

May 15, 2000

P.S. Protest No. 99-31

GRUMMAN OLSON INDUSTRIES, INC.

Limited Competition Solicitation

DIGEST

Protest of award of contract for Carrier Route Vehicles is denied. That price was more important than performance evaluation factors did not preclude award to more highly evaluated higher-priced offer; protester failed to meet its burden of establishing that the evaluation of offers was unreasonable.

DECISION

Grumman Olson Industries, Inc., protests the award of a contract for Carrier Route Vehicles (CRV) to Ford Motor Company.¹

In July, 1998, the Postal Service had issued solicitation 102590-98-A-0115 seeking offers for the production of 10,500 CRVs, with an option for an additional quantity of up to that amount. Ford Motor Company submitted the only proposal in response to that solicitation, receiving contract 102590-98-B-3548 for an initial quantity of 10,000 vehicles, with an option for an additional 11,000.

The contracting officer explored the possibility of conducting a limited competition for the next quantity of CRVs instead of exercised the option in the Ford contract. To that end, by letters of June 16, 1999, he informally inquired of DaimlerChrysler and General Motors whether they would be interested in proposing for the requirement, requesting responses by June 30. While DaimlerChrysler declined, General Motors in-

¹ As the name suggests, the CRV is a vehicle intended to be used by postal letter carriers on their routes. It is the follow-on to the Long Life Vehicle (LLV), of which more than 100,000 were purchased from Grumman Allied Industries, a subsidiary of the Grumman Corporation, between 1986 and 1995. Grumman Olson, no longer associated with the Grumman Corporation, has succeeded to the portion of Grumman Allied which produced the LLV. See www.grummanolson.com.

licated, first orally and subsequently in a July 29 letter, interest in supplying the chassis for a Grumman Olson-produced CRV. After receiving GM's letter,² the contracting officer orally advised Grumman Olson to submit an offer not later than August 13, "because postal budget time constraints required the vehicle order to be placed by September 10 [the close of the postal fiscal year]." Grumman Olson submitted its initial proposal as requested.³

By letters dated August 26, the contracting officer "formally confirmed for Ford and Grumman that [he] was conducting a limited competition for the option quantity vehicles" pursuant to the evaluation criteria of solicitation -0115 and two specifications, one dated June 7, 1999, for two wheel drive vehicles, and another dated May 26, 1999, for four wheel drive vehicles, which had previously been provided.⁴ The letters reiterated the September 10 anticipated award date, and provided that the Postal Service could make separate award for the two wheel and four wheel drive quantities.⁵

Section M of Solicitation -0115 included the following:

99. Contract Award

- a. The Postal Service will award a contract as a result of this solicitation to the offeror whose proposal conforming to the solicitation offers the best value to the Postal Service considering price, price-related factors and

² The contracting officer states that he took a "wait and see" posture about GM's oral statements because similar statements had been made in advance of the previous year's purchase, when GM ultimately declined to participate.

³ To the extent that Grumman Olson's protest complains about the schedule, and particularly that its submission of its initial offer was accelerated, it is, as the contracting officer notes, a matter which should have been raised before offers were due, and is now untimely. Purchasing Manual (PM) 3.6.4.b.

⁴ While Ford's contract had called only for two wheel drive vehicles, the Postal Service wished to procure 1,000 four wheel drive vehicles in addition to 10,275 two wheel drive vehicles.

⁵ Ford was told that the Postal Service would consider as its initial proposal its previous proposal, its oral agreements with various specification changes since that proposal, and its pre-production vehicle. Grumman Olson complains that Ford was not required to propose to the same specifications and that Grumman Olson was afforded less time than Ford to respond. The contracting officer's report makes it clear that both offerors were required to respond to the same specifications, and Grumman Olson's complaint about the time afforded for that response is untimely, as noted above. To the extent that Grumman Olson found itself trying to catch up with an incumbent contractor with whom the Postal Service had been discussing its requirements in the context of the exercise of a contract option, its situation was not amenable to correction by the Postal Service. "[A]n agency is not required to structure its procurements in a manner that neutralizes the competitive advantage that some potential offerors (including incumbent contractors) may have over others by virtue of their own particular circumstances where the advantages did not result from unfair action on the part of the government." *CW Government Travel, Inc. d/b/a Carlson Wagonlit Travel*, Comp. Gen. Dec. B-283408, November 17, 1999, 99-2 CPD Dec. ¶ 89.

other evaluation factors specified elsewhere in this solicitation. (See 100 below). For award purposes proposed pricing will be the paramount consideration. Award may be made to other than the lowest priced offer if it is determined to be in the best interest of the Postal Service to do so. For example, if a higher priced offer is deemed to provide the best overall value (based on price and technical considerations) to the Postal Service, award may be made to that offeror.

* * *

c. The Postal Service may accept any item or group of items of a proposal, unless the offeror qualifies the proposal by specific limitations. . . .

* * *

100. Proposal Evaluation

a. The offeror's proposal will be evaluated to determine whether the offeror has satisfied the requirement as described in the solicitation and whether award to the offeror will be in the best interest of the Postal Service.

b. . . . Technical scoring will be based on an offeror's ability to satisfy the evaluation elements and sub-factors of each technical factor.^{6]}

Evaluation Factors

The evaluation factors are listed below in descending order of importance. Maximum point values for each of the four evaluation factors are:

⁶ Although the solicitation, the contracting officer, and this decision sometimes refer to the non-price evaluation factors as "technical factors," those non-price factors are more accurately described as "performance evaluation factors" (PM 2.1.7) which include both technical factors and other proposal-specific and supplier-specific factors.

Factor 1 – Technical Approach	45
Factor 2 – Service	30
Factor 3 – Delivery	15
Factor 4 – Supplier Capability	<u>10</u>
Total	100

* * *

Each identified factor was assigned subfactors as follows:

Factor 1 – Technical Approach

Innovations/Advancements/Technological Improvements
Maintenance Economic Benefits
Operating Economic Benefits
Quality
Vehicle/Component Description

Factor 2 – Service

Warranty
Parts and Service
Training
Manuals

Factor 3 – Delivery

Best Possible Delivery Schedule⁷
Component Parts Deliver/Production Schedule
Description How This Proposed Contract Fits Into
the Plant Assembly/Production Schedule

Factor 4 – Supplier Capability

Resources
Corporate History
Contract Management Team
Past Performance

Additional information about these subfactors was provided in Section J, Instructions to Offerors, including the following:

⁷ According to the August 26 letter, delivery was to begin in August/September, 2000, and be complete by July/August 2001.

Tab B – Technical Approach

* * *

Section 1 – Innovative/Advancements/Technological Improvements

Describe all features the offeror plans to incorporate onto the vehicle that are over and above the features specified in the Specification. Also provide a method by which the Postal Service can place a value on the innovative feature (i.e., method of calculating cost with and without the feature).

Section 2 – Maintenance Economic Benefits

Provide features you are offering that will benefit the Postal Service when it begins maintaining the offered vehicle. Include the method used in calculating the benefit.

* * *

Section 4 – Operating Economic Benefit

Provide features you are offering that will benefit the Postal Service in its operation of the vehicle being offered. Include the method used in calculating the benefit.

Discussions were held with Grumman Olson on August 27. According to the contracting officer's statement, the discussions included postal concerns about Grumman Olson's claims of engine operating cost savings and about aspects of its production process.⁸

Final proposals were received by September 3. They were evaluated by the Postal Service. As evaluated, Ford received 61.25 points out of the 100 possible, and Grumman Olson received scores of 40.25 and 35.25 for its two wheel and four wheel drive vehicles, respectively.⁹ Both offerors received the same number of points for factor 2, services, but Ford outscored Grumman Olson on each of the other factors.

Ford's price was approximately 10% higher than Grumman Olson's price. The contracting officer considered Ford's proposal "so vastly superior in all non-price evalua-

⁸ Because Grumman Olson has asserted proprietary interests in many elements of its proposal, the discussion of those elements here is necessarily vague. *International Business Machines Corporation*, P.S. Protest No. 98-22, January 5, 1999.

⁹ Grumman Olson received fewer points for the four wheel drive vehicle under factor 1, technical approach, because it did not propose a flexible fuel engine for that vehicle as the specification directed. (A flexible fuel engine runs either on gasoline or on ethanol.)

tion factors that Ford's proposal was clearly the best value." Grumman Olson was advised on September 10 that award would be made to Ford; it requested a debriefing, which was given on September 24. Its timely protest followed.

Grumman Olson contends that the evaluation of offers was flawed; in its view, its offer failed to receive the full credit it deserved, and Ford's offer received more credit than it deserved. The following are among Grumman Olson's specific objections, based on information conveyed at the debriefing:

- Grumman Olson received no credit for the fuel savings,¹⁰ projected maintenance cost savings, and lifetime operating cost savings associated with its 4-cylinder engine, which uses less fuel than Ford's 6-cylinder engine.
- As to past performance, Ford was not downrated for delays in its performance under contract -3548 and Grumman Olson did not receive credit for its good performance under the LLV contract.
- Pricing, the "paramount consideration," was given insufficient weight, and "innovation," a subfactor of factor 1, received more weight than it deserved. As a result, the Postal Service's concerns about the innovative aspects of Grumman Olson's production process were weighted too heavily, and, in any event, Grumman Olson failed to receive positive credit for that process.¹¹
- The evaluation process was "all subjective," not conducted with objectivity and diligence, and failed to include the comparative evaluation required by PM 4.2.5.a 3.

The protest seeks award of the requirement to Grumman Olson, or, in the alternative, the recompetition of the requirement.

The contracting officer's statement defends the selection process as fully compliant with the two-step process of the PM, in which offers are first compared to the solicitation's requirements and evaluation factors, and then to the relative value of the competing offers. PM 4.2.5.a. The contracting officer asserts that "subjective considera-

¹⁰ In this regard, Grumman Olson particularly faults the Postal Service for failing to consider the fuel economy information which Grumman Olson furnished in response to the Postal Service's requests in the course of discussions and for improperly downrating Grumman Olson for failing to furnish information which had not been requested.

¹¹ Elsewhere, the protest identifies seven other innovative elements of its proposal. Among those elements not deemed proprietary are "an electronically controlled engine" using alternative fuels while providing better fuel efficiency and lower emissions than past or current postal vehicles; electronic controlled transmission, antilock brakes, extended life fluids; pre-painted replacement parts and assemblies; and a height adjustable seat.

tions are precisely the way that comparisons of the relative value offered by each proposal are performed.”

The most significant reason why the Postal Service preferred Ford’s proposal to Grumman Olson’s was that its vehicle offered more cubic feet of payload capacity than Grumman Olson’s vehicle. Ford also guaranteed low emission vehicle certification for its fleet. The Postal Service also preferred Ford’s quality procedures to Grumman Olson’s, and expressed concerns about untried aspects of Grumman Olson’s proposed production approach as well as its need to hire personnel to staff its proposed production facility.

The two offers provided for warranty service by Ford and General Motors dealers, respectively. The Postal Service preferred Ford’s approach since it has a direct contractual relationship to its dealers; the GM dealers’ relationship is to Grumman Olson’s subcontractor, a process “that has proven to be difficult, at times,” as to the LLVs. As noted above, Grumman Olson’s offer was downrated as to the four wheel drive vehicles because they lacked flexible fuel engines.¹²

With respect to Grumman Olson’s offered information on comparative fuel economy, the contracting officer does not recall that Grumman Olson was asked to supply specific EPA data, but instead was given “general direction to substantiate its [fuel savings] allegations with data.” Grumman Olson was told at the debriefing that the information which it provided was not used in the evaluation because it did not offer a “fair comparison[.]” between the two offered vehicles nor related to “postal driving conditions.”¹³ The “evaluators also chose to ignore” similarly unsupported assertions provided by Ford concerning the lower maintenance costs of its 6-cylinder engine *vis a vis* a 4-cylinder engine. The contracting officer asserts that the Postal Service did, however, consider the relative operational economies of the two offered engines, concluding that “because under carrier route conditions, it is not clear any significant fuel economies would exist,” no weight was given to either offeror’s claimed operating efficiencies.

¹² The contracting officer suggests that this failure made its entire offer technically unacceptable, a contention which Grumman Olson disputes. We do not understand the solicitation to require that an offeror supply both items (that is, four wheel as well as two wheel drive vehicles) in order to be considered for one of the items. The original solicitation did not contain such a requirement, since it sought only two wheel drive CRVs, and the letter incorporating that solicitation’s terms for this purchase did not add such a requirement.

¹³ The contracting officer contends that Grumman Olson used a city driving mileage figure for its CRV far greater than the figure actually experienced with its LLVs, compared that figure to a figure for an engine other than Ford’s offered engine, used the wrong alternative fuel in its comparison, and compared its lighter-weight aluminum-bodied vehicle erroneously to a heavier steel-bodied Ford vehicle.

The contracting officer views Ford's performance on three recent contracts (including the CRV contract) as excellent overall. He notes that although Ford's deployment of CRVs is later than its initial schedule, it is not late under a revision to that schedule for which the Postal Service has been compensated. On the other hand, he faults Grumman Olson's performance under its LLV contract arising out of safety concerns which he contends that Grumman Olson and GM had failed to resolve.

Overall, the contracting officer contends that his price/technical tradeoffs were rational and consistent with the solicitation's evaluation scheme, citing *OK's Cascade Company; Western Catering, Inc.*, Comp. Gen. Decs. B-257543, B-257562, October 14, 1994, 94-2 CPD ¶ 141:

Price/technical tradeoffs maybe made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Awards to offerors with higher technical scores and higher prices are thus proper so long as the result is consistent with the evaluation criteria and the procuring agency has reasonably determined that the technical difference is sufficiently significant to outweigh the cost difference.

Commenting on the contracting officer's statement, Grumman Olson again faults the Postal Service for "completely ignor[ing]" favorable aspects of Grumman Olson's proposal and unfavorable portions of Ford's proposal; "purposely fail[ing]" to evaluate the offers to the solicitation's stated goals; "purposely adopting" an "admittedly 'subjective' evaluation process," and "purposely avoid[ing]" a reasoned cost/benefit tradeoff analysis.

Further, it complains that the source selection documentation (and particularly the contracting officer's source selection memorandum) identifies "unstated evaluation criteria" inconsistent with the stated criteria and inimical to Grumman Olson's proposal, including the perception favoring an "exciting, new . . . vehicle" over "regressing to [the] old [LLV] design," and to adverse "long term consequences" said to argue against the acceptance of Grumman Olson's offer.

The contracting officer submitted a rebuttal to the protester's comments which took exception to a good many of Grumman Olson's characterizations of Ford's offer and past performance and of Grumman Olson's offer and past performance, all in support of the conclusion that Ford's proposal was significantly better than Grumman Olson's. The rebuttal includes the following points:

— The evaluation team and the contracting officer did not ignore Grumman Olson's assertions of lower operating costs and improvements. Instead, they considered them, but found them "to have no value or to be overcome by [Ford's] strengths."

— The specifics of Grumman Olson’s fuel usage assumptions are either incorrect or challenged by Ford’s competing assertions. Its asserted innovations are either features required by the solicitation, features surpassed by Ford’s features, or perceived by the Postal Service as disadvantageous, rather than advantageous.

— Ford’s past performance “has been excellent,” Grumman Olson’s proposed performance calls for first article delivery later than desired,¹⁴ and its need to start up its manufacturing operation and undertake its new production process “presents a high risk of delay and quality problems.”

— Contrary to Grumman Olson’s contentions, the award was consistent with the evaluation criteria. The portions of the award memorandum which Grumman Olson contends constitute unstated evaluation criteria were “additional comments” from a representative of Delivery, none of which “had anything to do with the award decision” but which were “simply additional matters of interest to senior managers.”

Ford commented on the contracting officer’s report, asserting that the award determination was consistent with the solicitation’s requirements and should be upheld. Those comments also contend that since the result of the competition was the exercised of an option in Ford’s existing CRV contract, it involves a matter of contract administration which is outside the jurisdiction of the protest procedure. As discussed in the margin, this latter view is incorrect.¹⁵

¹⁴ Some of the contracting officer’s argument in this regard focus on the requirement of the original solicitation that the first article be delivered within 90 days following contract award. Responding to this point, Grumman Olson suggests that the solicitation does not contain such a requirement, because it provides instead only a delivery timeframe for the production quantity (see footnote 7). While some lack of clarity results from the supplementation of the prior solicitation with the contracting officer’s correspondence establishing the limited competition, Grumman Olson’s position here is undercut by the fact that its proposal made reference to the 90 day requirement in proposing a substantially longer period within which it would deliver the first article.

¹⁵ Ford contends that various decisions of this office concluding that jurisdiction does not exist in situations the reverse of this (that is, when an incumbent contractor objects to the Postal Service’s decision to acquire competitively rather than exercising an existing contract option) support that result. Jurisdiction is lacking with respect to the decision not to exercise an option because “the matter is purely one of contract administration; it does not involve the failure to conduct a required competition and . . . a contractor has no legal right whatsoever to compel the government to exercise an option.” *Digital Systems Group, Inc.*, Comp. Gen. Dec. B-232080.2, March 12, 1993, 93-1 CPD ¶ 228. On the other hand, a decision to exercise an option may be reviewed “to determine that the agency property made [the] determination [that option exercise most advantageously met the government’s need]. *Ibid.* So, for example, a decision to exercise an option may be reviewed in a competitive situation. *Cf. Honeywell, Inc.*, B-244555, Oct. 29, 1991, 91-2 CPD ¶ 390 (“The Air Force conducted a limited competition between Honeywell and Litton, even though it was able to implement the award determination through the exercise of a contract option with one of the two competitors. We have recognized that in this situation, where the agency conducts a competition resulting in the

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Grumman Olson replied to the contracting officer's rebuttal, restating its contentions that its proposal is superior and that the Postal Service had overlooked its superior features. Grumman Olson also objects to the contracting officer's characterizations of its performance of the LLV contract, and to the contracting officer's characterizations of Ford's more recent performance under the CRV contract.

Grumman Olson restated many of its concerns at a protest conference, summarizing them in its post-conference submission which includes the following:

— The Postal Service determination was based in large part on erroneous facts:

Grumman Olson calculates the difference in cargo capacity between the two vehicles as either less than 2% or less than 6%, depending on the measurement approach used. Either figure is insignificant because the "extra" volume is at the top rear of the cargo compartment where it will not be used.

With the assistance of its subcontractor, General Motors, which has successfully assisted others in adopting its innovative production process, Grumman Olson will be able to provide "improved product quality" and other benefits which should have been considered as advantageous in the evaluation.

The Postal Service overstates the extent to which Grumman Olson will need to acquire personnel and improperly assumes that personnel with the needed skills will not be available.

The Postal Service overlooked innovative aspects of Grumman Olson's proposal, as previously noted. In addition, "innovation" was only part of the subfactor, which also included "advancements" and "technological improvements"; the Postal Service failed to give credit for those items separate from the requirement for "innovation."

The Postal Service's "*post hoc*" justification for the award was also based on additional erroneous facts.

— The Postal Service's evaluation failed to consider various stated evaluation criteria:

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exercise of an option under one competitor's contract, our rule against reviewing an agency's exercise of a contract option is inapplicable.")

Maintenance economic benefits and operating economic benefits were not considered. The fuel savings projections which Grumman Olson was requested to supply were not considered; neither were alternative analyses which the contracting officer has proposed as alternatives. All demonstrate a significant savings for Grumman Olson's vehicle.

Grumman Olson's asserted maintenance cost savings were not rebutted.

Ford's poor delivery performance record resulting from its delay in producing the CRV first article was not considered; Grumman Olson was not given credit for its on-time deliver under the LLV contract.

— The award decision was based on unstated evaluation criteria:

The Postal Service has desires for various performance features for the CRV and other concerns about Grumman Olson's approach which the solicitation did not identify.

With respect to the unstated performance features, Grumman Olson's proposal met those requirements but was not given credit for them.

— The Postal Service did not give price the "paramount" position that the solicitation required.

— As a result, Grumman Olson's proposal was not treated fairly and equally with respect to Ford's proposal.

Ford also participated in a conference on the protest. Its post-conference submission included the following:

— Grumman Olson has not met the protester's heavy burden necessary to establish that the evaluation was flawed. The Postal Service properly found that the Ford proposal was superior with regard to the solicitation evaluation factors.

— Grumman Olson's factual contentions are wrong. The Ford CRV has at least 13 cubic feet (10%) more cargo space than Grumman Olson's LLV. Ford's delivery subsequent to first article has been on time. While Ford believes that its vehicle offered fuel and maintenance savings, the Postal Service could reasonably conclude that neither party established those savings. Grumman Olson's various fuel savings calculations do not relate to the Postal Service's particular vehicle usage, involving low mileage and high idle times.

— No unstated criteria went into the evaluation; the contracting officer should not be criticized for noting postal personnel (not evaluators) found Ford's vehicle "exciting" or "innovative."

— The solicitation provided for a price/benefit tradeoff and the Postal Service properly concluded that the differences in vehicle prices were outweighed by other factors.

The contracting officer submitted comments responding to Grumman Olson's post-conference comments. They included the following:

— Grumman Olson's computation of the vehicle weights and capacities is wrong. The Ford vehicle has 13 cubic feet greater capacity, all of which is usable. The two vehicles' gross weights and net payload weights are comparable. Potential cost savings associated with the additional cubic capacity are sufficient to offset Grumman Olson's price advantage.

— Grumman Olson's production plan increases the risk of quality problems or delay. It has risks associated with startup which Ford, as the incumbent, lacks.

— Grumman Olson's asserted innovations are either required features, met or exceeded by Ford's proposal, or viewed as disadvantageous by the Postal Service.

— The factual statements of the contracting officer which Grumman Olson challenges are correct.

DISCUSSION

Here, the solicitation established both a series of evaluation factors and their relationship to price. The contracting officer found Ford's proposal approximately 50% better than Grumman Olson's in terms of those factors. He then weighed that advantage against the 10% price advantage of Grumman Olson's offer, determining that, notwithstanding the importance of price in the evaluation scheme, Ford's offer was entitled to award. To do so was clearly permissible.¹⁶

Grumman Olson contends that its offer was misevaluated with respect to the non-price evaluation factors, that the price factor was not given sufficient weight,¹⁷ and that as properly evaluated, its offer was entitled to award.

¹⁶ While the solicitation stated that price would be "paramount," that is, "of chief concern or importance" (American Heritage Dictionary, 3rd ed.) or "first in importance, rank, or regard" (*ibid.*, in discussion of "paramount" as a synonym at "dominant"); it did not state that price would be determinative. Instead, it expressly provided otherwise. ("Award may be made to other than the lowest priced offer if it is determined to be in the best interest of the Postal Service")

Even under a solicitation which states that proposed price is more important than technical evaluation factors, the contracting agency is not required to make award to the firm offering the lowest price; the agency retains the discretion to select a higher-priced, technically higher-rated proposal, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. See *University of Kansas Medical Center*, B-278400, Jan. 26, 1998, 98-1 CPD ¶ 120 at 6 [noting, *inter alia*, that "[i]n a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP in fact specifies that price will be the determinative factor."]; *Nomura Enterprises, Inc.*, B-277768, Nov. 19, 1997, 97-2 CPD ¶ 148 at 2-5. There is no requirement that the value of technical differences be quantified in dollar terms.

Day & Zimmermann/IMR L.L.C., Comp. Gen. Dec. B-280568; B-280569, October 19, 1998, 98-2 CPD ¶ 111; *accord, Environmental Tectonics Corporation*, Comp. Gen. Dec. B-280573.2, December 1, 1998, 98-2 CPD ¶ 140 (as to tradeoff between price and past performance).

¹⁷ It is difficult to understand how Grumman Olson would assign a weight to the price factor. While it indicated that price was the most important factor, the solicitation did not disclose how much more important it was than the performance evaluation factors. This was consistent with the relevant regulatory guidance and current practice:

The relationship of cost/price factors [to performance evaluation factors] should be stated in general terms . . . and no solicitation should establish a strict mechanical relationship between the cost/price factors and any other factors.

PM 2.1.7.f.

The use of predetermined formulae to mechanically select awardees is generally disfavored by our Office as an unnecessary--and often unwise--restriction of a selection authority's discretion.

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We have a well-settled standard for the review of proposal evaluations:

It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals. In reviewing a technical evaluation, we will not evaluate the proposal *de novo*, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. We will not overturn the determinations of a contracting officer unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. Similarly, we will not substitute our views for the considered judgment of technical personnel upon which such a determination is premised in the absence of fraud, prejudice, or arbitrary and capricious action. The protester bears the burden of proving its case affirmatively. This burden must take into account the "presumption of correctness" which accompanies the statements of the contracting officer, and if such allegations do not overcome the presumption of correctness, we will not overturn the contracting officer's position.

Timeplex Federal Systems, Inc., Sprint Communications Company, P.S. Protest Nos. 93-22; 93-24, February 2, 1994.¹⁸

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[W]e view mechanical reliance on a purely mathematical price/technical tradeoff methodology as improper.

Medical Development International, Comp. Gen. Dec. B-281484.2; March 29, 1999, 99-1 CPD ¶ 68.

¹⁸ *Timeplex* has been followed in cases such as *Cordant, Inc.*, P.S. Protest 94-08, June 23, 1994; *Kelly Services, Inc.*, P.S. Protest No. 95-17, October 27, 1995; *United Air Lines, Inc.*, P.S. Protest No. 99-25, November 26, 1999, and *PharmChem Laboratories, Inc.*, P.S. Protest No. 99-19, December 17, 1999. *Timeplex* cited *Mid Pacific Air Corporation*, P.S. Protest No. 92-62, November 23, 1992, which had cited *TRW Financial Systems, Inc.*, P.S. Protest No. 91-19, May 21, 1991, quoting *POVECO, Inc., et al.*, P.S. Protest No. 85-43, October 30, 1985. *POVECO* involved challenges by several parties, including Grumman Olson's predecessor, to aspects of the source selection process for the original LLV.

Judge Baskir of the Court of Federal Claims recently discussed the similar standard of review in post-award protests in that forum:

In alleging error, the plaintiff must do more than identify circumstances where the contracting officer . . . made a mistake. The plaintiff must show that the claimed misstep was so excessive as to fall outside the decision-maker's ambit of discretion. . . .

We limit our inquiry to whether the decision was based on a consideration of the relevant facts and whether there has been a clear error of judgment. In fact, this Court has described the plaintiff's burden as demonstrating that there was no rational basis for the agency's determinations.

The cases discussing administrative review describe in various ways what proof is required to establish legal error, but all the cases have in common the extreme measure

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Central to the contracting officer's determination was the preference for Ford's larger-capacity vehicle, even at the expense of its increased operating cost.¹⁹ In the dispute of fact concerning the vehicles' cubic capacities, we adopt the contracting officer's calculation, and conclude that his tradeoff is neither inconsistent with the solicitation nor unreasonable. See, e.g., *Crescent Helicopters*, Comp. Gen. Dec. B-283469.2, 1999 U.S. Comp. Gen. LEXIS 207, November 30, 1999.

Similarly, while the contracting officer's more favorable evaluation of Ford's past performance appears to gloss over or accommodate some of its delay with respect to the CRV first article and the resulting production,²⁰ his conclusion that Ford, as the incumbent, presents fewer risks than Grumman Olson, which proposes to commence production at a reactivated facility which incorporates a new production process, is entirely reasonable. "Risk of successful performance should almost always be considered as a performance evaluation factor. It may be included as a separate factor, or as an element of other factors." PM 2.1.7.a. 2.

Some of Grumman Olson's objections to the evaluation are inconsistent with the solicitation's terms. For example, given the discussion in section J., it appears that the innovative features factor related to innovative features of (*i.e.*, "incorporate[d] into") the vehicle, rather than to elements of the manufacturing process by which the vehicle was to be made. As so understood, the production process which Grumman Olson highlights was not for consideration under that factor, although the risks associated with that process could be considered under other appropriate factors. It also ap-

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of deference afforded the agency decision. Certainly the deference is not absolute, but where a Court is called upon to review technical matters that are within the agency's expertise, the highest degree of deference is warranted.

. . . [T]his was a negotiated procurement, a fact that justifies even more deference than usual. And finally, the [government] is accorded still greater deference where, as here, the procurement is a "best-value" procurement. FAR § 15.605(c); see *TRW, Inc. v. Unisys Corp.*, 98 F.3d 1325, 1327-28 (Fed. Cir. 1996) (though it may have reached a different result, General Services Administration Board of Contract Appeals may not overturn agency decision unless it is "wholly without reason"); accord, *E.W. Bliss Co. v. United States*, 77 F.3d 445, 449 (Fed. Cir. 1996).

Cubic Defense Systems, Inc., v. United States, 45 Fed. Claims 450 (CFC, 1999), some citations and internal quotations omitted.

¹⁹ While the extent of that increase is in dispute on the record, that there are increased costs is not.

²⁰ *Cf.*, *Kelly Services, Inc.*, P.S. Protest No. 95-17, October 27, 1997 ("While we find various inconsistencies and non sequiturs in the manner in which the offers were evaluated and in the contracting officer's explanation of that evaluation, we are unable to conclude that the evaluation, as a whole, was so flawed as to require that the protest be sustained.")

pears that credit was not to be available under that factor for vehicle features required by the solicitation.

Many of Grumman Olson's other objections constitute "mere disagreement with the contracting officer's judgement," which is insufficient to establish that the evaluation was unreasonable. *Shape Corporation*, P.S. Protest No. 92-91, December 18, 1992, quoting *Computer Systems & Resources, Inc.*, P.S. Protest No. 86-4, March 27, 1986. This is the clearly the case with respect to the many of the qualitative judgments about the advantages or disadvantages of various features of the Grumman Olson vehicle.

Further, we do not believe that the source selection process was affected by the consideration of unstated evaluation criteria. We agree with the contracting officer that the comments from individuals in the requesting organization recited in the source selection memorandum were not part of the evaluation.

Finally, the protester's objection to the subjective nature of the evaluation process warrants a comment. Contrary to its view, our prior decisions have noted that the process of arriving at numerical scores in evaluating offers is "essentially" and "largely subjective," and is not subject to objection on that ground unless it is arbitrary, unreasonable, or in violation of law. *Mid Pacific Air Corporation*, P.S. Protest No. 92-62, November 23, 1992, citing *Management Concepts, Inc.*, P.S. Protest No. 86-29, July 10, 1986. *Accord, John and Joyce McDonald*, P.S. Protest No. 98-13, August 28, 1988 ("The assignment of a numerical score by the evaluator is an attempt to quantify essentially subjective judgments.").

The protester had not met its burden. Because we cannot conclude that the evaluation of offers and the tradeoff between price and performance evaluation factors lacked reason, the protest is denied.

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