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# Decision

**Matter of:** Thoma-Sea Marine Constructors, LLC

**File:** B-416240; B-416240.2

**Date:** July 16, 2018

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## DIGEST

1. Protest challenging the evaluation of awardee's past performance is denied where the record shows the evaluation was reasonable and consistent with the stated evaluation criteria; protester's assertion that agency unreasonably ignored certain past performance information is denied where the protester fails to demonstrate that the agency knew or should have known of the information.

2. Protester's challenge to agency's affirmative responsibility determination for the awardee is dismissed where protester fails to demonstrate that the information on which the protester based its challenge was available to the contracting officer.

3. Protest challenging the evaluation of awardee's ship design proposal is denied where the source selection authority's disagreement with the conclusions of the source selection evaluation board, and its acceptance of the conclusions of the source selection advisory council, were documented, reasonable, and consistent with the stated evaluation criteria; and dismissed where the allegations are untimely.

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## DECISION

Thoma-Sea Marine Constructors, LLC, of Lockport, Louisiana, protests the award of a contract to Gulf Island Shipyards, LLC, of Houma, Louisiana,<sup>1</sup> under request for proposals (RFP) No. N00024-17-R-2207, issued by the Department of the Navy, Naval Sea Systems Command, for design and construction of a lead Towing, Salvage, and Rescue Ship (T-ATS) and up to seven additional ships. The protester primarily challenges the agency's evaluation of the awardee's proposal under the past performance and ship design factors, as well as the agency's affirmative responsibility determination.

We deny the protest in part and dismiss it in part.

## BACKGROUND

On March 31, 2017, the agency issued the RFP as a small business set-aside conducted pursuant to Federal Acquisition Regulation (FAR) part 12. Agency Report (AR), May 11, 2018, at 3. The RFP contemplated the award of a fixed-price contract with economic price adjustment for the design, construction, testing, and delivery of a lead T-ATS with options for seven follow-on ships. AR, Tab 1, RFP, as amended, at 26. The RFP specified that a single contract would be awarded to the offeror whose proposal was evaluated as offering the best value, based on a tradeoff between price and technical factors. Id. at 175. The technical factors, in descending order of importance, were (1) ship design, (2) past performance, and--of equal importance to each other but less important than the first two factors--(3) production and (4) management. Id. at 177, 181. Under the ship design, production, and management factors, proposals would be assigned adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. Id. at 176. Under the past performance factor, proposals would be evaluated on the relevancy of the past performance as well as the level of confidence, using quality ratings of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 176-77.

Of relevance here, with regard to the past performance factor, the RFP provided that the agency intended to evaluate the offeror's and any significant subcontractors' past performance in "design and construction" of ships that required the "same or similar work in both type and complexity as the work required by this solicitation." RFP at 179. The RFP further defined the relevancy ratings in terms of "scope and magnitude of effort and complexities" required by the solicitation and advised that the agency reserved the right to obtain and consider information from "any and all sources." Id. at 176, 179.

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<sup>1</sup> Gulf Island Shipyards, LLC, is a division of Gulf Island Fabrication, Inc., of Houston, Texas.

With regard to the ship design factor, the solicitation provided for three categories of requirements: mandatory, non-mandatory, and desired. RFP at 177. For the requirements identified as non-mandatory, offerors were permitted to propose alternative design features and the agency would determine the extent to which such features represented benefits or risks. Id. Notably, the RFP advised that, “where deviations from the [requirements] provide more capabilities than required and are advantageous to the [g]overnment, they will be noted as strengths to the design,” with a particular emphasis on how well the proposed design met the seakeeping requirements, as defined in an attachment to the RFP. Id. at 178; see also AR, Tab 1i, RFP Attachment J-1, at 10-11.

On or before June 13, 2017,<sup>2</sup> the agency received five proposals. After an evaluation of initial proposals, the agency established a competitive range of four offerors. The agency conducted discussions from September 29 to November 21, and requested and received final proposal revisions (FPRs) by December 7. AR, Tab 5, Source Selection Advisory Council (SSAC) Award Recommendation Report, at 2-3.<sup>3</sup>

The source selection evaluation board (SSEB) first evaluated each of the FPRs. Of relevance here, under the past performance factor, the SSEB assigned a rating of “very relevant/satisfactory confidence” to Gulf Island. AR, Tab 4, SSEB Evaluation Report, at 89. Gulf Island had provided ten references, including five of its contracts and five performed by its two significant subcontractors. Id. The SSEB examined each of the projects and described where each project reflected design and/or construction functions and same or similar type, size, and complexity characteristics. The SSEB evaluation report also reviewed other sources such as relevant work history, past performance questionnaires (PPQs), and contracting performance assessment reporting system (CPARS) reports. Id. at 89-94.

Also of relevance here, under the ship design factor, the SSEB assigned a rating of “good” to Gulf Island, noting 14 strengths, 3 weaknesses, and 6 risks. SSEB Report at 54-68. The SSEB concluded that Gulf Island’s FPR “indicates a thorough understanding of the ship design work to be accomplished and other aspects essential to contract performance,” and “[o]verall, risk of unsuccessful performance is low to moderate.” Id. at 54-55.

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<sup>2</sup> While proposals were initially due by May 31, amendments extended the deadline to June 13. RFP at 1, 9.

<sup>3</sup> In the development of the protest, the agency provided sections of the SSEB Evaluation Report as Tab 4 in the agency report and Exhibit 1 in the supplemental agency report, and sections of the SSAC Award Recommendation Report as Tab 5 in the agency report and Exhibit 2 in the supplemental agency report. For the purposes of clarity, we refer to these documents by their tab numbers as initially provided in the agency report and cite corresponding page numbers as needed.

The SSAC then reviewed the SSEB’s findings and technical ratings and, “based on its independent review of the facts in the record,” largely agreed with the SSEB except for the rating assigned to Gulf Island under the ship design factor. SSAC Report at 3. The SSAC evaluated Gulf Island’s and Thoma-Sea’s proposals as follows:

	<b>Gulf Island</b>	<b>Thoma-Sea</b>
Ship Design	Outstanding	Good
Production	Good	Good
Management	Good	Good
Past Performance--Relevance	Very Relevant	Very Relevant
Past Performance--Confidence	Satisfactory Confidence	Substantial Confidence
Total Evaluated Price	\$496,265,192 <sup>4</sup>	\$491,289,475

Id. at 4.

Of relevance here, in assigning an “outstanding” instead of “good” to Gulf Island under the ship design factor, the SSAC explained:

The SSAC concurs with the strengths identified by the SSEB. In particular, the SSAC found the following to be of significant value to the Government: 1) a bollard pull<sup>5</sup> of [redacted] short tons, which significantly exceeds the minimum requirement of 130 short tons of bollard pull required by the RFP; 2) a larger working deck of approximately [redacted] square meters, which significantly exceeds the minimum requirement of 465 square meters clear working deck area; and 3) the design exceeds all seakeeping requirements of the RFP. The SSAC found that exceeding these two mandatory requirements and the seakeeping requirement[s], critical to the primary towing, salvage, and rescue missions of the ship, not only provides significant value but also demonstrates an exceptional approach and understanding of the requirements while providing sufficient margin to mitigate performance risk to a “low” rating. . . .

No deficiencies or significant weaknesses were noted. The SSAC concurs with the weaknesses and risks identified by the SSEB. Overall, the multiple strengths and margins associated with the proposed ship

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<sup>4</sup> The award amount for the contract including options was \$522,701,092. The total evaluated price, which was used by the source selection authority (SSA) only for evaluation purposes to determine best value, was calculated to reflect the sum of the proposed contract line item numbers with certain specified price reductions if the offeror included any of the four capabilities characterized as “desired” in the RFP. AR at 8; see also RFP at 179-181.

<sup>5</sup> Bollard pull is a measure of the towing power of a vessel. Supp. AR, June 1, 2018, at 4 n.2.

design identified as providing significant value, combined with providing all the desired capabilities and the excellent seakeeping characteristics of the proposed design, substantially more than offset the weaknesses and the risks. The FPR demonstrates an exceptional approach and understanding of the requirements and the risk of unsuccessful contract performance is low.

SSAC Report at 7-8.

On February 21, 2018, the contracting officer documented her determination that Gulf Island was responsible to perform the contract in accordance with the requirements of FAR § 9-104.1. AR, Tab 6, Contracting Officer's Affirmative Determination of Responsibility; see also RFP at 181.

Finally, as documented in his source selection decision memorandum dated February 27, the SSA reviewed the SSEB and SSAC reports, conducted an integrated assessment and comparison of the proposals, and determined that the proposal submitted by Gulf Island provided the best overall value to satisfy the needs of the solicitation. In particular, the SSA cited the findings of the SSAC with regard to the advantages of Gulf Island's ship design proposal and concluded:

[Gulf Island] has the strongest proposal for Factor 1 Ship Design, the most important non-price factor[,] for which [Gulf Island] is rated "Outstanding." [Gulf Island]'s proposed design is the only design of the four Offerors to meet (and actually exceeds) all of the seakeeping requirements. As delineated above, [Gulf Island]'s proposed design provides significant increased capability with respect to mandatory requirements, which when combined with providing or exceeding all four of the desired capabilities, significantly increase core mission capabilities. The value associated with [Gulf Island]'s proposed design outweighs the 1% price premium over the lowest priced proposal.

AR, Tab 7, Source Selection Decision Memorandum (SSDM), at 3.

On March 16, the agency awarded the contract to Gulf Island. After requesting and receiving a debriefing, which concluded on April 4, Thoma-Sea filed this protest with our Office.

## DISCUSSION

Thoma-Sea challenges several aspects of the agency's evaluation of Gulf Island's proposal under the past performance and ship design factors, as well as the agency's affirmative responsibility determination. We have reviewed all of Thoma-Sea's arguments, including those that are in addition to, or variations of, those specifically

discussed herein, and find no basis to sustain its protest. Below, we discuss a few representative arguments.<sup>6</sup>

### Past Performance Evaluation

Thoma-Sea raises numerous challenges to the agency's evaluation of Gulf Island's past performance. For example, Thoma-Sea argues that the agency "erroneously relied on projects with little or no relevance to the work solicited in the RFP" such that the "very relevant" rating assigned to Gulf Island's past performance was "unsupported, arbitrary, and capricious." Comments, May 21, 2018, at 8. Thoma-Sea points to the definition of a "very relevant" rating in the RFP, which reads: "Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires." RFP at 176 (emphasis added). Thoma-Sea then defines "magnitude" in terms of price and equates this to approximately \$65 million per vessel, based on the total contract value of \$522,701,092 divided by eight vessels. Comments at 9. Because each of the ten projects submitted by Gulf Island was lower than \$65 million in value, Thoma-Sea contends that none of the projects met the level of "magnitude" required by the RFP and thus the agency's assignment of a "very relevant" rating to Gulf Island's past performance was unreasonable. Id. at 10-11.

As a preliminary matter, the agency asserts that "magnitude was not linked to a specific dollar per vessel threshold as the protester now seeks to apply." Supp. AR at 11. Moreover, the agency contends that "the plain language of the RFP's relevancy requirements stressed the type of effort performed and ship type involved as the [g]overnment's primary focus." Supp. AR at 12, citing RFP at 166, 179. In addition to defining the relevancy ratings, the RFP explained that the agency would consider past performance on contracts that required "the same or similar work in both type and complexity as the work required by this solicitation" and listed the order of "design and/or construction" projects to be considered for relevance. RFP at 179. In this regard, the agency asserts that it reasonably reviewed Gulf Island's past performance references, including considering the PPQs that were submitted by Gulf Island's previous customers and CPARS reports for Gulf Island's significant subcontractors. AR at 9-12.

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<sup>6</sup> Thoma-Sea's initial protest also challenged the agency's evaluation of its proposal under the ship design and production factors. Protest at 11-24. The agency discussed its evaluation of Thoma-Sea's proposal in its report. AR at 16-27; see also AR, Contracting Officer's Statement, May 10, 2018, at 1-3. Since Thoma-Sea did not respond to or rebut the agency's response in its comments, and instead raised new challenges to the agency's evaluation of Gulf Island's proposal, Thoma-Sea's failure to comment on the agency's response renders these initial arguments abandoned. We will not consider them further. 22nd Century Techs., Inc., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 10.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. American Env'tl Servs., Inc., B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5; AT&T Gov't Solutions, Inc., B-406926 et al., Oct. 2, 2012, 2013 CPD ¶ 88 at 15. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. American Env'tl Servs., Inc., supra; Short & Assocs., B-406799, B-406799.4, Aug. 31, 2012, 2012 CPD ¶ 251 at 4.

Further, where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 233 at 2. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 3.

On this record, we conclude that the agency's evaluation of Gulf Island's past performance was reasonable and consistent with the RFP's evaluation terms. First, we find reasonable the agency's view that the RFP emphasized "type and complexity" of past performance projects in its evaluation criteria and that nothing in the RFP supports the protester's assignment of a dollar value to the term "magnitude."<sup>7</sup> Further, we have no basis to question the reasonableness of the agency's evaluation of Gulf Island's past performance, where the agency thoroughly reviewed the ten contracts submitted for Gulf Island and its subcontractors; noted where each reflected design and/or construction functions, as well as other same-or-similar size and complexity characteristics; and assigned relevancy ratings for each project and overall. See SSEB Report at 89-94; SSAC Report at 9-10. Accordingly, we deny this basis of protest.

Thoma-Sea also argues that the agency's past performance evaluation was flawed because the agency improperly failed to consider "publicly available information regarding Gulf Island's failure to deliver two multi-purpose service vessels (MPSVs) under a contract substantially similar to the RFP." Protest at 7. Thoma-Sea bases its allegation in this regard on industry news reports dated from February 26 to April 4,

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<sup>7</sup> We also note that Thoma-Sea does not contest the agency's observation that "application of Thoma-Sea's own stringent standard of relevance based on a \$65 [million] threshold for magnitude arguably renders all of the protester's own past performance experience to be not relevant, since the contract prices per vessel in Thoma-Sea's past performance were [redacted] lower than the \$65 [million] standard it now seeks to impose." Supp. AR at 11 n.8.

2018, and an affidavit from its managing director who claims to have “personal knowledge concerning the fact that Hornbeck Offshore terminated a contract with Gulf Island’s parent company (Gulf Island Fabrication, Inc.) related to two [MPSVs].” Protest, Exh. 3, Affidavit, April 4, 2018; see also Protest, Exh. 4, Industry News Publications, March 26, 2018. Thoma-Sea also complains that Gulf Island should have notified the agency because the alleged contract failures occurred in 2017, including through the latter half of the year when the agency and offerors were engaged in discussions and the submission of FPRs. Comments at 12. Ultimately, Thoma-Sea contends that these alleged contract failures constituted “close at hand” past performance information that “were or should have been known to the Navy insofar as they related to entities operating in the same industry and geographic location as the agency and with respect to vessels that are substantially similar to the vessel procured in the RFP.” Protest at 8.

In response, the agency first argues that the alleged information raised by Thoma-Sea “relates to contract efforts between [Gulf Island] and other private parties – efforts that fall outside the ‘close at hand’ standards” because they were not with the contracting agency. AR at 10. The agency also points out that all of Thoma-Sea’s exhibits were created after the FPR past performance evaluations were completed on February 8 “and, therefore, could not have been considered by the evaluators.” AR at 11. While the agency does not confirm or deny whether it was aware of the alleged contract failures, the agency explains that it considered “specific, credible information” that was available to it in the form of a PPQ regarding a completed contract between Hornbeck Offshore and Gulf Island, in which Hornbeck rated Gulf Island’s performance as “excellent and good,” and “highly recommended” Gulf Island for a government contract. AR at 11-12, citing AR, Tab 11, PPQ submitted for Gulf Island, June 9, 2017.

In certain limited circumstances, an agency has an obligation to consider information bearing on the offeror’s past performance when it is “too close at hand” to require offerors to shoulder the inequities that spring from an agency’s failure to obtain and consider the information. See, e.g., Affordable Eng’g. Servs., Inc., B-407180.4 et al., Aug. 21, 2015, 2015 CPD ¶ 334 at 13. Our Office has generally limited application of this principle to situations where the alleged “too close at hand” information relates to contracts for the same services with the same procuring activity, or information personally known to the evaluators. Orbital Scis. Corp., B-414603, B-414603.2, July 26, 2017, 2017 CPD ¶ 249 at 10; Exelis Sys. Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 22.

Here, Thoma-Sea fails to show that its protest allegation meets the “close at hand” standard, since the alleged contract failures involved a private party--not the agency involved in this procurement--and nothing in the record indicates that the agency evaluators were personally aware of the information as presented by Thoma-Sea. We also note that, as Thoma-Sea recognizes, the alleged contract failures involved Gulf Island’s parent company, rather than the offeror itself. Additionally, Thoma-Sea’s complaints that the agency should have actively sought out this information or that Gulf Island should have alerted the agency during the evaluation process are without merit.

See, e.g., BillSmart Solutions, LLC, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 6 (finding that the agency's evaluation was reasonable where it did not consider outside sources of information, such as news reports that were not known to the evaluators, where there was no requirement for the agency to conduct an "independent review [i.e., run an internet search]. . ."). Finally, even if the agency had been aware of the alleged contract failures, we have no basis to question its review of an available PPQ regarding Gulf Island's past performance with Hornbeck Offshore, as documented in the record. Thus, we deny this protest allegation.<sup>8</sup>

#### Affirmative Responsibility Determination

Thoma-Sea also challenges the agency's affirmative responsibility determination by arguing that the alleged contract failures referenced above, as well as a Securities and Exchange Commission filing for the awardee's parent company dated March 9, 2018, demonstrate that Gulf Island "lacks the financial resources and performance record to be considered a responsible contractor." Protest at 10.

We are not convinced that Thoma-Sea's allegations fall within any of the exceptions that would trigger our review. The determination of a prospective contractor's responsibility rests within the broad discretion of the contracting officer, who, in making that decision, must necessarily rely on his or her business judgment. Rotech Healthcare, Inc., B-409020, B-409020.2, Jan. 10, 2014, 2014 CPD ¶ 28 at 6. Our Office generally will not consider a protest challenging a contracting officer's affirmative responsibility determination except in limited circumstances where it is alleged that definitive responsibility criteria in the solicitation were not met, or protests that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c); see, e.g., Active Deployment Sys., Inc., B-404875, May 25, 2011, 2011 CPD ¶ 113 at 3. For example, we have reviewed allegations that a contractor engaged in improper financial practices and improperly reported earnings. See, e.g., Verestar Gov't Servs. Grp., B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4-5.

Such circumstances are not present here, where Thoma-Sea has not established that the information was "available" to the agency, that is, that the agency knew or should have known of the allegations referenced by the protester. While the agency does not specifically address whether it was aware of the information as alleged by Thoma-Sea,

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<sup>8</sup> We reach the same conclusion regarding the supplemental protest that Thoma-Sea filed on April 30. That protest included a transcript of a corporate conference call conducted by the awardee's parent company on April 27 as additional support for Thoma-Sea's initial protest. Supp. Protest at 1-4. Here again, Thoma-Sea fails to show that the information discussed in the conference call constituted negative past performance information that meets the standard to be considered "too close at hand" for the agency to ignore.

we find compelling the agency's observation that all of the evidence presented by Thoma-Sea is dated after February 21--when the contracting officer finalized her affirmative responsibility determination--and, therefore, could not have been considered by the agency as presented by the protester. Under these circumstances, we dismiss this protest allegation.

### Ship Design Evaluation

Next, Thoma-Sea raises several challenges to the agency's evaluation of Gulf Island's proposal under the ship design factor. Most notably, Thoma-Sea questions the SSA's decision to adopt the SSAC's rating of Gulf Island's ship design proposal as "outstanding" instead of the SSEB's recommended rating of "good." Thoma-Sea complains that the "RFP does not provide for a hierarchy in which the SSA can unilaterally overrule the reasoned conclusions of the SSEB regarding technical competency." Comments at 4. Thoma-Sea alternatively contends that, "even if the SSA did act within his authority, the decision still must be overturned as unreasonable and lacking proper justification." Id. at 5.

As a preliminary matter, the agency asserts that "there is nothing in the RFP that prohibits the SSA (or the SSAC) from independently analyzing proposals and changing an adjectival rating" and that "source selection officials must consider the recommendations of advisory boards but are not bound by those ratings . . . [and] may come to their own reasonable evaluation conclusions." Supp. AR at 3, citing FAR § 15.303(b) and PiperCoughlin, LLC, B-414352.2, Apr. 17, 2018, 2018 CPD ¶ 143 at 5 (citing TruLogic, Inc., B-297252.3, Jan. 30, 2006, 2006 CPD ¶ 29 at 8). We agree. It is well-settled that source selection officials are not bound by the recommendation of lower-level evaluators. Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 7. A source selection official may disagree with the evaluation ratings of lower-level evaluators, and may make an independent evaluation judgment, provided that the basis for that judgment is reasonable and documented in the contemporaneous record. Halfaker & Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 10. In this regard, the relevant inquiry is not whether the source selection officials revised or overrode the judgments of the lower-level evaluators; rather, the issue for our Office's review is whether the agency's final evaluation was reasonable. See, e.g., Concurrent Techs. Corp., B-412795.2, B-412795.3, Jan. 17, 2017, 2017 CPD ¶ 25 at 18.

In this regard, the agency asserts that the SSA "made reasonable evaluation conclusions and documented his analysis." Supp. AR at 3. The agency explains that, first, the SSAC considered the SSEB report, "independently determined" that Gulf Island's ship design merited a rating of "outstanding" rather than "good," and documented these findings in the SSAC report. Id. The SSAC explained that Gulf Island's proposed ship design contained three significant benefits that it considered to

be particularly important to the solicited T-ATS<sup>9</sup> and concluded that “exceeding these two mandatory requirements and the seakeeping requirement[s], critical to the primary towing, salvage, and rescue missions of the ship, not only provides significant value but also demonstrates an exceptional approach and understanding of the requirements while providing sufficient margin to mitigate performance risk to a ‘low’ rating.” SSAC Report at 7-8. The agency next explains that, as documented in his source selection decision memorandum, the SSA “expressly concurred” with the evaluations, findings, and recommendations as set forth by the SSAC and described why he also considered Gulf Island to have “the strongest proposal” for ship design. Supp. AR at 5, citing SSDM at 3.

We agree with the agency that the SSAC’s independent evaluation of Gulf Island’s proposal under the ship design factor and the SSA’s conclusions agreeing with the SSAC were documented, reasonable, and consistent with the stated evaluation criteria. To illustrate, we discuss a representative example below.

With regard to the non-mandatory requirements, the RFP instructed that the agency would consider any proposed alternative designs and “[w]here deviations from the [requirements] provide more capabilities than required and are advantageous to the Government, they will be noted as strengths to the design,” with a particular emphasis on how well the proposed ship design met the seakeeping requirements as defined in an attachment to the RFP. RFP at 177-78; see also RFP Attachment J-1 at 10-11. The SSEB found that Gulf Island’s proposed ship design “exceeds all the seakeeping requirements” and correspondingly assessed a strength. SSEB Report at 56-57. As part of its reasoning for assigning a higher rating of “outstanding,” the SSAC considered the strength assigned to Gulf Island for “exceed[ing] all the seakeeping requirements” to be of “significant value to the Government” and “critical to the primary towing, salvage, and rescue missions of the ship.” SSAC Report at 8. Taking all of this into account, the SSA agreed with the SSAC’s rating of “outstanding” and specifically noted that Gulf Island’s “proposed design is the only design of the four [o]fferors to meet (and actually exceed) all of the seakeeping requirements.” SSDM at 3.

Overall, because we find the SSA’s decision to be documented in the record, reasonable, and consistent with the terms of the RFP, we deny Thoma-Sea’s challenge to the authority of the SSA to assign a rating of “outstanding” to Gulf Island’s ship design proposal.

Finally, Thoma-Sea raises additional complaints about the agency’s evaluation of Gulf Island’s proposal under the ship design factor. For example, based on its own analysis

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<sup>9</sup> As noted above, the SSAC found that Gulf Island’s ship design proposal presented the following three significant benefits: (1) a bollard pull that significantly exceeds the minimum requirement; (2) a working deck that significantly exceeds the minimum requirement for clear working deck area; and (3) a design that exceeds all seakeeping requirements of the RFP. SSAC Report at 7-8.

of what it purports to be Gulf Island's proposed ship design, Thoma-Sea asserts that "[i]t is not possible for [Gulf Island's] design to have passed all non-mandatory seakeeping requirements" and that it was "unreasonable" for the agency to find that "the nearly identical vessels offered by Thoma-Sea and [Gulf Island] . . . would have significantly different outcomes regarding seakeeping capabilities." Comments at 7 (emphasis original). As the agency points out, the record shows that Thoma-Sea raised these same arguments during its debriefing, which concluded on April 4, but did not raise these arguments with our Office until it filed its comments on May 21. Supp. AR at 6-9; see also Protest, Exh. 2, Debriefings, Apr. 4, 2018, at 2-4. Thoma-Sea does not challenge the agency's response and, further, admits that its analysis of Gulf Island's purported ship design is based in part on a press release issued by Gulf Island following the March 16 contract award date. Comments, Exh. 9, Supp. Affidavit, May 21, 2018, at 1.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). In this regard, a protest challenging a procurement on the basis of competitive proposals where a debriefing is "requested and, when requested, is required" should be filed not later than 10 days after the debriefing. Id.; see, e.g., Desbuild Inc., B-409009, Jan. 6, 2014, 2014 CPD ¶ 23 at 5 (protester knew of basis of protest grounds from its debriefing but did not timely raise them in its initial protest).

Here, the record shows that Thoma-Sea questioned the agency's evaluation of Gulf Island's ship design proposal during its debriefing, which concluded on April 4. Since Thoma-Sea did not raise this challenge to our Office when it filed its initial protest, but instead waited until May 21 when it submitted its comments on the agency report, we dismiss these additional allegations as untimely.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong  
General Counsel