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## Decision

**Matter of:** Watts-Weitz, JV

**File:** B-405475; B-405475.2

**Date:** November 8, 2011

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### DIGEST

1. Protest challenging agency's evaluation is denied where the protester's arguments reflect mere disagreement with the agency's evaluation findings.

2. Protest that "best-value" determination was unreasonable is denied where, following the issuance of a source selection decision memorandum, the contracting officer identified an error in the protester's price and corrected that error in a subsequent memorandum.

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### DECISION

Watts-Weitz, JV, of Honolulu, Hawaii, protests the award of a contract to Satterfield & Pontikes Construction, Inc., of Houston, Texas, by the Department of the Army, U.S. Corps of Engineers, under request for proposals (RFP) No. W9126G-09-D-00XX-RFP03 for construction of an Unmanned Aerial Systems (UAS) Hangar at Fort Hood, Texas. The protester alleges that the agency unreasonably evaluated its proposal and that the best-value determination was flawed.

We deny the protest.

### BACKGROUND

This task order RFP, issued under a multiple award task order contract to a pool of seven contractors, contemplated the award of firm fixed-price contract on a best-value basis. RFP ¶ 1.2. For the purpose of determining best value, the RFP

provided that the agency would consider two technical evaluation factors (factor 1--performance capability, and factor 2--design/technical) and price.<sup>1</sup> According to the RFP, factor 1 was more important than factor 2, and the technical factors, when combined, were significantly more important than price. Id.

The RFP also established that the factors would be evaluated using an adjectival rating scheme, ranging from excellent to unacceptable. As relevant to this protest, the definitions of excellent and good were as follows:

8.4.3.1. **Excellent:** Proposal has exceptional merit and reflects an excellent approach which will clearly result in the superior attainment of all requirements and objectives. This clearly achievable approach includes numerous advantageous characteristics of substance, and essentially no disadvantages, which can be expected to result in outstanding performance. The risk of unsuccessful performance is very low as the proposal solutions [] are unquestionably feasible and practical. These solutions are further considered very low risk in that they are exceptionally clear and precise, fully supported, and demonstrate a clear understanding of the requirements. Risk level: Very Low.

8.4.3.2. **Good:** Proposal demonstrates a sound approach which is expected to meet all requirements and objectives. This sound approach includes advantageous characteristics of substance, and few relatively minor disadvantages, which collectively can be expected to result in acceptable performance. The risk of unsuccessful performance is low as the proposal contains solutions which are considered feasible and practical. These solutions are further considered to be low risk in that they are clear and precise, supported, and demonstrate an understanding of the requirements. Risk level: Low.

RFP ¶¶ 8.4.3.1 & 8.4.3.2.

Six firms, including the protester and the awardee, submitted proposals. The agency placed all firms in the competitive range and issued them items for negotiation (IFNs). After evaluating the revised proposals, the agency re-established the competitive range, again including all firms and again issuing each of them IFNs. Final proposals were received June 16, 2011. The source selection evaluation board (SSEB) provided its final report to the source selection authority (SSA), the contracting officer (CO), on June 21.

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<sup>1</sup> Under the two factors, the RFP identified various elements that were to be considered as part of the agency's.

Relying on the technical findings of the SSEB, as well as her own independent judgment, the SSA determined that Satterfield & Pontikes' proposal represented the best value to the government. The Source Selection Decision Memorandum (SSDM) of July 22 stated, in part:

Watts-Weitz, JV demonstrated one significant strength for Factor 1 and one strength for Factor 2 as listed above. Watts-Weitz JV's price is 6.83% below the [independent government estimate (IGE)] and is awardable; however Watts-Weitz JV does not represent the overall best value. Satterfield & Pontikes Construction was rated Excellent for Factors 1 and 2. Satterfield & Pontikes['] strengths demonstrated numerous advantages of substance. Satterfield & Pontikes' proposal provided a total of 15 strengths for both Factors 1 and 2. They received an excellent rating for their submitted proposal for Factor 1 due to the past performance of the design/build team's top ratings in airport design and construction, experience with Corps of Engineer projects, and key personnel's hangar experience. In addition, one key personnel had regional airport experience. The numerous extra additions stated in Satterfield & Pontikes' proposal far exceeds [the other offerors'] proposals. Satterfield & Pontikes' price proposal is the third highest price but the highest technically rated proposal for both Factors 1 and 2. The numerous extras are significant and justify the extra cost of \$2,783,894.00 between Satterfield & Pontikes' proposal and the lower proposed price of \$34,605,000.00 by [the lowest priced offeror] with a lower technical rating. The additional expertise provided by Satterfield & Pontikes' technical rating and proposed price offers the greater value and reduces the risk to the Government with a higher quality facility.

SSDM, July 22, 2011 at unnumbered ¶ 6 (correcting proposed prices for the lowest-priced offeror, and for the protester, that were transposed in the prior June 28 SSDM, but otherwise containing an identical rationale).

The protester received a notice of award to Satterfield & Pontikes dated July 21 that contained the following table:

<b>Technical Factor</b>	<b>Your Offer</b>	<b>Successful Offeror</b>
Performance Capability	Good	Excellent
Design/Technical	Good	Good
Pricing	\$36,900,000.00 - 5.9% (Below IGE)	\$37,388,894.00 - 4.65% (Below IGE)

Agency Report, Exh. 41, Letter from CO to Protester, July 21, 2011 at 1. The agency, by letter dated the following day, issued a corrected award letter containing the chart below, which reflected a higher rating for the awardee under factor 2 and a lower price for the protester.

<b>Technical Factor</b>	<b>Your Offer</b>	<b>Successful Offeror</b>
Performance Capability	Good	Excellent
Design/Technical	Good	Excellent
Pricing	\$36,533,000.00 – 6.83% (Below IGE)	\$37,388,894.00 – 4.65% (Below IGE)

Agency Report, Exh. 42, Letter from CO to Protester, July 22, 2011 at 1 (stating “[i]ncluded in the matrix chart below is the corrected copy for your records.”). The record establishes that inclusion of the incorrect rating for the awardee under the design/technical factor was a mistake unique to the first award letter and not found in the agency’s evaluation.<sup>2</sup>

On July 22, the contract specialist (CS) sent the protester an email that contained “a formal written debriefing letter for the subject project.” AR, Tab 45 at 000863, July 22, 2011 Email from CS to Protester. The protester requested a “formal debrief” that same day. *Id.* at 000859, July 22, 2011 Email from Protester to CS. After several email exchanges, the CS offered the protester “an additional debriefing,” *id.* at 000855, July 28, 2011 Email from CS to Protester, which occurred on July 29. This protest followed on August 3.

## DISCUSSION

The protester alleges that the “agency’s evaluation of Watts on Factor 1 [ ] was arbitrary and unreasonable because it overlooked or ignored responsive and relevant information that, if properly considered, would have warranted a significantly higher rating with lower risk.” Protest at 5. The protester makes an identical claim for factor 2. *Id.* at 11. The protester also argues that the agency’s best value decision was flawed because the SSA used the wrong price for the protester (a higher price) in making her tradeoff decision. Based on our review of the record, we conclude that the protest allegations are without merit.

Before addressing the merits of the protest, we must resolve a procedural matter regarding timeliness. The agency argues that the protest is untimely because it was

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<sup>2</sup> The Final Source Selection Evaluation Report contained the correct ratings, Final Source Selection Evaluation Report at ¶ 7, as did both SSDMs. SSDM, June 28, 2011 at Table 3; SSDM, July 22, 2011 at Table 3.

filed more than 10 days after the protester received its July 22 formal written debriefing; the protest was filed on August 3, twelve days after July 22. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2011) (establishing that for protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required, such protests must be filed not later than 10 days after the date on which the debriefing was held). We disagree.

While the agency provided the protester with a written debriefing on July 22, as noted above, on July 28, 6 days later and within the protester's 10-day protest window, the agency also advised the protester in writing that it would provide the protester with an "additional debriefing." In our view, this created, at a minimum, some ambiguity as to whether the agency's debriefing process was continuing. Given this ambiguity, which was created by the agency, and considering that we resolve doubts regarding timeliness in favor of protesters, Fort Mojave/Hummel, a Joint Venture, B-296961, Oct. 18, 2005, 2005 CPD ¶ 181 at 6 n.7, we find that the protester's challenges to the agency's evaluation are timely when filed within 10 days of the agency's conclusion of the debriefing process on July 29.

Turning to the merits of the protest, the evaluation of proposals is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but will, instead, examine the record to determine whether the agency's judgment was reasonable and consistent with applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Watts faults the agency for failing to identify numerous aspects of its proposal as strengths or significant strengths,<sup>3</sup> protest at 5-12. Its objections, however, do not rise above the level of mere disagreement. For example, the awardee's proposal was evaluated as having the following significant strength under factor 1, performance capability:

**2. (S[ignificant])** Offeror's past performance ratings were determined a significant strength. The proposed design/build team has been

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<sup>3</sup> The RFP defined strength as "[a]ny aspect of a proposal that, when judged against a stated evaluation criterion, enhances the merit of the proposal or increases the probability of successful performance of the contract." RFP ¶ 8.3.4. A significant strength "appreciably enhances the merit of a proposal or appreciably enhances the probability of successful contract performance." Id. at ¶ 8.3.5.

named a leader in Green Construction and rated one of the top 12 [architecture and engineering] firms in airport design and construction. The design/build team has also been rated as the No. 8 firm in government and public construction by Texas Construction.

SSDM, June 28, 2011 at 6. The protester notes that it was ranked 27th out of the top 100 Green Contractors by Engineering News Record—an achievement that the protester asserts should have carried more weight than the awardee’s rating cited by the agency. Comments on AR at 10. Similarly, the protester favorably compares the relative qualifications of its design subcontractor with the qualifications of the awardee’s design subcontractor. Id.

Although we view the protester’s arguments as reflecting nothing more than disagreement with the agency’s assessments of the strengths of its proposal, it is also evident from the record that the agency performed a detailed assessment of the protester’s proposal at all stages of the procurement. The protester’s technical evaluation ratings improved throughout the evaluation process—from “unacceptable” for both factor 1 and factor 2, to marginal and acceptable, to final ratings of “good.”<sup>4</sup> To the extent the protester’s proposal demonstrated that it met, and sometimes exceeded, the requirements of the RFP, “good” ratings reflect that level of proposal quality. A “good” approach, as noted above, includes “advantageous characteristics of substance.” Based on our review of the record, we have no basis to conclude that the agency’s evaluation was unreasonable or otherwise improper.<sup>5</sup>

The protester also argues that the agency conducted a flawed best-value tradeoff. As noted above, the SSA’s initial tradeoff—as reflected in the first award letter—transposed the protester’s proposed price with that of another offeror, thus overstating the protester’s price. The transposition of the two offerors’ prices had the effect of understating the actual cost difference between the awardee and the protester’s proposals by \$367,000.<sup>6</sup> Supplemental Protest at 4. After realizing her

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<sup>4</sup> Determinations and Findings of the Contracting Officer, at 8-11.

<sup>5</sup> The protester also alleges that the agency unreasonably failed to credit its final proposal with a strength for offering a “clear span”—that is, zero interior columns—when earlier evaluations had noted this as a strength. Comments on AR at 7. This allegation is clearly without merit. After the evaluators had completed their initial evaluations, the agency issued Amendments 15 and 16 to the solicitation, which established “clear span” as a minimum requirement. Thus, there was no basis to continue to attribute Watts’ proposal with a strength for the “clear span,” because it no longer exceeded agency requirements. We have also considered the protester’s allegation that the agency disparately evaluated the protester’s and the awardee’s proposals; on the record, we find no support for that allegation.

<sup>6</sup> The protester also alleges that the SSA failed, in her corrected SSDM, to account for the additional \$1,928,000 difference between the awardee’s proposed price and the  
(continued...)

error, the SSA reaffirmed her decision based on a consideration of the correct price differential.<sup>7</sup>

The protester asserts that this simple reaffirmation failed to account for the actual tradeoff between the awardee's higher-rated proposal and the protester's lower proposed price.<sup>8</sup> As noted above, however, the agency identified specific strengths and significant strengths underlying the higher evaluation ratings that would benefit the agency if it selected the awardee's higher-priced, higher-rated proposal. In the SSA's initial SSDM, she identified those strengths as being worth the additional cost. In her initial tradeoff, she determined that the higher-quality proposal—as evidenced by better across-the-board evaluation ratings and many more evaluated strengths—was worth a price premium of \$484,894 dollars. In her corrected memorandum, the SSA reiterated that determination, using the same rationale, except correctly noting the price difference of \$855,894. According to Watts, because the price difference was originally understated, in order to be reasonable, the amended SSDM had to contain a more extensive justification. We disagree. Given that the price understatement was the only correction needed for the new decision, and the price correction reflected only a small fraction of the overall contract value, we have no basis to question the reasonableness of the SSA's reliance on her initial determination and findings, after having considered the corrected prices, to reach

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proposed price of another firm, which had in fact submitted the lowest-price. Prejudice is an element of every viable protest, Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5, and we will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. We fail to see how this error, with respect to the SSA's consideration of another firm for award, could have prejudiced Watts.

<sup>7</sup> Because we conclude that Watts' challenges to the agency's technical evaluations are without merit, Watts' objection to the agency's best-value determination—based on the alleged improper technical evaluations—likewise is without merit.

<sup>8</sup> The agency argues that this protest ground, first raised in the protester's comments on the agency report, is untimely, because the protester should have known when it received the corrected award letter that the SSA had relied on inaccurate proposed prices when she made her first award determination. See 4 C.F.R. § 21.2(a)(2). We disagree. The protester did not know until it received the agency report that the SSA's rationale remained essentially unchanged when she reaffirmed her decision. This knowledge gave rise to the protester's supplemental protest, which was filed within 10 days of the protester's receipt of the supplemental agency report.

the same conclusion that Satterfield's proposal represented the best value to the government.<sup>9</sup>

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>9</sup> During the development of the protest, Watts challenged the failure of the agency to produce individual evaluators' work sheets, which the agency could not locate. Where, as here, the record shows that the agency decision-maker relied not on the individual evaluators' worksheets but, rather, a consensus report produced from those individual evaluations, any statements made in those individual evaluations would have provided no basis on which to sustain the protest. See Vocus Inc., B-402391, Mar. 25, 2010, 2010 CPD ¶ 80 at 4-5. We consider the record adequate if the consensus documents and source selection decision sufficiently document the agency's rationale for the evaluation. Alliance Tech. Servs., Inc., B-311329, B-311329.2, May 30, 2008, 2008 CPD ¶ 108 at 3.