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Decision

Matter of: Avionic Instruments LLC

File: B-418604.3

Date: May 5, 2021

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DIGEST

Allegations that the agency unreasonably evaluated technical proposals are dismissed where the record demonstrates that the allegations were abandoned or untimely, and the challenge to the best-value tradeoff analysis is denied where the record shows that the agency's award decision was reasonable and in accordance with the stated evaluation criteria.

DECISION

Avionic Instruments LLC, of Avenel, New Jersey, protests the award of a contract to Physical Optics Corporation (POC), of Torrance, California, under request for proposals (RFP) No. N00019-19-R-0030, issued by the Department of the Navy, Naval Air Systems Command, to replace analog inverters on the Navy's UH-1Y helicopter fleet with digital signal processor (DSP) inverters. The protester challenges as unreasonable the agency's evaluation of technical proposals and the best-value tradeoff analysis.

We deny the protest.

BACKGROUND

This procurement was for development and production of a replacement inverter for the UH-1Y helicopter. Agency Report (AR), Tab 1, Source Selection Plan at 7. Inverters convert a helicopter's direct current (DC) into an alternating current (AC) usable for other electronic needs. The agency intends to replace all existing UH-1Y analog power

inverters, which have a history of low reliability rates, with a digital design that offers the potential for improved reliability. AR, Tab 8, Source Selection Evaluation Board (SSEB) Report at 3.

The RFP provided for the award of a fixed-price contract with a base award and options. AR, Tab 2, RFP at 3-6. The base award included four contract line item numbers for: non-recurring engineering (NRE) required to satisfy specification requirements; delivery of six flight test assets; delivery of four assets for validation/verification, and testing; and technical and administrative data. *Id.* The options were to manufacture and deliver additional quantities of DSP inverters that meet the configuration approved during the base contract. *Id.*

Award would be made to the offeror whose proposal represented the best value to the government, considering two factors--technical and price--with technical being more important. *Id.* at 69. Under the technical factor, the government would evaluate the offeror's "understanding of, approach to and ability to meet the solicitation requirements." *Id.* The technical evaluation would include the following elements: overall design; approach to qualification testing; logistics planning; experience risk assessment of qualification testing and achieved reliability for similar aircraft applications; and strategy for utilizing small businesses. *Id.*

The agency would assign each proposal a technical rating and a technical risk rating.¹ *Id.* at 65. The technical rating would be an assessment of compliance with the solicitation requirements, considering "the benefits and detriments related to program performance and operations." *Id.* at 69. The technical risk rating would evaluate "the risk associated with the technical approach in meeting the requirement." *Id.* at 60-70. The technical risk rating would consider the potential for disruption of schedule, increase in costs, degradation of performance, need for increased government oversight, and likelihood of unsuccessful contract performance. The experience element would only be evaluated for risk. *Id.* at 65.

With regard to experience, the RFP required offerors to "provide information that describes the Offeror team's (prime and subcontractors) relevant experience for DSP Inverter designs/applications or similar[.]" *Id.* at 60. The RFP required offerors to describe and compare the type of work, scope of effort, physical location of effort, and the product/technology involved. An offeror was to substantiate its experience by providing final versions of a statement of work (SOW) or performance work statement (PWS) for existing or previously performed contracts, citing the specific sections of the prior experience that are similar to the solicitation requirements here. The RFP advised that a "requirement not specifically identified in the SOW/PWS or otherwise demonstrated through documents as discussed here will not be considered." *Id.* at 61.

¹ The RFP provided that the agency would assign technical ratings of outstanding, good, acceptable, marginal, or unacceptable, and technical risk ratings of low, moderate, high, or unacceptable. *Id.* at 71.

Avionic and POC both submitted proposals. POC proposed a major subcontractor to perform approximately [DELETED] percent of the [DELETED] work. AR, Tab 4, POC Technical Proposal at 629.

After evaluating proposals, the Navy made contract award to POC. Avionic challenged the award, and GAO sustained that protest. See *Avionic Instruments LLC*, B-418604, B-418604.2, June 30, 2020, 2020 CPD ¶ 225. Consistent with our recommendation, the Navy reevaluated proposals. See *id.* at 10.

The table below provides a summary of the agency’s post-corrective action evaluation of Avionic’s and POC’s proposals:

Factor		Avionic	POC
Technical	Rating	Acceptable	Acceptable
	Risk	Low	Low
Total Evaluated Price		\$6,735,000	\$6,507,373
Price Reasonableness		Reasonable	Reasonable

AR, Tab 10, Source Selection Decision Document (SSDD) at 2; AR, Tab 9, Proposal Analysis Report (PAR) at 9.

The agency evaluated Avionic’s proposal as having four risk reducers,² and no strengths, weaknesses, significant weaknesses, deficiencies, or uncertainties. AR, Tab 8, SSEB at 12-13. The agency assigned Avionic’s proposal the following two risk reducers under the overall design approach element: the overall design approach reduced the risks of not meeting the performance requirements and the required development timeline; and Avionic’s [DELETED] of the inverter, showing [DELETED], reduced the risk that the size requirements will not be met. *Id.* at 12. The agency assigned Avionic’s proposal two more risk reducers under the experience element. The first was for Avionic’s experience manufacturing multiple products in its own production facility and for delivering over [DELETED] aerospace power electronic units of varying designs in the last 20 years. *Id.* This production experience, in Avionic’s own facilities, served to reduce the risk of schedule delays. *Id.* The agency assigned Avionic’s proposal a second risk reducer under the experience element for experience designing, building, qualifying, and fielding a system using DSP technology on the [DELETED] inverter. *Id.* This experience served to increase the likelihood that the program would meet the required development timeline, because Avionic is familiar with the needed design and integration steps to successfully meet the requirements. *Id.*

The agency evaluated POC’s proposal as having four risk reducers, and no strengths, weaknesses, significant weaknesses, deficiencies, or uncertainties. *Id.* at 18-19. The agency assigned POC’s proposal a risk reducer under the overall design approach

² The RFP defined a risk reducer as an aspect of a proposal that reduces risk in a way that will be advantageous to the government during contract performance. RFP at 72.

element for [DELETED], thus reducing the risk that the electrical performance requirements and the required development timeline will not be met. *Id.* at 18. The agency assigned POC's proposal a risk reducer under the experience element for multiple industry-standard manufacturing certifications. The certifications indicated POC is well versed in manufacturing and delivering a compliant and consistent product, which served to reduce risk of schedule delays. *Id.*

The agency assigned POC's proposal two additional risk reducers related to experience, the first because both POC and its proposed subcontractor have shown they are experienced and knowledgeable in qualification testing of aircraft avionic systems and electronics. *Id.* Their knowledge and experience reduces the risk that the program will fail to meet the required development timeline. *Id.* The agency awarded POC's proposal a second risk reducer because [DELETED], and that [DELETED]. *Id.* at 19.

Avionic's total evaluated price of \$6,735,000 was higher than POC's total evaluated price of \$6,507,373. *Id.* at 21-22. The agency concluded that both prices were reasonable.

The SSEB chair reviewed the evaluation of Avionic's and POC's technical proposals, including the risk reducers assigned by the agency. AR, Tab 9, PAR at 4-8. The SSEB chair also examined the underlying reasons for the ratings and concurred with them. *Id.* at 4. The SSEB chair found that the proposals were "technically similar, with neither having a clear technical advantage over the other." *Id.* at 7. After reviewing the evaluations, the SSEB chair conducted a trade-off analysis. See *id.* at 8-9. Because the proposals were technically similar, the SSEB chair found that POC's proposal, which was lower priced, represented the best value to the government and recommended award to POC. *Id.* at 9.

After reviewing the underlying evaluations, the source selection authority concurred with the recommendation of the SSEB chair and selected POC for contract award. AR, Tab 10, SSDD at 3. This protest followed.

DISCUSSION

The protester asserts two challenges to the agency's evaluation of technical proposals. First, Avionic contends that the Navy unreasonably failed to assign a risk reducer to Avionic's proposal for the reliability of Avionic's proposed inverter.³ Protest at 13; Comments at 15. Next, Avionic argues that in assigning POC's proposal a technical risk rating of low, the agency unreasonably failed to consider that POC and its proposed subcontractor lacked critical experience. Protest at 13. Avionic also asserts that the best-value tradeoff analysis was flawed because the source selection authority relied on

³ Avionic also initially alleged--but subsequently withdrew its allegations--that the agency should have assigned Avionic's proposal more strengths and that Avionic's proposal should have received a higher adjectival rating. Comments at 1 n.1.

the fact that Avionic's and POC's proposals received the same number of risk reducers to reach "a superficial conclusion of equality." *Id.* at 16. As explained below, we dismiss as abandoned or untimely the challenges to the proposal evaluation, and we find that the challenge to the best-value tradeoff decision is without merit.

Challenges to Evaluation of Technical Proposals

Avionic challenges the Navy's failure to assign Avionic's proposal a risk reducer for the performance reliability and design maturity of its proposed inverter. Protest at 13. As explained below, we agree with the agency that Avionic subsequently abandoned this allegation.

In responding to an agency report, protesters are required to provide a substantive response to the arguments advanced by the agency. *enrGies, Inc.*, B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 4. Where a protester merely references earlier arguments advanced in an initial protest without providing a substantive response to the agency's position, our Office will dismiss the referenced allegations as abandoned. *Id.* Similarly, a protester's statement, without elaboration, that its initial arguments "are maintained" also will result in the dismissal of the arguments as abandoned. *Citrus College; KEI Pearson, Inc.*, B-293543, *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

The agency report provided a substantive defense of the Navy's decision not to assign Avionic's proposal the challenged risk reducer. The Navy argues that the SSEB report explained that "the Government evaluators cannot state [Avionic's achieved reliability with the [DELETED] inverter] as a risk reducer for future UH-1Y performance because the operational period of one year is very limited and it is unclear how much the airborne rotary wing usage environment of the UH-1Y will degrade the reliability." Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 22, *quoting* AR, Tab 8, SSEB Report at 10-11. In other words, in the agency's view, the Navy reasonably did not assume that the achieved reliability of an inverter on an aircraft, over a relatively brief time span, would necessarily produce the same extended reliability on a helicopter.

Moreover, the Navy explained why, in its view, the data provided in Avionic's proposal was unpersuasive. See COS/MOL at 25. While Avionic's proposal included a bar graph showing cumulative operating hours of its inverter, the agency contends that the graph did not include any reliability data associated with those operating hours, nor did the graph state that all of the operating hours were used in the reliability calculation. *Id.* Additionally, the Navy argued that the graph was provided to demonstrate Avionic's "experience generally, and not for the purpose of demonstrating [inverter] reliability." *Id.* at 23.

In its comments on the agency report, Avionic did not address the Navy's contentions regarding either the content or the purpose of the chart showing cumulative operating hours of its inverter. See Comments at 15. Avionic did address the Navy's assertion that the agency reasonably declined to assume that reliability of an inverter used in an

aircraft would be replicated if that inverter were placed in a helicopter. That contention, Avionic argued, was evidence that the Navy utilized an unstated evaluation criterion, because the RFP expressed no preference for experience with helicopter inverters. *Id.* citing RFP at 61.

Because Avionic failed to respond to the substantive defense of the Navy's evaluation, as set forth in the agency report, the initial allegation--that the agency unreasonably failed to assign Avionic's proposal a risk reducer--is abandoned. Avionic knew the basis of its allegation that the agency employed an unstated evaluation criterion when it received proposal documents from the Navy on February 22, more than 10 days before Avionic filed its comments on March 19. The agency requested dismissal of this protest allegation as untimely. Request for Partial Dismissal at 6-7. We agree with the agency that this allegation is untimely, and we dismiss it as such. 4 C.F.R. § 21.2(a)(2).

Avionic also argues that in assigning POC's proposal a technical risk rating of low, the agency "unreasonably failed to consider that POC and its subcontractor lacked critical experience." Protest at 13. The Navy argues that it set forth a "detailed explanation" of the "extent of the experience demonstrated by POC and its subcontractor" that was unrebutted by the protester. Agency Reply to Comments at 2, citing COS/MOL at 27-28. The Navy again contends that because the protester did not refute the explanations in the agency report regarding the extent of the experience demonstrated by the awardee and its proposed subcontractor, GAO should dismiss any allegations related to the reasonableness of the agency's evaluation of those firms' experience. Agency Reply to Comments at 5.

Here, we again agree with the agency that Avionic abandoned this allegation. The Navy's agency report set forth a detailed and substantive defense of the agency's evaluation of the experience of POC and its proposed subcontractor. See COS/MOL at 27-28. The Navy explains that POC's proposal received three risk reducers under the experience element, including, for example, one for "having multiple industry-standard manufacturing certifications" that, in the Navy's view, indicate that POC is "well versed in manufacturing and delivering a compliant and consistent product and reduces the risk of schedule delays." *Id.* at 28. Avionic's comments do not address the agency's defense of its evaluation. See Comments at 11-15. The protester does not challenge the Navy's factual basis for the assignment of the risk reducers. See *id.* Because Avionic's comments fail to substantively respond to the agency's defense of its evaluation, this allegation is dismissed as abandoned.⁴

⁴ Rather than address the Navy's contention that it reasonably assigned POC's proposal risk reducers, the protester instead argues that its experience was comparable to the awardee's such that Avionic's proposal should also have been awarded risk reducers. See Comments at 12 (arguing that, while the Navy found that POC and its subcontractor are experienced and knowledgeable in qualification testing of aircraft avionic systems, "that is equally true of Avionic"), and 13 (arguing that if the awardee has the potential to [DELETED], "that is equally or more true of Avionic"). As discussed

Best-Value Tradeoff Analysis

Avionic argues that the Navy's best-value tradeoff analysis was unreasonable because it failed to meaningfully consider material proposal differences, including material differences in risk reducers. Comments at 17. Rather, the protester contends that the source selection authority relied on the "mere fact that Avionic and POC had the same number of risk reducers to reach a superficial conclusion of equality." *Id.* at 16. Avionic asserts that "[t]he record focused exclusively on the fact that Avionic and POC received four risk reducers each and the Navy's bald conclusion that they were equal." Response to Agency's Reply to Comments at 6, *citing* AR, Tab 9, PAR at 3-7. The agency argues that the best-value tradeoff analysis was reasonable and consistent with the RFP. Agency Reply to Comments at 9.

As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value evaluation scheme; such tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation criteria. *Coastal Int'l Sec., Inc.*, B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 14. In a best-value procurement, such as this, it is the function of the source selection authority to perform a price/technical tradeoff to determine whether one proposal's technical superiority is worth a higher price. *Raytheon Co.*, B-414062.3, Feb. 21, 2017, 2017 CPD ¶ 71 at 6. When proposals are compared for purposes of a best-value tradeoff decision, the number of identified strengths is not dispositive; rather, it is the qualitative information underlying the ratings that the source selection authority should consider in assessing whether and to what extent meaningful differences exist between proposals. *National Gov't Servs., Inc.*, B-412142, Dec. 30, 2015, 2016 CPD ¶ 8 at 18-19.

Avionic claims that the record focused exclusively on the number of risk reducers per proposal. Response to Agency Reply to Comments at 6, *citing* AR, Tab 9, PAR at 3-7 (noting, at 4, that "[t]he following provides the SSEB Chair's proposal analysis by Factor"). The SSEB chair did, indeed, set forth his analysis of how each proposal met requirements and, in some instances, lessened some risk in contract performance, as evidenced by the Navy's assignment of risk reducers. See AR, Tab 9, PAR at 3-7. That identification of risk reducers in each offeror's proposal, as well as a discussion of other proposal features, preceded the SSEB chair's comparison of proposals under the technical factor. See *id.* at 6. The SSEB chair's comparison then considered the entirety of the proposals under the technical factor, and not simply the risk reducers. See *id.* at 6-7.

more fully below, we dismiss as untimely arguments raised for the first time in the protester's comments on the agency report, where those arguments are based on documents produced more than 10 days prior to filing of the comments. 4 C.F.R. §§ 21.2(a)(2). Avionic's disparate treatment argument is one such untimely allegation, and we dismiss it as such.

Throughout the comparison of proposals, the SSEB chair considered the relative type and quality of the risk reducers assigned to each proposal. For example, the SSEB chair noted that, although Avionic and POC's proposals received different risk reducers related to manufacturing, the risk reducers "each individually highlight that both Offerors are perceived as low risk when the program moves from the Non-Recurring Engineering phase into the manufacturing and delivery phase of the effort." *Id.* at 7. As another example, the SSEB chair noted that, while both offerors' proposals received a risk reducer under the overall design element, Avionic's proposal was given one additional risk reducer "for the level of detail provided in their internal layout of the subcomponents[.]" *Id.* at 6. While Avionic's proposal thus had slightly lower risk under this element than did POC's proposal, the SSEB chair concluded that both offerors' proposals "presented a low risk approach" under this element, "as well as a low risk rating overall." *Id.* Far from being an exercise in the rote counting of risk reducers alleged by Avionic, the record demonstrates that the SSEB conducted a reasonable and nuanced comparison of the two proposals under the technical factor.

Likewise, the source selection authority, in the source selection decision document, concluded that, "based on a holistic examination of all of the findings, and comparisons of the risk reducers," the two offerors' proposals were "technically similar, with neither having a clear technical advantage over the other[.]" AR, Tab 10, SSDD at 2. The source selection authority read and agreed with the findings and recommendations contained in the PAR. *Id.* As discussed above, the record demonstrates that the PAR gave thoughtful consideration to the entirety of the competing proposals, including the relative strength of the assigned risk reducers. Inasmuch as the source selection authority adopted those findings, we deny the allegation that the source selection unreasonably failed to meaningfully consider proposal differences.⁵

⁵ Avionic argues that the source selection authority also relied on the fact that Avionic's and POC's proposals had the same number of risk reducers and failed to meaningfully consider relevant differences. Comments at 16. Avionic contends, for example, that the source selection authority failed to consider the material difference between the risk reducer assigned Avionic's proposal for manufacturing experience and the risk reducer assigned POC's proposal for manufacturing certificates. *Id.* at 17. As explained below, as either a challenge to the evaluation or the source selection, this allegation is untimely raised more than 10 days after Avionic knew the basis of its protest. 4 C.F.R. § 21.2(a)(2).

Untimely Allegations

The Navy asserted that Avionic raised untimely allegations in its comments on the agency report; as explained below, we agree with the Navy. The agency provided documents supporting the reasonableness of the Navy's conduct of the procurement on February 22, in advance of filing its report on March 4. See Electronic Protest Docketing System Nos. 13 & 16. Avionic filed no supplemental protests and filed its comments on March 15. *Id.* No. 22. Avionic, in its comments on the agency report, asserted several new allegations that were based on documents produced early by the agency. See Comments. The Navy asserts that the protester's March 15 comments contain numerous allegations "involving different factual bases from its original protest grounds and thus must independently satisfy the timeliness requirements." Request for Partial Dismissal at 2. The Navy argues that these allegations, filed more than 10 days after the documents on which the allegations were based, should be dismissed as untimely. *Id.*, citing 4 C.F.R. §§ 21.2(a)(2) and 21.2(b).

GAO's Bid Protest Regulations require that if a protest is not based on apparent solicitation improprieties, it must be filed within 10 days after the basis of protest is known or should have been known. 4 C.F.R. 21.2(a)(2). Where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements, because our Regulations do not contemplate the piecemeal presentation or development of protest issues. *Fisher Sand & Gravel Co.*, B-417496, July 26, 2019, 2019 CPD ¶ 280 at 10. Where an initial protest raises general allegations and a supplemental protest provides specific "examples" of the alleged general flaws, the supplemental grounds must still independently satisfy our timeliness rules. *Id.* Such a staggered presentation of "examples," each of which involves different factual circumstances and requires a separate explanation from the agency, constitutes piecemeal presentation of issues that our timeliness rules do not permit. *Id.*

The Navy contends, for example, that Avionic asserted for the first time in its comments that the two risk reducers assigned to POC's proposal regarding qualification testing were unreasonably duplicative. Request for Partial Dismissal at 3-4; see Comments at 14. Avionic's response argues that its protest alleged Avionic's own experience with qualification testing and POC's lack of experience. See Response to Request for Partial Dismissal at 2. Avionic did not dispute the Navy's claim that the protester's challenge to POC's risk reducers for qualification testing as duplicative was untimely raised for the first time in Avionic's comments. See *id.* We agree with the agency that numerous allegations in the protester's comments on the agency report failed to independently satisfy our timeliness requirements, and we thus dismiss those allegations. 4 C.F.R. §§ 21.2(a)(2) and 21.2(b).

The protest is denied.

Thomas H. Armstrong
General Counsel