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## Decision

**Matter of:** 22nd Century Technologies, Inc.

**File:** B-413210; B-413210.2

**Date:** September 2, 2016

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### DIGEST

Protest challenging the agency's evaluation of the protester's proposal and exclusion from the competitive range is denied, where the record shows that the proposal did not clearly address information required under the solicitation, and the agency reasonably concluded that the protester's proposal was not among the most highly-rated proposals.

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### DECISION

22nd Century Technologies, Inc., of McLean, Virginia, protests the award of a contract to InterImage, Inc., of Arlington, Virginia, under request for proposals (RFP) No. DTFR5315R00115, issued by the Department of Transportation, Federal Railroad Administration (FRA) for data and knowledge management support services. 22nd Century argues that the agency unfairly evaluated its proposal and excluded its proposal from the competitive range.

We deny the protest.

### BACKGROUND

The RFP, issued on September 4, 2015, sought proposals from participants in the Small Business Administration's (SBA) 8(a) Business Development Program for the award of an indefinite-delivery/indefinite-quantity contract for data and knowledge

management support services (known as Railroad Safety Information Management Support Services) for the Railroad Safety Information System (RSIS), to be performed over a one-year base period and four option years. RFP Amend. 2 at 9.

The RFP identified four tasks to be performed, which corresponded to four contract line items (CLIN): (1) program, systems, data and application management (operations and maintenance); (2) non-routine maintenance, system development and enhancements; (3) transition in; and (4) transition out.<sup>1</sup> Id. at 2, 141.

For the first task, the RFP included a statement of work (SOW) that identified specific tasks to be performed. For example, the SOW identified 17 specific deliverables to be provided under the contract, including providing a project plan and schedule within 15 days of award, and an updated procedures manual after transition to document any changes or updates to the process. RFP Amend. 2, Task No. 1 SOW, at 89. The RFP also included a statement of objectives applicable to all four CLINs. See RFP Amend. 2 at 9-22.

The contract was to be awarded on a best-value basis considering price and six non-price factors: mandatory capability maturity model integration (CMMI) Level 2 (or higher) appraisal certificate, corporate experience and capacity, technical approach, management approach, staff qualification and key personnel, and past performance. The non-price factors were equally weighted, and when combined, were significantly more important than price. RFP Amend. 2 at 147.

Under the technical approach factor, FRA was to evaluate the offeror's understanding of the government's requirements, its proposed plan for responding to and managing the requirements, the effectiveness of the offeror's proposed approach and methodology to provide the services outlined in the SOW and in the statement of objectives for the second task, and the offeror's proposed strategy for facilitating FRA's goal of maintaining and streamlining operations related to the data collection, processing and distribution of railroad safety data. Id. at 148. The RFP also instructed offerors to provide a detailed description of the company's experience, demonstrated related technical capabilities, proposed management strategy, and technical approach to address the objectives, requirements, and deliverables outlined in the SOW and the statement of objectives. Id. at 141.

Under the staff qualification and key personnel factor, FRA was to evaluate the offeror's proposed key personnel to ensure that they possessed the requisite background and expertise to achieve the contract requirement. Id. at 149. The project manager and deputy project manager were identified as key personnel. As

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<sup>1</sup> The RFP stated that CLINs 1, 3 and 4 would be fixed-price; the majority of task orders issued for CLIN 2 also would be fixed-price, with labor-hour task orders issued if necessary. RFP Amend. 2 at 138.

relevant here, the project manager was required to have a minimum of 10 years of experience, with a minimum of 5 years managing a project of similar size, scope, and complexity. The deputy project manager was required to have a minimum of 3 years of experience managing projects. Id. at 20-21.

The RFP stated that FRA would evaluate price as part of the integrated assessment and tradeoff analysis, and would conduct a realism assessment to determine whether the estimated proposed price/cost elements were realistic for the work performed, reflected a clear understanding of the requirements, and were consistent with the approach described in the offeror's technical proposal. Id. at 150.

The RFP established an extended closing date of October 15, 2015. RFP Amend. 3. On October 1, 22nd Century submitted its proposal in accordance with the RFP. The contracting officer received 11 more proposals by the due date. FRA established a source selection evaluation board (SSEB), which evaluated 11 proposals, including InterImage's, but overlooked 22nd Century's. Contracting Officer's Statement of Facts at 1-2.

The SSEB assigned an unacceptable rating for at least one evaluation factor to eight proposals, and rated them either marginal or unacceptable overall.<sup>2</sup> Agency Report (AR), Tab 8, Competitive Range Briefing, at 9. The agency decided that only those proposals receiving an overall technical rating of at least acceptable and an overall risk rating of moderate or low would be included in the competitive range.<sup>3</sup> Id. at 40. Prior to discussions, the three offerors whose proposals were included in the competitive range were rated as follows:

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InterImage	Offeror A	Offeror B
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<sup>2</sup> The competitive range briefing document stated that under the technical factors, proposals were to be rated outstanding, very good, acceptable, marginal, or unacceptable. As relevant here, marginal is defined as where the "proposal is less than 'Acceptable.' There are some deficiencies, ambiguities or inconsistencies in the technical proposal. However, given the opportunity for discussions, the technical proposal has a reasonable chance of becoming at least 'Acceptable.'" AR, Tab 8, Competitive Range Briefing, at 7. Unacceptable is defined as where the proposal has many deficiencies and/or gross omissions; demonstrates a failure to understand much of the scope of work necessary to perform the required tasks; fails to provide a reasonable, logical approach to fulfilling much of the government's requirements; and/or fails to meet many personnel requirements of the solicitation. Id. The RFP did not identify or define the adjectival ratings.

<sup>3</sup> Risk ratings assigned were low, moderate, or high. AR, Tab 8, Competitive Range Briefing, at 8.

<b>CMMI Level 2</b>	Pass	Pass	Pass
<b>Corporate Experience and Capacity</b>	Acceptable (Low Risk)	Marginal (Moderate Risk)	Acceptable (Moderate Risk)
<b>Technical Approach</b>	Very Good (Low Risk)	Very Good (Moderate Risk)	Acceptable (Moderate Risk)
<b>Management Approach</b>	Very Good (Low Risk)	Very Good (Moderate Risk)	Very Good (Low Risk)
<b>Staff Qualification and Key Personnel</b>	Very Good (Low Risk)	Marginal (High Risk)	Marginal (High Risk)
<b>Past Performance</b>	Very Relevant (Satisfactory Confidence)	Somewhat Relevant (Limited Confidence)	Somewhat Relevant (Satisfactory Confidence)
<b>Overall</b>	<b>Very Good (Low Risk)</b>	<b>Acceptable (Moderate Risk)</b>	<b>Acceptable (Moderate Risk)</b>
<b>Total Proposed Price</b>	<b>\$11,153,651.76</b>	<b>\$7,409,753.10</b>	<b>\$7,158,217.87</b>

Id. at 10-16. As relevant here, the SSEB assigned a weakness to InterImage's proposal because it was unclear whether its proposed project manager met the 10-year minimum experience requirement or the requirement for 5 years of experience managing a project of similar scope. AR, Tab 7, InterImage Initial Consensus Evaluation, at 3. Similarly, the SSEB raised concerns about whether the proposed project manager for one of the other competitive range offerors met the experience requirement. AR, Tab 8, Competitive Range Briefing, at 17.

FRA engaged the competitive range offerors in discussions. After receiving final proposal revisions, the SSEB assigned the proposals of both Offeror A and Offeror B marginal overall technical ratings and moderate/high overall risk ratings. InterImage's overall technical and risk ratings remained unchanged. AR, Tab 12, SSEB Award Recommendation Briefing, at 9. On April 12, 2016, the source selection authority (SSA) selected InterImage for contract award. Id., Source Selection Decision Document, at 1.

On April 23, 22nd Century learned of the award and contacted FRA. Because it had overlooked 22nd Century's proposal, the agency offered to either pay the firm's proposal preparation costs or to evaluate its proposal. 22nd Century chose to have its proposal evaluated. Protest at 7. FRA reconvened the SSEB to evaluate 22nd Century's proposal, which was assigned the following ratings:

	<b>22nd Century</b>
<b>CMMI Level 2</b>	Pass
<b>Corporate Experience and Capacity</b>	Acceptable (Moderate Risk)
<b>Technical Approach</b>	Unacceptable (High Risk)
<b>Management Approach</b>	Acceptable (Moderate Risk)
<b>Staff Qualification and Key Personnel</b>	Marginal (High Risk)
<b>Past Performance</b>	Relevant (Limited Confidence)
<b>Overall</b>	<b>Marginal (High Risk)</b>
<b>Total Proposed Price</b>	<b>\$7,755,948.56</b>

AR, Tab 17, Addendum to Competitive Range Determination, at 2.

Under the technical approach factor, the SSEB identified several strengths, and multiple weaknesses and deficiencies. The SSEB assigned a deficiency to 22nd Century's proposal with respect to deliverables. The firm addressed deliverables in one paragraph:

Team 22nd Century's PM [project manager] will ensure that we generate and deliver all the project deliverables mentioned in the solicitation as per defined timelines. We will ensure all deliverables are transmitted with a cover letter, on the prime [contractor's] letterhead, describing the contents clearly. All correspondence, including electronic communications, will include the contract number; title of the deliverable; office symbols; document number and version notation; and periods covered.

AR, Tab 15, 22nd Century's Proposal, at 20-21. Based on the above paragraph, the SSEB determined that 22nd Century's use of a blanket statement that the project management "will ensure that we generate and deliver all project deliverables mentioned in the solicitation as per defined timelines"--rather than accepting and explaining how the deliverables dates for various meetings, plans, and annual updates would be met under the SOW--merited a deficiency. AR, Tab 16, 22nd Century Consensus Evaluation, at 2. In this regard, the SSEB noted that several of the deliverables are time sensitive and the agency needed assurances that they would be met.

The SSEB assigned another deficiency because 22nd Century's proposal did not address maintenance and support for RSIS data collection tools. The SSEB assigned a third deficiency on the basis that 22nd Century demonstrated a lack of understanding and omitted the RSIS Safety Data Portal requirements and associated data management applications without mention of meeting the maintenance and update requirements. The SSEB noted that the firm's proposal only discussed overhauling existing websites. The SSEB similarly identified as a deficiency that, with respect to RSIS SharePoint Maintenance, 22nd Century's proposal did not mention support for development and maintenance of workflow applications for processing the receipt and routing approval of forms and plans, which the SSEB noted was a large part of the operations and maintenance work to be performed. Id.

Under the staff qualification and key personnel factor, the SSEB identified two strengths, several weaknesses, and two deficiencies, and assigned 22nd Century's proposal a marginal rating. The SSEB assigned a deficiency to the firm's proposal because "it was not apparent that the proposed Project Manager has the required 5 years of experience with projects of similar size and scope as a Project Manager." Id. at 3. The SSEB noted that the proposed project manager's resume shows approximately 2 years of experience as a project manager, and many years as a program manager.<sup>4</sup> The SSEB also assigned a deficiency because the proposed deputy project manager did not appear to have the required 3 years of project manager experience with projects of similar size and scope at the time the proposal was received. Id. at 3-4.

Based largely on these deficiencies and some weaknesses, the SSEB recommended that 22nd Century's proposal receive a marginal technical rating and a high risk rating overall. The SSEB also noted that, in addition to the apparent insufficient project management experience of the proposed project manager, performance and staff retention issues were identified on the past performance questionnaire of the only past performance reference contract overseen by the project manager. The SSEB concluded that these issues created a high level of concern, which translated into a higher risk. Based on the deficiencies identified and higher risk level assessed, the SSEB concluded that 22nd Century's proposal presented significant risk of degradation of performance, cost overruns, or disruption to the schedule. Id. at 4-5. Based on the evaluation of technical proposals, the SSEB ranked 22nd Century seventh out of the 12 offerors. AR, Tab 17, Addendum SSEB Briefing, at 7.

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<sup>4</sup> The SSEB noted that according to the Project Management Institute, there is a substantive difference between a program manager and a project manager, where a program manager is an upper level manager with oversight over several project managers. AR, Tab 16, 22nd Century Consensus Evaluation, at 3-4.

The source selection authority reviewed the SSEB's briefing on its evaluation of 22nd Century's proposal, and concluded that the proposal should not be considered for award. The SSA noted that 22nd Century's proposal was rated unacceptable under the technical factor as a result of gross omissions of some key technical requirements. The SSA also noted that 22nd Century's proposed price was within the general range of all proposals submitted, and concluded that, although its price was significantly lower than that of the awardee, he did not consider 22nd Century's price as a factor in light of its rating under the technical approach factor. See AR, Tab 17, Addendum to Competitive Range Determination, at 2. The firm filed this protest after its debriefing.

## DISCUSSION

22nd Century raises a variety of allegations with respect to the conduct of the procurement. The firm primarily challenges the evaluation of its proposal and its exclusion from the competitive range, and maintains that the agency engaged in unequal treatment. We have considered all of the protester's allegations, and find that none provide a basis to sustain the protest. We discuss only the most significant protest grounds below.

### Technical Approach Factor

22nd Century contends that FRA erred in assigning a deficiency to its proposal under the technical approach factor for using a "blanket statement" to explain how it would meet the deliverables dates. The firm states that its proposal provided details about its capabilities and experience under the corporate experience factor to provide confidence to the government that the firm would be able to fulfill the deliverables requirement. Protest at 12-13. 22nd Century also asserts that its proposal "mentioned meeting the deliverables requirements frequently" and generally referred to various proposal sections. In this regard, the firm identifies the following statement in proposal section 7.3, Quality Management System: "The deliverables listed in Attachment J-1 of the solicitation will be reviewed during the Kickoff Meeting Briefing. During the briefing, the planning, managing, and how the overall quality of Task Orders will be handled will be discussed." 22nd Century Comments at 10 (citing AR, Tab 15, 22nd Century's Proposal, at 61).

FRA notes that the RFP clearly stated that proposals would be evaluated under the technical approach factor to determine the offeror's understanding of the technical requirements as outlined in the SOW. The agency further states that, although the SOW listed 17 specific deliverables that a contractor would be responsible for providing, the protester's proposal did not address any of them. FRA asserts that, instead, 22nd Century's proposal simply provided a blanket statement that it would meet the defined timelines and detailed the format in which it would submit its deliverables. The agency also states that nothing in the corporate experience

section of the protester's proposal specifically addressed the deliverables or tied the deliverables back to relevant portions of the technical approach. AR Legal Memorandum at 6.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Rather, we will review the record only to assess whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. ARBEIT, LLC, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4. A protester's disagreement with an agency's judgment, without more, is insufficient to establish that an agency acted unreasonably. Watts-Obayashi, Joint Venture; Black Constr. Corp., et al., B-409391 et al., Apr. 4, 2014, 2014 CPD ¶ 122 at 9. Moreover, it is an offeror's responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Id.

Based on the record before us, we find that the agency reasonably evaluated 22nd Century's proposal under the technical approach factor. The RFP instructed offerors to provide a detailed description of the company's proposed management strategy and technical approach to address the objectives, requirements, and deliverables outlined in the SOW, to permit the government to evaluate proposals in accordance with the evaluation factors. RFP Amend. 2 at 141. Again, the SOW identified 17 deliverables required under the contract. Id., Task No. 1 SOW, at 89. Under the proposal section identified as addressing 22nd Century's proposed technical approach to meet SOW requirements, 22nd Century included one paragraph to address deliverables that stated they would be transmitted with a cover letter, and that all correspondence would include the contract number and other administrative information. The deliverables paragraph also stated that "Team 22nd Century's PM [project manager] will ensure that we generate and deliver all the project deliverables mentioned in the solicitation as per defined timelines." AR, Tab 15, 22nd Century's Proposal, at 20-21. In our view, the SSEB reasonably concluded that this paragraph did not explain how the protester planned to meet the deliverables requirement. Statements that are essentially blanket offers of compliance with the stated requirements are not an adequate substitute for detailed information necessary to establish how an offeror proposes to meet the agency's needs. Professional Performance Dev. Group, Inc., B-311273, B-311273.2, June 2, 2008, 2008 CPD ¶ 101 at 4.

With respect to the firm's assertion that its capabilities and experience described under the corporate experience factor demonstrated its ability to meet the deliverables requirement, we fail to see how its response under the corporate experience factor provides a plan for meeting deliverables under the current

requirement. Similarly, 22nd Century's identification of the section of its proposal concerning its Quality Management System as providing the necessary information is not persuasive. That proposal section is identified as providing documents required by the RFP, such as the protester's capability maturity model integration (CMMI) certification, resumes, and SBA certification. Moreover, the discussion of deliverables in that section simply asserts that deliverables will be reviewed at the kickoff conference, and does not address how deliverables will be met. See AR, Tab 15, 22nd Century's Proposal, at 61. Finally, while 22nd Century generally points to various other sections of its proposal as mentioning meeting the deliverables requirements, the protester fails to provide specifics to support its position. Accordingly, we find no basis to question the agency's judgment in assessing a deficiency to 22nd Century's proposal for failing to adequately address how it would meet the deliverables requirement.

In its comments, 22nd Century for the first time challenges the SSEB's assessment of deficiencies under the technical approach factor for "a gross omission of maintenance and support for RSIS tools" and "apparent lack of understanding and complete omission of the RSIS Safety Data Portal requirements and associated data management applications with no mention of meeting the maintenance and update requirements." 22nd Century's Comments at 11.

These protest grounds are untimely, as 22nd Century knew from its debriefing that FRA identified these issues as among the significant weaknesses and/or deficiencies that appreciably increased the risk of unsuccessful contract performance. See AR, Tab 18, 22nd Century's Debriefing. Under our Bid Protest Regulations, protests based on other than solicitation improprieties must be filed within 10 days of when the protester knew or should have known their basis. 4 C.F.R. § 21.2(a)(2). The regulations do not contemplate the piecemeal presentation or development of protest issues; where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later issues will not be considered. Salient Fed. Solutions, Inc., B-410174.3, B-410174.4, Apr. 1, 2016, 2016 CPD ¶ 104 at 9. Although 22nd Century's initial protest generally asserts that FRA unreasonably evaluated its proposal under the technical approach factor and that the identified issues could have been addressed during discussions, the firm failed to specifically raise these protest grounds until it filed its comments. Accordingly, these protest grounds are dismissed as untimely.<sup>5</sup>

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<sup>5</sup> The agency assessed one other deficiency to 22nd Century's proposal under the technical approach factor that had not been identified in its debriefing; however, the firm did not protest the assessment of that deficiency.

## Unequal Treatment

22nd Century argues that FRA treated it and InterImage disparately with respect to several features of their proposals. For example, the protester argues that FRA assigned a deficiency to its proposal under the staff qualification and key personnel factor but only a weakness to InterImage's proposal for appearing to propose program managers that did not meet the experience requirement. Supp. Protest at 10-11.

FRA states that 22nd Century's proposal was assigned a deficiency because its proposed project manager had less than one year of experience as a project manager, while the rest of its experience was as a program manager, which the agency asserts are two different positions with different types of responsibilities. FRA states that InterImage's proposed project manager had 12 years of experience as a project manager and had 5 years of experience on projects of similar size and complexity, but was assigned a weakness because the scope of that experience was not readily apparent. Supp. AR Legal Memorandum at 9.

The contemporaneous record belies the agency's explanation. While the agency is correct that the SSEB found that it was not clear whether InterImage's proposed project manager met the requirement of 5 years of experience managing a project of similar scope, the SSEB also was unclear as to whether the individual met the 10-year minimum experience requirement. Based on these findings, the SSEB assigned a weakness to the awardee's initial proposal. AR, Tab 7, InterImage Initial Consensus Evaluation, at 3. In contrast, the SSEB assigned a deficiency to 22nd Century's proposal because its proposed project manager appeared to have only 2 years of experience as a project manager and did not appear to have 5 years of experience with projects of similar size and scope. AR, Tab 16, 22nd Century Consensus Evaluation, at 3.

These contrasting assessments appear to buttress the protester's contentions. It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. Cubic Applications, Inc., B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218 at 7. However, even if 22nd Century's proposal had received a weakness instead of a deficiency for its proposed project manager, the protester has not shown that its proposal would have been included in the competitive range, given the agency's evaluation of its protest under the other evaluation factors. In this regard, 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. First Coast Serv. Options, Inc., B-409295.4, B-409295.5, Jan. 8, 2015, 2015 CPD ¶ 33 at 8; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

## Exclusion from the Competitive Range

22nd Century also argues that because its proposal did not receive an overall rating of unacceptable, the agency was required to include its proposal in the competitive range. 22nd Century contends that its weaknesses and deficiencies could have been addressed during discussions. 22nd Century contends that given the agency's definition of a marginal rating--that the technical proposal has a reasonable chance of becoming at least acceptable if discussions are held--the agency was required to include its proposal in the competitive range. 22nd Century's Comments at 4-5.

The protester appears to misunderstand the standard for inclusion of proposals in the competitive range. Since 1997, the Federal Acquisition Regulation (FAR) has required the contracting officer to include in the competitive range all of the most highly-rated proposals, unless the range is further reduced for efficiency purposes. See FAR § 15.306(c)(1). The current FAR requirement materially differs from the previous one, which required that the competitive range "include all proposals that have a reasonable chance of being selected for award." FAR § 15.609(a) (superseded). As our Office has previously explained, "the explanatory preamble published at the time the final version of the FAR Part 15 rewrite was issued makes clear that the intent of the revised language was to permit a competitive range more limited than under the prior 'reasonable chance of being selected for award' standard." SDS Petro. Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5.

As addressed above, an agency is authorized to exclude proposals from the competitive range that are not among the "most highly rated." FAR § 15.306(c)(1). The evaluation of proposals and resulting determination as to whether a particular offer is in the competitive range are matters within the discretion of the contracting agency. ECC Renewables, LLC; Pacific Power, LLC, B-408907 et al., Dec. 18, 2013, 2014 CPD ¶ 9 at 6. Our review is limited to whether the agency's evaluation and competitive range determination were reasonable and consistent with applicable procurement statutes and regulations. Straughan Env'tl., Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 13.

Here, we find the agency's decision to exclude 22nd Century's proposal from the competitive range to be within the agency's discretion. The record shows that the SSEB identified few strengths, and multiple weaknesses and deficiencies in 22nd Century's proposal under the technical approach factor that resulted in an unacceptable rating for the evaluation factor, and high risk of unsuccessful performance and increased likelihood of significant disruptions to program schedule. AR, Tab 16, 22nd Century Consensus Evaluation, at 1-2. The SSEB concluded that, despite the overall marginal rating, 22nd Century's proposal was unacceptable as proposed. The SSA considered the SSEB's briefing on 22nd Century's proposal, and noted that no proposal included in the competitive range had been found unacceptable under any evaluation factor, and concluded that 22nd

Century's proposal should not be considered further for award. AR, Tab 17, Addendum to Competitive Range Determination, at 2. Based on the above, we conclude that the agency's decision to exclude 22nd Century's proposal from the competitive range was reasonable.

22nd Century also argues that FRA's competitive range determination was improper because the agency failed to take the protester's price into consideration. Protest at 12. The record demonstrates otherwise.

An agency must consider price in making a competitive range determination. See Arc-Tech, Inc., B-400325.3, Feb. 19, 2009, 2009 CPD ¶ 53 at 3. In determining that 22nd Century's proposal would not be included in the competitive range, the SSA noted that 22nd Century's proposed price was within the general range of all proposals submitted, and concluded that, although its price was significantly lower than that of the awardee, the SSA did not consider 22nd Century's price as a factor in light of 22nd Century's rating under the technical approach factor. See AR, Tab 17, Addendum to Competitive Range Determination, at 2. Based on the above, we conclude that the agency adequately considered 22nd Century's proposed price in excluding the protester's proposal from the competitive range.<sup>6</sup>

The protest is denied.<sup>7</sup>

Susan A. Poling  
General Counsel

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<sup>6</sup> We recognize that other documentation suggests that the SSEB did not evaluate 22nd Century's price. However, as noted above, we conclude from the contemporaneous documentation that the SSA adequately considered 22nd Century's price in making his competitive range determination.

<sup>7</sup> To the extent that 22nd Century complains that the mere fact that its proposal was evaluated after the contract was awarded to InterImage resulted in a flawed evaluation, we find this protest ground to be untimely. The protester was aware that its proposal would be evaluated after contract award on April 29, 2016--when FRA offered it the choice of either having its proposal evaluated or receiving its proposal preparation costs. 22nd Century filed its protest with our Office on May 31--more than one month later--and therefore this protest ground is untimely. See 4 C.F.R. § 21.2(a)(2).