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Decision

Matter of: MetalCraft Marine Inc.

File: B-410199; B-410199.2

Date: November 13, 2014

Theodore P. Watson, Esq., Watson & Associates, LLC, for the protester.
Jeanne P. Ockerman, Esq., and Catherine Rubino, Esq., Department of the Navy, for the agency.
Pedro E. Briones, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the agency improperly evaluated the protester's technical proposal is denied where the evaluation was reasonable and in accordance with the solicitation's evaluation criteria.
 2. Agency's discussions with the protester were meaningful and not misleading where the agency reasonably led the offeror into an area of its proposal that needed amplification or correction, and the identification of a new, significant weakness in the protester's final proposal revisions did not require the agency to reopen discussions with the protester.
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DECISION

MetalCraft Marine, Inc., of Cape Vincent, New York, protests the award of a contract to Workskiff, Inc., of Sedro Woolley, Washington, under request for proposals (RFP) No. N00024-14-R-2221, issued by the Department of the Navy, Naval Sea Systems Command, for Naval Special Warfare surface support craft. MetalCraft challenges the agency's evaluation of its technical proposal, the Navy's conduct of discussions, and the agency's source selection decision.

We deny the protest.

BACKGROUND

The RFP, which was set aside for small businesses, provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) contract, for a base year

and 4 option years. See RFP at 40, 51, 55-57, 82.¹ The solicitation sought to procure up to 64 commercial, 8-meter Naval Special Warfare surface support craft² under the commercial item procedures of Federal Acquisition Regulation (FAR) Part 12. Id. at 25. The RFP advised offerors that award would be made on a best-value basis considering the following evaluation factors, stated here in descending order of importance: technical design merit, price, and past performance/experience. Id. at 83. The RFP stated that the non-price evaluation factors, when combined, were approximately equal to the price factor. Id.

The RFP stated that the craft's mission is to operate from inshore littorals to blue-water, over-the-horizon locations, in and up to moderate seas states, and in widely diverse climatic conditions (tropical to arctic). Id. at 25. The craft provide over-watch and coverage for diverse waterborne operations, such as transit for personnel at sea, diving, and surface swimmer support. Id. The solicitation required offerors to provide an integrated system, consisting of the craft, trailer, initial spares, technical data, and ancillary equipment, necessary to accomplish the mission. Id. at 26.

The solicitation included detailed technical specifications that the craft were required to meet. See RFP § L. The RFP instructed offerors to use the specifications as a template for preparing and submitting technical proposals. Id. at 80. The solicitation also permitted offerors to propose alternative approaches other than as required by the specifications, but cautioned that any alternative approach must meet the minimum requirements of the specifications. See id. Where an alternative was proposed, the offeror was required to address, in detail, its compliance with requisite commercial or military standards, and provide supporting product performance, test data, or other empirical evidence in that regard. Id. Offerors were also instructed to provide drawings, technical specifications, data, calculations, relevant analyses, and any other information sufficient to prove the feasibility and practicability of their proposed craft's design. See id. At a minimum, offerors were to provide a full stability analysis that accounted for a number of factors--including weight--in order to demonstrate the offeror's understanding of the requirement and specifications. See id.

As relevant here, the solicitation specifically required the proposed craft to meet certain stability, operability (in specified sea state conditions), and drainage (water from the deck) specifications. See id. at 84; attach. 1, Specifications (Specs.), at 15-17, 20. With regard to stability, the specifications established that the craft were to meet stability and technical criteria in the Navy's Procedures Manual

¹ Our citations are to the conformed version of the solicitation.

² Specifically, the requirement is for two configurations of the same craft: one with an open center console, the other with an enclosed cabin. RFP at 28.

for Stability Analysis of U.S. Navy Small Craft, which the RFP incorporated by reference. Specs. at 12, Spec. no. 079-20 at 20; see Agency Report (AR), Tab 19, NAVSEA COMBATSYSENGSTA Rep. No. 6660-99 Rev. A, May 1988. With regard to sea state conditions (measured by significant wave height), the specifications stated that these craft must be capable of full operation in 2-foot significant wave heights, reduced operations in 4-foot significant wave heights, and survive 8-foot significant wave heights. Spec. no. 070-2b at 15. With regard to drainage, the specifications stated that a craft's exterior decks were required to be watertight and meet specified commercial standards for quick draining when the deck becomes flooded, or swamped, in heavy seas. Spec. no. 130, Self-bailing decks, at 30.

The RFP stated that proposals would be evaluated under the technical design merit evaluation factor based upon three subfactors: (1) completeness of the proposed design and compliance with the specifications; (2) feasibility and practicability of the proposed design and technical approach as demonstrated with supporting data; and (3) minimization of total ownership costs. See RFP at 83-84. With regard to completeness and compliance, the RFP stated that the stability, sea state conditions, and drainage specifications, among others, were "vital," and warned offerors that technical proposals would be found unacceptable if they deviated in a way that did not meet these minimum, vital specifications. See id. at 84. With regard to feasibility and practicability, the RFP stated that the agency would evaluate the validity, clarity, and accuracy of technical information provided, and the suitability of the proposed design to meet the intended mission and operational use in marine environments, among other things.³ See id.

The Navy received seven proposals, including from MetalCraft and Workskiff. Agency Report (AR) at 5. An agency technical evaluation team (TET) evaluated initial proposals and technical designs. With regard to MetalCraft, the agency rated its technical proposal acceptable, and identified a number of strengths and weaknesses.⁴ See AR, Tab 5, Initial TET Rep., at 7; Tab 6, Initial SSEB Rep., at 17. As relevant here, the evaluators found that MetalCraft's proposed design--an alternative approach that included [DELETED] in its craft--presented a significant weakness with regard to stability in certain sea state conditions, hull protection, and buoyancy. See AR, Tab 5, Initial TET Rep., at 11-12. The evaluators found, among

³ MetalCraft does not protest the agency's evaluation under the total ownership costs technical subfactor. The protester also does not object to the agency's evaluation of its past performance/experience or price.

⁴ Under the RFP's adjectival rating scheme, an acceptable technical design met requirements and indicated an adequate approach and understanding of the requirements, had strengths and weaknesses that are offsetting or will have little or no impact on contract performance, and the risk of unsuccessful performance was no worse than moderate. See AR, Tab 5, Initial TET Rep., at 5; RFP at 84.

other things, that the [DELETED] would be a source of water ingress that would not be adequately compensated for (i.e., adequately drained) by aft freeing ports when operating the craft in the 4 or 8-foot significant wave heights, reducing stability and operability. See id. at 12.

A source selection evaluation board (SSEB) reviewed the TET's evaluation report, concurred with its findings, and recommended that the source selection authority (SSA), who was also the contracting officer here, enter into discussions with offerors whose proposals were rated acceptable or marginal under the technical design merit evaluation factor.⁵ See AR, Tab 6, Initial SSEB Rep., at 5, 17. The contracting officer established a competitive range that included four proposals, including MetalCraft's and Workskiff's, and held discussions with those offerors. AR, Tab 7, Competitive Range Mem., at 2-4.

On April 16, the Navy opened discussions with MetalCraft and requested that it submit written responses to a list of "specific discussion items" regarding weaknesses and deficiencies in its proposal, or areas where further information or explanation was needed for a full evaluation. AR at 5; Tab 8, MetalCraft Discussion (Disc.) Letter, at 1. The agency's April 16 letter advised MetalCraft of the significant technical weakness (including, as described above, that its proposed [DELETED] would be a source of water that would reduce stability and operability in 4 or 8-foot significant wave heights), and requested the following:

Discussion Question 1: Metal Craft is requested to provide clarification on the approach to ensure water shipped through the [DELETED] will not adversely impact performance in large wave heights.

AR, Tab 8, Disc. Questions, at 1 (bold/italics emphasis in original; underlining added). MetalCraft was also requested to "provide [its] approach" to hull protection, and "provide clarification that the stability analysis" accounted for buoyancy as specified. Id. ("Discussion Question" nos. 2 and 3, respectively).

On April 24, MetalCraft submitted written responses to the agency's initial discussion questions. AR, Tab 9, MetalCraft Disc. Responses, at 1. In response to the first question, MetalCraft stated, among other things, that an optional [DELETED] could be added to [DELETED]. See id. In response to the second question, MetalCraft

⁵ Under the RFP's adjectival rating scheme, a marginal technical design did not clearly meet the requirements and did not demonstrate an adequate approach and understanding of the requirements, had one or more weaknesses or significant weaknesses that were not offset by strengths, and the risk of unsuccessful performance was high. See AR, Tab 5, Initial TET Rep., at 5; RFP at 84.

proposed, among other things, to place [DELETED] to provide hull protection. Id. In response to the third question, MetalCraft stated that its

initial stability analysis was conducted without [DELETED] and then analyzed and compared with [DELETED] removed. There is a minor but negligible difference between the two scenarios and both exceeded the stability requirements identified in the [RFP's] specification.

Id. (emphasis added).

On May 6, the Navy requested that MetalCraft submit final proposal revisions (FPR), and provided submission instructions. AR, Tab 10, Request for FPR, at 1. In this regard, MetalCraft was informed that uncertainty remained as to how its proposed [DELETED] would impact the overall stability of its craft design. Id. at 2. MetalCraft was also advised that it had not provided (in response to the agency's April 16 discussion letter) an updated stability analysis that accounted for the [DELETED], and that it remained unclear whether the stability analysis in MetalCraft's initial proposal did, or did not, account for the [DELETED], which prevented the agency from determining whether the stability analysis met requirements. See id. Finally, the Navy's request for FPRs stated "**ONLY THAT INFORMATION CONTAINED WITHIN THE FPR WILL BE CONSIDERED IN THE GOVERNMENT'S EVALUATIONS.** (I.E. Information contained within an Offeror's response to the discussion questions will not be evaluated if it is not included in the FPR.)". Id. at 1-2 (emphasis in original).

The agency received FPRs from the four offerors in the competitive range, including MetalCraft. The TET found that MetalCraft's FPR had addressed concerns regarding the impact of the proposed [DELETED] on hull protection and buoyancy, but that the FPR did not address stability concerns regarding ingress and drainage of water when operating in 4 or 8-foot significant wave heights. AR, Tab 12, Final TET Rep. at 14-16. The TET noted that, although MetalCraft had addressed the significant weakness in its written responses to the discussion questions, by stating that it would provide [DELETED], such information was not included in MetalCraft's FPR. Id. at 16. The TET reduced its prior assessment of a significant weakness to a weakness, because MetalCraft had otherwise addressed the evaluators' hull protection and buoyancy concerns. Id. However, the TET found a new significant weakness in MetalCraft's technical design, because new data provided in MetalCraft's FPR to justify the stability of its proposed designs revealed that its stability analysis did not account for the weight of water on the deck when the craft rolled/tilted. Based upon this finding, the evaluators concluded that MetalCraft's proposed designs would not provide adequate stability as required by the specifications. See id. This newly assessed significant weakness, along with the earlier weakness, resulted in MetalCraft's FPR being rated marginal for technical design merit.

After conducting a cost/technical tradeoff, the Navy determined that Workskiff's proposal represented the best value to the agency, and awarded the contract to Workskiff. AR at 9; Tab 14, Source Selection Decision, at 1-3. This protest followed.

DISCUSSION

MetalCraft protests the agency's evaluation of its technical proposal, the Navy's conduct of discussions, and the agency's source selection decision. The protester also raises numerous other arguments supporting its protest. While our decision here does not specifically discuss each and every argument, or every technical aspect thereof, we have considered all of the protester's assertions and find none furnish a basis for sustaining the protest.

Technical Evaluation

MetalCraft contends that the Navy failed to reasonably evaluate MetalCraft's technical proposal. The protester alleges that the Navy evaluated MetalCraft's proposed technical design with the [DELETED] but failed to consider its proposed craft without the optional [DELETED] configuration, even though the RFP permitted offerors to propose alternate approaches. Comments at 4; Protest at 1. The protester also argues that the agency applied unstated evaluation criteria insofar as it considered whether MetalCraft's stability analysis accounted for the weight of water on deck, which was not explicitly identified in the specifications or the provisions of the Navy's Procedures Manual for Stability Analysis referenced by the RFP. Supp. Comments at 2-5. Moreover, MetalCraft asserts that the Navy deviated from the sea state specifications by seemingly requiring that MetalCraft's proposed craft be "fully operational" in 4-foot or 8-foot significant wave heights. See Comments at 7. MetalCraft insists that either of its proposed designs (i.e., with or without the [DELETED]) exceeded RFP requirements, including its relevant stability and drainage specifications. Id. at 7, 11-13.

The Navy argues that it evaluated MetalCraft's proposed technical designs--with and without the [DELETED]--consistent with the RFP's evaluation criteria and specifications, and reasonably concluded that both designs presented a high risk of not meeting stability requirements. AR at 9-10; Supp. AR at 8; see 1st Declaration of Naval Architect & Sr. Craft Design Mgr. at 5. The agency also points out that, contrary to explicit instructions in RFP and the FPR request, MetalCraft's FPR omitted required specifications, drawings, and other data needed to evaluate the optional [DELETED] (for the proposed [DELETED]) that MetalCraft ostensibly proposed in its written responses to the agency's discussion questions. See 1st Declaration of Naval Architect & Sr. Craft Design Mgr. at 4. The agency disputes the protester's argument that weight of water on deck was an unstated evaluation criterion, and cites a number of provisions from the RFP's specifications and the Procedures Manual in that regard. See Supp. AR at 4; 1st Declaration of Naval

Architect & Sr. Craft Design Mgr. at 6-10. Moreover, the Navy maintains that the risks associated with MetalCraft's proposed [DELETED] design would result in significantly reduced operations regardless of any sea state conditions envisioned by the RFP. Supp. AR at 7.

An agency's evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them. Wyle Labs., Inc., B-311123, Apr. 29, 2008, 2009 CPD ¶ 96 at 5-6. In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. See Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6; Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6.

Based on our review of the record, we find that the Navy reasonably evaluated MetalCraft's proposal. The contemporaneous record shows that the agency extensively evaluated MetalCraft's compliance with the stability, sea state condition, and drainage specifications, as well as the feasibility and practicability of MetalCraft's proposed designs. Compare RFP at 83-84 with AR, Tab 5, Initial TET Rep., at 7, 11-12 and Tab 12, Final TET Rep. at 14-16. In this regard, the record reflects that, contrary to the protester's contention, the Navy did in fact evaluate MetalCraft's proposed design with and without optional [DELETED]. The agency's naval architects and senior technical evaluators prepared a detailed analysis (in response to the SSEB's independent review and request) that calculated the down-flooding that would occur when MetalCraft's proposed craft would heel in specified sea states, and found that water would enter the aft deck area and add weight--with or without the optional [DELETED]. See 1st Declaration of Naval Architect & Sr. Craft Design Mgr. at 5-6; attach., MetalCraft Deficiency Derivation, June 25, 2014, at 1. The protester's objections provide no more than disagreement with the agency's detailed analysis and do not provide a basis to sustain the protest.⁶

⁶ To the extent the protester alleges that the agency failed to evaluate MetalCraft's optional [DELETED] (for the proposed [DELETED]), we find that the agency properly did not consider this information. The FPR instructions that the Navy provided to MetalCraft explicitly stated that MetalCraft "should ensure that all issues raised via discussions questions are addressed in the FPR." AR, Tab 10, Request for FPR, at 3. The record reflects that the [DELETED] were proposed by MetalCraft during discussions but were not incorporated into MetalCraft's FPR. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See, e.g., International Med. Corps,

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With regard to the protester's allegations concerning the agency's assignment of a significant weakness for MetalCraft's stability analysis, we find that the agency's evaluation was reasonable and in accordance with the solicitation. While the protester complains that the Navy should not have evaluated weight of water on deck as a factor, the RFP, as described above, specifically required offerors to provide a full stability analysis that included: righting arm vs. heeling arm curves, weight, centers of gravity, and the attained values of the area limits. RFP at 80. The solicitation also stated that the agency would evaluate the validity, clarity, and accuracy of technical information provided by an offeror that proves compliance with the requirements and the ability of the offeror to achieve the proposed performance, including the suitability of the proposed design to meet the intended mission, operational use, and the marine environment. Id. at 84; Spec. no. 079, Stability, at 20; no. 085-1, Tech. Design Analysis, at 24; AR, Tab 19, Rep. No. 6660-99 Rev. A, § 5.1, Intact Stability Criteria, at 36-41; see 1st Declaration of Naval Architect & Sr. Craft Design Mgr. at 6-7 (describing the mechanics and countervailing forces in play when a boat rolls, or heels).

Moreover, to the extent that MetalCraft complains that the RFP did not explicitly provide for an evaluation of the weight of water on the deck, such a consideration is, in our view, logically (if not inherently) encompassed within the evaluation contemplated by the solicitation. An agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 6. In this regard, the RFP and specifications, as well as the Navy's Procedures Manual for Stability Analysis, identify a number factors and considerations that we believe reasonably advised offerors that their technical proposals and stability analysis should account for, and that the Navy would evaluate, the effect of water retained on deck under specified sea state conditions. See, e.g., AR, Tab 19, Rep. No. 6660-99 Rev. A, at 2 (disturbances to stability include off-center weights), 3 (items influencing load conditions), 15-20 (effect of added weight on heeling and curves), at 41, 45-46 (analyzing stability curves to include weight of icing on deck); Specs. at 15-17 (identifying load conditions and various weight requirements). Here, we find that the agency reasonably evaluated MetalCraft's technical proposal in accordance with the solicitation's criteria.⁷

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B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. An offeror is responsible for affirmatively demonstrating the merits of its proposal and, as here, risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5.

⁷ We also find the protester's arguments with regard to the agency's evaluation of the sea state specifications are likewise without merit. MetalCraft does not

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Discussions

MetalCraft also claims that, during discussions, the Navy misled the protester into believing that the agency simply wanted MetalCraft to “clarify” its initial proposal with regard to the impact of its proposed [DELETED] on stability and buoyancy, but not necessarily revise its initial proposal in that regard. Supp. Protest at 2-3; Comments at 10-11, 14-16. In this respect, the protester cites the agency’s written discussion questions, which explicitly requested that MetalCraft “provide clarification” regarding specified items. Comments at 10. MetalCraft also maintains that the Navy was required to reopen discussions because the agency only identified concerns over the weight of water on deck after reviewing MetalCraft’s FPR. Supp. Comments at 9-10.

The Navy maintains that it should have been clear to the protester that the Navy was simply using the term “clarify” in its discussion questions to mean “address” or “explain,” and that the substance of the questions and the required responses otherwise constituted discussions under FAR § 15.306(d). *Id.* at 13. The agency also disputes that it was required to reopen discussions because MetalCraft, in its FPR, submitted a new stability analysis, including new stability curve data and related information. Supp. AR at 11-14; 1st Declaration of Naval Architect & Sr. Craft Design Mgr. at 4-5, citing AR, Tab 11, MetalCraft FPR, Vol. 1, § 2.a.4, Rev. Stability Analysis.

FAR § 15.306 describes a spectrum of exchanges that may take place between a contracting agency and an offeror during negotiated procurements. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a); Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Discussions, by contrast, occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal or quotations, or provides the vendor with an opportunity to revise or modify its proposal. Diversified Collection Services, Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 11-12; see FAR § 15.306(d). It is the actions of the parties that determine whether discussions have been held and not merely the characterization of the communications by the agency. See Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 5.

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meaningfully refute the Navy’s assertions, including its detailed technical declarations, that the protester’s proposed design would significantly reduce operations in any sea state condition.

We find that, notwithstanding the Navy's request that the protester "provide clarification" under certain enumerated discussion questions, the exchanges at issue constituted discussions, not clarifications.⁸ Here, the information the agency requested that MetalCraft provide with regard to sea state conditions, stability, and buoyancy, was necessary to determine the acceptability of MetalCraft's technical proposal, including its alternate design for a craft with [DELETED]. See, e.g., ADNET Sys., Inc., et al., B-408685.3 et al., June 9, 2014, 2014 CPD ¶ 173 at 14-16. Moreover, the protester was permitted an opportunity to revise its proposal through the submission of a FPR.

We also find no merit to the protester's arguments that the agency should have reopened discussions with the protester. Discussions, when conducted, must identify proposal deficiencies and significant weaknesses that reasonably could be addressed in order to materially enhance the offeror's potential for receiving award. Serco Inc., B-405280, Oct. 12, 2011, 2011 CPD ¶ 237 at 11. However, agencies are not required to reopen discussions to afford an offeror an additional opportunity to revise its proposal where a weakness or deficiency is first introduced in the firm's revised proposal. Raytheon Co., B-403110.3, Apr. 26, 2011, 2011 CPD ¶ 96 at 7. Here, the protester essentially concedes that the agency's stability concerns regarding weight on water on deck arose from new stability data introduced in MetalCraft's FPR. See, e.g., Supp. Comments at 8.

Best Value Determination

Finally, MetalCraft protests the Navy's selection decision, asserting that the agency's tradeoff analysis and best value determination was flawed because it was based on evaluations that, according to the protester's arguments described above, were unreasonable. Supp. Protest at 3; Comments at 16; see Protest at 1.

As discussed above, we find no merit to MetalCraft's objections to its technical evaluation. Thus, there is no basis to question the agency's reliance upon those evaluation judgments in making its source selections, and the protester's

⁸ The RFP stated that the agency intended to make awards without conducting discussions, but reserved the agency's right to do so. RFP at 83.

disagreement in that regard does not establish that the agency acted unreasonably or provide a basis to sustain its protest. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The protest is denied.⁹

Susan A. Poling
General Counsel

⁹ We dismiss, as untimely, MetalCraft's challenges to the agency's price evaluations and the evaluation of the awardee's technical proposal. These protest grounds were first raised by the protester nearly 2 months after it learned of the agency's source selection decision and the awardee's price. See Supp. Protest Pleading, Sept. 10, 2014, at 1-2. Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2014).