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Decision

Matter of: Smiths Detection, Inc.; American Science and Engineering, Inc.

File: B-402168.4, B-402168.5, B-402168.6

Date: February 9, 2011

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Daniel R. Forman, Esq., Puja Satiani, Esq., and Jonathan M. Baker, Esq., Crowell & Moring LLP, for Rapiscan Systems, the intervenor.

Christian M. Butler, Esq., Department of Homeland Security, for the agency.

Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency should have awarded higher adjectival ratings to protester's proposal, or lower ratings to awardee's proposal, with regard to non-price evaluation factors reflects mere disagreement with the agency's judgments and provides no basis for sustaining the protest.
2. Agency reasonably considered the significance and relevance of awardee's past performance in the context of actions awardee has taken, and is continuing to take, concluding that past performance problems are unlikely to recur.
3. Agency reasonably determined that awardee's proposal was technically superior to protester's where protester failed to propose 2 of 3 capabilities that the solicitation identified as "desired," and agency reasonably concluded that protester's proposal offered only "marginal" advantages regarding other solicitation requirements.
4. In awarding fixed-price contract, agency reasonably complied with solicitation requirement to perform price realism analysis by comparing proposed prices to each other, to prices under an existing indefinite-delivery indefinite-quantity contract for similar items, and to other published prices for similar items.

DECISION

Smiths Detection, Inc., of Morristown, New Jersey, and American Science and Engineering, Inc. (AS&E), of Billerica, Massachusetts, protest the award of a contract to Rapiscan Systems, of Arlington, Virginia, by the Department of Homeland Security (DHS), Customs and Border Protection (CBP), to provide high energy mobile X-ray systems pursuant to request for proposals (RFP) No. HSBP1009R2590. Smiths protests the agency's evaluation of proposals under the non-price evaluation factors; AS&E similarly challenges the agency's evaluation under the non-price factors and complains that the agency failed to perform an adequate price analysis.

We deny the protests.

BACKGROUND

In July 2009, the agency published the RFP at issue, seeking proposals for the award of one or more firm-fixed-price contracts to provide up to 15 large-scale non-intrusive inspection high-energy mobile X-Ray systems.¹ The solicitation provided that the systems will be used to inspect cargo containers entering the United States, including "trailer trucks, trailer-mounted cargo containers and other vehicles," in order to detect contraband, "such as illicit drugs, terrorist weapons and currency," including "weapons of mass destruction/weapons of mass effect." Statement of Work (SOW) at 1.

The solicitation's SOW established various performance requirements which each proposed system must meet,² and also identified certain desired capabilities.³ The SOW also identified requirements related to the mobile systems themselves, referred

¹ The agency states that the systems being acquired are within the scope of an existing multiple award indefinite-delivery indefinite-quantity (IDIQ) contract, but that, in order to obtain broader competition, the agency opted to conduct this procurement on a full and open basis. Contracting Officer's Statement at 1.

² For example, the SOW established performance requirements regarding: image resolution ("[s]patial [r]esolution of 0.5 inches is required"); penetration ("[p]enetration through a minimum of 10 inches of steel is required"); throughput ("10 conveyances per hour"); and scan size ("[m]ust be able to display the length of the conveyance scanned and its height from the wheel axel to the top"). SOW at 3-4.

³ The desired capabilities included: manifest scanning ("ability to scan a manifest is desired"); passive detection ("capability to passively detect gamma and neutron radiation emissions in a single pass is desired"); and material discrimination ("capability to distinguish between Organic, Metallic and Intermediate materials is desired"). *Id.* at 4.

to as operational specifications.⁴ The solicitation established three evaluation factors: technical/management,⁵ past performance and price, and provided that award would be made on the basis of the proposal most advantageous to the government, price and other factors considered.⁶ RFP, Evaluation Factors, at 1.

In August 2009, proposals were submitted by Smiths, Rapiscan, and AS&E;⁷ in October 2009, the agency awarded contracts to AS&E (for three systems) and to Rapiscan (for nine systems). Contracting Officer's Statement at 2. Thereafter, Smiths filed a protest with this Office. In response to that protest, the agency stated that it would reopen the procurement, obtain revised proposals, and make a new source selection decision. Accordingly, Smiths' protest was dismissed. Smiths Detection, Inc., B-402168, B-402168.2, Nov. 18, 2009.

Thereafter, the agency conducted discussions with the three offerors, sought and received revised proposals, and evaluated those proposals. In March 2010, the agency awarded contracts to AS&E (for four systems) and to Smiths (for seven systems). Contracting Officer's Statement at 2. Thereafter, Rapiscan filed a protest. In response to that protest the agency again advised this Office that it intended to take corrective action by reopening the procurement, obtaining revised proposals,

⁴ Among other things, the SOW established required operational specifications regarding: maximum controlled operating area (140 ft wide by 120 ft long); number of operators (no more than 3); operational environment (functional at temperatures ranging from -20°F to 122°F); and radiation dose (not to exceed 0.05 mR [milliroentgen] in any one hour). Id. at 4.

⁵ As amended, the solicitation established the following technical/management subfactors, listed in descending order of importance: performance requirements and production capability. Under the performance requirements subfactor, the solicitation established the following sub-subfactors: high density cargo and mobile systems. Under the production capability subfactor, the solicitation established the following sub-subfactors: production and site preparation. RFP amend. 4.

⁶ With regard to the relative importance of the evaluation factors, the agency assigned weightings of technical/management (70%) and past performance (30%), and did not establish a weight for price, but stated that technical/management and past performance combined were significantly more important than price. RFP, Evaluation Factors, at 1.

⁷ A fourth offeror submitted an initial proposal, but that proposal was determined to be non-responsive and was eliminated from the competition; the fourth offeror did not further participate in this procurement.

and making a new source selection decision.⁸ Accordingly, Rapiscan's protest was dismissed. Rapiscan Sys., Inc., B-402168.3, May 6, 2010.

In July 2010, the agency again reopened discussions with the offerors and, thereafter, amended the solicitation and requested submission of final revised proposals (FRPs); FRPs were submitted on August 2.⁹ In evaluating proposals under the technical/management factor, the agency assigned ratings of outstanding,¹⁰ highly satisfactory,¹¹ satisfactory, marginal, and unsatisfactory.¹² Technical Evaluation Report (TER) at 8-9. With regard to the past performance factor, the agency

⁸ More specifically, the agency stated that it would treat the previously submitted proposals as initial proposals, perform a de novo evaluation of those proposals, conduct discussions, obtain revised proposals, and make a new source selection decision. Contracting Officer's Statement at 2. In connection with performing the de novo evaluation, the agency restructured its technical evaluation team (TET), adding three new members, retaining one prior member and re-assigning a prior member to the role of non-voting technical advisor. Id.

⁹ In their FRPs, each offeror was permitted to submit two separate proposals, reflecting two different system configurations. Accordingly, Rapiscan proposed two configurations, referred to as "Rapiscan M60-DE" and "Rapiscan [deleted]"; Smiths proposed two configurations, referred to as "Smiths [deleted]" and "Smiths [deleted]"; and AS&E proposed two configurations, referred to as "AS&E [deleted]" and "AS&E [deleted]."

¹⁰ Of relevance to these protests, a rating of outstanding was assigned where the agency determined that "[the] proposal significantly exceeds requirements in a way that benefits the Government or meets requirements and contains at least one exceptional enhancing feature, which benefits the government." TER at 8 (underlining added).

¹¹ Of relevance to these protests, a rating of highly satisfactory was assigned where the agency determined that "[the] proposal exceeds requirements in a way that benefits the government or meets requirements and contains enhancing features, which benefit the Government." Id.

¹² In evaluating proposals under the technical/management factor, the agency also made proposal risk assessments of low, medium and high.

assigned risk ratings of very low, low, moderate, high, very high, and unknown.¹³ Id. With regard to price, the solicitation provided that the agency would evaluate proposed prices to determine if they were reasonable and realistic.¹⁴ RFP, Evaluation Factors, at 5. The TET documented its evaluation in an 86-page report which was forwarded to the contracting officer. The contracting officer engaged in various meetings with the TET and conducted an independent review of the evaluation record. The final results of the agency’s evaluation were as follows:

| | Price | Technical/ Management | Past Performance | Proposal Risk | Non- Price Rank |
|-------------------------------|--------------|----------------------------------|-----------------------------|--------------------------|--------------------------------|
| Rapiscan M60-DE | \$24,797,500 | Highly Satisfactory | Low Risk | Low Risk | Highest |
| Smiths [deleted] | \$26,430,810 | Highly Satisfactory | Low Risk | Low Risk | |
| AS&E [deleted] | \$33,340,072 | Highly Satisfactory | Very Low Risk | Low Risk | Medium |
| AS&E [deleted] | \$31,310,418 | Highly Satisfactory | Very Low Risk | Low Risk | |
| Smiths [deleted] | \$19,885,975 | Highly Satisfactory | Low Risk | Low Risk | Lowest |
| Rapiscan [deleted] | \$19,866,000 | Highly Satisfactory | Low Risk | Low Risk | |

¹³ The various past performance risk ratings corresponded with the perceived level of doubt that the offeror would successfully perform the contract. Thus, based on the agency’s consideration of the offerors’ past performance information, a rating of very low risk was assigned where “no doubt” exists; a rating of low risk was assigned where “little doubt” exists; a rating of moderate risk was assigned where “some doubt” exists; a rating of high risk was assigned where “substantial doubt” exists; and a rating of very high risk was assigned where “extreme doubt” exists. TER at 9.

¹⁴ In evaluating price, the agency relied on three price analysis techniques: comparison of the proposed prices to each other; comparison of the proposed prices to previously proposed prices under a similar contract; and comparison of the proposed prices to those on a commercial catalog and General Services Administration schedule. Price Negotiation Memorandum (PNM) at 4-5.

Contracting Officer's Statement at 6; PNM¹⁵ at 8, 24-35; TET Report, attach. 1.

Upon reviewing the evaluation record, the contracting officer determined—as shown in the last column of the table above—that the Rapiscan M60-DE proposal and the Smiths [deleted] proposal were the highest-rated with regard to non-price factors, and that both of these proposals were lower-priced than either of AS&E's proposals; accordingly, the contracting officer did not further consider AS&E's lower-technically-rated, higher-priced proposals for award. PNM at 29-30. As between the two proposals rated highest under the non-price evaluation factors (the Rapiscan M60-DE and the Smiths [deleted]), and the two lowest-technically-rated, lowest-priced proposals (the Rapiscan [deleted] and Smiths [deleted]), the SSA performed a cost/technical tradeoff and determined that the value associated with both of the higher-rated proposals was worth their higher prices; accordingly, the SSA did not further consider the two lower-technically-rated proposals for award. As between the two highest-technically-rated proposals, the SSA concluded that they were essentially equal, and selected the Rapiscan M60-DE for award on the basis of its lower proposed price. These protests followed.

DISCUSSION

Smiths' Protest

Smiths first challenges the agency's evaluation of the Smiths [deleted] proposal under the technical/management factor, asserting that its proposal offered "substantial enhancements and benefits" and should have received the highest possible rating of "outstanding," rather than the second-highest rating, "highly satisfactory." Smiths' Protest, Nov. 2, 2010, at 15-16. Smiths refers to various features of its proposal, complaining that the agency failed to understand "the full enhancing [e]ffect of these features."¹⁶ Smiths' Comments, Dec. 13, 2010, at 17-18.

The evaluation of technical proposals is generally a matter within the agency's discretion, and our Office will not disturb an agency's judgments regarding the relative merits of competing proposals absent a showing those judgments are unreasonable or inconsistent with the RFP's evaluation criteria. See, e.g., METAG Insaat Ticaret A.S., B-401844, Dec. 4, 2009, 2010 CPD ¶ 86 at 4; Manassas Travel, Inc., B-294867.3, May 3, 2005, 2005 CPD ¶ 113 at 2-3. In this regard, a protester's mere

¹⁵ The PNM is signed by the contracting officer, who was also the source selection authority, and contains an extensive discussion of, and analysis regarding, the relative merits of the competing proposals, along with the rationale for selecting Rapiscan's M60-DE proposal for award. It is the source selection decision document for this procurement.

¹⁶ Among other things, Smiths refers to [deleted]. Smiths Protest, Nov. 2, 2010, at 16.

disagreement with the agency's judgments does not render an evaluation unreasonable. Id. Further, there is no legal requirement that an agency award the highest possible rating, or the maximum point score, under an evaluation factor simply because the proposal contains strengths and/or is not evaluated as having any weaknesses. See, e.g., Archer Western Contractors Ltd., B-403227, B-403227.2, Oct. 1, 2010, 2010 CPD ¶ 262 at 5; Pannesma Co. Ltd., B-251688, Apr. 19, 1993, 93-1 CPD ¶ 333 at 4.

The agency responds, and the contemporaneous evaluation record shows, that some of the aspects of Smiths' proposal, which Smiths describes as offering "substantial enhancements and benefits," were, in fact, viewed by the agency's evaluators as constituting strengths in the proposal. See TET Lead Affidavit at 11-14; Individual Evaluation Worksheets. For example, Smiths' proposal of its [deleted] formed part of the agency's bases for rating Smiths' proposal as "highly satisfactory"—though not "outstanding"—under the technical/management evaluation factor.¹⁷ Id. That is, the agency concluded that these features exceeded the solicitation requirements and/or were enhancing features, but did not significantly exceed requirements or constitute exceptional enhancing features. TET Lead Affidavit at 14. The agency further notes that Rapiscan's M60-DE proposal offered various similar benefits and enhancements. Finally, the agency states that some of the aspects of Smiths' proposal that Smiths describes as "substantial enhancements"—such as the software it proposed and its compliance with bridge law—met the solicitation requirements, but did not exceed or enhance those requirements in a way that benefited the government. Id. at 13-14. We have reviewed the record and find no basis to question the agency's judgments; Smiths' contrary view constitutes mere disagreement with the agency's judgments and provides no basis for sustaining the protest.

Moreover, the agency notes that, in performing an independent review of the proposals and the evaluation record prior to making an award decision, the contracting officer concluded that Smiths' proposal, in fact, failed to comply with the solicitation's requirements regarding maximum controlled operating area.¹⁸ Specifically, the solicitation provided:

¹⁷ As noted above, the agency assigned a rating of "outstanding" where a proposal "significantly exceeds requirements in a way that benefits the Government or . . . contains at least one exceptional enhancing feature, which benefits the government," and assigned a rating of "highly satisfactory" where a proposal merely "exceeds requirements in a way that benefits the government or . . . contains enhancing features which benefit the Government." TER at 8-9 (underlining added.)

¹⁸ The agency states that "maximum controlled operating area" refers to the amount of land area required for an X-ray inspection system to safely operate considering the radiation dose rate caused by the system's operation. CBP Legal Memorandum at 13.

[T]he [proposed] imaging system shall meet these operational specifications:

1. Maximum Controlled Operating Area – 140 ft wide by 120 ft long. . . .

SOW at 4.

In its FRP, Smiths clearly proposed a maximum controlled operating area of [deleted] feet in length—exceeding the solicitation requirements by [deleted] feet. See Smiths’ FRP, Vol. 1, at 27, 33. In pursuing this protest, Smiths does not meaningfully dispute the contracting officer’s conclusion that Smiths’ proposal failed to comply with the solicitation requirement regarding length of the operating area. Nonetheless, Smiths notes (and the record confirms) that the width of its proposed operating area was narrower than the solicitation required. Id. In that context, Smith maintains that the length requirement was “not as significant” as the width requirement,¹⁹ and thus asserts that Smiths’ failure to comply with the solicitation’s length requirement “provides no basis for assigning a deficiency or weakness.”²⁰ Smiths’ Protest, Nov. 2, 2010, at 18.

In performing his best value analysis, the contracting officer specifically noted Smiths’ failure to comply with the solicitation’s requirements regarding the length of the controlled operating area, describing that failure as follows:

[I]n the course of arriving at a best value decision, I noted that the Maximum Controlled Operating Area (MCOA) length quoted for the Smiths [deleted] . . . exceeded the RFP requirement for MCOA length. . . . This issue appeared for the first time in Smiths’ August 2, 2010 FRP and was not present in Smiths’ earlier proposal versions.

Although this potentially would have been a matter for concern had the Smiths [deleted] otherwise appeared to be the best value, I determined that this issue was immaterial under the circumstances because a different configuration was determined to be the best value without

¹⁹ Smiths only support for its assertion that the mandatory length requirement was less significant is the statement that “the system travels in a straight path.” Smiths Protest, Nov. 2, 2010, at 18. Nothing in the solicitation indicated that either requirement was more important.

²⁰ We note that Smiths did not protest the solicitation’s requirement regarding the length of the operating area prior to submitting its proposal. To the extent it is now attempting to challenge that unambiguous requirement, its protest is untimely. 4 C.F.R. § 21.2(a)(1) (2010).

consideration of this potential deficiency. Therefore, I left undisturbed the TET's conclusion that Smiths' FRP had no weaknesses or deficiencies.

Contracting Officer's Statement at 6-7.

We have reviewed the entire record and find no support for Smiths' assertion that the agency failed to properly rate Smiths' proposal as outstanding, rather than highly satisfactory. To the contrary, based on Smiths' clear failure to comply with a mandatory solicitation requirement, it appears that its proposal should have been rated substantially lower. On this record, we find no merit to Smiths' assertion that it was unreasonable for the agency to assign a rating lower than outstanding to Smiths' proposal under the technical/management evaluation factor.

Next, Smiths challenges the agency's past performance evaluation of "low risk" for both Smiths' and Rapiscan's proposals, complaining that Smiths' proposal should have been rated as very low risk, while Rapiscan's proposal should have been rated as moderate or high risk.²¹ Smiths' Protest, Nov. 2, 2010, at 18-19. With regard to its own past performance, Smiths asserts there is "no doubt" that Smiths can successfully perform the contract, because "[a]ny [of Smiths'] prior schedule issues were completely overcome." *Id.* at 20-21. Regarding evaluation of Rapiscan's past performance, Smiths asserts that Rapiscan had prior performance problems with "cracked chassis frames" and "mechanical failures" under a similar contract, and that those problems should have resulted in a higher past performance risk rating. *Id.* at 19.

The evaluation of past performance, including the agency's assessments with regard to the relevance, scope, and significance of an offeror's performance history, including actions taken to resolve prior problems, is a matter of agency discretion, which we will not disturb unless those assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. *See, e.g., Yang Enter., Inc.; Santa Barbara Applied Research, Inc.*, B-294605.4 *et al.*, Apr. 1, 2005, 2005 CPD ¶ 65 at 5-7; *Acepex Mgmt. Corp.*, B-283080 *et al.*, Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5. A protester's mere disagreement with the agency's judgments is not sufficient to establish that the agency acted unreasonably. *Birdwell Bros. Painting & Refinishing*, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

²¹ As noted above, the various risk ratings assigned by the agency reflected the level of doubt that was created by the offeror's past performance information. Thus, a rating of very low risk was assigned where "no doubt" exists; a rating of low risk was assigned where "little doubt" exists; a rating of moderate risk was assigned where "some doubt" exists; and a rating of high risk was assigned where "substantial doubt" exists. TER at 9.

In evaluating the past performance information presented with Smith's initial proposal, the agency noted that one reference stated, among other things, that in performing a prior contract for similar systems, "timeliness was an issue as Smiths was understaffed and was not able to meet all the scheduled dates." The reference further stated that Smiths' performance of another contract "was impacted by a delay in Smiths submitting the engineering drawings for review."²² Past Performance Questionnaire (Smiths) of CBP Program Manager, July 16, 2010, at 2. During discussions, the agency brought these matters to Smiths' attention. Smiths Discussion Letter, July 21, 2010, at 8. However, Smiths' FRP did not provide any further information addressing this issue. Accordingly, the agency concluded that a rating of low risk, reflecting "little doubt" that Smiths could perform, was appropriate. TER at 60-65, 86. Based on our review of the record, we find no basis to question the reasonableness of the agency's judgment; Smiths' protest to the contrary reflects its mere disagreement.

Similarly, in evaluating the past performance information presented with Rapiscan's initial proposal, the agency noted an issue regarding cracks in welds on the undercarriage of previously delivered Rapiscan systems. Indeed, the same past performance reference who evaluated Smiths, discussed above, expressed grave concern and substantial dissatisfaction with Rapiscan's prior performance, due primarily to the problems flowing from that matter. Past Performance Questionnaire (Rapiscan) of CBP Program Manager, July 16, 2010, at 1-2. Accordingly, the agency raised this matter with Rapiscan during discussions. In its FRP, Rapiscan provided additional information regarding the impact of the weld cracks on system performance, and the corrective actions Rapiscan had taken, and was continuing to take, regarding this matter. Rapiscan FRP, Vol. 1, at 30. Additionally, the agency assembled and considered extensive documentation regarding the prior problem, including multiple independent engineering assessments. Agency Report, Tab 2D. Based on its consideration of all such information, the agency concluded that the prior problems had not impacted safety or performance of the systems, had been corrected, and were unlikely to recur. Report of CBP's Enforcement Technology Program, at 1; TET Lead Affidavit at 17. Accordingly, the agency concluded that a past performance rating of "low risk" was appropriate.

As noted above, it is well within an agency's discretion to consider the significance of an offeror's prior performance in the context of, among other things, the contractor's actions to resolve prior problems. See, e.g., Yang Enter., Inc.; Santa Barbara Applied Research, Inc., supra. Here, the agency performed an extensive analysis regarding both the impact of Rapiscan's prior problems and the actions taken to resolve them, and concluded the problems were unlikely to recur. While Smiths disagrees with the agency's various judgments, it has failed to demonstrate

²² In its initial proposal, Smiths acknowledged "schedule slippage of up to 90 days on some units." Smiths Initial Proposal, Vol. 1, at 16-17.

that those judgments were unreasonable. On the record here, we find no basis to question the agency's past performance evaluation; Smiths' protest challenging that evaluation is denied.²³

AS&E's Protest

AS&E protests the agency's determination that both of AS&E's proposals were lower-rated under the non-price factors than Rapiscan's M60-DE proposal, and were also higher priced.²⁴ In challenging this determination, AS&E makes various arguments, including challenges to the agency's evaluation under the non-price factors, and it asserts that the agency failed to perform an adequate price realism analysis. AS&E's arguments are without merit.

As discussed above, with regard to the most important sub-subfactor (performance requirements/high density cargoes) of the most heavily weighted evaluation factor (technical/management), the solicitation identified various minimum performance requirements, along with three specifically identified desired capabilities.²⁵ SOW at 4. The desired capabilities were: (1) manifest scanning ("ability to scan a manifest is desired"); (2) passive detection ("capability to passively detect gamma and neutron radiation emissions in a single pass is desired"); and (3) material discrimination ("capability to distinguish between Organic, Metallic and Intermediate materials is desired"). Id.

In evaluating AS&E's proposals, the agency determined that the technology proposed by AS&E in both of its proposals failed to provide the desired capabilities regarding either passive detection or material discrimination;²⁶ in contrast, the

²³ Smiths raised similar arguments regarding the agency's assessment of low proposal risk for both offerors, along with other arguments in addition to, or variations of, the arguments discussed above. We have considered all of Smiths arguments challenging the agency's evaluation and source selection decision and find no basis to sustain its protest.

²⁴ Both of AS&E's proposals were also lower-technically-rated and higher-priced than Smiths' [deleted] proposal.

²⁵ Similar to identification of the three desired capabilities, for some of the minimum performance requirements, the solicitation identified "preferred" levels of performance that exceeded the minimum requirements. SOW at 3-4.

²⁶ Both of AS&E's proposed configurations, as described by AS&E, "combine high energy transmission imaging with AS&E's proprietary backscatter imaging technology." AS&E Protest, Nov. 3, 2010, at 12. In contrast, both the Smiths [deleted] and the Rapiscan M60-DE proposals were based on different technology, and are referred to as "high dual energy systems." TER at 27.

Rapiscan M60-DE proposal (and the Smiths [deleted] proposal) provided all three desired capabilities. TER at 21, 24, 27. Specifically, with regard to passive detection, the agency determined that AS&E's proposed technology did not detect [deleted] and, with regard to material discrimination, AS&E's technology only distinguished [deleted]—not the three levels of discrimination the solicitation sought. Id.

In performing the best value analysis, the contracting officer discussed the various strengths associated with AS&E's and Rapiscan's proposals, specifically noting that AS&E's proposal had “a marginal advantage in spatial resolution and image quality” but also stating that AS&E's “failure to provide Material Discrimination and Passive Detection . . . outweighs these advantages.” PNM at 29. Following his discussion of the various proposal strengths, the contracting officer concluded:

I have considered all of these strengths and the relative importance of the sub-subfactors they fall under, and agree with the TET Report that AS&E's lack of Material Discrimination and Passive Detection are the key technical discriminators between [AS&E's and Rapiscan's] configurations.

I also note that AS&E received a past performance risk rating of “Very Low” while Rapiscan . . . received [a] past performance risk rating[] of “Low.” However, the difference in past performance risk does not outweigh the substantial gradations of technical difference mentioned above since the technical factor is significantly more important than past performance (70% weight vs. 30% weight among non-price factors).

Id.

Based on his review, the contracting officer concluded that Rapiscan's M60-DE proposal was superior to AS&E's proposals under the non-price evaluation factors and offered a lower price; accordingly, the contracting did not further consider AS&E's proposals for award.

AS&E first challenges the agency's evaluation under the non-price evaluation factors. All of AS&E's various arguments in this regard essentially challenge the agency's reliance on AS&E's failure to provide passive detection and material discrimination as the “key technical discriminators” between the proposals. We have reviewed all of AS&E's arguments and find no basis to sustain its protest.

For example, AS&E asserts that it was unreasonable for the contracting officer to conclude that AS&E's proposals failed to provide passive detection and material discrimination, maintaining that this conclusion was inconsistent with the TET's evaluation. Specifically, AS&E asserts that, “the SSA [contracting officer] inexplicably deviated from the TET's findings and stated that AS&E ‘fail[ed]’ to

provide these desired capabilities.” AS&E Comments, Jan.5, 2010, at 3. AS&E is wrong.

Specifically, in discussing AS&E’s proposal regarding passive detection, the TET stated:

Passive Detection – A desired requirement for the [capability to passively detect gamma and neutron radiation emission in a single pass is desired]. . . .

AS&E proposed a [deleted] solution and was not recognized as a strength nor did it meet the requirement. . . .

TER at 21.

Similarly, in discussing AS&E’s proposal regarding material detection, the TET stated:

Material Discrimination – A desired requirement to provide [the capability to distinguish between Organic, Metallic and Intermediate materials is desired]. . . .

AS&E’s capability as stated in the response **does not provide** the 3-levels of material discrimination as desired in the SOW. . . .²⁷

TER at 23-24 (bold in original).

Finally, in describing the different technology proposed by AS&E, the TET unambiguously stated, “neither the [deleted] nor the [deleted] [the configurations proposed by AS&E] meets the *desired* material discrimination or passive detection requirements.” TER at 27 (italics in original).

In short, there can be no meaningful dispute that the solicitation sought, as desired capabilities, detection of both gamma and neutron radiation, along with discrimination between three types of material—organic, metallic and intermediate. There also can be no meaningful dispute that AS&E did not offer to meet either desired capability (offering only [deleted] and only [deleted]). See, e.g., AS&E Supp. Protest, Dec. 13, 2010, at 4. Finally, the record is clear that both the TET and the contracting officer properly concluded that AS&E’s proposals failed to offer the

²⁷ The TET elaborated that, although AS&E failed to provide the desired material discrimination capability, it did provide an alternative enhancing feature by offering [deleted]. TER at 24.

desired capabilities, as identified by the solicitation. To the extent AS&E protests that any of the above conclusions are erroneous, its protest is without merit.

Next, AS&E protests that it was unreasonable for the agency to view Rapiscan's proposed capability to fully provide the desired capabilities as more valuable than AS&E's proposal to exceed various other minimum requirements. In this regard, AS&E asserts that, "[i]ntuitively," the portions of AS&E's proposal that exceeded any mandatory solicitation requirement should have been considered more important than Rapiscan's proposal to provide the desired capabilities. AS&E Supp. Protest, Dec. 13, 2010, at 3. We disagree.

In short, AS&E asserts that offering to exceed the solicitation's minimum requirements with regard to capabilities that the solicitation expressly advised offerors were "desired" should have been evaluated as less important than capabilities an offeror, on its own, opted to provide which exceed the solicitation's minimum requirements—even where the solicitation gave no indication of a desire or preference for such capability. AS&E's assertion is illogical. Clearly, it was evident from the face of the solicitation that a capability the solicitation identified as either "desired" or "preferred," was considered to be more important to the agency than a proposal to exceed minimum requirements in areas the solicitation did not indicate were "desired" or "preferred."²⁸ To the extent AS&E asserts that the agency should have afforded greater weight to aspects of its proposal that exceeded solicitation requirements, but were not identified by the solicitation as either "desired" or "preferred" capabilities, its protest is without merit.

AS&E further complains that it was unreasonable for the contracting officer to conclude that Rapiscan's M60-DE proposal was technically superior to AS&E's proposals because the TET assigned 19 strengths to AS&E's proposal under the technical/management evaluation factor and only 16 strengths to Rapiscan's proposal,²⁹ further complaining that the strengths assigned to AS&E's proposal should have led to a higher technical rating than was assigned to Rapiscan's proposal. See AS&E Supp. Protest, Dec. 13, 2010, at 2.

Generally, a protester challenging a source selection decision based solely on the number of evaluated strengths, weaknesses, or other discriminators that are identified by an agency during its evaluation fails to state a valid protest basis, since

²⁸ We do not dispute that the solicitation's identification of a "preferred" level of performance, over and above a stated minimum requirement, was comparable to identification of a "desired" capability.

²⁹ It is not entirely clear how AS&E calculated the number of strengths it asserts was assigned to each proposal, and our references to the numbers, above, do not reflect our concurrence with the accuracy of AS&E's calculations.

a procuring agency's ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making. Highmark Medicare Serv., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 11. In this regard, the evaluation of proposals and consideration of their relative merit is properly based on a qualitative assessment of competing proposals characteristics, not a simple count of the relative strengths and weaknesses assigned during the evaluation process. ITT Corp., Syst. Div., B-310102.6 et al., Dec. 4, 2009, 2010 CPD ¶ 12 at 10; Kellogg Brown & Root Servs., B-298694.7, June 22, 2007, 2007 CPD ¶ 124 at 5.

Here, we have reviewed the entire evaluation record, including the individual evaluator worksheets, the comprehensive report prepared by the TET, and the documentation created by the contracting officer in performing his review of the record leading to the source selection decision. Based on this record, we find no basis to question the multiple agency judgments on which the contracting officer ultimately concluded that Rapiscan's proposal was superior to the AS&E proposals. More specifically, rather than counting the number of strengths assigned to each proposal, we have considered the agency's qualitative assessments regarding the relative merits of the competing proposals, as measured against the various solicitation requirements.

For example, with regard to image resolution, the solicitation provided that "Spatial Resolution of 0.5 inches is required" and that "[resolution of] 0.125 inches [is] preferred." SOW at 3. AS&E notes that its proposal was evaluated as exceeding both the requirement and the preferred performance capability, offering a spatial resolution of [deleted] inches, and complains that the contracting officer failed to give sufficient consideration to this aspect of its proposal. AS&E Supp. Protest, Dec. 13, 2010, at 12. However, AS&E's protest neglects to mention that Rapiscan's proposal similarly exceeded the requirement, and also met the preferred capability, offering a spatial resolution of [deleted] inches. TER at 30. That is, AS&E's proposal was superior to Rapiscan's by [deleted] one-thousandths of an inch. Not surprisingly, the contracting officer, while recognizing AS&E's advantage, characterized that advantage as "marginal." PNM at 29.

By way of another example, AS&E notes that its proposal was evaluated as superior to Rapiscan's with regard to image quality, again complaining that the contracting officer failed to give sufficient consideration to this aspect of its proposal in concluding that Rapiscan's proposal was technically superior. AS&E Supp. Protest, Dec. 13, 2010, at 12-14. However, with regard to image quality, the solicitation established only subjective criteria ("images are to appear clear, have sharp edges, and have an Aspect Ratio that is not compressed"). SOW at 3. Again, although the contracting officer expressly recognized that AS&E's proposal was superior to Rapiscan's regarding image quality, he also viewed that advantage as "marginal." AS&E's protest offers no meaningful basis, other than AS&E's own opinion, to conclude that the contracting officer's judgment was unreasonable.

Finally, AS&E asserts that the agency effectively converted the desired capabilities of passive detection and material discrimination into mandatory requirements. AS&E Supp. Protest, Dec. 13, 2010, at 2, 8. In this regard, AS&E maintains that the contracting officer improperly referred to AS&E's "failure" to provide the desired characteristics, and excluded it from the competition on that basis. AS&E Comments, Jan. 5, 2011, at 5. We disagree.

It is well-settled that a single evaluation factor—even a lower-weighted factor—may properly be relied upon as a key discriminator for purposes of a source selection decision. See, e.g., DPK Consulting, B-404042, B-404042.2, Dec. 29, 2010, 2011 CPD ¶ __ at 13 (source selection authority, in making a tradeoff analysis, may ultimately focus on a particular discriminator, even if it is not the most heavily weighted factor).

Here, AS&E primarily relies on one sentence in the contracting officer's source selection decision that was contained within the section of the decision where the contracting officer compared and contrasted the capabilities flowing from AS&E's and Rapiscan's differing proposed technologies. Specifically, AS&E notes that the contracting officer stated, "the AS&E systems are not classified as dual high-energy systems and therefore they cannot be compared to the . . . Rapiscan M60-DE configuration[] that do[es] meet the desired Material Discrimination requirement unless it is determined that the requirement is no longer desired." PNM at 29. Following that statement, the contracting officer specifically considered the other differing capabilities of the two proposals, including areas in which AS&E's proposals offered "marginal" advantages, noted that the TET had evaluated all aspects of AS&E's and Rapiscan's proposals in accordance with the RFP's stated evaluation factors, acknowledged that each proposal had "strengths not possessed by [the other]," stated that he had considered all such strengths along with the relative importance of the evaluation factors under which each strength was assessed, and concluded that Rapiscan's M60-DE proposal was superior with regard to the non-price evaluation factors. Id. On this record, we find no merit in AS&E's assertion that the contracting officer effectively converted the solicitation's desired capabilities into mandatory requirements.

In summary, we have reviewed all of AS&E's allegations regarding the alleged errors in the evaluation of its proposal and find no basis to question the

agency's decision that the Rapiscan M60-DE proposal was superior to AS&E's proposals under the non-price evaluation factors.³⁰

Finally, AS&E protests that the agency "failed to evaluate price realism," as was required by the solicitation. AS&E Protest, Nov. 3, 2010, at 4. Noting that the solicitation provided that the agency would evaluate proposed prices to determine, among other things, if they were "unrealistically low," RFP, Evaluation Factors, at 5, AS&E maintains that the agency "performed no such analysis." AS&E Protest, Nov. 3, 2010, at 31.

Where, as here, a fixed-price contract is to be awarded, a solicitation may provide for the use of a price realism analysis to measure an offeror's understanding of the requirements or assess the risk inherent in a proposal. Rodgers Travel, Inc., B-291785, Mar. 12, 2003, 2003 CPD ¶ 60 at 4; Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 2. The nature and extent of such an analysis are matters within the agency's discretion, and our review of a realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Id. In this regard, the Federal Acquisition Regulation (FAR) recognizes a number of price analysis techniques that are adequate to perform a price realism analysis in a fixed-price contract context, including comparison of the proposed

³⁰ Among other things, we have considered AS&E's unusual assertion that, because the agency apparently evaluated AS&E's proposal differently under prior iterations of this procurement, the current evaluation is, therefore, flawed. See AS&E Protest, Nov. 3, 2010, at 23. Since the agency expressly concluded that corrective action was required to remedy flaws in the prior evaluations, we are at a loss to understand how AS&E can credibly assert that the prior evaluation results constitute appropriate criteria for measuring the agency's current evaluation. To the contrary, the terms of the solicitation itself established the appropriately applicable criteria. Focusing on the RFP criteria, we have also considered, and rejected, AS&E's assertion that the agency was required to perform "tradeoffs" between the various performance capabilities, id. at 16-21, since such "tradeoffs" were not contemplated by the terms of the solicitation. Similarly, AS&E's assertion that an agency discussion question, provided to all offerors, was "misleading," id. at 29-30, in that it sought information regarding the impact that adjusting the level of one performance capability could have on another, is without merit. To the extent AS&E has challenged the agency's evaluation of Rapiscan's past performance, as discussed in our response to Smiths' protest, above, we find no merit in AS&E's protest. Finally, AS&E's assertion that the agency gave insufficient credit to AS&E's comparatively higher rating under the performance evaluation factor is without merit since the record shows that the contracting officer expressly recognized that AS&E's past performance rating was superior to Rapiscan's, but reasonably concluded that AS&E's advantage under the less important past performance factor did not outweigh Rapiscan's advantages under the more important technical/management evaluation factor.

prices to each other, comparison of proposed prices to other contract prices for similar items, and comparison of proposed prices with published price lists. FAR §§15.404-1(b)(2)(i), (ii), (iv).

Here, the contemporaneous evaluation record shows that the agency performed an extensive price evaluation, comparing the proposed prices to each other, to prices under the existing IDIQ contract for similar items, and to prices for similar items in a commercial catalog and a General Services Administration schedule. PNM at 20-24. Based on these comparisons, the agency concluded that the proposed prices

were reasonable and realistic. Based on the record here, we find no basis to question the agency's price realism analysis; AS&E's protest challenging that analysis is without merit.

The protests are denied.

Lynn H. Gibson
General Counsel