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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: FN Manufacturing, LLC

File: B-402059.4; B-402059.5

Date: March 22, 2010

Joseph J. Dyer, Esq., Martin J. Golub, Esq., Amanda B. Weiner, Esq., and Daniel P. Wierzba, Esq., Seyfarth Shaw LLP, for the protester.

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Vera Meza, Esq., and Caridad Ramos, Esq., U.S. Army Materiel Command, for the agency.

Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of awardee's past performance as relevant based on comparative complexity of awardee's past performance references was reasonable and consistent with the terms of the solicitation which afforded the agency the discretion to consider "the degree to which contracts are of a comparable complexity, size or value to the proposed effort" in determining relevance.

DECISION

FN Manufacturing, LLC, of Columbia, South Carolina, protests the award of a contract to Colt Defense LLC, of West Hartford, Connecticut, under request for proposals (RFP) No. W56HZV-09-R-0402, issued by the U.S. Army Materiel Command for the supply of M240B machine guns. FN argues that the Army did not reasonably evaluate Colt's past performance in accordance with the solicitation's evaluation criteria, the Army's technical evaluation was flawed, and its source selection decision was unreasonable.

We deny the protest.

The Army issued the RFP on April 7, 2009, contemplating the award of a 4-year fixed-price indefinite-delivery/indefinite-quantity (ID/IQ) contract for the supply of M240B machine guns. Award was to be made to the offeror whose proposal was determined to represent the best value to the government considering the following factors: technical, past performance, small business participation, and price. The

RFP established that the technical factor was slightly more important than past performance and substantially more important than small business participation, while past performance was more important than small business participation. The non-price factors, when combined, were considered to be “slightly more important than Price.” RFP, § M.1.a.

The technical factor was comprised of four subfactors: approach/schedule, facilities/equipment, quality system, and key personnel. The approach/schedule subfactor was “significantly more important” than the other subfactors, which were of equal importance. The technical factor and each of the subfactors were to be rated as “low risk,” “moderate risk,” or “high risk.” RFP, § M.2.

As it relates to the protest, in responding to the technical factor, offerors were required to propose “a technical approach and pre-production schedule, and information demonstrating access by the Offeror (and [its] suppliers/subcontractors) to all resources necessary to fulfill the requirements of the Technical Data Package.” RFP, § L.2. Under the approach/schedule subfactor, offerors were to set forth the technical approach and pre-production schedule that they would use to “perform technical data package review, establish change management, fabrication and quality control processes, fabricate and evaluate First Article hardware (if applicable) and initiate production hardware fabrication and delivery in accordance with the required delivery schedule.” Id.

Under the facilities/equipment subfactor, offerors were to detail their “production facilities/equipment available (or plan and schedule to obtain same) to fabricate, inspect and test the M240B Machine Gun to the Technical Data Package, in its entirety and in accordance with the required delivery schedule.” Id. Offerors were also required to describe their “plant production capacity” under this subfactor, which was to include certain specific “minimum” information, to include, among other things, the extent to which specific “processes or items” were being subcontracted. Id.

Past performance was to be rated as “very low risk,” “low risk,” “moderate risk,” “high risk,” or “unknown risk.”¹ RFP, § M.3. In this regard, the RFP required offerors to submit contract references representing “recent, relevant performance.” The term “recent” was defined to mean within the last 3 years since the issuance of the solicitation. The term “relevant” was defined as follows:

¹ “Very low risk” was defined to mean that there is “very little doubt” regarding an offeror’s ability to successfully perform the required effort, while “low risk” and “moderate risk” were defined to mean, respectively, that the agency has “little” or “some” doubt regarding the offeror’s ability to successfully perform the contract. RFP, § M.3.

Performance that demonstrates the offeror has successfully manufactured or provided the M240, 7.62mm Machine Gun or similar items. These are listed in descending order of importance from highly relevant to the somewhat relevant:

- M240, 7.62MM Machine Gun produced to the U.S. Army's Technical Data Package (TDP).
- Gas operated, belt fed, machine guns produced to other Military technical data packages.
- Other small arms weapons, machine gun parts, or experience in producing commercial small arms parts.

The degree to which contracts are of a comparable complexity, size or value to the proposed effort may also be considered in determining relevance.

RFP, § L.3.

Small business participation was to be rated as “excellent,” “good,” “adequate,” “marginal,” or “poor” based, in part, on

the extent to which offerors (both large and small businesses) identify and commit to small business (SB), veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), HUBZone small business, small disadvantaged business (SDB), woman-owned small business (WOSB), and historically black college and university/minority institution (HBCU/MI) participation in the contract, whether as the contractor or a subcontractor, or as a member of a joint venture or teaming arrangement.

RFP, § M.5. A rating of “excellent” was appropriate where a proposal committed to having more than 20% of the dollar value of the contract performed by the above small business categories, either through the prime (if so qualified) or through subcontractors or team members. According to the RFP, the agency would also consider whether the offeror “has substantive evidence suggesting prior achievement of subcontracting plans or policy goals, and whether, based on the proposal and past performance risk history, the offeror’s proposal goals and/or actions are substantial and are considered very realistic (very low risk).” Id.

The Army received two timely proposals in response to the RFP, from FN and Colt. For the purpose of evaluating proposals, the Army established a Source Selection Evaluation Board (SSEB). Upon completing an initial evaluation, the Army held discussions with the two offerors and obtained final proposal revisions. After evaluating the offerors’ final proposals, the Army selected Colt for award, which was

made on September 25, 2009. FN was notified that day of the Army's decision and requested a debriefing on September 28. The Army provided FN with a debriefing on October 2 and, on October 6, FN filed a protest with our Office. Before submitting its agency report, the Army agreed to take corrective action in response to FN's protest, including a reevaluation of the firms' proposals and the issuance of a new source selection decision.² We dismissed the protest as academic on November 20.

To implement the promised corrective action, the source selection authority (SSA) reevaluated the proposals and issued a new Integrated Assessment of Proposal and Source Selection Decision Document (SSDD). The new SSDD reflects the following ratings as determined by the SSA:

	Technical Risk	Past Performance	Small Business Participation	Total Price
FN	Low Risk	Very Low Risk	Excellent, Very Low Risk	\$106,163,664.39
Colt	Moderate Risk	Low Risk	Excellent, Very Low Risk	\$87,333,810.50

Agency Report (AR), Tab III.1., SSDD, at 24.

The record reflects that the SSA disagreed with the SSEB's "low risk" rating for Colt as it related to "technical risk" and instead concluded that Colt should have been assigned a rating of "moderate risk," in light of the fact that Colt has not produced an M240 machine gun. *Id.* at 13. Notwithstanding FN's superior ratings under the technical and past performance factors, the SSA determined that Colt's proposal represented the best value to the government. On December 9, the Army informed FN that the proposals had been reevaluated and the SSA had affirmed the Army's prior award to Colt. FN requested a debriefing on December 11, which it received on December 18. FN filed an initial protest on December 21 and a supplemental protest on December 28, both of which are the subject of this decision.

² While implementing its promised corrective action, the Army stayed performance of Colt's contract.

DISCUSSION

FN challenges several aspects of the Army's evaluation of Colt's proposal. Specifically, FN argues that the Army did not reasonably evaluate Colt's past performance in accordance with the evaluation criteria established under the RFP. In this regard, FN complains that the Army found contracts referenced by Colt to be relevant notwithstanding the fact that they did not meet the solicitation's definition of relevant. In addition, FN argues that Colt's proposal should have been downgraded under the technical evaluation factor because Colt did not include information demonstrating access by its suppliers and subcontractors to resources necessary to fulfill the requirements of the technical data package, and because Colt failed to identify its suppliers and subcontractors. FN challenges the Army's evaluation of Colt's proposal under the small business participation factor as well, arguing that the agency failed to consider Colt's lack of demonstrated success in achieving subcontracting goals, and its failure to consistently identify its proposed subcontractors. As a final matter, FN asserts that the SSA's selection decision was unreasonable.

Timeliness

As a threshold matter, Colt contends that FN's December 28 supplemental protest is untimely.³ Under our Bid Protest Regulations, protests other than those based on an alleged solicitation impropriety must be filed within 10 days after the basis of protest is known or should have been known, except when a required debriefing is requested. 4 C.F.R. § 21.2(a)(1) and (2) (2009). In challenging the timeliness of FN's supplemental protest, Colt first argues that FN did not file its protest within 10 days of when it knew or should have known its bases of protest. Colt asserts that FN knew, or should have known, of the bases for its December 28 supplemental protest from the evaluation record the Army provided to FN's counsel in connection with its prior October 6 protest, coupled with the December 9 letter from the Army affirming its prior award decision to Colt. Because FN did not file its supplemental protest within 10 days of learning of the Army's revised source selection decision, Colt maintains, the protest is untimely.

Colt also contends that the debriefing exception in section 21.2(a)(2) of our Regulations does not apply in this case because the debriefing FN received on December 18 was not a "required debriefing" as defined by Federal Acquisition Regulation (FAR) § 15.506(a)(1), which provides as follows:

³ In its supplemental protest, FN specifically challenged the agency's evaluation of Colt's proposal under the technical and small business participation factors. In its initial protest, FN challenged the agency's failure to reasonably evaluate Colt's past performance.

An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.

According to Colt, the Army's December 9 letter advising FN of the results of its reevaluation and revised source selection decision was not a "notification of contract award"; rather, FN received the notice of the award decision on September 25. Colt argues that, because FN's December 11 debriefing request was not made within 3 days of the "notification of contract award," the debriefing the Army provided in response to this request was not a "required debriefing," thus rendering the debriefing exception under 4 C.F.R. § 21.2(a)(2) inapplicable.

Because we find that FN filed its supplemental protest within 10 days of when it knew, or should have known, of the bases of its supplemental protest, we need not address whether the debriefing exception to our timeliness rules applies here. In this regard, even where a disappointed offeror does not secure a required debriefing, as Colt contends is the case here, it retains the right to file a protest within 10 days after it learns, or should have learned, the basis for protest, provided it has diligently pursued the matter; this includes the right to file a timely protest based on information obtained during a debriefing that was not "required" within the meaning of FAR § 15.506(a)(1). See Raith Eng'g & Mfg. Co., W.L.L., B-298333.3, Jan. 9, 2007, 2007 CPD ¶ 9 at 3.

Here, we find that FN diligently pursued the information that it learned at the debriefing and its protest based on the information learned at the debriefing thus is timely filed. Specifically, FN's supplemental protest challenges the Army's failure to properly evaluate Colt's proposal under the technical and small business participation factors. The December 9 letter merely advised FN of the Army's ratings for the offerors under the various factors and its determination that Colt's proposal represented the best value to the government. It was not until FN received its debriefing on December 18, which included a detailed discussion of the agency's reevaluation and revised selection decision, that FN had the facts needed to reasonably know its bases of protest.⁴ Because FN's supplemental protest was filed on December 28, within 10 days of its December 18 debriefing, it is timely.

⁴ In reaching this conclusion we reject Colt's assertion that FN was aware of or should have known its bases of protest from documents pertaining to the agency's initial evaluation and selection decision, which FN received in connection with its protest of the Army's initial award decision. The Army represented to our Office and the parties that it intended to perform a reevaluation of the offerors' proposals and make a new selection decision. Based on these representations, it was reasonable for the protester to assume that the initial findings were not reflective of the agency's revised evaluation and new selection decision.

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Past Performance

FN argues that the Army unreasonably evaluated Colt's proposal as "low risk" under the past performance factor. According to FN, based on the terms of the RFP, none of Colt's past performance references should have been considered relevant because they did not involve the manufacture of "belt-fed" machine guns, or indeed, machine guns at all.

Where a solicitation calls for the evaluation of past performance, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. Divakar Techs., Inc., B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5. The evaluation of past performance, by its very nature, is subjective; an offeror's mere disagreement with the agency's evaluation judgments does not demonstrate that those judgments are unreasonable. SDV Telecomms., B-279919, July 29, 1998, 98-2 CPD ¶ 34 at 2.

Here, Colt submitted three references for evaluation: (1) a contract for the manufacture of M4/M4A1 carbines, with a value of approximately \$478 million; (2) a contract for the manufacture of the M16A4 rifle with a value of approximately \$16 million; and (3) a second contract for the manufacture of M4/M4A1 carbines with a value of approximately \$6 million. The SSA determined all three references to be relevant since they were of "comparable complexity and value to the proposed effort." AR, Tab III.1, SSDD, at 18.

In documenting his relevance determination, the SSA concluded that the M4/M4A1 and the M16 are considered machine guns because they are weapons which are capable of automatically shooting more than one shot by a single pull of the trigger without having to be manually reloaded.⁵ In this regard, the SSA further noted that

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⁵ The record reflects that, in concluding that the M4 and M16 are "machine guns," the SSA considered the National Firearms Act of 1934, specifically, 26 U.S.C. § 5845(b) (2006), which defines a "machine gun" as follows:

any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

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“the M4A1 carbine is capable of full automatic fire at a rate of approximately 800 rounds per minute from a 30 round detachable box magazine.” AR, Tab III.1, SSDD, at 17. Expressly recognizing that the referenced weapons are not “belt-fed” machine guns, the SSA determined that the complexity of a box magazine-fed machine gun, like the M4/M4A1 and M16, “requires a similar attention to strict government technical tolerances and specifications of a belt fed magazine” and further noted that “any effort to manufacture complete small caliber automatic weapons demonstrates greater knowledge and capability than the production of lesser weapons or weapon parts.” Id. at 17. According to the SSA, the weapons manufactured by Colt under these contracts “were made and tested to a weapon specification similar to the M240 Machine Gun.” Id. at 18.

The SSA also expressly considered the dollar values of the various contracts referenced by Colt as part of his relevance assessment. In this regard, the SSA highlighted the fact that the \$478 million M4/M4A1 contract had a “significantly” greater value as compared to the estimated value of the M240 acquisition (approximately \$187 million). Id. The SSA again noted that the M4/M4A1 weapon manufactured by Colt is made in accordance with a government-approved technical data package, which involves a “significant degree of complexity.” Id. Acknowledging that the other two contracts referenced by Colt were not equivalent in dollar value, the SSA similarly emphasized the complexity associated with the weapons manufactured under these contracts in justifying his determination that they should be considered relevant for the purposes of evaluating Colt’s past performance.

FN principally argues that the SSA’s findings do not comport with the evaluation criteria established under the RFP, which defined “relevant” as “[g]as operated, belt fed machine guns produced to other Military technical data packages.” RFP, § L.3. According to FN, the M4/M4A1 and M16 weapons “in general parlance” are not considered machine guns. Protest at 8. FN asserts that, even if they can properly be considered machine guns, they are not “belt-fed,” and thus, by the terms of the RFP, Colt’s contracts for the manufacture of these weapons should not have been regarded as relevant. Instead, they should have been considered, at most, “somewhat relevant,” which was defined to encompass “other small arms weapons, machine gun parts, or experience in producing commercial small arms parts.” RFP, § L.3. FN further argues that the SSA could not rely on the language in the solicitation indicating that “comparable complexity, size or value to the proposed effort may also be considered in determining relevance” for the purpose of finding Colt’s contracts for the M4/M4A1 and M16 weapons relevant. In FN’s view, such a finding would render the relevance categories meaningless since it would allow the Army to effectively redefine the specific relevance definitions identified in the RFP.

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We find that FN's challenge to the agency's past performance evaluation is based on an unreasonably narrow reading of the SSA's evaluation and the evaluation criteria established under the RFP. First, as established by the record, the SSA expressly recognized the fact that Colt's referenced contracts did not fit precisely within the definition of a belt-fed machine gun under the relevance categories identified in the RFP. Thus, whether the guns manufactured under Colt's M4/M4A1 and M16 contracts are in fact "machine guns" (a term not specifically defined in the RFP) or "belt-fed" weapons, is not relevant to assessing the reasonableness of the SSA's analysis. Rather, the record shows that the SSA based his relevance assessment on the degree to which Colt's contracts for the manufacture of the M4/M4A1 and the M16 weapons were of comparable complexity to the manufacture of the M240 machine gun.

Second, by its terms, the language of the RFP afforded the agency broad discretion in assessing relevance beyond the narrowly defined relevance categories identified by the RFP. In reaching this conclusion, we note that the discretionary language appears immediately after the defined relevance categories and expressly provides that "complexity, size or value to the proposed effort may also be considered in determining relevance." RFP, § L.3 (emphasis added). Moreover, recognizing that the agency retained the discretion under the RFP to effectively look beyond the specific relevance categories does not render the defined categories meaningless, as FN asserts. Rather, it is FN's rigid adherence to the defined relevance categories that would effectively read out the discretionary language set forth in the RFP. See Northrup Grumman Info. Tech., Inc., B-401198, B-401198.2, June 2, 2009, 2009 CPD ¶ 122 at 2 (in order for an interpretation to be reasonable, solicitation must be read as a whole and in a manner that gives effect to all of its provisions). The SSA reasonably understood the RFP language as affording him the overall discretion to consider a multitude of factors in making his final assessment regarding the relevance of offerors' references in addition to the specific relevance categories established by the RFP. Because the agency's evaluation was consistent with the evaluation criteria established by the terms of the RFP, we see no basis to find the agency's past performance evaluation improper as FN has alleged.

FN further argues that it was unreasonable to find Colt's referenced contracts relevant since they are not of comparable complexity.⁶ FN believes that the

⁶ In its current protest FN argues that the Army unreasonably found Colt's contract for the manufacture of the barrel for the M240/M240C machine gun to be relevant. This argument is a departure from the arguments raised in FN's initial protests, before the agency implemented corrective action, which argued that the Army failed to properly consider Colt's performance on its barrel contract, noting that the barrel is a "critical" component and it "is more relevant than Colt's past contracts for the M4 and M16." Supp. Protest, Oct. 13, 2009, at 8. FN speculated that Colt's

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manufacture of the M240 machine gun is significantly more complex as compared to the manufacture of Colt's M4/M4A1 and M16, which are not belt-fed, and notes that this fact was expressly recognized by Colt in its proposal and the solicitation, which specifically defined relevant contracts as involving belt-fed machine guns. While Colt's proposal highlights various similarities and recognizes the differences between the manufacture of the M4/M4A1 and M16 as compared to the manufacture of the M240, Colt's proposal does not indicate, or otherwise suggest, that its activities under its referenced contracts were not of comparable complexity. In addition, FN's reliance on the RFP to support its relevance argument simply rehashes its contention that the SSA's relevance determination was contrary to the terms of the RFP. As explained above, the RFP afforded the Army the discretion to make judgments regarding the relative degree of complexity of a contract as compared to the M240B requirement when assessing relevance. While FN may ultimately disagree with the SSA's assessments regarding the comparable complexity of Colt's references and his determination that they were relevant for the purposes of evaluating Colt's past performance, FN's mere disagreement does not render the SSA's evaluation findings unreasonable.⁷

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performance on its barrel contract had been "so difficult that it is likely that Colt will miss First Article Qualification" and, had the agency properly considered its performance under this contract, it would not have rated Colt's past performance as low risk. *Id.* at 8-9. Upon receipt of the record in this case—which revealed that the SSA had in fact considered Colt's performance under its M240 barrel contract, that Colt had completed its first article testing early, and that all indications were that the Army was completely satisfied with Colt's performance—FN shifted its stance to argue that it was unreasonable for the agency to have considered Colt's barrel contract relevant and that its performance under this contract could not justify Colt's "low risk" rating. Given FN's shifting views of the significance of Colt's barrel contract, its arguments concerning the agency's consideration of this contract are unpersuasive.

⁷ FN further maintains that the Army improperly considered information regarding Colt's performance on other unspecified contracts; that information, which the agency obtained from databases like PPIRS, reflected that Colt did not have any performance problems. The record shows that some of the information in fact pertained to Colt's performance under several of the contracts it referenced in its proposal. To the extent the databases had information about performance under other contracts, it appears from the record that the SSA considered that information as, in effect, a check on the evaluation, looking for any indication that might warrant reconsidering the ratings assigned. In our view, the SSA's general consideration of this information was not improper or otherwise inconsistent with the RFP. To the extent FN argues that the Army's consideration of the information was unfair because it did not consider such information in its evaluation of FN's past performance, the record shows that the Army in fact did do an overall check of the

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Technical Evaluation

FN also challenges the agency's evaluation of Colt's proposal under the technical factor. According to FN, Colt proposed to subcontract approximately 80% of the work, yet failed to consistently identify the suppliers/subcontractors it intended to use to perform the contract and, with respect to the suppliers and subcontractors it did identify, Colt, in many instances, did not provide necessary information concerning the resources of these firms. In sum, FN contends that "the SSA simply ignored the fact that Colt did not provide any information demonstrating its suppliers/subcontractors' access to the necessary resources" to perform the contract. Protester's Comments at 8. As a related matter, FN argues that the Army should have further downgraded Colt's proposal based on the schedule risk associated with Colt's failure to identify the suppliers/subcontractors it would use to manufacture the M240B machine gun.

The record reflects that Colt proposed to subcontract the manufacture [DELETED] components of the M240B machine gun while assembling [DELETED]. Colt separately listed each major component of the M240B and described how the component would be manufactured. For example, Colt expressly identified the "receiver" as "the most critical assembly in the manufacture of the [M240B machine gun]" and specifically discusses how its expertise and knowledge is applied to the manufacture and assembly of this component. Colt's Technical Proposal, at 22. Colt discusses the "barrel group" for the M240B and notes its current contract for the manufacture of 22,500 M240 spare barrels, explains that it has established the source plan needed to manufacture the barrels, and identifies the manufacturing processes it is incorporating to the manufacture of this barrel. Colt also identifies the "cover assembly" as a "critical" part, and explained that it would be the primary manufacturer [DELETED] and that it would assemble the components in-house. Colt further provided extensive details regarding the experience and capabilities for two of its critical suppliers [DELETED]. In addition to identifying its overall approach to the major components, Colt provided the Army with a detailed "make/buy" spreadsheet, which identified a specific subcontractor/supplier for every component part of the M240B machine gun as well as lead times for manufacture of the component. Colt further included a "partial listing of suppliers" (32 in total) which Colt was "expecting" to use in the manufacture of the M240B, with hyperlinks to several of the suppliers' websites for further details regarding their capabilities. Id. at 31-33.

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performance databases for FN similar to the check it did with regard to Colt. See AR, Tab III.1, SSDD, at 15-20.

In its review of Colt's technical proposal, the Army found Colt's make/buy spreadsheet to be complete and determined that it substantiated its approach to manufacturing the M240B machine gun; however, it found some of the lead times to be "rather aggressive." AR, Tab III.1, SSDD, at 9. The Army also concluded that Colt's subcontracting approach, as set forth in its proposal and make/buy spreadsheet, is a "practical approach to the manufacture of an item as complex as the M240B, which reduces the risk [DELETED]." *Id.* at 10. As part of its evaluation, the Army noted Colt's plan [DELETED] and found this to be a "reasonable risk reduction method." *Id.* at 11. The Army also considered Colt's strategic suppliers, their areas of expertise, the summary information on the facilities, equipment, quality system, and key personnel for Colt's most significant supplier as well as general information regarding Colt's second key supplier, and determined that Colt's existing subcontractor base for its current small arms contracts will "facilitate the subcontract performance for the proposed contract." *Id.* Ultimately, the SSA was "confident that Colt has the necessary technical and engineering skills, production capability, and the staff to produce the M240B MG." *Id.* at 13. Notwithstanding this confidence, the SSA determined that Colt should receive a "moderate risk" rating since it has not in fact produced an M240B. *Id.* Based on this record, which reflects the Army's detailed consideration of Colt's proposal, there is no basis to sustain FN's challenge to the technical evaluation of Colt's proposal.

Regarding certain alleged discrepancies associated with Colt's identification of its subcontractor/suppliers, we think FN overstates the importance of any such discrepancies. As reflected in Colt's proposal, the critical aspects of the work were to be performed by Colt and its major subcontractors, all of which are identified and fully described throughout Colt's proposal.⁸ To the extent FN highlights the fact that Colt's make/buy spreadsheet includes subcontractors that are not among the 32 "expected" suppliers listed in Colt's technical proposal, this list, by its terms, was only a "partial listing of suppliers," as noted above. Colt's Technical Proposal at 31. Thus, there does not appear to be any discrepancy on the face of Colt's proposal in this regard. FN also contends that Colt's subcontractors/suppliers were not firmly identified, since Colt indicated in its proposal that it would "do another final

⁸ As explained by Colt in its comments, [DELETED] of the work required by the contract would be carried out by Colt itself and four major subcontractors, all of which are among the 32 listed in its proposal and identified throughout its make/buy analysis. Moreover, Colt notes that since award of the contract, it has in fact contracted with [DELETED] subcontractors listed in its technical proposal and [DELETED] of its major subcontractors. Colt also acknowledges that some of its suppliers of minor components or parts are listed in its proposal, but not included in its make/buy analysis. This discrepancy, according to Colt, was due to the fact that the make/buy analysis listed only first-tier subcontractors, while some of the minor suppliers identified in Colt's technical proposal are second-tier suppliers. Colt's Comments at 18-19.

complete make-buy analysis” at “the time of contract award.” Id. at 7. The RFP, however, did not require firms to commit themselves to particular suppliers/subcontractors in their proposals. Rather, it simply asked firms to identify the items and processes that they intended to subcontract. RFP, § L.2.b(2)(e). Moreover, Colt added that it believed that [DELETED]. Id. In sum, FN’s allegations do not provide a basis for our Office to conclude that the Army acted unreasonably in assigning Colt a “moderate risk” rating under the technical evaluation factor.

Small Business Subcontracting Plan

FN argues that the Army unreasonably evaluated Colt’s plan for small business subcontracting as “excellent” and “very low risk.” According to FN, Colt’s ratings were unjustified because, as Colt indicates in its proposal, it does not have established procedures for achieving its goals and its list of intended small business suppliers was undefined as reflected by inconsistencies in identifying firms when compared to Colt’s make/buy analysis.

Under the small business participation factor, a rating of “excellent” was reserved for offerors who proposed to subcontract more than 20% of the work, by dollar value, to small business concerns and where “the offeror’s proposal goals and/or actions are substantial and are considered very realistic (very low risk)” considering the proposal and the offeror’s “Past Performance Risk history.” RFP, § M.5. In assessing risk under this factor, the RFP provided for an evaluation of offerors’ performance in complying with requirements for the utilization of small business concerns, and for large business offerors, the RFP indicated that the agency would also consider their past performance in complying with FAR clause 52.219-9, Small Business Subcontracting Plan. Id.

As indicated in its proposal, Colt planned to subcontract approximately [DELETED] of the contract effort to small businesses and provided a listing of the specific small business firms that it intended to use to perform the work as well as the specific components or services that each firm would provide. Colt, which was a small business concern itself until 2009, did not have a history of compliance with FAR clause 52.219-9; however, Colt indicated that it has a history of promoting small business utilization, that it maintains a listing of small business suppliers, and that historically it has placed over [DELETED] of its requirements with small business concerns. AR, Tab 17b, Evaluation of Colt’s Small Business Participation Plan, at 28-29. Colt further explained that it was “establishing internal efforts to guide and encourage buyers” which included having them attend small business workshops and training programs, as well as monitoring activities to ensure compliance with its subcontracting plan. Id. at 28.

The record reflects that the Army considered Colt’s small business plan in detail and reasonably concluded that it warranted an “excellent” rating. In this regard, the Army noted that Colt planned to subcontract a “substantial portion” of the work to

small business concerns--specifically noting its plan to subcontract approximately 56% of the contract to small business concerns, which was well in excess of the 20% needed to achieve a rating of excellent. *Id.* at 3. Moreover, recognizing that Colt did not have a past performance record in complying with FAR clause 52.219-9 given its recent status as a small business, the Army noted that Colt maintained a listing of its small business suppliers and that it had a [DELETED] historical rate of placing requirements with small business concerns. To the extent FN contends that Colt did not deserve an “excellent” rating due to Colt’s limited history with implementing small business subcontracting plans, its lack of firm procedures to implement its subcontracting plans, and its [DELETED] small business placement rate, FN’s arguments amount to little more than mere disagreement with the agency’s evaluation of Colt’s proposal under this factor and do not support a basis for sustaining its protest.

Moreover, the discrepancies about which FN complains concerning Colt’s inconsistent listing of its small business suppliers under its small business utilization plan as compared with its make/buy analysis, are minimal and consist of at most two firms [DELETED] of the [DELETED] small business firms identified in Colt’s small business utilization plan. *See id.* at 12-14. While these two firms do appear on Colt’s small business plan as suppliers, and do not appear on Colt’s make/buy analysis spreadsheet, they do in fact appear on Colt’s listing of suppliers in its technical proposal. *See* Colt’s Technical Proposal, at 32-33. Given the limited nature of the alleged discrepancy,⁹ and the fact that the firms are in fact identified in Colt’s technical proposal, we conclude that FN’s allegation in this regard does not present a basis for our Office to conclude that the agency’s findings were unreasonable or otherwise improper.

Source Selection Decision

As a final matter, FN challenges the SSA’s best value tradeoff decision. In this regard, FN argues that the SSA’s decision to select Colt’s lower-priced proposal was unreasonable because it did not afford any weight to the superiority of FN’s proposal under the technical and past performance factors as compared to the proposal submitted by Colt.

It is well-settled that an agency properly may select a lower-rated, lower-priced proposal, even where price is a less important evaluation factor than technical merit, where it reasonably concludes that the price premium involved in selecting the

⁹ There is nothing in the record to suggest that even if Colt did not intend to use these two firms that its small business participation plan would drop below the 20% threshold required for an “excellent” rating. Rather, much of work appears to be subcontracted to Colt’s critical suppliers, [DELETED] both of which are listed as small business concerns.

higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Thus, a protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, do not establish that the evaluation or source selection was unreasonable. General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

Here, the record reflects that the SSA performed a detailed examination of the offerors' proposals under each evaluation factor and subfactor identified in the RFP. The record further reflects that the SSA understood and recognized the lower performance risk associated with FN's technical approach and past performance record largely based largely on FN having previously, and successfully, manufactured the M240B machine gun, as compared to the risk posed by Colt, which has not manufactured this weapon, but determined that the lower risk associated with FN's proposal did not warrant a price premium of more than 21%. We see no basis to object to this determination.

The protest is denied.

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Acting General Counsel