



# Decision

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**Matter of:** Tetra Tech, Inc.

**File:** B-416861.2; B-416861.3

**Date:** May 22, 2019

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## DIGEST

1. Protest challenging the agency's evaluation of the protester's proposal and the agency's best-value tradeoff decision is dismissed where the protester withdrew and/or abandoned its substantive challenges to the agency's evaluation and award decision.
  2. Protest alleging that the agency engaged in unequal exchanges with offerors is denied where the record shows that, in conducting a task order acquisition pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, the agency established a competitive range that excluded the protester.
  3. Protest alleging that the agency failed to comply with the pre-award notification requirements of FAR § 15.503(a)(1) is dismissed for failure to state a valid basis of protest where the failure to provide such notice constitutes a procedural deficiency that does not affect the validity of the award.
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## DECISION

Tetra Tech, Inc., of Pasadena, California, protests the issuance of a task order to Booz Allen Hamilton (BAH), of McLean, Virginia, under request for proposals (RFP) No. 70FA20-18-R-00000014, issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), for a full range of national preparedness exercise support services. The protester challenges the agency's evaluation of its proposal and contends that the agency engaged in unequal exchanges with offerors.

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

## BACKGROUND

On June 14, 2018, FEMA issued the solicitation pursuant to the provisions of Federal Acquisition Regulation (FAR) subpart 16.5 to firms holding General Services Administration (GSA) One Acquisition Solution for Integrated Services (OASIS) indefinite-delivery, indefinite-quantity (IDIQ) contracts in Unrestricted Pool 1, Management and Consultative Services. RFP at 1, 2;<sup>1</sup> Contracting Officer's Statement (COS) at 3. The solicitation contemplated the issuance of a single task order to provide a full range of capability validation and exercise delivery support services to FEMA's National Exercise Division.<sup>2</sup> RFP, Performance Work Statement (PWS) § 1.0, at 32.

The solicitation provided that the agency would issue a time-and-materials task order with a three-year period of performance, including a nine-month base period, two 12-month option periods, and a three-month option period. Id. at 2. The solicitation anticipated award on a best-value tradeoff basis considering price and the following five non-price factors, in descending order of importance: (1) technical approach, (2) management approach, (3) key personnel, (4) corporate experience, and (5) past performance. Id. at 30. When combined, the non-price factors were approximately equal in importance to price. Id.

The solicitation provided that the agency intended to evaluate proposals and award a task order without communications, but reserved the right to enter into communications with offerors if necessary. Id. Proposals were due by July 25. Id. at 29.

In response to the solicitation, FEMA received proposals from five offerors. COS at 12. After an initial evaluation, the agency decided to eliminate from the competition the proposals of three offerors, including Tetra Tech. Id. The agency concluded that these offerors failed "to accurately or adequately address the Solicitation requirements." Id.

With respect to the proposals submitted by the remaining two offerors, BAH and another offeror (hereinafter "Offeror A"), the agency concluded that the proposals were the highest rated proposals after the initial evaluation. COS at 13. However, despite the

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<sup>1</sup> Citations to the RFP are to the conformed copy provided at Tab D of the agency report.

<sup>2</sup> The mission of the National Exercise Division is to support the federal government's efforts to prevent, protect against, mitigate, respond to, and recover from threats and hazards posing the greatest risk to national security. RFP, PWS § 2.0, at 32. The Division achieves this mission by providing exercise doctrine, programs, and resources. Id. The services sought pursuant to the solicitation here include program management; mission support standard operations; policy, document, and tool development; and exercise support. Id., PWS §§ 3.0, 4.0, at 32-33.

favorable ratings, the record reflects that the agency was concerned that the offerors' proposed levels of effort were "much higher than similar support provided in the past under previous contracts" and much higher than the level of effort contemplated in the independent government cost estimate. Id.; Agency Report (AR), Tab R, Business Clearance Memorandum (BCM), at 10. As a result, the agency decided to conduct discussions with BAH and Offeror A and to allow them to submit revised proposals. COS at 13.

The results of the agency's initial evaluation of the proposals of Tetra Tech, BAH, and Offeror A are reflected below:

<b>Factors</b>	<b>Tetra Tech</b>	<b>BAH</b>	<b>Offeror A</b>
<b>Technical Approach</b>	Satisfactory	Excellent	Good
<b>Management Approach</b>	Good	Excellent	Excellent
<b>Key Personnel</b>	Excellent	Good	Excellent
<b>Corporate Experience</b>	Excellent	Excellent	Excellent
<b>Past Performance</b>	Good	Excellent	Excellent
<b>Total Evaluated Price</b>	\$19,887,917.55	\$49,440,197.71	\$47,367,222.59

AR, Tab R, BCM, at 10; Tab P, Technical Report, at 30; Tab Q, Source Selection Memorandum, at 1.

On September 10, the agency sent "communication letters" to BAH and Offeror A. AR, Tab R, BCM, at 10. On September 14, BAH and Offeror A submitted final revised proposals. Id. As a result of the proposal revisions, the rating assigned to BAH's proposal under the key personnel factor improved from good to excellent. BAH's total evaluated price decreased to \$38,876,087.65. Id. All other ratings remained the same. Id. The ratings assigned to Offeror A's proposal did not change. Its total evaluated price decreased to \$39,026,131.10. Id.; AR, Tab Q, Source Selection Memorandum, at 1.

At the same time, on September 10, the agency provided a pre-award notice to Tetra Tech "in accordance with FAR 16.505(b) and FAR 15.503(a)," informing Tetra Tech that the agency had eliminated its proposal from the competition because the proposal was "determined not to be among the most highly rated" proposals. AR, Tab K, Pre-Award Notice. The notice also informed Tetra Tech that it could request a pre-award debriefing in accordance with FAR § 15.505. Id.

On September 11, Tetra Tech requested a pre-award debriefing, which the agency provided in writing on September 14. AR, Tab L, First Debriefing, at 1, 6. The protester submitted additional questions, which the agency answered in writing on September 18. AR, Tab M, Debriefing Questions; Tab N, Agency Answers to Debriefing Questions.

On September 24, Tetra Tech filed a protest with our Office, challenging the elimination of its proposal from the competition. We docketed the protest as B-416861. On October 11, FEMA notified our Office of its intent to take corrective action.

Specifically, FEMA represented that it would reevaluate Tetra Tech's proposal to ensure compliance with the terms of the solicitation. Agency Notice, October 11, 2018, at 1. As a result, on October 18, we dismissed Tetra Tech's protest as academic. Tetra Tech, Inc., B-416861, Oct. 18, 2018 (unpublished decision).

During the agency's reevaluation, the rating assigned to Tetra Tech's proposal under the past performance factor improved from good to excellent. AR, Tab R, BCM, at 10; Tab P, Technical Report, at 30. All other ratings remained unchanged. Id.

After the reevaluation of Tetra Tech's proposal, FEMA "again determined that moving forward with Tetra Tech's proposal would not be in the best interests of the government." COS at 21; Supp. COS at 1. The record reflects that the agency "excluded [Tetra Tech's proposal] from further consideration based on technical/non-cost reasons." AR, Tab Q, Source Selection Memorandum, at 1. In this respect, the agency concluded that Tetra Tech's proposal "did not accurately or adequately address the RFP requirements and that major revisions would be necessary." Id. at 2.

In particular, the agency was concerned that Tetra Tech's level of effort was "very low" and "insufficient to support the requirements of this effort." AR, Tab S, Post-Award Notice, at 1. Consequently, the agency did not include Tetra Tech's proposal in the competitive range, engage in exchanges with Tetra Tech, or allow Tetra Tech to submit a revised proposal. Furthermore, having eliminated Tetra Tech's proposal from the competition, the agency also did not include the proposal in the agency's best-value tradeoff analysis. See AR, Tab Q, Source Selection Memorandum, at 2-3. See also AR, Tab R, BCM, at 13; Tab P, Technical Report, at 35. On February 1, 2019, the agency issued the task order to BAH.<sup>3</sup>

Despite the agency's decision to eliminate Tetra Tech's proposal from the competition a second time, FEMA did not notify Tetra Tech of this decision. Rather, in a post-award notice dated February 1, the agency simply informed Tetra Tech that its "proposal was not selected for award based upon the evaluation criteria." AR, Tab S, Post-Award Notice, at 1. Likewise, in the subsequent debriefing provided to Tetra Tech on February 4, the agency again failed to inform Tetra Tech that its proposal had been eliminated from the competition after the reevaluation. See generally AR, Tab T, Second Debriefing. Instead, the agency informed Tetra Tech that "your firm's proposal was not the most advantageous offer or best value to the Government." Id. at 1.

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<sup>3</sup> The agency represents that, although the revised technical report was completed on December 20, 2018, the partial government shutdown occurring from December 23, 2018, through January 25, 2019, prevented the agency from taking any further action. Memorandum of Law (MOL) at 7. At the conclusion of the lapse in funding, the agency explains that the contracting officer completed the source selection memorandum, issued the award to BAH, and notified Tetra Tech that its proposal was not selected for award. Id.

This protest followed on February 11. On March 22, the protester filed a supplemental protest.<sup>4</sup>

## DISCUSSION

The crux of Tetra Tech's initial protest is that the agency unreasonably evaluated Tetra Tech's proposal under the technical approach and management approach factors, and that the agency conducted a flawed best-value tradeoff decision. In its supplemental protest, Tetra Tech contends that the agency erred because it engaged in discussions with BAH and Offeror A, but not with Tetra Tech, despite allegedly including Tetra Tech's proposal in the competitive range after the reevaluation.

In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. Here, we find no basis upon which to sustain the protest.<sup>5</sup>

### Withdrawn and Abandoned Grounds

In its 73-page protest filed on February 11, Tetra Tech challenged numerous aspects of the agency's evaluation and award decision, including, among other things, allegations that the agency relied upon unstated evaluation factors; overlooked or ignored information in Tetra Tech's proposal; unreasonably assessed weaknesses to Tetra Tech's proposal under the technical and management approach factors; improperly evaluated Tetra Tech's price proposal for price realism; and failed to conduct a meaningful best-value tradeoff analysis. Protest at 26-73. In response to these allegations, the agency provided a detailed discussion of its evaluation and award decision. MOL at 8-53.

On March 22, Tetra Tech filed a joint supplemental protest and comments. In its comments responding to the agency report, Tetra Tech does not discuss the merits of the agency's response or substantively rebut the agency's position. See generally Supp. Protest & Comments, Mar. 22, 2019, at 7-8. Instead, the entirety of Tetra Tech's comments on the agency report is set forth in one paragraph, in which Tetra Tech notes that it "understands, but does not concur with, the arguments made in the Agency

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<sup>4</sup> The estimated value of the task order at issue here exceeds \$10 million and, therefore, exceeds the threshold for GAO bid protest jurisdiction. 41 U.S.C. § 4106(f).

<sup>5</sup> Although our decision does not specifically address every argument raised by Tetra Tech, we have considered all of its arguments and conclude that none provides a basis upon which to sustain the protest.

Report.” Id. at 7. Tetra Tech proceeds to restate the following four arguments raised in its February 11 protest:

(1) “In particular, Tetra Tech believes that FEMA accorded an undisclosed, undue weight to the Sample Exercise Scenarios under Factor 1 where the RFP did not disclose this weighting to all offerors”;

(2) “Further, FEMA failed to define ‘closeout’ as ‘post-conduct activity’ in the RFP and Tetra Tech’s interpretation of this undefined, unrelated term was reasonable”;

(3) “Finally, FEMA unreasonably rated Tetra Tech’s Management Approach as ‘good’ instead of ‘excellent’ based on the assessment of a single weakness that was unrelated to any of the stated requirements or evaluation criteria for the Management Approach. FEMA’s evaluation of Tetra Tech’s Management Approach did not comply with the RFP[s] stated evaluation criteria and was unreasonable as a result”; and

(4) “As a result, FEMA’s evaluations and source selection decision are unreasonable and inconsistent with the solicitation’s evaluation criteria and applicable procurement laws and regulations.”<sup>6</sup> Id. at 7-8.

Following this paragraph, wherein Tetra Tech explains that it “does not concur with” the agency’s arguments, Tetra Tech represents that, “[n]otwithstanding the foregoing, Tetra Tech respectfully withdraws all other grounds of Protest B-416861.2 submitted on February 11, 2019.” Id. at 8.

The agency interprets this final sentence to mean that Tetra Tech intended to withdraw all protest grounds raised in the February 11 protest and to proceed only with the grounds raised in its March 22 supplemental protest. Supp. MOL, Apr. 9, 2019, at 3. In the alternative, the agency asserts that, even if Tetra Tech did not intend to withdraw all of the grounds raised in the initial protest, it nevertheless abandoned those grounds by failing to substantively rebut the agency’s arguments. Id. (citing Bid Protest Regulations, 4 C.F.R. § 21.3(i)(3)).

Tetra Tech represents that, although its comments were “perhaps unartfully stated,” it did not intend to withdraw all of its previously raised grounds of protest. Supp. Comments, Apr. 15, 2019, at 1. Instead, Tetra Tech contends that it expressly maintained the four grounds listed above. Id. at 9-10. Despite this contention, we note that Tetra Tech asserted, in a different filing, that it intended to withdraw all but two grounds raised in its February 11 protest.<sup>7</sup> See Protester’s Resp. to Agency Req. for

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<sup>6</sup> These statements are followed, in some cases, by a citation to a GAO decision. Supp. Protest & Comments at 7-8.

<sup>7</sup> Tetra Tech did not identify the two grounds to which it referred. Protester’s Resp. to Agency Req. for Dismissal, Mar. 28, 2019, at 8 n.2.

Dismissal, Mar. 28, 2019, at 8 n.2. In any event, whether Tetra Tech intended to withdraw all but two grounds or all but four grounds of protest raised in its February 11 protest, we conclude that such grounds have been abandoned.

Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references, restates, or alludes to the original protest allegations without substantively rebutting the agency's position, we deem the initially raised arguments abandoned. Jacobs Tech., Inc., B-413389, B-413389.2, Oct. 18, 2016, 2016 CPD ¶ 312 at 5-6. We therefore conclude that these arguments have been abandoned, and do not consider them further.

In sum, we find that Tetra Tech withdrew the majority of the protest grounds raised in its initial protest filed on February 11 and that those grounds not withdrawn were abandoned. Accordingly, we dismiss all protest grounds raised in the initial protest.

### Unequal Discussions

As noted above, Tetra Tech filed a supplemental protest on March 22. In its supplemental protest, Tetra Tech alleges that the agency erred because it engaged in discussions with BAH and Offeror A, but not with Tetra Tech. The protester maintains that this was improper because its proposal was also included in the competitive range after the reevaluation. We deny this aspect of Tetra Tech's protest because the contemporaneous record shows that the agency established a competitive range that did not include Tetra Tech's proposal.

In its supplemental protest, Tetra Tech argues that, following the reevaluation, its proposal was not excluded from, but instead included in, the competitive range. Supp. Protest & Comments at 5. Tetra Tech relies upon the following language in the agency's source selection memorandum to support its contention that its proposal was included in the competitive range:

Tetra Tech was initially excluded from further consideration, but then was re-evaluated under the corrective action taken in response to Tetra Tech's pre-award protest. Although Tetra Tech was not excluded again after the re-evaluation[,] they were not selected for award. Although Tetra Tech's offer was acceptable, they only received a rating of Satisfactory for Factor 1 – Technical Approach, the most important factor. Tetra Tech's Level of Effort was determined to be very low and insufficient to support the effort.

Id. at 2-3 (quoting AR, Tab Q, Source Selection Memorandum, at 2). Tetra Tech argues that, having included its proposal in the competitive range, FEMA was required to conduct exchanges with Tetra Tech and afford Tetra Tech an opportunity to revise its proposal, as had been provided to the other two offerors whose proposals were included in the competitive range. Id. at 5.

In response, FEMA contends that it was not required to conduct discussions with Tetra Tech because Tetra Tech's proposal was eliminated from the competition after the reevaluation.<sup>8</sup> Supp. MOL, Apr. 9, 2017, at 5; Agency Req. for Dismissal, Mar. 26, 2019, at 8. In this regard, the agency argues that "Tetra Tech's entire argument is based on the premise that it was included in the competitive range after re-evaluation[.]" Supp. MOL at 5. The agency represents, however, that this premise is "false." Id. Tetra Tech's proposal was not included in the competitive range after the reevaluation. Supp. COS at 1. See also Supp. MOL at 5 (explaining that "[a]fter re-evaluating Tetra Tech's proposal, the Agency found that Tetra Tech remained unworthy of further consideration"). Rather, it was eliminated from the competition. Agency Req. for Dismissal at 8.

In clarifying the language from the source selection memorandum quoted above, the contracting officer explains as follows:

I determined that I did not need to revise the competitive range determination and again exclude Tetra Tech from the competitive range because I had already excluded Tetra Tech from the competitive range. The re-evaluation did not change my prior determination. Tetra Tech was never included in the competitive range as a competitor that had a reasonable prospect to secure award of the contract with which the agency should bother to engage in further communications.

Supp. COS at 1. The agency further asserts that a new competitive range determination "would have been needlessly redundant and served no practical purpose" because the reevaluation did not result in any change to those aspects of Tetra Tech's proposal that resulted in its elimination. Supp. MOL at 4, 5.

It is well-established that, although the regulations concerning discussions in procurements conducted pursuant to FAR part 15 do not, as a general rule, govern task order competitions conducted pursuant to FAR part 16, when an agency engages in exchanges with offerors in task order competitions, such exchanges must be fair and not misleading. See e.g., Skyline Ultd, Inc., B-416028, B-416028.2, May 22, 2018, 2018 CPD ¶ 192 at 6; AT&T Corp., B-414886 et al., Oct. 5, 2017, 2017 CPD ¶ 330 at 4; Mission Essential Personnel, LLC, B-407474, B-407493, Jan. 7, 2013, 2013 CPD ¶ 22 at 5. Moreover, in a procurement conducted pursuant to FAR subpart 16.5, such as this one, when an agency elects to conduct exchanges with one offeror, it must conduct exchanges with all offerors included in the competitive range and may not engage in

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<sup>8</sup> The agency also sought dismissal of this protest ground as untimely raised, contending that the protester was aware of this ground of protest prior to the filing of the agency report. See Agency Req. for Dismissal, Mar. 26, 2019. We denied the agency's request because the agency failed to identify any prior correspondence placing Tetra Tech on notice that the agency had conducted discussions with and received revised proposals from BAH and Offeror A.



conduct that favors one offeror over another. AT&T Corp., *supra*; SRA Int'l, Inc., B-410973, B-401973.2, Apr. 8, 2015, 2016 CPD ¶ 32 at 7.

Here, FEMA's technical evaluation plan also provided that, to the extent the government engaged in exchanges with offerors, such exchanges "must be conducted by the contracting officer with each offeror within the competitive range." AR, Tab F, Technical Evaluation Plan, at 8. Accordingly, we agree with the protester's contention that the agency was required to engage in exchanges with all offerors in the competitive range. That said, the record here shows that, after the reevaluation, FEMA eliminated Tetra Tech's proposal from the competition. Hence, the agency was not required to conduct exchanges with Tetra Tech as its proposal was eliminated from the competition. See NTT DATA Servs. Fed. Gov't, Inc., B-416123 *et al.*, June 20, 2018, 2018 CPD ¶ 215 at 6.

The language from the agency's source selection memorandum relied upon by Tetra Tech is not a model of clarity. At first glance, the language suggests that Tetra Tech's proposal was included in the competitive range after the reevaluation.<sup>9</sup> The agency, however, disputes this interpretation, contending that the proposal was again eliminated from the competition.

Tetra Tech argues that the agency's factual contention is unsupported by the record and, therefore, constitutes a post hoc argument raised for the first time in the heat of litigation. Supp. Comments at 2, 4; Protester's Resp. to Agency Req. for Dismissal, Mar. 28, 2019, at 8. Tetra Tech asserts that our Office should afford the agency's argument little weight. We disagree. We find the agency's factual assertion to be supported by the contemporaneous evaluation record.

For example, the language from the source selection memorandum quoted above is preceded by language expressly indicating that Tetra Tech's proposal was "excluded from further consideration based on technical/non-cost reasons." AR, Tab Q, Source Selection Memorandum, at 1. It is followed by language stating that "Tetra Tech did not accurately or adequately address the RFP requirements and [] major revisions [to the

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<sup>9</sup> Arguably, this interpretation is bolstered by the post-award notice and debriefing provided to Tetra Tech after reevaluation--both of which fail to mention that Tetra Tech's proposal was eliminated from the competition. The agency explains that it would have "preferred" to issue a second pre-award notice to Tetra Tech, but that, due to the partial government shutdown, "there was insufficient time to issue pre-award notifications without a loss of funding in accordance with 31 U.S.C. § 1558." COS at 22; Supp. MOL at 6. Even if true, the agency's explanation addresses only the timing of the notice, not the information contained therein. The agency does not explain why, in the post-award notice and/or the debriefing, the agency failed to notify Tetra Tech that its proposal was again eliminated from the competition. In any event, after reviewing the notice and the debriefing, we do not find that either document conclusively indicates that Tetra Tech's proposal was included in the competitive range.

proposal] would be necessary[.]” id. at 2, thus implying that the proposal was eliminated from the competitive range. Moreover, the agency also did not include the proposal in the agency’s best-value tradeoff analysis, see id. at 2-3, which is consistent with a decision to eliminate the proposal from the competition. Accordingly, when viewed in the context of the source selection memorandum as a whole, we do not find that the quoted language was intended to mean that Tetra Tech’s proposal was included in the competitive range.

Additionally, the agency’s technical report and business clearance memorandum--both finalized after the reevaluation--support the agency’s factual contention that Tetra Tech’s proposal was not included in the competitive range after the reevaluation. In this respect, the technical report provides that the agency “determined that moving forward” with Tetra Tech’s proposal “would not be in the best interests of the government.” AR, Tab P, Technical Report, at 32. The business clearance memorandum contains nearly verbatim language. AR, Tab R, BCM, at 10. Thus, although the language relied upon by Tetra Tech is somewhat ambiguous, it is clear from the contemporaneous evaluation record that the agency eliminated Tetra Tech’s proposal from the competition.<sup>10</sup>

Having eliminated Tetra Tech’s proposal, the agency was under no obligation to conduct exchanges with Tetra Tech or permit Tetra Tech to submit a revised proposal. Accordingly, this ground is denied.

#### Failure to Provide Notice of Elimination

As a final matter, Tetra Tech contends that, if its proposal was indeed eliminated from the competition after the reevaluation, the agency violated FAR § 15.503(a)(1) by failing to provide a pre-award notice of elimination from the competition. Supp. Comments at 8-9. The agency argues that the notice requirements of FAR § 15.503 are not applicable to procurements conducted pursuant to FAR subpart 16.5. Supp. MOL at 5 n.3. Thus, the agency contends that it was not required to provide a pre-award notice in accordance with FAR § 15.503(a)(1). Id.

Even accepting Tetra Tech’s contention that the requirements of FAR § 15.503(a)(1) are applicable in the context of a procurement conducted pursuant to FAR subpart 16.5, an agency’s failure to provide such notice constitutes a procedural deficiency that does not affect the validity of award and, therefore, does not provide a legally sufficient basis of protest. See e.g., AeroSage, LLC; SageCare, Inc., B-415607.2, B-415607.3, Jan. 3, 2018, 2018 CPD ¶ 11 at 3 n.4 (agency’s alleged failure to comply with the FAR’s post-award notification requirements constitutes a procedural defect that does not provide a

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<sup>10</sup> We have closely reviewed the protester’s filings and conclude that the protester has not challenged the merits of the agency’s decision to eliminate its proposal from the competition. For this reason, we do not address the merits of the agency’s decision or consider whether the agency adequately documented its decision in the contemporaneous record.

basis upon which to sustain a protest). See also e.g., Secure Eng'g Servs., Inc., B-252270.2, B-252271.2, June 11, 1993, 93-1 CPD ¶ 452 at 3; Paragon Dynamics, Inc., B-251280, Mar. 19, 1993, 93-1 CPD ¶ 248 at 5; Blurton, Banks & Assocs., Inc., B-206429, Sept. 20, 1982, 82-2 CPD ¶ 238 at 5-6. Accordingly, we dismiss this ground for failure to state a valid basis of protest. 4 C.F.R. § 21.5(f).

The protest is dismissed in part and denied in part.

Thomas H. Armstrong  
General Counsel