



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Bulova Technologies LLC

**File:** B-281384; B-281384.2

**Date:** February 3, 1999

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Glenn A. Rowley, Esq., John E. McCarthy, Jr., Esq., and Donald E. Sovie, Esq., Crowell & Moring, for the protester.  
Larisa A. Trainor, Esq., Anne B. Perry, Esq., and Louis D. Victorino, Esq., Fried, Frank, Harris, Shriver & Jacobson, an intervenor.  
Larry Brady, Esq., Gerald T. Williams, Esq., and Maj. Cynthia M. Mabry, U.S. Army Materiel Command, for the agency.  
Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

1. Allegation that protester would have been able to eliminate certain deficiencies in the portion of its proposal related to a certain item, had the agency made predecessor contract information available, is untimely where first raised after closing time for receipt of proposals and protester knew that the item had been used under prior contract (and actually requested that the item be provided as government-furnished equipment), but neither requested information about the item, nor protested its omission from the solicitation prior to the closing time.
2. Protest that agency improperly considered offerors' experience in manufacturing specific item being acquired is denied where evaluation factors encompassed consideration of such experience.
3. Protest that evaluation improperly was based on unstated criteria--methodology to mitigate component obsolescence of a specific component--is denied where, contrary to protester's position, record indicates that evaluation was conducted on basis of general methodology to mitigate component obsolescence, as provided for in solicitation, and protester failed to present a plan in this area.
4. Protest that agency improperly evaluated protester's price assumption--that component parts will function properly when manufactured to technical data package and assembled--as inconsistent with solicitation is denied, where solicitation specifically provided that contractor was not to assume that all possible

combinations of tolerances and fits permitted by specifications/drawings would consistently satisfy test requirements.

5. Where solicitation advised offerors that government intended to make award on basis of initial proposals, contracting agency was not obligated to conduct discussions concerning protester's proposal, which was rated marginal with significant weaknesses based on omissions/informational deficiencies.

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## **DECISION**

Bulova Technologies LLC protests the award of a contract to KDI Precision Products, Inc. under request for proposals (RFP) No. DAAE30-98-R-0310, issued by the Department of the Army for production, testing, load, assembly, pack, and delivery of M734A1 fuzes used in 120mm mortar systems.<sup>1</sup> The protester challenges the evaluation and award on several grounds.

We deny the protest.

The RFP, which limited competition to small businesses, provided for award of a fixed-price contract on a best value basis, applying the following four evaluation factors, in descending order of importance: (1) quality, (2) cost, (3) management, and (4) past performance. In the actual evaluation, quality was weighted at 50 percent, cost at 25 percent, management at 15 percent, and past performance at 10 percent. The quality factor included three subfactors--manufacturing process, technical capabilities and facilities/capital equipment. The management factor included two subfactors--program management and configuration management. The RFP provided that quality and management were to be assigned color ratings of blue, green, yellow, or red and assessed for proposal risk using the ratings of low, moderate, and high.<sup>2</sup> Past performance was to be evaluated using the same adjectival risk ratings. RFP §§ M.1, M.3-M.6, at 84-92. Cost was to be evaluated by

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<sup>1</sup>The fuze is the "brains" of the overall cartridge, providing both safety and arming functions. Contracting Officer's Statement of Facts (COSF), Dec. 1, 1998, at 1. It is primarily a "proximity fuze," which allows it to function in the air at some predetermined height above the ground. In order to accomplish this, it utilizes frequency modulated continuous wave (FM-CW) radar technology with Directional Doppler Ratio (DDR) ranging signal processing techniques and contains custom radar transceiver and signal processing integrated circuits. Id.

<sup>2</sup>Low risk was defined as: "Little potential to cause disruption to schedule, increased cost, or performance[; n]ormal contractor effort and normal government monitoring will probably be able to overcome difficulties." RFP § M.5, at 88. High risk was defined as: "Likely to cause serious disruption of schedule, increased cost, or degradation of performance, even with special contractor emphasis and close Government monitoring."

adding the price for the basic year (first article and production quantity) to the total of all evaluated prices for all option years. The solicitation provided that the "Government intends to award without discussions" and, therefore, "[e]ach initial offer should contain the offeror's best terms." RFP § M.2, at 85.

The statement of work consisted of a CD-ROM technical data package (TDP) with requirements and drawings which were described as "defin[ing] the effort required" and were to be used "as the approved Product Baseline documentation . . . within the overall context of the configuration management control authority" provided for in the solicitation." RFP §§ C.1, C.2, at 5.

The agency received two proposals, from Bulova and KDI, who is the incumbent. For the subfactors under the quality and management factors, Bulova received primarily yellow ratings, defined as "Marginal" - "Fails to meet evaluation standards; however any significant deficiencies are correctable." RFP § M.4, at 87. KDI received primarily green ratings, defined as "Acceptable" - "Meets evaluation standards and any weaknesses are readily correctable." Id. KDI's proposal risk was evaluated as low, with low risk ratings in all quality and management subfactors, while Bulova's proposal risk was evaluated as high, with high risk ratings in three of the five subfactors (along with one moderate and one low rating in the other two).<sup>3</sup> Id. Both offerors received a low risk rating for past performance.

KDI's total evaluated price was \$225,670,895, approximately [deleted] percent higher than Bulova's at \$[deleted]. The contracting officer determined that discussions were not necessary, because they would not eliminate concerns about Bulova's high proposal risk in the quality and management areas. The contracting officer performed a price/technical tradeoff analysis and determined that KDI's proposal represented the best value to the government. Award was made to KDI on September 25, 1998.

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<sup>3</sup>The specific ratings under the quality and management factors were as follows:

<u>Factors</u>	<u>KDI:</u>	<u>Rating</u>	<u>Risk</u>	<u>Bulova:</u>	<u>Rating</u>	<u>Risk</u>
Quality:						
Manufacturing Process		green	low		yellow	moderate
Technical Capabilities		blue	low		yellow	high
Facilities and Capital Equip.		blue	low		yellow	high
Management:						
Program		green	low		yellow	high
Configuration		green	low		green	low

Bulova challenges the evaluation on several grounds. In reviewing a protest against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. The protester must demonstrate that the evaluation was unreasonable, a burden that is not met by mere expressions of disagreement with that evaluation. CH2M Hill, Ltd., B-259511 et al., Apr. 6, 1995, 95-1 CPD ¶ 203 at 4. We have examined the evaluation here and conclude that it was both reasonable and consistent with the evaluation criteria. We discuss some of Bulova's key arguments below.

## QUALITY

### Testing and RF Tester

The RFP specified the required tests (for conformance to the performance specification), test parameters, and requirements for special test equipment, such as the RF tester, to be designed by the offeror. Detail Specification M734A1 DTL12973560 §§ 4.1, 4.4.3.1, at 8, 68.

Bulova argues that the agency improperly failed to release predecessor contract documentation relating to the RF tester and necessary to respond to the solicitation, and that this resulted in an unequal competition because KDI, as the incumbent, had access to this documentation. According to Bulova, if it had received a complete RF tester technical package, "it would have been able to propose a[n] RF Tester which met the Government's requirements." Supplemental Protest, Dec. 4, 1998, at 7. The protester complains that, without the existing RF tester data, it had to design an RF tester, including drawings, from "scratch," which "divert[ed] resources" and "affected many of the alleged deficiencies" as evaluated in its proposal. Comments, Dec. 24, 1998, at 33; Supplemental Comments, Jan. 13, 1999, at 15-16.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1998), protests based on alleged solicitation improprieties must be filed prior to the closing time for receipt of initial proposals. East Penn Mfg. Co., Inc., B-261046, Aug. 1, 1995, 95-2 CPD ¶ 50 at 3. This requirement is intended to enable the procuring agency to decide an issue while it is most practicable to take effective corrective action where the circumstances warrant. Mead Data Central, B-242598, Mar. 26, 1991, 91-1 CPD ¶ 330 at 3. Although the record shows that Bulova was aware that there was an RF tester that had been used under the predecessor contract (see n.5 below), and that the agency would "assess the offeror's knowledge and capability to fabricate the M734A1 RF tester," RFP § M.6.1 at 89, it never asked the agency to provide this information. Instead, Bulova opted to prepare a proposal that, it now asserts, contained deficiencies/weaknesses in the RF tester area that could only have been eliminated with reference to the predecessor contract information. While Bulova perhaps was unaware of the precise documents available until after award, Bulova

does not assert that it had reason to believe that no information relative to the RF tester existed prior to the closing time, and there is nothing in the record to support such an assumption.<sup>4</sup> (We note that Bulova did request other specific engineering change proposals, requests for waivers, and drawings which were not included in the TDP. See Agency Report, Dec. 1, 1998, Tab. 28--Correspondence between Bulova and the Army.) Under these circumstances, Bulova should have sought RF tester information from the Army prior to the closing time, or protested its absence from the RFP package some time prior to the closing time. Because it failed to do so, this aspect of the protest is untimely and will not be considered.<sup>5</sup>

In any event, it is not apparent how the predecessor contract information in question would have improved Bulova's evaluation. According to the Army, "Bulova was not criticized directly for their proposed RF Tester design," but rather because the firm "provided a general description of a proposed RF tester with no narrative on how it will interface with the fuze or discussion relating to fuze test requirements" and "fail[ed] to demonstrate [how] their RF Tester could support the required production rates." COSF, Dec. 1, 1998, Attach. 1, at 17, and Attached

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<sup>4</sup>Even if we agreed with Bulova that it could not protest the agency's failure to provide the predecessor contract documents until it learned of the specific documents in the agency's report, this aspect of the protest would still be untimely. Specifically, while Bulova generally asserted in its protest that the documents were necessary to prepare an adequate proposal, Bulova did not actually attempt to draw a nexus between specific documents and evaluation deficiencies until it filed its comments on the report which, due to an extension granted by our Office, were not filed until December 24, which was 23 days after the report was received. Comments, Dec. 24, 1998, at 35-37, 38. The nature of this protest argument is such that, without specifics establishing that the documents would have made a difference, there would be no basis for sustaining the protest. Under these circumstances, the specifics provided in Bulova's December 24 comments constituted independent grounds of protest that failed to independently satisfy our timeliness requirements. Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CDP ¶ 195 at 6.

<sup>5</sup>Bulova also argues that the Army improperly failed to make a government-owned RF tester (in KDI's possession) available to the protester. This argument is untimely for the same reason as discussed above. Bulova knew the RF tester existed, and even allegedly asked the agency "whether the RF Tester previously used in the production of the M734A1 product was government-owned and if so, whether it would be made available to the awardee for use." Protest Clarification on Timeliness, Nov. 24, 1998, at 1. If Bulova believed the RF tester should have been made available to it for purposes of equalizing the competition, or otherwise, it should have protested the RFP's failure to make such provision prior to the closing date.

Memorandum, Nov. 25, 1998, at 2.<sup>6</sup> The agency concludes that the "[a]vailability of RF Tester documentation and/or an RF Tester would not have rescued Bulova from these criticisms." Supplemental Contracting Officer's Statement of Facts (SCOSF), Dec. 16, 1998, Attached Response, Dec. 15, 1998, at 3. Moreover, while the protester focuses on the RF tester, the record indicates that most of the evaluated deficiencies in the quality area related to Bulova's broad failure to address the test requirements, which are unrelated to the RF tester.<sup>7</sup> In this regard, despite RFP instructions stating that offerors were to provide a "[d]etailed narrative" which "[d]emonstrate[s] a detailed understanding" of the processes and testing required under the RFP (§§ L.13.1, at 77-78), Bulova's low ratings were based on a finding that the firm failed to "provide a complete detailed process flow for the assembly and test of the M734A1 fuze, particularly sub-assembly test requirements in the fuze specification." Business Clearance Memorandum, Sept. 15, 1998, at 13; Risk Analysis, Aug. 19, 1998, at 2. Essentially, the technical evaluation team (TET) determined that Bulova failed to address or even list all the required tests of the fuze. SCOSF Dec. 16, 1998, Attached Response, Dec. 15, 1998, at 3.<sup>8</sup> For example, the agency found that "Bulova's proposal does not address the required air pressure tests for the electronic head assembly," a test with no apparent relation to the RF tester; Bulova does not rebut this agency finding. Business Clearance Memorandum, Sept. 15, 1998, at 14; Risk Analysis, Aug. 19, 1998, at 3. We conclude that Bulova has not established that its lack of predecessor contract documentation related to the RF tester caused its evaluated weaknesses.

Bulova also argues in this area that the Army improperly evaluated its proposal under two allegedly unstated RF testing criteria--the "[r]equirement to demonstrate knowledge of the unique residual delay cancellation feature necessitating special test capability in the Proximity Fuze RF Tester," and the requirement "to address

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<sup>6</sup>In this regard, the agency explains that "[s]ince testing of proximity fuzes is complex and time consuming the offeror needed to address the M734A1 unique features such as the interconnection process of the M734A1 to the RF tester to demonstrate how the RF tester would be able to support the required production rate." Id.

<sup>7</sup>In this regard, we note that Bulova's blanket proposal statement that "[a]ll . . . testing will be performed in full compliance to DTL12973560" reasonably was deemed inadequate given the RFP's specific testing requirements and provision for evaluation of offerors' "in-depth understanding" of test requirements. Bulova Quality Proposal, at F1-11; RFP § L.13.1, at 78.

<sup>8</sup>In this regard, the agency noted that "any experienced offeror should compare their final proposal to the system requirements and confirm that all requirements are properly addressed. . . . Bulova failed to complete this simple task." Id.

the necessity for unique features for the RF Tester." Protest, Oct. 26, 1998, at 7 and Attach. 3.

The agency states that "Bulova was not penalized directly for [the] absence of discussion of residual delay" (a factor "below which the time delay [of the fuze] cannot be reduced"). COSF, Dec. 1, 1998, Attach. 1, at 17. Rather, according to the agency, Bulova's "[l]ack of addressing residual delay line cancellation [in the proposed RF tester design] was discussed during the debriefing as one example of where Bulova's proposal contained omissions that when combined with other omissions and errors led the government to question Bulova's ability to manufacture the M734A1 fuze within the program timeliness of the solicitation," and "demonstrate[d Bulova's] lack of knowledge in FM-CW ranging systems." COSF, Dec. 1, 1998, Attached Memorandum, Nov. 25, 1998, at 2; Attach. 1, at 17. According to the agency, "residual delay line cancellation for such a tester is routinely identified and any offeror with knowledge in this area would have known to address it." COSF, Dec. 1, 1998, Attached Memorandum, Nov. 25, 1998, at 2.<sup>9</sup> Bulova has not rebutted the agency's explanation in this regard, and also has not timely specified any unstated 'unique' RF tester features against which its proposal was evaluated. There thus is no basis to question the evaluation in this area.

### Experience

Under the second quality subfactor, technical capabilities, the RFP provided that, among other things, the government would "assess the offeror's knowledge and experience in fuze design and manufacture," and instructed offerors to "[d]iscuss previous experience with manufacturing of similar items." RFP § M.6.1, at 89; § L.13.1, at 78. Bulova proposed two electrical engineers and two consultants. The TET determined that no "RF or Proximity Fuze experience" was indicated for the electrical engineers, and that the consultants' experience did not adequately extend to M734A1 fuzes. *Id.* at 4.

Bulova argues that the Army essentially improperly downgraded its proposal based on an unstated evaluation criterion--specific prior experience in M734A1 proximity fuze manufacture. According to the protester, this was contrary to the RFP's requirement for generic RF fuze experience, which its proposed electrical engineers and consultants satisfied.

This argument is without merit. Agencies properly may take into consideration specific, albeit not expressly identified, experience in making qualitative distinctions between competing proposals, so long as the specific experience is logically

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<sup>9</sup>In this regard, the agency asserts that the TET "was looking for some mention of the need to cancel this delay to meet the RF tester requirements specified in the product baseline documentation." COSF, Dec. 1, 1998, Attach. 1, at 17.

encompassed by or related to a solicitation's requirements and stated basis for evaluation; accordingly, it is not objectionable for an agency to rate a firm that has previously supplied the same type of item called for under a solicitation higher than a firm with more general experience. Fidelity Tech. Corp., B-258944, Feb. 22, 1995, 95-1 CPD ¶ 112 at 2-3. Here, while the RFP did not specifically require a firm to have manufacturing experience with the M734A1 proximity fuzes, the solicitation is for the manufacture of those fuzes and did provide that experience with manufacture of similar fuzes would be considered. Under these circumstances, offerors' specific experience with M734A1 proximity fuzes clearly was encompassed by the terms of the solicitation, and the agency properly considered this experience. See id. (agency properly scored firm with prior experience in performing exact work called for under RFP higher than protester).<sup>10</sup>

## MANAGEMENT

### Component Obsolescence

Under the management subfactor, program management, "the offeror's proposed approach to mitigate component obsolescence" was one of five areas to be evaluated. RFP §§ L.13.3, M.6.3, at 80, 91. In this regard, the RFP specifically instructed offerors that "[a]s a minimum the following points," including "efforts to mitigate component obsolescence," "shall be addressed." RFP § L.13.3, at 80. In this area, Bulova's proposal consisted of one paragraph, and in pertinent part stated the following:

From its experience with the M762 program, Bulova believes the M734A1 active electronic devices have the greatest threat of component obsolescence. These threats have been mitigated by the technologies selected for each of the active devices. For example, the signal processor has been implemented in an analog-switched capacitor technology. Analog components typically do not suffer from fabrication process obsolescence

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<sup>10</sup>Bulova complains that, because KDI is the only firm with production experience on the M734A1 fuze, only KDI could achieve a low risk rating. However, the agency responds that Bulova could have demonstrated directly relevant experience by either proposing individuals with such experience or proposing experience with proximity fuzes of similar technology, such as the "XM450 Medium Altitude Prox Fuze, XM773 MOFA, M732A2 Prox[imity] fuze for artillery and the DSU-33 general purpose bomb proximity fuze." COSF, Dec. 1, 1998, at 14. Bulova does not rebut the Army's position. In any case, the agency was not required to compromise its experience requirements based on the fact that only one offeror may be able to achieve the maximum score.

problems that digital components experience. Consequently, custom analog components are typically available long after custom digital components of the same vintage become completely unavailable. . . . As a result, no functional differences will be apparent as the manufacturing processes and the device geometries change.

Bulova Management Proposal § 3.1.4, at 3.

Under this subfactor, Bulova's proposal received a yellow rating and a "significant weakness" based on the lack of "a methodology to mitigate component obsolescence," and the firm's "reliance on the current M734A1 Fuze electronic design to be the solution to component obsolescence [was determined] unacceptable." Risk Analysis, Aug. 19, 1998, at 4; see also Technical Evaluation, Aug. 11, 1998, Caucus Rating and Rationale Summary, at 1, and Approved Strengths and Weaknesses, at 1. Bulova's proposal also received a high risk rating based on the "failure to address a management methodology for the continued prevention of component obsolescence . . . which adds significant risk to the option year schedules and potentially leaves the government with an obsolete fuze design at the end of the multi-option contract." Caucus Rating and Rationale Summary, at 1.<sup>11</sup> The agency characterized the impact of the high risk rating as follows:

The M734A1 design contains several complex electronic components that are only available from one source, namely the Signal Processor and the MMIC Integrated Circuits [IC]. Integrated circuit suppliers utilize Foundries (sub-vendors) to fabricate the necessary wafers and these foundries often change their processes to stay competitive with the commercial marketplace and advancing technology. In any event, changes to the Foundry's processes typically dictate a requalification of the part and may lead to availability problems with the components. A recent design translation required by the MMIC vendor to stay compatible with their Foundry required a 18-24 month lead time and a \$500,000 cost. Proper planning with the Fuze Manufacturer and the IC vendors resulted in an execution plan that prevented any program slippage. Issues like this can cause a significant, unexpected program delay if not properly monitored. The predecessor to this program, the M734 Basic fuze, experienced schedule delays and plant shutdowns due to component obsolescence issues. In addition, the government

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<sup>11</sup>"Lack of a plan to address component obsolescence in Bulova's proposal leaves the government at great risk for schedule interruptions in the option years" since "[i]t is easily conceivable that two interruptions of 4-6 months each over a 5-year period would result if this is not monitored adequately." Business Clearance Memorandum, Sept. 15, 1998, at 15.

requires that the contractor monitor these issues and suggest product improvements to keep the overall fuze design from becoming obsolete over the course of the five years (Basic + 4 Options) of contract performance.

Risk Analysis, Aug. 19, 1998, at 4-5; see also Business Clearance Memorandum, Sept. 15, 1998, at 15.

Essentially, the protester argues that the agency improperly evaluated the firm's proposal based on an unstated requirement to mitigate the obsolescence risk of the MMIC, one of the fuze components, based on problems encountered under the incumbent contract. According to the protester, "[i]f [it] had known MMIC obsolescence was a key concern of the Government's, [it] would have most certainly addressed this issue in its proposal." Supplemental Protest, Dec. 4, 1998, at 5.

This argument is without merit. The Army explains that the evaluation of Bulova's approach to mitigating component obsolescence was based, not on any particular component, such as the MMIC, and that the evaluation discussion quoted above, and relied on by the protester, was intended to be merely illustrative. Rather, Bulova's proposal rating in this area was based on the firm's reliance solely on its expressed view that it was unlikely the technologies set forth in the solicitation would lead to an obsolescence problem, in lieu of a plan of its own to mitigate component obsolescence. According to the agency, this was inadequate given the RFP's specific request for offerors to address mitigation of component obsolescence. In this regard, the agency asserts that it "was looking for the offeror to acknowledge that potential component obsolescence issues exist and provide a management technique for alerting the Government of these issues prior to them becoming problems with schedule and cost impact." SCOSF, Dec. 16, 1998, at 3.<sup>12</sup>

The evaluation of component obsolescence was reasonable. There is no indication that Bulova's proposal was downgraded for failure to discuss the mitigation of MMIC obsolescence. Rather, it is clear from the record, as the agency explains, that Bulova's proposal was evaluated as deficient for failing to discuss mitigation of any component obsolescence and that the discussion of MMIC component obsolescence in the evaluation record was merely illustrative. More specifically, given the agency's disagreement with Bulova's view regarding component obsolescence and the protester's failure to establish that the agency's position is

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<sup>12</sup>Further, the agency asserts that "the M734A1 product baseline documentation includes several critical components such as the Signal Process, MMIC and Turbine Alternator having single sources of supply, which further emphasize the necessity of addressing component obsolescence issues." SCOSF, Dec. 16, 1998, at 3.

incorrect, we think the agency reasonably downgraded Bulova's proposal for failing to specifically address the matter of mitigating component obsolescence.<sup>13</sup>

#### PRICE ASSUMPTION REGARDING COMPONENT PARTS

Bulova's price proposal stated as follows:

The costs for the proposal were prepared with the assumption that the technical data package and its related documents will produce a unit that will properly function when Bulova assembles the components utilizing proper manufacturing techniques.

Bulova Cost Proposal at 1. However, a drawing in the RFP's TDP package stated as follows:

The contractor will not assume, nor does the government guarantee that all possible combinations permitted by the tolerance limits of the specifications and drawings will consistently satisfy the test requirements. Therefore the manufacturer is obligated to choose those combinations of tolerance and fits within the limits of the specification and drawings that best suit his process needs and still satisfy the requirements.

Risk Analysis, Aug. 19, 1998, at 3, quoting RFP TDP, Drawing No. 12973560, n.11. The TET determined that Bulova's assumption represented a "significant discrepancy" from the TDP drawing for the top assembly of the M734A1; this was one of five factors which led to Bulova's proposal being rated high risk. Risk Analysis, Aug. 19, 1998, at 1-3; Business Clearance Memorandum, Sept. 15, 1998, at 14. The Army's rationale in this regard was set forth as follows:

Test requirements of proximity fuzes are very complex in nature and require engineering throughout a production program. The functionality of a random mix of signal processors, MMIC transceivers, Turbine Alternators etc. can not be assumed to always produce fuzes that meet the test requirements, particularly in high volume production

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<sup>13</sup>The protester also argues that the agency "placed inordinate emphasis on [component obsolescence] in the evaluation," when it "was but one of five subfactors within the Program Management Subfactor which at best was worth 1.5% in the overall evaluation score." However, since this argument was raised for the first time in the protester's comments, Comments, Dec. 24, 1998, at 37-38, filed more than 10 days after receipt of the agency report which contained the information upon which this argument is based, it is untimely and will not be considered. 4 C.F.R. § 21.2(a)(2).

when electronic part variability increases. Bulova's assumption combined with their lack of proposed RF engineering support demonstrates significant cost and schedule risk to the government and in Bulova's ability to perform within their proposed pricing.

Risk Analysis, Aug. 19, 1998, at 1-3; Business Clearance Memorandum, Sept. 15, 1998, at 14.

Bulova argues that its "innocent pricing assumption" "does no more than state [its] belief and reasonable expectation that the fundamental design of the M734A1 will work," and "does not in any way contradict the notice found in the technical data package," or "in any way deny Bulova responsibility for production of the fuze in accordance with the technical data package." Comments, Dec. 24, 1998, at 47 and 22. In any case, the protester characterizes this area of evaluated deficiency as a "part variability [problem] between the signal processors and the MMIC chips," which has been resolved by "deviations, waivers and drawing changes [that] had been promulgated to address and resolve this issue" and that, thus, in actuality, the agency criticized Bulova's proposal for failing to address a corrected, nonexistent problem. Supplemental Protest, Dec. 4, 1998, at 8.

The evaluation in this area was reasonable. First, we think the Army reasonably interpreted the language in Bulova's proposal as conflicting with the admonition in the TDP drawing. Specifically, while the drawing expressly provided that the contractor was not to assume the correctness of the tolerances in the specifications in making its manufacturing decisions, Bulova's price proposal purported to be based on the assumption that a properly functioning item will result from complying with the TDP. Whether or not Bulova intended to take exception to the TDP drawing language, the quoted language is reasonably susceptible of such a reading.

According to the agency, moreover, the evaluation in this area really focused on a broader concern; the "criticism of Bulova in this area stemmed from the fact that they did not address generic production problems associated with Proximity fuzing," *i.e.*, part inconsistencies/variability among vendors, which "is common with components required for proximity fuze programs" and is "not unique to the M734A1 Proximity Fuze." SCOSF, Dec. 16, 1998, at 4, 7. In this regard, the agency asserts, while the TET "did not require offerors to submit a detailed plan to control part variation, [they] required discussion on component parameter variations in order to demonstrate an understanding of the fuze operation," and Bulova's proposal failed to provide "a qualitative discussion on system parameters," which, "combined with the technical omissions and errors, demonstrates that Bulova does not have the knowledge or experience needed to independently produce M734A1 fuzes that will meet the end item performance requirements." COSF, Dec. 1, 1998, at 16. The agency maintains that Bulova's "interpretation [expressed in its protest argument] that all part variability problems between the signal processor and the MMIC chips have been resolved and no longer represent a problem is incorrect." SCOSF,

Dec. 16, 1998, at 7. Rather, according to the agency, "[t]he government continues to try to refine the product baseline documentation to reduce the potential of these types of issues from impacting the performance of the fuze" and Bulova's interpretation is "grounds for further criticism of Bulova's knowledge and capability in Proximity fuzing since these issues will remain throughout the production life cycle of the item." Id. Bulova has not shown that the agency's position regarding continued part variability is incorrect. We conclude that the agency reasonably determined that this area of Bulova's proposal evidenced performance risk.<sup>14</sup>

#### AWARD WITHOUT DISCUSSIONS

Bulova argues that its proposal was downgraded under the quality subfactors and assigned a high risk rating based on informational deficiencies which could have been corrected through discussions.

Generally, agencies are not obligated to conduct discussions where, as here, the RFP specifically instructs offerors of the agency's intent to award a contract on the basis of initial proposals. Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 11. Under such circumstances, offerors are required to provide in their initial proposals all of the information necessary to permit the agency to conclude that the proposal meets the solicitation's requirements. Norden Sys., Inc., B-255343.3, Apr. 14, 1994, 94-1 CPD ¶ 257 at 7-8. While the contracting officer's discretion in deciding not to hold discussions is not unfettered, it is quite broad. Id.; Robotic Sys. Tech., supra.

There is no basis for questioning the agency's decision not to conduct discussions. The RFP specifically advised offerors that the government intended to award a

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<sup>14</sup>As later recast in its comments, the protester acknowledges that it did not address part variability in its proposal, but contends that part variability was an unstated criterion, since the "the agency failed to inform [the firm] that "the design was still in flux and not yet stable, and . . . [that] certain additional processes are required to deal with the exigencies of the shifting design." Comments, Dec. 24, 1998, at 22 and 47; see also Supplemental Comments, Jan. 13, 1999, at 16. Further, the protester raised a specific example of where part variability had been allegedly resolved under the prior contract by "ma[king] a minor adjustment of the resistor values for resistors R1 and R3 on the Flex assembly." Comments, Dec. 24, 1998, at 35 and 47. The specifics of this argument were untimely filed more than 10 days after receipt of the agency report. We nevertheless note that, even if Bulova were correct that the issue of part variability of one component part has been resolved, that certainly would not negate the agency's concern with Bulova's price assumption and the on-going issue of part variability with all components. Further, we think the TDP drawing did put Bulova on notice that, essentially, the design was not stable.

contract without discussions, and that each initial proposal should contain the offeror's best terms. RFP § M.2, at 85. Based on the initial proposals received, the Army determined that KDI's represented the best value to the government based on its technical superiority, low risk, and reasonable price. Bulova does not argue that its proposal was technically equal to KDI's and does not contest the agency's determination that KDI's proposal was clearly superior. Under these circumstances, the mere possibility that Bulova's technical proposal, which was evaluated as substantially inferior with significant weaknesses, could theoretically become the best value proposal through discussions did not preclude the agency from awarding the contract based on initial proposals. See Harry A. Stroh Assocs., Inc., B-274335, Dec. 4, 1996, 97-1 CPD ¶ 18 at 3.<sup>15</sup>

#### PRICE/TECHNICAL TRADEOFF

Bulova also alleges that the price/technical tradeoff was inadequate primarily due to the alleged failure to consider the price differential between the proposals. This argument is without merit. The record indicates that the TET conducted a detailed "Cost Tradeoff Analysis" which "identified[d] the areas that support the difference in Risk Assessment of the two offerors." Risk Analysis, Aug. 19, 1998, at 1. The tradeoff focused on Bulova's high risk versus KDI's low risk, and the fact that this high risk could lead to unacceptable performance delays. Id. at 1. Conversely, the TET concluded that KDI's low performance risk would enable the firm "to meet the schedule within the RFP," because "their proposal addressed all areas of the RFP," "they are successfully producing the M734A1 in quantities of 10K per month under the [predecessor contract]," and "KDI also presented a methodology for monitoring component obsolescence issues with the electronic components." Id. at 1, 5. In the final analysis, the TET recommended that the best value award be made to KDI without discussions based on their (1) "distinctly superior . . . overall proposal, particularly the technical portion," (2) significantly lower risk with no past performance problems on similar contract, and (3) the fact that "Technical (Quality/Management) is far more significant than Cost (as identified in the RFP) (+10%)." Id. at 5. The contracting officer considered this recommendation, characterizing it as a determination that "the low risk associated with the somewhat higher priced KDI proposal . . . more than compensate[d] for the risk of awarding to Bulova which has limited or no experience in producing proximity fuzes and has not set forth a proposal that conclusively demonstrates how they can successfully meet all contract requirements." Business Clearance Memorandum, Sept. 15, 1998, at 16.

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<sup>15</sup>In its comments, Bulova for the first time raises specific objection to certain evaluated deficiencies in its proposal. These allegations, based on the evaluation information contained in the agency report received by Bulova on December 1, are untimely because they were not raised until December 24, more than 10 days later. See Global Eng'g & Constr. Joint Venture, B-275999.4, B-275999.5, Oct. 6, 1997, 97-2 CPD ¶ 125 at 4 n.2.

Further, the contracting officer determined that "[a]lthough lower priced, award to Bulova would likely result in major program delays and related expenses due to impact of late deliveries." Id. at 16. Based on these considerations, the contracting officer determined that "KDI has presented a distinctly superior proposal . . . significantly lower in risk than Bulova and recommended that a best value award be made to KDI for the basic production year in the amount of \$11,665,850.64." Id.

Contrary to the protester's position, the documentation of the tradeoff was clearly adequate. The fact that the documentation did not specifically mention the [deleted]-percent differential does not undermine the fact that the agency weighed the proposals' advantages, including schedule risk, against prices. Further, contrary to the protester's allegation that schedule risk was improperly considered in the tradeoff, consideration of risk is inherent in the evaluation of proposals, Hi-Shear Tech. Corp., B-261206, Aug. 31, 1995, 95-2 CPD ¶ 97 at 4, and thus the agency was not precluded from considering it. Finally, to the extent that the protester contends that the agency was required to quantify the dollar value of the superior features of KDI's proposal, there is no requirement that an agency quantify the value of technical superiority in relation to low cost to determine the best value to the government. KRA Corp., B-278904, B-278904.5, Apr. 2, 1998, 98-1 CPD ¶ 147 at 14; Picker Int'l. Inc., B-249699.3, Mar. 30, 1993, 93-1 CPD ¶ 275 at 12. Thus, the price/technical tradeoff here is unobjectionable.

The protest is denied.

Comptroller General  
of the United States