



**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:** Colonna's Shipyard, Inc.

**File:** B-418896

**Date:** September 29, 2020

---

Yuki Haraguchi, Esq., and Chidinma Okogbue, Esq., Holmes Pittman & Haraguchi LLP, for the protester.

Shomari B. Wade, Esq., Michael J. Gardner, Esq., and Danielle K. Muenzfeld, Esq., Greenberg Traurig LLP, for Lyon Shipyard, Inc., the intervenor.

William R. James, Esq., and James M. Metcalfe, Esq., Department of the Navy, for the agency.

Kasia Dourney, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

Protest challenging the agency's best-value determination is denied where the agency reasonably determined that the awardee's higher-rated, higher-priced proposal represented the best value to the agency.

---

## DECISION

Colonna's Shipyard, Inc. (Colonna), a small business of Norfolk, Virginia, protests the award of a contract to Lyon Shipyard, Inc., a small business of Norfolk, Virginia, under request for proposals (RFP) No. N4215820PS154, issued by the Department of the Navy for barge overhaul and inspection services at the Norfolk Naval Shipyard in Portsmouth, Virginia. The protester challenges the agency's best-value determination, and contends that the agency failed to provide an adequate explanation for its award decision. In addition, Colonna alleges that the Navy should have held discussions to clarify minor deficiencies in its proposal.

We dismiss the protest in part, and deny it in part.

## BACKGROUND

The agency issued the RFP on March 27, 2020, as a small business set-aside, anticipating award of a fixed-price contract, on a best-value tradeoff basis, for a period of performance between September 25, 2020 and November 9, 2020. Agency Report

(AR), Encl. 3, RFP at 1, 18; Encl. 4, RFP amend. 0002 at 1. Although not clearly stated in the solicitation, the agency advises and the protester does not dispute that the procurement was conducted using the simplified acquisition procedures of Federal Acquisition Regulation (FAR) subpart 13.5.<sup>1</sup> Contracting Officer's Statement (COS) at 1.

The RFP sought proposals for overhaul and inspection services of barge YD 257 at the Norfolk Naval Shipyard, including management and disposal of all hazardous wastes; inspection and repair of underwater hull and freeboard; inspection, repair and preservation of watertight bulkhead frames; and other related services.<sup>2</sup> *Id.* Offerors were advised that proposals would be evaluated under three factors, in descending order of importance: past performance; technical capability; and cost/price. RFP at 18. The solicitation stated that past performance was more important than technical capability, and when combined, they were significantly more important than cost/price. *Id.*

The RFP instructed that the past performance factor would be evaluated in two aspects: relevancy and a performance confidence assessment. RFP at 19-20. Under relevancy, the agency was to assess whether past performance references were similar in scope and magnitude to the current requirement. *Id.* at 20. For the performance confidence assessment, the Navy would consider how well the contractor performed on the identified past performance references. *Id.* With respect to cost/price, the RFP stated that the agency would evaluate proposals for price reasonableness. *Id.* at 23.

The RFP provided that in order to "select the successful [o]fferor," the Navy would compare proposals and "trade off differences in past performance and technical capability based on the non-cost/price factors." *Id.* Further, the solicitation stated that:

[i]f one offeror has the better past performance and technical capability and a higher cost/price, the government will decide whether the difference in past performance and technical capability is worth the difference in cost/price. If it is determined that the difference in past performance and technical capability is worth the difference in cost/price, then the more capable, higher-priced offeror will be the better value.

---

<sup>1</sup> See Protester's Response to Intervenor's Req. for Dismissal at 5 (stating that Colonna "does not dispute . . . that 'the Government treated this procurement under FAR Subpart 13.5' outlining streamlined acquisition procedures for commercial items."); see *also* RFP at 10, 24, 30, including or incorporating by reference FAR provision 52.212-1, Instructions to Offerors--Commercial Items; FAR provision 52.212-2, Evaluation--Commercial Items; FAR clause 52.212-4, Contract Terms and Conditions--Commercial Items, and FAR clause 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items.

<sup>2</sup> Barge YD 257 is one of the Navy's floating cranes. See, e.g., <https://www.navysite.de/yd/yd257.htm>.

RFP at 18.

The solicitation also advised that the agency intended to award the contract without discussions, and did not anticipate the establishment of a competitive range. *Id.* at 17-18.

The Navy received proposals from two offerors, Colonna and Lyon, in response to the solicitation. The agency convened a technical evaluation board (TEB) to evaluate proposals, and document their relative strengths and weaknesses. With respect to Colonna's past performance, the TEB documented "concerns" regarding the protester's "inability to maintain original schedule, budgets and additional findings such as safety violations." AR, encl. 8, Simplified Acquisition Procedures Pre-Award Document (SAPPD) at 10. The TEB also noted problems with the quality of work performed by Colonna's subcontractors on a previous barge requirement, and stated that "Colonna's refusal to hire better subcontractors caused several delays," culminating in a letter of concern that the Navy issued to Colonna in December 2019. *Id.*

With respect to Colonna's technical capability, the TEB concluded that Colonna's proposal met the requirements and indicated "an adequate approach and understanding of the requirements." *Id.* at 12. Nevertheless, the TEB assessed Colonna's proposal a weakness for "providing [an] outdated [Dry Dock MIL-STD 1625 C safety certification compliance] instruction." *Id.* In this regard, the TEB noted that the instruction had been outdated since 2009. *Id.* Accordingly, the TEB concluded that "[e]ven though Colonna may possess the technical capability to perform the work as prescribed in the solicitation," the outdated security certification compliance document referenced in Colonna's proposal raises the "likelihood of unsuccessful contract performance." *Id.*

While evaluating the cost/price proposals, the contracting officer observed that the independent government estimate developed by the agency was "significantly lower" than both offerors' cost/price proposals. COS at 11. On June 2, 2020, the Navy contract specialist sent emails to both offerors, requesting that they reconsider and revise their cost/price proposals. *Id.*; see also AR, Encl. 6, Revised Pricing Email to Colonna; Encl. 7, Revised Pricing Email to Lyon. In response, Lyon complied and lowered its cost/price by \$60,040, from \$4,558,140 to \$4,498,100, while Colonna chose not to do so. AR, Encl. 8, SAPPD at 12.

Accordingly, the final evaluation of both proposals was as follows:

	<b>Colonna's Shipyard</b>	<b>Lyon Shipyard</b>
<b>Past Performance</b>	Acceptable	Acceptable
Relevancy	Relevant	Very Relevant
Confidence	Limited Confidence	Substantial Confidence
<b>Technical</b>		
Technical Approach	Acceptable	Good
<b>Cost/Price</b>	\$3,949,540	\$4,498,100

AR, Encl. 8, SAPPD at 8-9, 11, 14.

After reviewing the proposals, the contracting officer, acting as the source selection authority, concluded that Lyon's ratings under the past performance and technical capability evaluation factors were "significantly better" than Colonna's. *Id.* at 14-15; COS at 14. Notwithstanding Lyon's higher price, because the RFP established that past performance and technical capability, when combined, were "significantly more important than cost/price," the contracting officer determined that Lyon's proposal represented the best value to the government. *Id.*

On June 23, the Navy awarded the contract to Lyon. COS at 14. On June 26, after seeing the barge YD 257 docked at Lyon's shipyard, an employee of Colonna sent an email to the Navy contract specialist, inquiring if an award had been made. AR, Encl. 9, Colonna's June 26, 2020 Email at 1. On June 30, Colonna sent another email, requesting an update on the award. AR, Encl. 12, Colonna's June 30-July 1, 2020 Emails at 1. On July 1, the Navy posted a notice of award to Lyon on beta.SAM.gov. On the same day, Colonna requested a debriefing. *Id.* On July 2, the contracting officer provided Colonna with a brief explanation of the basis of award pursuant to FAR 13.106-3(d).

This protest followed.

## DISCUSSION

Colonna challenges the agency's best-value tradeoff and argues that the Navy's brief explanation fails to adequately explain why Lyon's technical proposal, allegedly equivalent to Colonna's technical proposal, warranted paying a 13 percent price premium. The protester also contends that the agency failed to clarify a minor deficiency in its technical proposal through discussions. Moreover, Colonna argues that it was prejudiced by the Navy's failure to notify it of award. We have considered all of Colonna's allegations and find no basis to sustain its protest. Below we discuss Colonna's principal contentions.

### Best-Value Tradeoff

Colonna asserts that the Navy's best-value tradeoff was improper because the agency chose to pay a price premium of more than 13 percent to Lyon despite Colonna offering "a technically capable alternative." Protest at 6-7. The protester further contends that "there is little substantive evidence to suggest Lyon had significantly more technical capability to perform than Colonna" and that the Navy itself acknowledged in its brief explanation of award that "Colonna is technically qualified

to perform.”<sup>3</sup> *Id.* We find the agency’s tradeoff analysis unobjectionable, and deny this protest ground.

As noted above, the procurement here was conducted under simplified acquisition procedures. When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations or proposals in accordance with the terms of the solicitation. *Emergency Vehicle Installations Corp.*, B-408682, Nov. 27, 2013, 2013 CPD ¶ 273 at 4; *Finlen Complex, Inc.*, B-288280, Oct. 10, 2001, 2001 CPD ¶ 167 at 8-10. In reviewing protests of an allegedly improper simplified acquisition award selection, we examine the record to determine whether the agency met this standard. *Novex Enters.*, B-407914, Apr. 5, 2013, 2013 CPD ¶ 97 at 3.

In a best-value procurement, agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Price/technical tradeoffs may be made, and the extent to which one is sacrificed for the other is governed by the test of rationality and consistency with the established factors. *Dew Drop Sprinklers & Landscaping*, B-293963, July 15, 2004, 2004 CPD ¶ 171 at 4. An agency may properly select a more highly-rated quotation or proposal over one offering a lower price where it has reasonably determined that the technical superiority outweighs the price difference. *Id.*

Here, as set forth above, the solicitation established that award would be made to the offeror whose proposal demonstrated the best overall value to the government, considering past performance, technical capability, and cost/price. RFP at 18. The RFP clearly advised that past performance and technical capability, when combined, were significantly more important than price. *Id.* As important here, the RFP specifically provided for the agency’s discretion to determine whether a more technically

---

<sup>3</sup> In its protest, Colonna does not challenge the agency’s underlying evaluation of the protester’s technical or past performance proposals but instead, alleges that the “technical” issue raised by the agency regarding an outdated security certification compliance “was clearly a typo” which the agency should have recognized. Protest at 7. For the first time in its comments on the agency report, however, Colonna now complains about the reasonableness of the agency’s evaluation of its past performance and technical proposals. Protester’s Comments at 7-10.

Our Bid Protest Regulations require that all protest allegations must be filed not later than 10 calendar days after the protester knew, or should have known, of the basis for protest. 4 C.F.R. § 21.2(a)(2). The timeliness requirements of our regulations do not contemplate the piecemeal presentation or development of protest issues. See *Battelle Mem’l Inst.*, B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 24 n.32. Here, the protester learned the results of the agency’s evaluation of its proposal after receiving the Navy’s brief explanation of award, and hence, it should have challenged the agency’s evaluation earlier. Accordingly, these new protest grounds are dismissed as untimely.

capable offeror, and with a better past performance record, who submitted a higher-priced proposal, would provide a better value to the government. *Id.*

The record shows that the contracting officer considered the respective merits of the individual proposals, as evaluated by the TEB, in accordance with the RFP criteria, and concluded that Lyon's proposal provided a better value to the government due to its "significantly better" past performance record and technical capability. AR, Encl. 8, SAPPD at 14-15; COS at 14. In this regard, the contracting officer concluded that the strengths of Lyon's proposal under the non-price evaluation factors, warranted paying the 13 percent price premium. Memorandum of Law (MOL) at 14 (citing SAPPD at 14-15, 16).

Based on this record, we find no merit to the protester's argument that both proposals were essentially technically equivalent, or that the agency failed to give proper weight to the "importance of price." Protest at 6. An agency may select the higher-rated, higher-priced proposal as reflecting the best value to the agency where, as here, that decision is consistent with the evaluation criteria and the agency reasonably determines that the technical/past performance superiority of the higher-priced proposal outweighs the cost/price benefit provided by the other offeror. *Dew Drop Sprinklers & Landscaping, supra*. In sum, Colonna's disagreement with the agency does not establish that the agency acted unreasonably or provide a basis to sustain Colonna's protest.

#### Brief Explanation of Award

The protester also alleges that the Navy failed to provide an adequate statement explaining its consideration for award. According to the protester, a "two-paragraph summation of the technical and past performance evaluation" of Colonna's proposal, provided in the agency's brief explanation of award pursuant to FAR 13.106-3(d), lacked sufficient detail as to why Lyon's proposal was selected for award, instead of Colonna.<sup>4</sup> Protest at 7-9.

---

<sup>4</sup> The brief explanation of award provided that:

Based from the review of Colonna's proposal, Colonna's past performance showed a history of being able to complete availabilities with relative communication in regards to Condition Found Report (CFRs) but there had been concerns raised due to Colonna's inability to maintain original schedule, budgets and additional findings such as a safety violation(s). A Letter of Concern was also issued to Colonna on 20 December 2019 due to undue delays.

For Colonna's technical capability, even though Colonna may possess the technical capability to perform the work as prescribed in the solicitation; however, concerns were raised specifically on page 16 of their technical capability packet proposal. Colonna referenced

(continued...)

The agency responds that it fully complied with the documentation and notification requirements of FAR 13.501(b) and FAR 13.106-3(d), used in simplified acquisition procedures for the purchase of commercial items. MOL at 16-17. The Navy explains that its brief explanation of award pursuant to FAR 13.106-3(d) was structured in a way to correspond with the requirements of FAR 15.503(b)(1), and asserts that contrary to Colonna's assertion, FAR 15.503(b)(1) does not require an explanation as to "why the [a]wardee's proposal was selected." *Id.* at 17.

We agree. Not only did the agency's brief explanation of award provide all the required information, *i.e.*, a number of offerors solicited, and proposals received; information about the awardee; and general reasons as to why "the offeror's proposal was not accepted," but the adequacy of a debriefing or post-award notice is a procedural matter that is not for consideration of our Office; the agency's actions after award are unrelated to the validity of the award itself. See *CAMRIS Int'l, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 5; *The Ideal Solution, LLC*, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2. Further, our regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. Colonna's argument here, premised on the adequacy of the brief explanation provided by the agency, fails to state a legally or factually sufficient basis of protest, and as a result, we dismiss it.<sup>5</sup>

## Discussions

Finally, Colonna contends that the agency was required to engage in discussions to resolve minor deficiencies in its proposal. Protest at 9-10. On August 3, our Office indicated our intention to dismiss this protest ground because the RFP here did not provide for discussions or establishing a competitive range. Electronic Protest Docketing System, Dkt. No. 18. In its comments on the agency report, however, Colonna raises a slightly different argument in this regard, asserting that since the agency offered both offerors an opportunity to revise their cost/price proposals, the agency should have also afforded Colonna an opportunity to revise its technical proposal to address the issue of its outdated certification compliance instruction. Protester's Comments at 10-11.

---

(...continued)

Dry Dock MIL-STD 1625 C that contained instruction and requirements that had been outdated since 2009.

AR, Encl. 13, Brief Explanation of Award at 2.

<sup>5</sup> For the same reason, we will not consider Colonna's other procedural argument, alleging that it was prejudiced by the Navy's failure to properly post a notice of award. Protest at 10-11; Protester's Comments at 11-12. Because this protest ground does not concern the validity of the award, and Colonna has not demonstrated competitive prejudice, we will not consider this argument any further. *CAMRIS Int'l, Inc.*, *supra*; *The Ideal Solution, LLC*, *supra*.

An agency is not required to conduct discussions in procurements under simplified acquisition procedures. See, e.g., *Houston Air, Inc.*, B-292382, Aug. 25, 2003, 2003 CPD ¶ 144 at 5 (in FAR part 13 procurements, an agency is not required to engage in discussions to enable a protester to revise a deficiency identified in its quotation); see also *CDS Network Sys., Inc.*, B-281200, Dec. 21, 1998, 98-2 CPD ¶ 154 at 3. Nevertheless, discussions that do occur with vendors in FAR part 13 procurements, like all other aspects of such procurements, must be fair and equitable. *Northstate Heavy Equip. Rental*, B-416821, Dec. 19, 2018, 2018 CPD ¶ 430 at 5.

Here, the agency sent nearly identical emails to both offerors, providing both of them an opportunity to revise their cost/price proposals. Further, the record shows that these were the only discussions with offerors conducted by the Navy. Under the circumstances here, however, we fail to see how the Navy's discussions, limited to price proposals, were unfair to Colonna or how the protester was prejudiced by the agency's actions. Competitive prejudice is an essential element of every viable protest. *Savvee Consulting, Inc.*, B-408416, Sept. 18, 2013, 2013 CPD ¶ 231 at 12. Where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel