarified that:

Consideration for the degree that the Offeror [, as compared to its subcontractor], has demonstrated the ability to perform, in the manner proposed, is part of the proposal risk assessment analysis and the resulting adjectival rating.

Id. In this context, the proposed use of subcontractors was to be considered by the evaluators in making their “subjective judgment,” and warranted a higher level of scrutiny, potentially resulting in assessment of a higher degree of risk associated with an offeror’s proposal. Specifically, not only did Austal propose to subcontract over half the requirements, it proposed to use additional layers of subcontracts, with second-tier subcontractors to be managed by one of its main subcontractors, [DELETED]. See, e.g., AR, SSEB Report for Austal at 5. As noted above, Austal proposed to subcontract 56.5 percent of the work. Nearly 43 percent of the total effort was to be subcontracted to [DELETED], which, in turn, proposed to subcontract approximately 59 percent of its own effort to [DELETED], and various original equipment manufacturers. COS/MOL at 15. We find nothing unreasonable in the agency’s assessment that such an approach--proposing subcontractors over which neither Austal nor [DELETED] exercise any institutional or organizational control--warranted a moderate degree of risk regarding the successful performance of the requirements. We also see no basis to conclude that the Navy improperly “double-counted” the protester’s heavy reliance on subcontractors under multiple subfactors, as it appears that this element of Austal’s proposal was relevant and reasonably related to multiple solicitation subfactors. See, e.g., InnovaTech, Inc., B-402415, Apr. 8, 2010, 2010 CPD ¶ 94 at 6. Accordingly, this protest ground is denied.

#### Treatment of Subcontractors versus Corporate Affiliate

Austal argues that the agency treated the two offerors disparately because Austal’s proposal was assessed moderate risk for delegating approximately 56 percent of the work to its subcontractors, yet, the agency did not assess HII’s proposal any risk for “subcontracting” even more work--63 percent of the requirements--to its corporate affiliate, AMSEC. Protester’s Supp. Comments at 13. In the protester’s view, there should have been no distinction between its reliance on subcontractors and HII’s reliance on an affiliate to perform the work. In this regard, Austal insists that HII “would have to procure . . . services from [AMSEC] through some kind of subcontract vehicle,” and argues that the agency failed to recognize that the awardee’s corporate affiliate, [AMSEC], was in fact a “subcontractor” to HII. Protest at 53-55; Protester’s Supp. Comments at 7-8, 13.

The agency explains that unlike the protester, which relied on “multiple tiers of subcontractors over which the protester has no institutional or organizational control,”



HII proposed to use its wholly-owned subsidiary, which provided an assurance of “internal accountability within a single corporate management framework.” Supp. MOL at 4-5. The agency highlights the fact that Austal’s “four first tier subcontractors-- [DELETED]--all operate independent of Austal,” meaning, they “would all perform under separate subcontracts, with separate terms and conditions, with independent management.” Id. at 4. The Navy contrasts Austal’s proposal with HII’s plan “to perform the entire contract, not via a subcontract, but through an interdivisional work order (‘IWO’) process between HII and its affiliate, [AMSEC].” Id. at 4-5.

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors’ proposals. See, e.g., Abacus Tech. Corp.; SMS Data Prods. Grp., Inc., B-413421 et al., Oct. 28, 2016, 2016 CPD ¶ 317 at 11. Here, the record reveals that there were material differences between Austal’s and HII’s proposals. Austal proposed to subcontract approximately 56.5 percent of the effort to four independent, third-party entities, over which it exercises no institutional or organizational control. This lack of control was further diluted by the fact that much of the effort was to be subcontracted to sub-tier, independent third-party subcontractors, over which neither Austal nor its subcontractors exercise institutional or organizational control.

HII’s proposal, on the other hand, anticipated performing the work with an affiliate entity, a wholly-owned subsidiary of HII that is under common ownership and management, which HII would manage through a comprehensive IWO. While Austal insists that the agency should have recognized that “AMSEC is a ‘subcontractor’ and that this IWO is a subcontract,” it was not unreasonable for the agency to conclude that such an arrangement warranted a lower assessment of risk. Protester’s Supp. Comments at 8.<sup>7</sup> A corporate affiliate, particularly a wholly-owned subsidiary, as in this case, by its nature reflects an alignment of interests, which can reasonably be understood as “closer” than that of a third-party subcontractor arrangement. Our Office has recognized this difference in the context of cases raising impaired objectivity organizational conflicts of interest, where the presumption for corporate affiliates is that those interests are more closely aligned than those between a prime and a third-party subcontractor. See, e.g.,

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<sup>7</sup> To the extent the protester suggests that the agency should have questioned HII’s description of AMSEC as its corporate affiliate, we find no evidence in the record--and Austal does not allege in either its initial protest or supplemental filings--that the awardee in any way misrepresented the relationship between the corporate parent and its affiliate, such that the agency should have inquired into the accuracy of AMSEC’s status as HII’s corporate affiliate. In evaluating proposals, an agency may reasonably rely upon information provided by an offeror in its proposal as accurate. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 13; cf. Alpha Marine Servs., LLC, B-292511.4, B-292511.5, Mar. 22, 2004, 2004 CPD ¶ 88 at 4 (agency may not accept representations in a proposal at face value where there is significant countervailing evidence reasonably known to the agency evaluators that should or did create doubt as to whether the representations are accurate).

L-3 Services, Inc., B-400134.11, B-400134.12, Sep. 3, 2009, 2009 CPD ¶ 171 at 13-15 (distinguishing between corporate affiliates and subcontractors for purposes of finding impaired objectivity organizational conflict of interest).

Moreover, as noted above, section M of the solicitation expressly advised that an offeror's reliance on subcontractors would invite a higher degree of scrutiny in the evaluation process. RFP at 243. In contrast, there was nothing in the RFP suggesting that offerors would be downgraded for relying on the resources of a corporate affiliate in performing the contract. HII specifically represented in its proposal that the resources of AMSEC would be committed to the contract, listing particular contract line item numbers which AMSEC would perform. SAR, HII Tech. Proposal at FII-S2-85. Accordingly, we find nothing unreasonable in the agency's conclusion that HII's proposed use of its corporate affiliate, assuring a "commonality of ownership, control, and processes" between HII and AMSEC, warranted a different assessment of risk from the risk between a prime contractor and its varying tiers of subcontractors. Supp. MOL at 5.

#### Allegations of HII's Lack of Experience

Austal also contends that the Navy improperly disregarded HII's lack of experience with LCS class vessels by assigning HII an "outstanding" rating under the program management plan subfactor under the management approach factor. Protest at 7-8, 52-55. More specifically, Austal claims that the agency ignored the fact that "HII has no experience with the design, construction or servicing of either LCS variant,"<sup>8</sup> which, the protester alleges, was the focus of this subfactor. Protest at 52. Hence, according to Austal, HII would need to rely on its corporate affiliate for its experience and expertise in performing LCS planning yard work. Id. at 54.

The record reflects that under the program management plan subfactor, offerors were required to describe their capabilities with respect to 10 different areas. Under one of the 10 areas, offerors were to describe, among other things:

specific experience with LCS variants, and explain any mitigation actions the Offeror shall take to reduce the learning curve for the percentage of workforce personnel without prior Navy, LCS, and planning yard related experience.

RFP at 220.

The record also reflects that the awardee explained its LCS-specific experience at great length in its proposal, stating it has performed these types of services for the Navy since 2009. SAR, HII Tech. Proposal at FII-S1-63. The agency adds that besides LCS-specific experience, HII has more than 30 years of experience with planning yard

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<sup>8</sup> While the RFP, on multiple occasions, refers to LCS variant 1 and LCS variant 2, it does not define either term. See, generally, RFP at 3-119.

functions for several other ship classes, which, the Navy contends, “was equally important under this factor.” Supp. MOL at 2 n.2; RFP at 220. Moreover, the protester concedes that AMSEC, HII’s wholly-owned subsidiary, does, in fact, have relevant LCS-specific experience. Protest at 53. In this regard, an agency may reasonably credit an offeror with the experience of an affiliated corporation where, as in this case, the affiliate will be meaningfully involved in performance of the contract. See Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 12. Thus, the protester’s contention that the awardee lacked relevant experience is without a factual basis, and we deny the protester’s argument in this regard.

#### Cost Realism Analysis of HII’s Proposal

Finally, Austal alleges errors in the agency’s evaluation of HII’s cost proposal in two respects: (1) the Navy failed to account for higher costs that Austal believes will result from using HII’s corporate affiliate to perform the contract in the future; and (2) the Navy also failed to adequately consider HII’s ability to successfully meet schedule and manage costs, which Austal bases on concerns identified in a December 2017 justification and approval (J&A) for a sole-source planning yard award to GD-BIW in support of two other classes of ships.<sup>9</sup> Protest at 53-55, 56-57, 59-60. Neither argument provides a basis to sustain the protest.

The first argument stems from an alleged telephone conversation between an Austal staff member and an account manager for the HII corporate affiliate. Austal alleges that the account manager told the Austal representative that HII was planning to transition workers from its corporate affiliate to HII at some point during the contract performance, and that these workers would be responsible for critical program management functions. Protest at 53, 60-61. Such a change would substantially increase the cost of performance, according to Austal, based on Austal’s assumption that these employees would subsequently be billed at higher rates. Austal argues that the agency failed to consider the potential increase in costs that would result from this plan.<sup>10</sup> Id.

The allegations in this regard fail for a variety of reasons. First, nothing in HII’s proposal suggests that HII intends to have its corporate affiliate employees transition in the future; thus, there would have been no reason for the agency to assess the impact of such an event. Second, the declaration provided by Austal’s vice president does not

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<sup>9</sup> Austal initially also argued that the agency improperly calculated the cost for licensing MAXIMO software; however, the protester later withdrew this challenge. Protester’s Supp. Comments at 2.

<sup>10</sup> According to Austal, the cost increase would result from “HII’s higher burdened labor costs” as “[AMSEC’s] rates are not burdened by HII’s shipyard’s overhead.” Protest at 53, 60-61.

corroborate the protester's assertions.<sup>11</sup> Resp. to Request for Partial Dismissal, encl. 2, Decl. of Vice President ¶ 10. In his declaration, Austal's vice president states that the HII account manager claimed that his entity "plans to transition personnel working on the CVN Planning Yard Contract over to LCS Planning Yard Contract." Id. This statement does not indicate that HII corporate affiliate employees would be changing jobs and transitioning to HII. Consequently, we deny this protest ground.

With respect to its second challenge, Austal argues that a December 2017 J&A in support of a sole-source award to another firm suggests that the agency believed HII presented cost risks; yet, the agency failed to consider such risks. Specifically, Austal cites to a sole-source J&A for award to GD-BIW, which indicated that GD-BIW was the only responsible source able to satisfy the agency requirements for this type of services. Protest at 56-57; Dec. 2017 J&A at 3. According to the protester, the Navy must have been aware of performance issues with HII, "the only other possible source for this effort." Id.

In our view, the 2017 J&A is not relevant to the procurement at hand.<sup>12</sup> The December 2017 J&A involved a sole-source procurement for yard support services for different classes of ships. The agency later issued a separate solicitation for LCS planning yard support, on July 12, 2018. In light of the material differences between the procurements--including different solicitations, different requirements, and a significant passage of time--we find no basis to conclude that the Navy source selection official<sup>13</sup> was required to rely on information from the earlier procurement to draw conclusions regarding cost risk for HII under this procurement. It is well-established that each procurement stands on its own, and evaluation ratings under another solicitation are not probative of the alleged unreasonableness of the evaluation ratings under the

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<sup>11</sup> In a declaration submitted to our Office, the account manager for HII's corporate affiliate characterizes Austal's description of that conversation as "highly inaccurate." Intervenor's Supp. Comments, encl. 1, Decl. of Account Manager at 1.

<sup>12</sup> Moreover, our review of the J&A reveals that GD-BIW was the incumbent on that requirement, performing these types of service for the Navy since 1988. Dec. 2017 J&A at 3. Consequently, transitioning the services, "in the peak of the DDG modernization program" planned by the Navy, could naturally cause "costs and schedule delays" referenced in the J&A. Id. at 4.

<sup>13</sup> Austal's arguments concentrate on the fact that the source selection official for the current LCS planning yard procurement also signed the December 2017 J&A; hence, according to the protester, she must have been aware of "issues" concerning HII's performance. Protester's Supp. Comments at 37.

solicitation at issue. Parmatic Filter Corp., B-285288, B-285288.2, Aug. 14, 2000, 2000 CPD ¶ 185 at 7.

The protest is denied.

Thomas H. Armstrong  
General Counsel