



Comptroller General
of the United States

Washington, D.C. 20548

REDACTED VERSION

Decision

Matter of: Allied-Signal Aerospace Company
File: B-250822; B-250822.2
Date: February 19, 1993

Alan W.H. Gourley, Esq., Paul Shnitzer, Esq., and Kathleen E. Karelis, Esq., Crowell & Moring, for the protester. James A. Dobkin, Esq., and Justin M. Dempsey, Esq., Arnold & Porter, and J. Drake Turrentine, Esq., Wiggin & Dana, for Saab Training Systems AB, an interested party. Eric A. Lile, Esq., and Thomas T. Basil, Esq., Department of the Navy, for the agency. Ralph C. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. One of two outside counsel for awardee--a subsidiary of a parent corporation--is denied admission to a General Accounting Office protective order where the attorney's role as a competitive decisionmaker presents too great a risk of inadvertent disclosure of protected information given that the attorney serves as a corporate officer for two other subsidiaries and has represented at least nine subsidiaries in the last 3 years, suggesting that the attorney has a management relationship with the companies that cuts across corporate boundaries.
2. Protester's contention that agency unreasonably selected a higher rated, lower-risk proposal priced \$18.8 million above the protester's proposal is denied where: (1) since the solicitation called for award of a fixed-price incentive contract (under which the government would absorb 70 percent of the incurred costs between the target and ceiling prices), the agency performed a limited price realism analysis to consider the impact of costs in excess of the target price, and as a result of this analysis, reasonably concluded that the protester's actual price would be approximately \$2.6 million higher than its proposed price; and

The decision was issued on February 19, 1993, and contained proprietary and source-selection sensitive information subject to a General Accounting Office protective order. Since all parties have waived any objection to its release, this decision is now removed from the coverage of the protective order.

(2) the agency made its price/technical tradeoff after reasonably quantifying and considering the possible additional costs associated with selection of the protester's higher risk proposal.

3. Challenge to adequacy of discussions is denied where the agency pointed out all deficiencies in the protester's proposal, but did not point out areas where the protester's technically acceptable approach was relatively less desirable than other offerors' approaches.

4. Argument that agency improperly evaluated technical proposals is denied where the record indicates that the evaluation was reasonable and in accordance with the stated evaluation criteria, and where the protester fails to show that the agency's conclusions were irrational or that offerors were treated disparately.

DECISION

Allied-Signal Aerospace Company protests the award of a contract to Saab Training Systems AB under request for proposals (RFP) No. N61339-91-R-0063, issued by the Department of the Navy for the acquisition of the Tank Weapon Gunnery Simulation System/Precision Gunnery System (TWGSS/PGS). Allied argues that the Navy failed to follow the stated evaluation scheme in making its price/technical tradeoff; failed to hold meaningful discussions; and failed to reasonably evaluate technical proposals.

We deny the protests.

BACKGROUND

On November 6, 1991, the Navy issued RFP No. N61339-91-R-0063, seeking proposals for a fixed-price incentive (FPI) contract for the TWGSS/PGS. The TWGSS/PGS is an integrated training device that uses laser technology to simulate the effect of firing certain weapons systems at the M-1 tank (the TWGSS), or at the Bradley Fighting Vehicle (the PGS). The TWGSS/PGS calculates ranges, and projects "hits" and "kills" based upon actual ballistic data for the various weapons systems.

The RFP sought offers to provide a base quantity of 42 TWGSS and 21 PGS, using existing TWGSS/PGS systems. The RFP also included 3 options, each with varying quantity ranges, for up to 1,344 TWGSS and 936 PGS units. In addition, the RFP included options for purchasing more TWGSS/PGS units for the Marine Corps, for sales to foreign governments, and for logistics support. According to the Navy, the value of the contract, with options, is approximately \$100 million.

The evaluation section of the RFP advised that award would be made to the offeror whose proposal was found most advantageous to the government. Potential offerors were informed that technical merit was equal to price, but cautioned that award might be made to an offeror with "a higher-rated, higher-priced proposal if . . . the technical advantage of [the proposal] more than offsets [the higher price]." In addition, offerors were instructed that price would become more important as proposals were found otherwise more equal.

In keeping with the incentive nature of the proposed contract, offerors were required to propose a target cost, target profit, target price, and ceiling price for each of the hundreds of sub-contract line items in the price schedule of the RFP. The ceiling price was to be calculated as 125 percent of the offeror's target price. Under the terms of the solicitation, the government agreed to absorb 70 percent of the costs above the target price up to the ceiling price, while the contractor was responsible for 30 percent of the costs incurred above the target price up to the ceiling price. Any expenditures above the ceiling price were to be the sole responsibility of the contractor.

The evaluation scheme of the RFP set forth four technical evaluation factors: system design; integrated logistics support; management; and past performance. In addition, the solicitation assigned the following relative weights to the four evaluation factors: (1) the system design factor would be substantially more important than the other three factors combined; (2) the past performance factor would be slightly more important than the management or integrated logistics support factors; and (3) the management and integrated logistics support factors would be approximately equal in weight.

In addition, each of the four technical factors was divided into subfactors and elements. For example, the evaluation subfactors and elements for the most important evaluation factor, system design, are shown below:

EVALUATION FACTOR: SYSTEM DESIGN

Subfactor 1: Functional Design

- Element 1: Maturity of the proposed design**
- Element 2: System performance capabilities**
- Element 3: Realism of visual simulations**

Subfactor 2: Computer System

- Element 1: Effectiveness of software design/approach**
- Element 2: Upgradeability for future changes**

Subfactor 3: System Accuracy

- Element 1: System accuracy**
- Element 2: Minimization of hit point dispersion**
- Element 3: Target resolution**

Subfactor 4: Hardware Design

- Element 1: Installation/deinstallation time**
- Element 2: Commonality between TWGSS and PGS**
- Element 3: Minimization of components**
- Element 4: Minimization of intrusions into turret working area**

Subfactor 5: Other Technical Requirements

- Element 1: System safety program**
- Element 2: Soundness of reliability approach**
- Element 3: Soundness of quality assurance approach**
- Element 4: Test and evaluation approach**
- Element 5: Human factors engineering and MANPRINT**

Among the subfactors and elements of the system design factor set forth above, the functional design subfactor is the most important subfactor, while the remaining four subfactors are of equal weight. Among the elements listed under each subfactor, all have equal weight with one exception: under the fifth subfactor, other technical requirements, the first element, system safety program, is more important than each of the other four elements, which are of equal weight.¹

The RFP did not anticipate numerical scoring of these evaluation factors, subfactors and elements; rather, the Navy used a color-coded evaluation scheme together with a formal assessment of risk. Under this scheme, evaluation factors and subfactors were awarded color rankings of blue (exceptional), green (acceptable), yellow (marginal) or red

¹We need not set forth here the subfactors and elements of the remaining three evaluation factors since most of the protester's challenges to the adequacy of the technical evaluation are in the area of system design.

(unacceptable).² In addition, each evaluation factor was assessed as presenting high, moderate, or low risk.³

The RFP also required offerors to demonstrate their proposed systems after initial evaluations at the White Sands Missile Range, New Mexico. Although the RFP explained that the demonstration would not be a pass/fail evaluation element, offerors were cautioned that the demonstration would be viewed as a validation of the offeror's written proposal, and that the results would have a direct bearing on the rating of key elements during final evaluations. The demonstration plan, appended to the RFP, set forth in detail the rules and procedures to be followed during each offeror's demonstration of its proposed system.

By February 26, 1992, the closing date for receipt of initial technical proposals--initial cost proposals were required by March 11--the Navy received offers from three companies. Upon receipt of the technical proposals, the Navy's Technical Evaluation Team began its review, and, at the same time, the Performance Risk Analysis Group (PRAG) began a similar review. Upon receipt of the cost proposals approximately 2 weeks later, the Cost Team began its review. By April 3, these initial reviews were completed, and the Proposal Evaluation Report (from the Technical Evaluation Team), the PRAG Report and the Cost Review were prepared.

These reports, forwarded to the Source Selection Advisory Counsel (SSAC), found that all three offerors' proposals contained deficiencies in their technical and cost

²Although the explanation above describes the color scheme used in the Source Selection Document, the evaluation plan and the initial evaluation used the same colors with a different explanation. There, the color rating scheme is described as follows: blue indicates an advanced design maturity or a technical advantage of great benefit to the government; green indicates that the proposal meets the requirements and that any weaknesses can be corrected within the required delivery schedule; yellow indicates that the proposal does not meet the requirements, but deficiencies can be corrected within the required delivery schedule; and red indicates that the proposal does not meet the performance requirements and correcting the deficiency will require major revision to the proposal.

³One evaluation factor, the past performance factor, was not separately evaluated for risk. Since this evaluation factor already considers performance risk, the Navy concluded that it would be inappropriate to evaluate risk twice.

proposals. Despite these deficiencies, however, the SSAC and the Source Selection Authority (SSA), decided to include all three offerors in the competitive range since all three had a reasonable chance of being selected for award depending upon their responses during discussions.

By letter dated May 20, the Navy provided written questions to each of the three offerors, and requested written responses by June 4. This round of questions and answers was followed by each offeror's demonstration of its proposed system at the White Sands Missile Range. During this demonstration, Allied admits that its system suffered a high voltage power system failure that precluded Allied from demonstrating the Tracer, Burst and Obscuration System (TBOS) feature of its proposed TWGSS/PGS.⁴

After the Navy had an opportunity to review the written responses to the discussion questions, and the results of the demonstration test, the Navy scheduled face-to-face negotiations with each offeror from June 22 to June 24. During these discussions, the Navy advised Allied--as it advised each of the other offerors during these face-to-face meetings--that none of the offerors had offered a solution for simulating firing of TOW missiles, which are operated manually on the Bradley Fighting Vehicle. As with other issues raised during discussions, offerors were requested to submit change pages to their technical proposals showing how they would address this issue.

When Allied submitted its proposed change pages on July 8, it offered two solutions to the TOW missile issue--one low-cost solution and one more expensive, more technically sophisticated solution. On July 9, 1 day after receipt of the change pages, the Navy contacted Allied, directed it to choose between the two solutions, and requested an answer on the same day. Allied states that since price was accorded the same weight as technical merit in the evaluation scheme, it chose the low-cost solution. On the next day, July 10, the Navy requested best and final offers (BAFO).

⁴The TBOS is an important element of the TWGSS/PGS system. Specifically, TBOS superimposes simulated special effects onto the vehicle sight to enhance the system's training benefits. As its name suggests, these effects include ammunition tracers, simulated explosions or "bursts," and what the Navy describes as "realistic aural effects."

On July 17, each offeror submitted its BAFO, which was again reviewed for technical merit, technical risk and cost. A summary of the final results of the technical and risk evaluation presented to the SSAC is shown below:⁵

	<u>Allied</u> (Color/Risk) ⁶	<u>Saab</u> (Color/Risk)
<u>SYSTEM DESIGN</u>	<u>Yellow/H</u>	<u>Blue/L</u>
Functional design	Yellow/H	Blue/L
Computer system	Yellow/M	Green/L
System accuracy	Green/L	Blue/L
Hardware design	Yellow/H	Green/L
Other Tech. Requirements	Green/L	Green/L
<u>LOGISTICS</u>	<u>Green/L</u>	<u>Green/M</u>
ILS program management	Green/L	Green/M
CLS program	Green/L	Green/M
<u>MANAGEMENT</u>	<u>Green/L</u>	<u>Blue/L</u>
Project management	Green/L	Blue/L
Configuration management	Green/L	Blue/L
Production/test facilities	Yellow/M	Blue/L
Subcontractor/vendor mgmt.	Green/L	Green/L
Resources	Green/L	Green/L
<u>PAST PERFORMANCE</u> ⁷	<u>Green</u>	<u>Blue</u>

After reviewing the results of the evaluation of factors, subfactors and elements, the SSA summarized the posture of the three offerors as follows:

	<u>Technical Merit</u>	<u>Proposal Risk</u>
Allied	Yellow	High
Saab	Blue	Low
Company A	Yellow	Moderate

⁵We have not included the detailed evaluation results for the third offeror in the competitive range. Although this offeror's technical evaluation is marginally better than Allied's, its price was so much higher than the prices offered by Allied or Saab that a detailed recounting of the evaluation of this offeror's technical proposal is not relevant to the discussion that follows.

⁶Risk is shown as High (H), Moderate (M), or Low (L).

⁷As mentioned above, the past performance factor was not separately evaluated for risk.

In addition to the review of technical merit and risk, the Navy performed a price realism analysis, and made adjustments in each offeror's proposed price. The proposed target prices and the evaluated prices of the offerors are as follows:

	<u>Proposed Price</u>	<u>Evaluated Price</u>
Allied	\$ 55,571,858	\$ 58,188,420
Saab	74,368,504	74,142,610
Company A	112,455,512	100,642,710

After reviewing the results of the technical evaluation, the assessment of risk, and the proposed and evaluated prices, the SSA decided that the greater technical merit of Saab's proposal outweighed the \$15.9 million evaluated price savings offered by Allied's proposal. Thus, on September 30, the Navy awarded the contract to Saab, and on October 8, Allied filed this protest.⁶

PROCEDURAL ISSUE

Pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(d) (1992), our Office issued a protective order during the course of this protest covering material related to the offerors' proposals and the agency's evaluation of those proposals. Both Allied and Saab retained outside counsel to represent them in this protest, although Saab retained two firms to represent it as a team. Allied's outside counsel, and one of Saab's two outside counsel were admitted without opposition, as were technical experts for both parties. Saab's other outside attorney, Mr. J. Drake Turrentine, a member of the Wiggin & Dana law firm, was not admitted to the protective order here.

In his original and supplemental affidavits for admission to the protective order on behalf of Saab, Mr. Turrentine disclosed corporate management positions with two other Saab corporations, as well as an extensive pattern of representation of Saab entities. Specifically, under the parent

⁶On November 24, the Navy determined that it was in the best interest of the government to continue performance of the contract notwithstanding the fact that the protest was filed in time to be covered by the automatic stay provision of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d) (1988). See also Federal Acquisition Regulation (FAR) § 33.104(c) (2) (i).

entity, Saab-Scania AB, Mr. Turrentine identified several first-tier subsidiaries. For one of these first-tier subsidiaries, Saab Scania Holdings U.S., Inc., Mr. Turrentine serves as the corporation's Assistant Secretary. In addition, Mr. Turrentine disclosed that he had represented four of these subsidiary corporations in the last 3 years--Saab Aircraft AB, Saab Automobile AB, Saab Scania Holdings U.S., Inc., and Saab-Scania Combitech AB.

Under the last of the first-tier subsidiaries named above, Saab-Scania Combitech AB, Mr. Turrentine identified 16 second-tier subsidiaries, including the awardee here, Saab Training Systems AB. While Mr. Turrentine is not a corporate officer for the corporate entity that is the awardee here, he serves as President and Director of 1 of the other 16 second-tier subsidiaries, Saab Marine Electronics AB, which has no business relations with the awardee and does not bid on government contracts. In addition, Mr. Turrentine disclosed that he had represented 5 of these 16 subsidiaries in the last 3 years.

In determining whether counsel may be permitted access to information covered by a protective order, we look to whether the attorney is involved in competitive decision-making for the client--i.e., whether the attorney's activities, associations, and relationship with the client are such as to involve advice and participation in any of the client's decisions (such as pricing, product design, etc.) made in light of similar or corresponding information about a competition. See U.S. Steel Corp. v. United States, 730 F.2d 1465, 1468 (Fed. Cir. 1984). Where an attorney is involved in competitive decisionmaking, the attorney will not be granted access to the proprietary data of another company because there is an unacceptable risk of inadvertent disclosure of the protected material. Id. Although it is often easier for outside counsel to establish that they are not involved in competitive decisionmaking, see, e.g., International Tech. Corp., GSBICA No. 9967-P, Mar. 24, 1989, 89-2 BCA ¶ 21,746; 1989 BPD ¶ 92, we approach the admission of counsel on a case-by-case basis, and we do not assume that any attorney's status as outside counsel is dispositive of whether that attorney is involved in competitive decisionmaking. See U.S. Steel Corp. v. United States, supra.

Our review of the circumstances of Mr. Turrentine's relationship with various Saab corporate entities led us to conclude that the risk of inadvertent disclosure of protected information was too great to warrant granting him access to Allied's and the Navy's protected information. Although Mr. Turrentine is not an officer of the Saab

corporate entity that was awarded this contract, he is an officer in two other Saab corporate entities. These two high-profile corporate positions, combined with the fact that a large number of Saab subsidiaries--at least nine--have called on his legal services in the last 3 years, suggest that Mr. Turrentine has developed a relationship with the Saab family of corporations that cuts across the various separate corporate entities. Given the apparent broad nature of Mr. Turrentine's relationship with Saab corporations, our Office could not confidently conclude that information learned during the representation of one Saab corporate entity--in this case, Saab Training Systems AB--could be isolated and protected from inadvertent disclosure when Mr. Turrentine functions as a competitive decisionmaker for other Saab corporate entities. Accordingly, Mr. Turrentine was denied access to the protected information produced during the course of this protest.

ANALYSIS

In its initial and supplemental protests, Allied essentially raises three issues: (1) it contends that the Navy abandoned the stated evaluation scheme by selecting Saab's more expensive system over Allied's system; (2) it argues that the Navy did not hold meaningful discussions regarding costs, scheduling and technical merit; and (3) it claims that the Navy's evaluation of Allied's and Saab's technical proposals lacked a reasonable basis.

Adherence to Stated Evaluation Scheme

Allied argues that the Navy unreasonably selected Saab's system over Allied's despite the fact that Allied's proposed price was \$18.8 million less than the proposed price of Saab. According to Allied, the Navy did not make a valid price/technical tradeoff decision using the difference between proposed prices, but instead applied undisclosed evaluation factors to conclude that Allied's actual price would be higher than its proposed price. Allied describes these factors as: (1) an alleged cost realism analysis; (2) estimated costs for an anticipated change order; and (3) estimated costs of live ammunition to be fired during an alleged 7-month schedule slippage.

In our view, Allied's description of the Navy's price/technical tradeoff decision does not accurately portray the Navy's actions. Before discussing each of these three adjustments in greater depth, the following is an overview of how the Navy approached this issue.

First, the Navy did not add costs for each of these three factors to Allied's proposed price. The Navy did, however, perform a limited price realism analysis to determine whether the offerors would exceed their proposed target prices. The Navy explained that it performed this analysis because the structure of this FPI contract required the government to absorb 70 percent of costs in excess of the target price, up to the amount of the ceiling price. As a result of the Navy's recognition of its potential exposure to such costs, it added approximately \$2.6 million to Allied's proposed price of \$55.6 million--increasing Allied's evaluated price to \$58.2 million. This \$2.6 million increase in Allied's proposed price was comprised of increases in the areas of hardware design and manufacturing, system engineering, software design, and contractor logistic support.

The other two costs Allied claims were added to its price were the estimated costs of an anticipated change order to address the inadequacy of Allied's approach to simulating the manual firing of the TOW missile, and the estimated costs of live ammunition to be fired during the 7-month schedule slippage the Navy concluded would result from award to Allied. While Allied cannot fairly claim that the Navy "added" these costs to its proposed price, the Source Selection Official (SSO) considered the possibility that both of these costs might be incurred while evaluating the risk of awarding a contract to Allied. As a result, as part of the Navy's decision to award the contract to Saab at a higher price, the SSO quantified and expressly considered the cost impact of the higher risk associated with award to Allied.

With respect to the first issue--the limited price realism analysis--we find nothing improper about the Navy's decision to perform such an analysis to attempt to determine the government's exposure to excess costs as a result of the 70/30 share line used in this FPI contract. See Universal Techs., Inc., B-241157, Jan. 18, 1991, 91-1 CPD ¶ 63. Not only was the Navy's \$2.6 million adjustment to Allied's proposed price minimal, we find that the decision to consider the possibility of overruns up to the amount of the ceiling price to be a prudent exercise of agency discretion.

We have also reviewed each of the Navy's four adjustments resulting in this \$2.6 million increase in Allied's proposed price and we find nothing unreasonable about the Navy's analysis in support of the adjustments. For example, the Navy explained that it made an upward adjustment to Allied's proposed hours for software design based on its experience with trainers of similar complexity and based on an estimate

it had developed for software requirements. Instead of attacking the Navy's conclusions specifically, Allied claims that the agency has not provided sufficient information to support these conclusions. Although we agree with Allied that the Navy has not offered much in the way of support for these relatively minor adjustments, Allied has failed to show why the Navy's numbers are unreasonable, or why the Navy should have known that Allied's device would not need as many hours for software design as the Navy estimated it would. Since the agency offers support for its adjustments and Allied fails to show that the adjustments are unreasonable, we will not overturn the agency's adjustments in this area.'

With respect to the Navy's decision to consider other possible costs that might be incurred if award was made to Allied, we again find the Navy's actions reasonable. As described above, the Source Selection Document compares the Allied and Saab evaluated prices, but then attempts to quantify the impact of the higher risk associated with selection of Allied. In so doing, the Source Selection Document enumerates a possible delivery slip associated with the design effort required to bring the Allied system to maturity; a possible increase in Allied's price associated with the substitution of a different approach for simulating the use of manually-fired TOW missiles; and a potential savings in training costs associated with Saab's perceived ability to make accelerated deliveries.

Allied claims that the Navy's consideration of costs associated with a change in its approach to simulating the firing of the TOW missile is unreasonable. As stated above, after being told during discussions that its proposal failed to address simulating the manual firing of TOW missiles, Allied submitted two proposed approaches to the Navy on July 8. One of these approaches was a low-cost solution and one was a more expensive, more technically sophisticated solution. On July 9, 1 day after receipt of Allied's proposed solutions, the Navy contacted Allied, directed it to choose between the two solutions, and requested an answer

*For another of these four adjustments--a 9,000 hour increase in Allied's proposed level of contractor logistics support--we agreed with Allied that the record failed to provide any explanation for the adjustment. After our Office asked questions of the Navy regarding its explanation for this adjustment, the Navy supplemented the record on this issue. Although Allied was provided a copy of this material, it has not offered any reason why our Office should conclude that the adjustment was unreasonable.

on the same day. Allied chose the low cost solution, and on the next day, July 10, the Navy requested BAFOs.

In its review of Allied's BAFO proposal, the Navy concluded that the approach Allied selected on July 9 for simulating the manual firing of the TOW missile was unacceptable. As a result of this conclusion, the Navy, in its consideration of the relative price differential between Allied and Saab, attempted to estimate the price increase associated with providing a technically acceptable approach to simulating the firing of TOW missiles. Since the Navy had already accepted BAFOs, the Source Selection Document estimated the cost of Allied's more sophisticated alternate solution as a possible cost associated with award to Allied.

Allied argues that the Navy's attempt to quantify the cost associated with this issue was unreasonable because Allied was never told that its approach was technically unacceptable, and thus Allied believes that the Navy should have reopened discussions and asked for another round of BAFOs. In addition, Allied suggests that the Navy had no basis to assume that Allied would automatically revert to the approach it abandoned when forced to choose between two approaches on the day before the agency requested BAFO submissions.

We disagree with Allied's interpretation of the Navy's options after the Navy concluded that Allied's approach on this issue was unacceptable. First, despite Allied's contention that the Navy should have reopened discussions and called for a second round of BAFO submissions, BAFOs are generally intended to be the final submission from offerors prior to an agency's selection of an awardee. See generally FAR subpart 15.6; Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD ¶ 76. There is no requirement for agencies to reopen negotiations to permit an offeror to modify its proposal, and, in fact, there are significant barriers to reopening discussions. Id.

Once the agency determined--after receipt of BAFOs--that Allied's admittedly low-cost, less technically sophisticated approach to this requirement was unacceptable, the Navy recognized that award to Allied would require a change to the contract at some later date to provide for the purchase of a technically acceptable solution to TOW missile simulations. In our view, once Allied's approach was found technically unacceptable--a conclusion that Allied does not challenge--the Navy would have been remiss not to give some consideration to the impact of a contract change to correct this feature of Allied's proposed system.

Since Allied had also proposed a more sophisticated, technically acceptable approach, the Navy considered the cost of Allied's alternate approach as a cost that would likely be incurred if the Navy selected Allied for award. Despite Allied's argument to the contrary, we see nothing improper about assuming--for purposes of evaluating risk--that Allied would revert to its previously-offered alternate approach. Using an approach Allied had already proffered as the basis for estimating the additional cost related to this effort is more logical than basing a government estimate on some unrelated approach. In addition, we fail to see why the Navy should have based an estimate on the cost of the Saab approach, as Allied suggests in its pleadings. There is simply no evidence that Allied would choose to address this issue in the same way as Saab, while there is strong evidence of how Allied would approach the issue. Accordingly, we will not take issue with the SSO's consideration of this added cost of award to Allied.

The Source Selection Document also considered the possible cost of additional training ammunition associated with the slippage in deliveries that the Navy believes will occur if it makes award to Allied. According to the Navy, the cost of lost training during the 7-month delivery slip associated with award to Allied "is calculated conservatively to have a value of \$31.2 [million]." Allied, on the other hand, claims that the Navy's calculations regarding training ammunition amount to application of an unspecified evaluation criterion.

In our view, the Navy's approach here, as with its approach related to the TOW missile issue, amounts to an attempt to quantify the effects of recognized risk factors. Although Allied disagrees with the Navy's conclusion that there will be schedule slippage associated with award to Allied, we see nothing unreasonable about attempting to quantify the effect of such perceived slippage. The Navy's actions, in essence, are an attempt to attach a possible price to these risks to aid in its decision about whether the benefits offered by the more expensive, higher rated, lower risk Saab proposal are outweighed by Allied's less expensive, but lower rated, higher risk approach. Although Allied's challenge to the computations used to quantify the cost of additional ammunition may have some merit,¹⁰ it is logical to assume that

¹⁰For example, Allied complains that the Navy's analysis is flawed because it does not disclose the period during which the savings would purportedly occur or the firing schedules they claimed to have received. Allied also complains that the Navy fails to show how the initial purchase would affect

(continued...)

there will be some cost associated with this perceived schedule slippage, and the Navy expressly disregarded a number of other costs associated with the slippage.¹¹ Accordingly, we find that the Navy acted reasonably in recognizing the potential for incurring such costs, and that the costs associated with such slippage may be even higher than those enumerated in the Source Selection Document.

Adequacy of Discussions

Allied raises numerous arguments to support its contention that the agency failed to hold meaningful discussions. When an agency acquires goods or services by means of a negotiated procurement, CICA, 10 U.S.C. § 2305(b)(4)(A) (1988), as reflected in FAR § 15.610(b), requires that written or oral discussions be held with all responsible sources whose proposals are within the competitive range. The requirement for discussions with offerors is satisfied by advising them of deficiencies in their proposals and affording them the opportunity to satisfy the government's requirements through the submission of revised proposals. FAR § 15.610(c)(2), (5); The Scientex Corp., B-238689, June 29, 1990, 90-1 CPD ¶ 597. Agencies are not, however, obligated to afford offerors all-encompassing discussions, or to discuss every element of a technically acceptable, competitive range proposal that has received less than the maximum possible score. Id.

Prior to discussing Allied's contentions specifically, we note that Allied fails to recognize several important points regarding this procurement. First, this RFP requested that offerors propose existing TWGSS/PGS systems. The agency is not evaluating an offeror's approach to building and designing a new system to meet the government's needs, but instead is reviewing proposed systems related to systems that already can be purchased. In making such a review, the Navy is evaluating the relative strengths and weaknesses of these systems.

¹⁰ (...continued)

as many tanks as the Navy claims, or how a delay in meeting the first article test date would necessarily translate to delays in deliveries.

¹¹ Among the costs the Navy says it could quantify, but does not, are: the time spent setting up targets on the range, the time spent preparing the tank fire control system for use, the crew member training time, and the added benefit of more realistic training.

Allied chose to propose several modifications to the Giravions Dorand's DX-175 system it was offering. These proposed modifications--perhaps made to strengthen the system's ability to meet the Navy's requirements, or to strengthen the system's relative merits as measured against its known competitors--caused the Navy concern about how much progress Allied had made towards producing a system that fully integrated the existing system with the system as modified in the proposal.

Our review of Allied's pleadings; the initial technical proposals; the written discussion questions; the offerors' responses; the result of the demonstration at the White Sands Missile Range; the face-to-face negotiations; the exchanges involving the contract requirement for simulating the firing of TOW missiles; and the agency's evaluation of all these materials, leads us to conclude that the Navy's discussion questions were adequate to put Allied on notice of the perceived deficiencies in its technical proposal. On the other hand, the Navy had no obligation to identify relative weaknesses in Allied's technically acceptable proposal that simply represent a less desirable approach than other proposals. Fairchild Space & Def. Corp., B-243716; B-243716.2, Aug. 23, 1991, 91-2 CPD ¶ 190.

For example, several of Allied's contentions raise the same issue--i.e., whether the Navy was required to advise Allied that the Navy viewed its proposed system as immature in design. We agree with Allied that this finding by the Navy had far-reaching implications for Allied's evaluation. Specifically, the Navy's conclusion about the maturity of Allied's system resulted in evaluation findings that additional hours would be required to continue modifying the system, and that the time required for the modifications would result in a 7-month slippage in the schedule while Allied met the first article test. As explained above, the Navy's conclusion regarding the risk of schedule slippage--and the costs the Navy considered associated with that risk--formed part of the basis for the Navy's conclusion that the Saab system was worth the higher price.

While the Navy admits that it did not expressly advise Allied that it considered its design to be immature, it points to several reasons why it reached the conclusion it did, and states that in these areas, and others, it advised Allied where its proposal was deficient in meeting the requirements of the specification. Since the Navy's questions highlighted in detail areas where the proposed system appeared to fail to meet the specification's requirements, the Navy met its obligation to apprise Allied of the deficiencies in its generally acceptable proposal.

Allied also contends that the Navy's discussions were misleading regarding the adequacy of Allied's proposed solution to simulating the firing of the TOW missile. In this regard, Allied argues that when the Navy asked Allied to choose between one of the two alternate approaches proposed for simulating the firing of the TOW missile, the Navy was required to advise Allied that the less expensive approach was technically unacceptable.

Allied's argument overlooks the fact that the Navy called Allied within 1 day of receipt of the alternate proposals for TOW missile simulation to tell Allied that it could only propose one solution to this contract requirement. On the very next day, the Navy requested that offerors submit BAFOs. There is nothing in the record to suggest that the Navy realized the inadequacy of Allied's initial approach within 1 day of having received it, or that the Navy in any way misled Allied about which of the two options it should propose. As stated above, once the Navy realized that the approach proposed by Allied was unacceptable, it had no obligation to reopen negotiations and request a second round of BAFOs so that Allied could correct the inadequacy of its approach. Mine Safety Appliances Co., supra. Accordingly, there is no support for a finding by our Office that the Navy acted unreasonably in this regard.

Technical Evaluation

With respect to Allied's challenges to the technical evaluation, Allied focuses mostly on the Navy's evaluation of Saab's proposal. In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. A protester's disagreement with the agency's judgment, without more, does not show that the agency's judgment was unreasonable. Id.

We have considered Saab's and Allied's proposals, the evaluation materials, Allied's arguments, and the agency's and interested party's responses. As a result of our review, we find no basis for concluding that the evaluation was unreasonable or that Saab was accorded preferential treatment in the evaluation, as Allied contends. To illustrate our conclusion, we will discuss Allied's contentions generally, and discuss in detail a few of the specific issues raised in the protest filings.

As in its challenge to the price/technical tradeoff decision and the adequacy of discussions, several of Allied's arguments regarding the evaluation of its technical proposal relate to the Navy's conclusion that the design of Allied's proposed system was immature. As explained above, no other single conclusion about the Allied proposal appears to have had a greater impact on the Navy's decision to select Saab than the Navy's perception that the Allied system design was immature and would require additional design work--together with schedule slippage--to align the actual system with the concept set forth in the proposal. Since the system design factor was the most important evaluation factor, this conclusion contributed significantly to the Navy's overall rating of the Allied proposal.

Our review of the Navy's evaluation materials, and Allied's challenges to those materials, does not show that the Navy's assessment of Allied's proposed system as immature was unreasonable. This assessment, resulting from observation of numerous weaknesses in the Allied approach--the conclusions about each of which have been challenged by Allied--is based on the Navy's experience with such systems; its recognition of differences between the existing and proposed systems; and the performance of the system during the demonstration at White Sands Missile Range. Although we understand that Allied disagrees with the many conclusions that led the Navy to this assessment, Allied's specific challenges to the underlying conclusions--and our own reading of the evaluation materials--does not lead us to conclude that the assessment was unreasonable or arbitrary.

One of Allied's specific contentions is that the Navy's evaluation of the Saab proposal was unreasonable in the rating area of the compatibility of offerors' TWGSS/PGS system with the existing Multiple Integrated Laser Engagement System (MILES).¹² According to Allied, the Source Selection Evaluation Board's (SSEB) report unreasonably failed to mention that there was a potential problem with Saab's compatibility with the MILES system.

The Navy raised the issue of Saab's compatibility with the MILES system in a discussion question. In its answer, Saab not only revealed to the Navy the area where there was a degradation in compatibility, but it explained how it believed the situation was beyond the scope of the

¹²Allied describes MILES as the existing laser-based system for force-on-force training. According to Allied, MILES is less sophisticated in design than TWGSS/PGS and does not simulate specific weapons systems.

specification requirements. In addition, Saab's answer suggested ways to address the degradation it forthrightly identified. In our view, Allied has made no showing that the Navy acted unreasonably in accepting Saab's position on this issue, or in failing to identify this issue as a weakness in the SSEB report summarizing the evaluation of Saab's proposal.

Allied also complains that the evaluation of TWGSS/PGS compatibility with MILES is an example of disparate treatment of Allied and Saab by the Navy. Allied argues that the Navy unfairly failed to mention this shortcoming in Saab's TWGSS/PGS compatibility with MILES in the final evaluation, while at the same time "the Navy inaccurately criticizes Allied for marginal MILES performance at long range."

Despite its claim, Allied offers no support for its contention that the Navy's criticism on this point was inaccurate--and little support can be found elsewhere in its pleadings on this issue.¹³ Since we have already concluded that there was nothing unreasonable about the Navy's evaluation of Saab on this issue, and since Allied has failed to show why the criticism of its system was inaccurate, or the evaluation unreasonable, we will not conclude that the evaluation of Allied was unfair, or that the Navy treated the offerors disparately.

Allied also claims disparate treatment in the Navy's refusal to permit Allied to stage a second demonstration of its system to overcome the negative impression left when its system experienced a high voltage power failure at the White Sands Missile Range demonstration. As explained above, the power failure resulted in Allied's inability to demonstrate certain features of its system, and left the Navy evaluators with the impression that the power system required additional design.

¹³In a subsequent discussion contesting the Navy's conclusion--drawn from the demonstration at White Sands Missile Range--that Allied's system lacked laser power, Allied challenges the Navy's opinion that its system had a laser power deficiency which contributed to a degradation of its MILES compatibility at long range. Although this challenge to the Navy's review of Allied's performance at the White Sands Missile Range demonstration conceivably supports Allied's conclusion here, it appears that the Navy's criticism of Allied's compatibility with MILES was broader than just the criticisms leveled in the review of the demonstration at White Sands Missile Range.

The demonstration plan appended to the RFP required offerors to demonstrate their TWGSS/PGS systems by running a gauntlet of nine separate tests--the eighth of which was a demonstration of the TBOS visual effect system. Although Allied apparently had reasonable concerns about securing replacement parts if its system malfunctioned, it refused to participate in the "free day" where offerors were permitted to simply show how their systems operated, and, in essence, "play" with the systems. When Allied did attempt to demonstrate its system as required, its power source malfunctioned, leading the evaluators to conclude that the system might be less developed than it should be.

Our review of the facts surrounding the demonstration does not support Allied's contentions. First, just as Allied argues there is nothing in the demonstration plan precluding additional demonstrations, there is nothing in the plan requiring them either. Second, the demonstration of the TBOS visual effects system was one of the primary assessments intended by the Navy. Even if Saab was permitted an additional opportunity to demonstrate its system--and, in our view, the record does not support this claim¹⁴--the subject of the alleged demonstration was the effect of dust on the system's visual acuity. This topic is several orders of magnitude less important than the demonstration of the TBOS system that Allied was supposed to make. In short, there is no evidence that Saab was improperly given any meaningful advantage over Allied during the course of this procurement.

In another area, Allied complains that the Navy unreasonably increased Saab's final rating from green to blue under the functional design and system accuracy subfactors of the system design factor, based on information provided during discussions. Allied argues that the increased rating was irrational since Saab admitted during discussions that it did not meet one of the specification's requirements which should have had an impact on the evaluation of these two

¹⁴In its comments, Allied includes 4 pages of handwritten notes prepared by one of the evaluators considering, among other things, the effects of dust in the atmosphere on the proposed TWGSS/PGS systems. There is no evidence that these notes were prepared during some other demonstration of the Saab system as Allied claims. Rather, the notes appear to relate to information gathered on the "free day" or the day of the more formal tests. Thus, the notes do not suggest the kind of disparate treatment Allied claims.

subfactors--the requirement for 360 degrees of hull defilade detection.¹⁵

During discussions the Navy reminded Saab that the specification requires 360 degrees of detection for hull defilade. In response, Saab offered to place two additional hull detector modules in the rear of the vehicle and then explained its decision in substitute pages for its technical proposal. In its explanation, Saab states that for the PGS, the modification provides 360 degrees of coverage for all turret positions. For the TWGSS, Saab states that its modification provides 360 degrees for every turret position except one--Saab admits that when the turret is pointed 180 degrees from the front, the frontal hull detector modes are obscured by the rear part of the turret.

In our view, Allied's complaint overlooks the fact that Saab corrected much of the deficiency in its system's ability to provide 360 degrees of detection for hull defilade. As stated above, Saab's modification completely corrected the problem for the PGS units, and corrected the problem for the TWGSS units for every position but one. In addition, hull defilade coverage was only one of many requirements covered by these two evaluation subfactors. Accordingly, we find that Allied has failed to establish that the Navy's upgrade of Saab's rating on these evaluation factors in the final review was unreasonable.

The protests are denied.

James F. Hinchman
General Counsel

¹⁵As explained in the pleadings, hull defilade detection refers to the ability of the proposed TWGSS/PGS system to detect when a target vehicle's hull is protected (hull defilade). When the hull is protected, the vehicle is less vulnerable. According to Allied, the proposed systems are required to detect when the hull is protected, and while the hull is protected the system should only score simulated "hits" to the vehicle's turret.