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Decision

Matter of: Weibel Equipment, Inc.

File: B-406888; B-406888.2

Date: September 21, 2012

Thomas M. Brownell, Esq., Terry Elling, Esq., and Gregory Hallmark, Esq., Holland & Knight LLP, for the protester.

Kevin C. Dwyer, Esq., Kathy C. Weinberg, Esq., Damien C. Specht, Esq., and Carrie F. Apfel, Esq. Jenner & Block LLP, for General Dynamics C4 Systems, the intervenor.

Tina Pixler, Esq., and Bryan C. Naquin, Esq., Department of the Army , for the agency.

Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of awardee's past performance and protester's technical proposal is denied where the record shows that the evaluation was consistent with the terms of the solicitation and reasonable.
 2. Protest that agency failed to properly consider information contained in the protester's final proposal revision is denied where the protester was not prejudiced by the agency's error.
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DECISION

Weibel Equipment, Inc., of Lansdowne, Virginia, protests the award of a contract to General Dynamics C4 Systems, of Scottsdale, Arizona, by the Department of the Army, Program Executive Office for Simulation, Training, and Instrumentation, under request for proposals (RFP) No. W900KK-11-R-0034, for the Army's Range Radar Replacement Program.

We deny the protest.

BACKGROUND

The Army issued the RFP on June 20, 2011, for the purpose of awarding a contract to replace legacy radar systems at four Army test centers. The Army explains that the instrumentation radars at the Aberdeen, Redstone, White Sands, and Yuma test centers have become antiquated and are not able to support current test needs. The radar replacement effort is intended to provide new radars with improved test capabilities and reduced life-cycle costs by developing and deploying modern radar designs.

The RFP set forth a best value selection scheme considering three factors: technical, performance risk, and cost/price. The RFP advised that the technical factor was significantly more important than the performance risk factor, which was significantly more important than the cost/price factor, and that the non-price factors, when combined, were significantly more important than the cost/price factor. The technical factor included three subfactors, in descending order of importance: radar system capability, integrated logistics support and small business participation. The RFP cautioned that award may be made to other than the lowest-priced proposal if the agency determined that paying a price premium was warranted based on its evaluation.

Concerning the technical factor and subfactors other than the small business participation subfactor, the RFP advised that the agency would assign adjectival ratings and risk ratings. Adjectival ratings were to be assigned based on the agency's evaluation of an offeror's approach to meeting or exceeding solicitation requirements; proposal risk ratings considered the potential impacts of an offeror's proposed approach on performance, schedule, and price/cost in achieving solicitation requirements and program objectives.¹

Concerning the performance risk factor, the RFP stated that the agency would assess the relative risks associated with an offeror's likelihood of success in performing the solicitation's requirements as indicated by that offeror's record of past performance, including that of the offeror's proposed major subcontractors. RFP at 141. In this regard, the RFP provided that the agency may use data provided in offerors' proposals as well as data obtained from other sources, and that because the agency may not necessarily interview all of the sources provided by

¹ The RFP set forth an adjectival rating scheme of outstanding, highly satisfactory, satisfactory, marginal, and unacceptable, and a risk rating scheme of low risk, moderate risk, and high risk. Under the small business participation subfactor, proposals received a proposal adjectival rating, but did not receive a proposal risk rating.

the offerors, it is incumbent upon the offerors to explain the relevance of the data provided.²

The agency received five proposals in response to RFP by the August 9 closing time, including proposals from Weibel and General Dynamics. After an initial evaluation, the agency determined that discussions were necessary and established a competitive range consisting of four of the five proposals. Weibel and General Dynamics were both included within the competitive range. The agency then conducted two rounds of discussions, which began on November 28, 2011, and ended on January 27, 2012, with the agency's request for final proposal revisions. Four FPRs were received on February 24, and were deemed responsive.

After the final evaluation, Weibel's and General Dynamics' final proposals were rated as follows:

Factors	Weibel	General Dynamics
Factor I: Technical	Satisfactory/ Moderate Risk	Outstanding/ Low Risk
Radar System Capability	Satisfactory/ High Risk	Outstanding/ Low Risk
Integrated Logistics Support	Satisfactory/ Low Risk	Highly Satisfactory/ Low Risk
Small Business Participation	Marginal	Highly Satisfactory
Factor II: Performance Risk	Low Risk	Very Low Risk
Factor III: Cost/Price	\$250,423,765	\$267,645,353

Final Proposal Evaluation Report (FPER), at 10. Based on its evaluation, the agency determined to make the award to General Dynamics, concluding that "the enhanced capabilities and lower risk found in General Dynamics' approach is well worth the price premium." Source Selection Decision Document (SSDD) at 22. On June 5, the agency informed Weibel that it had selected General Dynamics. Weibel then requested a debriefing, which the agency provided on June 11. Weibel filed this protest on June 15.

ANALYSIS

Weibel alleges that the agency failed to properly consider negative past performance information concerning a major General Dynamics subcontractor.

² For the performance risk factor, the RFP set forth a rating scheme of very low risk, low risk, moderate risk, high risk, and unknown risk.

Weibel also challenges the agency's evaluation of its proposal under each of the technical subfactors, and alleges that the discussions provided by the agency were misleading, that the agency treated the offerors' proposals unequally, and that the agency's best value tradeoff decision was flawed.

Performance Risk Factor

Concerning the agency's evaluation under the performance risk factor, Weibel argues that General Dynamics' "very low risk" rating was unreasonable in light of poor performance by a General Dynamics subcontractor on another contract for similar radar equipment. More specifically, Weibel asserts that the XSTAR radars offered by General Dynamics under this RFP are the same radars that a predecessor company to General Dynamics' major subcontractor STAR Dynamics failed to deliver under a previous contract for range radar equipment with the government of Israel. Weibel states that it is aware of these facts because it was also a competitor for the Israeli radar contract and further argues the agency should have been aware of the performance problems based on a discussion of the contract and information found in Weibel's proposal.³

The record reflects that General Dynamics identified the Israeli radar contract in its initial and revised proposals, and acknowledged that there had been multiple schedule revisions on the project, but also stated that the revisions were related to customer changes and added technical requirements. General Dynamics stated that challenges under the contract had been completely resolved and that the project is on schedule to meet the delivery date.

The record also reflects that the agency requested past performance information on the contract from the government of Israel, however, no information was provided. Specifically, in August, 2011, the government of Israel informed the agency that the program was ongoing and that it is not the practice of the Ministry of Defense "to give qualitative program reviews generally, [and] this is more so when the program has not been completed." Agency Report (AR), Tab 18, at 1. The agency also checked the Contractor Performance Assessment Reporting System (CPARS), but found no information on the contract. Accordingly, where it had no independent data on which to base an assessment, the agency did not consider the Israeli radar

³ Weibel also contends that the alleged poor past performance of a critical General Dynamics subcontractor renders the agency's "low risk" rating of General Dynamics under the technical factor unreasonable. We disagree. The RFP established that technical proposal risk would be based on the agency's consideration of risk associated with a firm's technical approach, not the firm's past performance. Thus, even if the agency had received independent past performance information concerning the Israeli radar contract, it would not have impacted General Dynamics' risk rating under the technical factor.

contract in rating General Dynamics' performance risk. The agency explains, and the record reflects, that the agency based its evaluation on other contracts identified in General Dynamics' performance risk volume for which the agency received independent customer based data (to include information contained in CPARS), all of which showed a highly successful record of past performance, resulting in General Dynamics' "very low risk" performance risk rating.

The evaluation of past performance, including the agency's determination of the relevance and scope of a firm's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable, inconsistent with the solicitation criteria, or undocumented. Harris IT Servs. Corp., B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 at 10. A protester's mere disagreement with the agency's judgment is insufficient to establish that an evaluation was improper. Id.

In this case, as in Harris IT, supra, the agency did not receive, or otherwise locate, independent past performance information on a contract identified in an offeror's proposal. Absent any independent information, the agency like the agency in Harris IT, declined to consider the offeror's own positive assessment of its past performance. Nor did the agency consider adverse past performance information set forth by Weibel, General Dynamics' competitor. Rather, the agency based its past performance assessment solely on independently provided past performance data. We have no basis to conclude that the agency's evaluation in this regard was unreasonable.

Technical Factor

Weibel next challenges the agency's evaluation of weaknesses in its proposal under each of the three technical subfactors: radar system capability, integrated logistics support and small business participation. Weibel alleges that each of the weaknesses is unreasonable, and with regard to certain weaknesses, that the agency failed to conduct meaningful discussions, or treated the offerors' proposals unequally. We address Weibel's arguments concerning a number of these weaknesses, which were set forth as "key discriminators" or featured in the tradeoff decision in the SSDD.⁴

⁴ Weibel presented a wide range of allegations during the development of this protest. We discuss a number of these claims herein. To the extent that claims, or portions of claims presented by the protester are not discussed in this decision, we consider them to be without merit or non-prejudicial to the protest. For example, Weibel also challenges the agency's evaluation of certain weaknesses that were not identified as discriminators between its proposal and General Dynamics' proposal, such as a weakness related to the length of Weibel's proposed radar trailer. Because we see no evidence that these weaknesses factored into the agency's

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In reviewing protests challenging an agency's evaluation, our Office will not reevaluate proposals; rather, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation. See GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6; RVJ Int'l, Inc., B-292161, B-292161.2, July 2, 2003, 2003 CPD ¶ 124 at 5. A protester's mere disagreements with a procuring agency's conclusions are insufficient to establish that the agency's judgments were unreasonable.

Radar System Capability Subfactor

Under the radar system capability subfactor, Weibel challenges several weaknesses assessed by the agency. For example, one of the weaknesses challenged by Weibel concerns the agency's observation that Weibel's proposed radar system lost signal strength at increased "angular extents." See Final Proposal Evaluation Report (FPER) at 39. The specification at issue, "adjustable angular extent," provides as follows:

As a result of the diversity of testing parameters, the group of radars must measure objects in both narrow and wide angular extents (though not at the same instant in time). Wider beams or efficient, limited volume scans can be used for initial object acquisition and for covering larger volumes of interest when many objects are to be measured simultaneously. Narrower beams are useful to provide more precise measurements at greater distances.

Threshold: The radars shall provide the capability to measure objects utilizing angular extents with dynamically selectable increments of angular extent from 2 to 10° (nominal).

Objective: The radars shall provide the capability to measure objects utilizing angular extents with dynamically selectable increments of angular extent from 1 to 20° (nominal).

System Requirements Document (SRD), at 41.

Weibel argues that the weakness assessed by the agency in this area was unreasonable. According to Weibel, it met the specifications by proposing a radar with angular extents of [DELETED] and the specifications did not state a

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decision that General Dynamics' proposal represented the best value, we do not address them here.

requirement for the signal strength of a wider radar beam. Weibel also argues that the agency overstates the extent of the power loss, based on an unrealistic scenario. The agency responds that the weakness is reasonably based, and that the extent of the signal loss is set forth in Weibel's own proposal.

The record reflects that Weibel's proposal included a chart that demonstrated signal power loss corresponding with increased angular extent. The agency reviewed this data and concluded that:

The proposed design [DELETED]. This loss of signal strength impacts data collection on items that need to be measured over a large coverage area. The data collected when configured in a wide angular extent may be severely degraded or unusable.

FPER at 39.

We see nothing unreasonable in the agency's evaluation. Although the RFP did not contain specifications for signal strength at wider angular extents, the specification for "adjustable angular extent" required the proposed radars to be able to "provide the capability to measure objects" at those wider angular extents. SRD at 41. Where the agency evaluators concluded that "[t]he data collected when configured in a wide angular extent may be severely degraded or unusable," we do not consider it unreasonable for the agency to assign Weibel's approach a weakness in this area.⁵ FPER at 39.

Weibel also argues that it was not afforded adequate discussions in this area since it was not advised of the agency's concern during discussions. In a negotiated procurement where the agency conducts discussions, those discussions must be meaningful--that is, they must be sufficiently detailed so as to lead the offeror into the areas of its proposal requiring revision. Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 10. While discussions must address deficiencies and significant weaknesses identified in proposals, the

⁵ Weibel also focuses on the agency's evaluation conclusion that the loss of signal strength at wider angular extents "increases risk regarding the Government's ability to reconfigure the system to support changing and future mission requirements, which is a Threshold requirement." FPER at 39. Weibel argues that the agency used an unreasonably vague reconfigurability requirement to assess Weibel a weakness for failing to meet an unstated signal strength requirement. The entirety of the FPER's discussion of the weakness, however, indicates that the weakness was assessed under both the "adjustable angular extent" and "reconfigurability" requirements. We find no error in either area, where the evaluators concluded that the power loss in Weibel's approach may render data degraded or unusable at wide angular extents.

precise content of discussions is largely a matter of the contracting officer's judgment. American States Util. Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 6. Where an agency has advised an offeror of its concern, there is no requirement that it raise the issue again in subsequent rounds of discussions, even where the issue continues to be a concern to the agency, US Filter Operating Servs., Inc., B-293215, Feb. 10, 2004, 2004 CPD ¶ 64 at 3, nor is the agency required to reopen discussions when an offeror's revised proposal contains new information that constitutes a weakness. See Mechanical Equipment Co., Inc., et.al., B-292789.2, Dec. 15, 2003, 2004 CPD ¶ 192.

In this case, Weibel's initial proposal did not include a discussion of radar signal strength at various angular extents, and stated only that its radars would have adjustable angular extents between [DELETED]. In the first round of discussions, the agency requested additional information about Weibel's approach, such as the increments of angular extent available, the transmission of power at each increment, and whether widening the radar beam would reduce tracking capabilities. Weibel answered these questions and additionally stated that a "beam spoiling" capability could be delivered to offer [DELETED]. Weibel First Discussions Responses at 28. In the second round of discussions, the agency sought to clarify whether the "beam spoiling" capability was included in Weibel's price. Weibel responded that "the beam spoiling capability is not included in the price, but we will be happy to include this capability." Weibel Second Discussions Responses at 4. However, in its FPR, Weibel did not discuss beam spoiling and indicated that the proposed radar would lose power at increased angular extents.

We conclude that the agency's discussions in this area were adequate. As reflected above, the agency's concern regarding the loss of power at increased angular extents was not fully apparent until Weibel submitted its FPR. Accordingly, the agency was not required to reopen discussions to provide Weibel with another opportunity to address this concern. Moreover, because this concern represented only a weakness, and not a significant weakness or deficiency, it was within the discretion of the contracting officer to decide whether to include the matter in discussions. See Federal Acquisition Regulation (FAR) § 15.306(d)(3), American States Util. Servs., Inc., supra (discussions must address at least deficiencies and significant weaknesses identified in proposals). In sum, we see no error in the agency's conduct of discussions here.⁶

⁶ We note that the page limit for the initial proposals was 150 pages. This limit, however, was increased to 250 pages for FPRs. As a consequence, the record reflects that, offerors, to include the protester, included significantly more new information in their FPRs, which in some cases gave rise to new weaknesses.

Weibel next challenges the agency's assessment of a weakness and a risk related to Weibel's approach under transponder tracking requirements. Concerning the weakness in this area, the agency observed that Weibel:

relies on a standard technique of [DELETED] . . . The proposed [DELETED] approach increases risk of meeting the above referenced Threshold because it is unclear how the [DELETED] are to be provided to the radars and no detail is given that addresses how the [DELETED] can be modified during the mission.

FPER at 37. Weibel responds that the weakness is based on a misreading of its proposal, ignores its discussions responses or demonstrates inadequate discussions, and treats its proposal unequally in comparison to General Dynamics' proposal. More specifically, Weibel argues that its proposal did not indicate that [DELETED], but merely described the relationship between pulse transmit times and an external timing reference such as the global positioning system (GPS). Weibel also argues that it made clear in its response to discussion questions that [DELETED], and that General Dynamics' proposal similarly relies on [DELETED].

The agency argues that Weibel's FPR did not clearly respond to its concern, expressed during discussions, regarding real-time pulse timing adjustment and failed to adequately describe how pulse timing could be modified. The agency acknowledges that additional explanation of Weibel's approach could be found in Weibel's discussion responses, but asserts that the explanations were not incorporated into Weibel's FPR, and that the agency had cautioned offerors that all information for evaluation must be included in the FPRs. Finally, with regard to unequal treatment, the agency responds that while General Dynamics also utilized [DELETED] in its proposal and received a strength for transponder tracking, General Dynamics' proposal had an overall different approach and received its strength in this area based on a number of advantages beyond its use of [DELETED].

Our review of the record reveals nothing unreasonable in the agency's evaluation. The agency's initial review determined that Weibel provided only limited information on how its radar system would track transponders. During discussions, the agency asked Weibel a number of questions in this area, including a question on how transponder "time slots will be managed and adjusted in real-time for those radars that are assigned to track in transponder mode?" Weibel First Discussions Responses at 5. Weibel provided a response during discussions, however, it appears that Weibel did not elaborate on this response in its FPR, or even incorporate the entirety of the discussions response, stating only that:

[DELETED]

FPR at 106. We find that it was not unreasonable for the agency to conclude that Weibel's proposed radar [DELETED], where despite a discussion question on how time slots would be managed in real-time, Weibel's FPR failed to specifically address how real-time adjustment would be accomplished. We also conclude that discussions in this area were reasonable, where the agency clearly inquired as to how real-time adjustment would be accomplished, and Weibel's FPR failed to clearly address this agency concern.

Concerning unequal treatment, the evaluation record demonstrates that while General Dynamics' proposal also utilized [DELETED], General Dynamics provided significant explanation in its FPR to explain how transponder tracking would be accomplished, and the agency was satisfied with General Dynamics' approach. Further, as noted by the agency, General Dynamics received a strength in the transponder tracking area for offering many advantages apart from its [DELETED]--most significantly, GD4CS' proposal to provide radars with [DELETED]. See FPER at 89.

Weibel also challenges the agency's assessment of technical proposal risk related to its transponder tracking approach. Specifically, the agency concluded that, based on a "draft frequency allocation plan" provided in Weibel's FPR, there was a risk that Weibel's radar system may not be able to support the agency's transponders. In this regard, the RFP required that for the "pulsed radar tracking of transponders, radars shall adhere to IRIG 262-02." SRD at 25. The IRIG 262-02 standard in turn requires that current "X-Band transponders" operate between the frequencies of 9.0 and 9.6 gigahertz (GHz). IRIG 262-02 at 1-2. However, Weibel's draft frequency allocation plan proposed to support X-Band frequencies between [DELETED] and [DELETED] GHz, which the agency interpreted as limiting available frequency spectrum for the current transponders to just [DELETED] to [DELETED] GHz.⁷

⁷ In its comments, Weibel also argued that the agency's evaluation was unreasonable where, during questions and answers, an offeror asked "[w]hat are the available X-Band frequency allocations in MHz or GHz at the Test Centers within which ALL the RRRP radars (Close-ins and Fly-outs) must operate," and the agency responded that "for radars with power over 40W, 9.5 GHz to 10.499 GHz is the available X-Band frequency range." RFP Amendment 0003, Q&A, at 1. Weibel argues that it was improperly penalized for proposing to use the available frequency band, where General Dynamics was not penalized for using unavailable frequencies in its proposal. However, because Weibel was on notice of the agency question and answer response and the evaluated weaknesses at the time of its debriefing, but did not raise this challenge until the time of Weibel's comments, the allegation is untimely and is dismissed. Concerning the allegation that General Dynamics should have received a weakness for proposing "unavailable frequencies," we see nothing in the agency's questions and answers response to indicate that the

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Weibel protests that the agency's interpretation of its proposal is unreasonable because the frequency allocation plan was clearly marked as a "draft," and could be changed during the engineering and manufacturing design phase of the contract. We disagree. The agency is obligated to evaluate the information provided in the proposals--it is the offeror's responsibility to prepare a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows for a meaningful review by the procuring agency. American Title Servs., a Joint Venture, B-404455, Feb. 4, 2011, 2011 CPD ¶ 38 at 4; International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8. Here, it was not unreasonable for the agency to consider the frequency allocation presented in Weibel's proposal. Concerning Weibel's allegation of inadequate discussions, the record indicates that this issue was introduced in the FPR, and was not apparent from the initial Weibel proposal on which the discussions were based.

Finally, Weibel challenges the agency assessment of a weakness related to the RFP's inter-radar interference mitigation requirements. In this regard, the SRD required that:

As a system of systems, the radars shall be capable of operation without electromagnetically interfering with each other. *Note--all radars may be operational in the same performance zone at the same test center at the same time and perhaps tracking the same object(s). If a transponder is in use, this may require the radars to share the same frequency assignment.

SRD at 19. The agency also advised that "the maximum number of radars that will be operated at one individual test center (not supporting the same mission) is anticipated to be 23 radars, rather than the entire quantity of 50. **The maximum number of radars supporting the same mission is 12.**" Protest, Tab I, at 1.

In its FPER, the agency concluded that Weibel's FPR did not include sufficient detail to demonstrate that its proposed approach would successfully mitigate electromagnetic interference. Specifically, the agency found that:

[Weibel] relies on the ability to [DELETED]. Not enough information is provided as to whether a [DELETED] will be adequate . . . The proposal states that the system is able to detect interference [DELETED]. No information is provided as to how

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offerors could not utilize the frequency band set forth in IRIG 262-02 for transponder tracking.

this interference would be detected. There is no explanation of the algorithms or methods used to [DELETED].

FPER at 32.

Weibel responds that its proposal fully addressed the interference mitigation requirements and demonstrated that 12 of its radars--the maximum number of radars that the agency indicated would support a single mission--could operate within the available frequency band without overlapping frequencies. However, while 12 radars was set forth as the maximum number supporting a single mission, the agency advised that up to 23 radars may operate at a single test center, and that "all radars may be operational in the same performance zone at the same test center at the same time." SRD at 19. Further, Weibel's demonstration that 12 radars could function without overlapping frequencies does not fully address the agency's requirement, where the SRD indicated that the use of transponders "may *require* the radars to share the same frequency assignment." *Id.* (emphasis added). The FPER reflects that the agency was concerned that, where radars shared the same frequency assignment, Weibel's proposal did not explain how interference would be detected, or what methods would be utilized to mitigate the interference without introducing new conflicts. Where Weibel's proposal did not explain how interference would be mitigated when radars were required to share frequency assignments, we do not find the agency's concern unreasonable.

With respect to the allegation that discussions were insufficient or misleading in the area of interference mitigation, Weibel asserts that in the second round of discussions, the agency asked follow-up questions in some areas, but did not ask about others. As stated above, where an agency has advised an offeror of its concern, there is no requirement that it raise the issue again in subsequent rounds of discussions, even where the issue continues to be a concern to the agency. US Filter Operating Servs., Inc., *supra*. Further, as is also discussed above, because these matters were assessed as mere weaknesses, not significant weaknesses or deficiencies, it was within the discretion of the contracting officer to decide whether to include the matters in discussions.

Integrated Logistics Support Subfactor

Weibel challenges the agency's evaluation of two weaknesses under the integrated logistics support factor. However, based on our review of the record, we conclude that the protest grounds represent mere disagreement with the agency's evaluation. A protester's mere disagreement with the agency's judgment is insufficient to establish that an evaluation was improper. Harris IT Servs. Corp., *supra*.

For example, Weibel first challenges a weakness related to its proposal to adapt its current systems operating in a 100 MHz FM Bandwidth to a 300 MHz bandwidth with "a new 300 MHz bandwidth oscillator . . . built using the basic design and

principles already employed in [the current oscillators]. FPR at 159. In the technical risk assessment and mitigation section of its initial technical proposal, Weibel categorized the development of the new 300 MHz oscillator as low risk. Initial Proposal at 127. The agency however, concluded that Weibel did not provide sufficient data to support that risk assessment and mitigation strategy.

In the first round of discussions, the agency advised Weibel that more information was required to support its risk assessment concerning the development of the 300 MHz oscillator. Weibel's response included an exhibit detailing the specific changes that were required to convert the current 100 MHz oscillator to 300 MHz. In the second round of discussions, the agency asked additional questions about the 300 MHz oscillator functionality. Weibel then reproduced its exhibit on changes to the 100 MHz oscillator from the first round of discussions in its FPR. However, on review of Weibel's additional response, the agency concluded that Weibel still had not provided sufficient information to support a low risk rating for the 300 MHz oscillator development effort.

In its protest, Weibel asserts that the agency's assessment is overwrought and lacks a reasonable basis, where Weibel's proposal included an "explanation of the relatively minor, simple solution." Protest at 18. The agency states that its evaluators did not accept Weibel's assessment as an accurate description of the inherent risk in development of the new oscillator, and did not consider the effort to be minor. In its comments, Weibel again asserts that it fully explained the development process, which consisted largely of replacing commercial items in the 100 MHz oscillator with other commercial items, and provided a chart to identify which parts would be replaced, and which maintained. Weibel argues that the record does not explain why the development of a 300 MHz oscillator is more complex than its proposal suggests.

We conclude that this protest issue essentially presents a disagreement between Weibel and the agency's technical evaluators over the level of risk inherent in product development. We defer to the agency's evaluators on this technical matter and conclude that Weibel has not shown that the agency's evaluation conclusions were unreasonable.⁸ See DANTEC Electronics, Inc., B-213247, Aug. 27, 1984, 84-2 C.P.D. ¶ 224 at 6; London Fog Co., B-205610, May 4, 1982, 82-1 CPD ¶ 418 at 3.

⁸ Proposals under this RFP were evaluated by a government team consisting of representatives from the Program Executive Office for Simulation, Training, and Instrumentation; the Aberdeen, Redstone, White Sands, and Yuma test centers; Oak Ridge National Labs; and the Tobyhanna Army Depot. The protester has provided no information to cause our Office to question the ability of the evaluators to reach these technical conclusions.

Weibel also challenges the agency's evaluation of its calculations of mean time between critical failure (MTBCF) for its radar system. In this regard, the agency initially found that Weibel's proposal of a MTBCF in excess of both the RFP threshold and objective constituted a strength, but that the lack of detail on the system design, and the failure to provide MTBCF information for certain subsystems, constituted a proposal risk. During discussions, the agency informed Weibel about this risk, and Weibel provided information concerning the MTBCF of the additional subsystems. However, in the FPER, the agency again concluded that Weibel failed to sufficiently detail their approach for accomplishing the calculated MTBCF, and failed to demonstrate an understanding of the work required. Weibel argues that the assertion of both a strength and a weakness in this area is irrational.

We disagree. The RFP in this case explained that in the technical area, proposals would be assessed for approach in meeting or exceeding solicitation requirements, and separately for proposal risk such as the potential impacts of the proposed approach on performance, schedule, and price/cost in achieving solicitation requirements and program objectives. With regard to MTBCF, the agency concluded that Weibel's proposal of a very high MTBCF was a strength, but separately concluded that the lack of detail in the approach increased risk, and thus constituted a weakness. We see no error in this assessment under the evaluation scheme set forth in the RFP. Weibel also argues that the weakness for lack of detail was unreasonable because, according to Weibel, its proposal included more detail regarding the MTBCF area than did General Dynamics. We conclude that this argument represents mere disagreement with the agency evaluation. General Dynamics' and Weibel's approaches to MTBCF were not similar, and Weibel has provided no basis for our Office to question the agency's conclusion that General Dynamics' approach was lower risk.

Small Business Participation Subfactor

Under the final technical subfactor, Weibel argues that the agency improperly based its final evaluation on statements from Weibel's initial proposal which were supplanted by its FPR. Specifically, Weibel contends that agency assigned a significant weakness under the small business participation factor based on a statement from Weibel's initial proposal indicating that "while we have firmed up the subcontractors for the EMD phase, it is premature to list potential subcontractors for production." FPER at 52. Weibel maintains that its FPR featured a revised small business participation section that did not include this statement.

The agency acknowledges that it erred in including this statement in its FPER, but argues that Weibel was not prejudiced, because the heart of the significant weakness concerned Weibel's failure to meet two of five small business goals: overall small business participation, and women-owned small business participation. The agency stated in the FPER that:

[Weibel] does not provide any justification for not proposing to meet two of the five small business goals. This indicates a substantial lack of commitment to utilization of small business resulting in a Significant Weakness.

Id. at 53.

We agree that Weibel has not demonstrated that it was prejudiced by the alleged error. The FPER's conclusion demonstrates that the significant weakness in the small business participation subfactor was assessed for Weibel's failure to meet two of five small business goals, which persisted in Weibel's FPR, not a concern regarding the extent to which Weibel identified potential subcontractors beyond the EMD phase of the contract. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, 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; see Statistica, Inc., v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). The error identified by the protester under the small business participation subfactor does not reach this standard.

Tradeoff Determination

Lastly, Weibel argues that the agency tradeoff decision was flawed. We conclude that this argument is largely derivative of Weibel's allegations of error in the technical and performance risk factors, which we have found to be without merit. In any event, with regard to source selection decisions, agencies enjoy discretion in making cost/technical tradeoffs where the solicitation provides for the award of a contract on a best value basis; the agency's selection decision is governed only by the test of rationality and consistency with the solicitation's stated evaluation scheme. Marine Hydraulics Int'l, Inc., B-403386.3, May 5, 2011, 2011 CPD ¶ 98 at 4. In this case, where General Dynamics' proposal enjoyed adjectival rating and risk rating superiority over Weibel's proposal under essentially every evaluation factor and subfactor, we find that the agency's conclusion that "the enhanced capabilities and lower risk found in General Dynamics' approach is well worth the price premium," was rational.

The protest is denied.

Lynn H. Gibson
General Counsel