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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:** Remington Arms Company, Inc.

**File:** B-297374; B-297374.2

**Date:** January 12, 2006

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Michael R. Charness, Esq., Amy R. Napier, Esq., and Amanda J. Kastello, Esq., Vinson & Elkins LLP, for the protester.

James A. McMillan, Esq., Melissa A. Roover, Esq., and Alan M. Grayson, Esq., Grayson & Kubli, P.C., for Knight's Armament Company, an intervenor.

Capt. Victor G. Vogel, Vera Meza, Esq., and Col. Thomas A. Goonan, Department of the Army, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Failure to file a protest within 10 days of a preaward debriefing does not render the protest untimely when the agency, after the preaward debriefing, reinstated protester in the competitive range and continued to consider the protester's proposal for award.
2. Protest of agency's reliability testing of offerors' bid samples is denied where the record shows the evaluation was reasonable and consistent with the evaluation criteria; protester's disagreement with agency's evaluation is insufficient to show it was unreasonable.
3. Protest challenging the evaluation of technical proposals is denied where the record, including post-protest explanations of the rationale for the agency's contemporaneous conclusions, establishes that the agency's evaluation was reasonable and in accord with the stated evaluation criteria.
4. Agency's decision to make award based on a higher technically-rated, higher-priced proposal is unobjectionable where the agency reasonably determined that the awardee's greater weapon accuracy, reliability, and higher user assessment were worth the price premium.

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## DECISION

Remington Arms Company, Inc. protests the award of a contract to Knight's Armament Company under request for proposals (RFP) No. W15QKN-05-R-0433, issued by the Army Tank-Automotive and Armaments Command-Picatinny, Army Materiel Command, Department of the Army, for semi-automatic sniper systems (SASS). Remington argues that the agency's evaluation of offerors' proposals was unreasonable and that the resulting award decision was improper.

We deny the protests.

## BACKGROUND

The SASS is a semi-automatic, 7.62 millimeter caliber weapon system, designed to address the shortcomings in the Army's older M24, bolt-action sniper weapon system. The intended purpose of the SASS is to support offensive and defensive combat operations by delivering rapid, accurate, long-range, direct fire to kill enemy personnel targets and to penetrate light-armored vehicles. Agency Report (AR), Tab 4, Source Selection Plan, at 1.

The RFP, issued on December 6, 2004, contemplated the award of a fixed-price contract for 30 SASS units together with spare parts, operator and maintenance training, manuals, and data requirements, as well as options for up to 3,220 additional units. The solicitation established six evaluation factors: bid sample; technical; price; government purpose license rights (GPLR) availability; past performance; and small disadvantaged business (SDB) participation. RFP amend. 5, §M, at 82. The RFP informed offerors that bid sample was more important than technical, and that bid sample and technical, when combined into an overall merit rating, were significantly more important than price, GPLR availability, past performance, and SDB participation.<sup>1</sup> Id. Award was to be made to the responsible offeror whose proposal was determined to be the "best value" to the government, all factors considered. Id.

The RFP required offerors to submit SASS bid samples, as well as written proposals addressing the remaining evaluation factors. The solicitation established that bid samples were to be evaluated in three categories: essential criteria not requiring live-fire testing; essential criteria requiring live-fire testing; and "rated requirements." Id. at 83. The essential criteria (a total of 17 items) constituted "pass/fail" requirements: if an offeror's bid sample failed to comply with any essential criterion, the offeror's proposal would be considered technically unacceptable and eliminated

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<sup>1</sup> Price was in turn significantly more important than the GPLR availability, past performance, and SDB participation factors, which were of equal importance to each other. Id.

from further consideration for award. Id. By contrast, the bid sample rated requirements (8 items) were to be evaluated using an adjectival rating system.<sup>2</sup> One of the bid sample essential criteria was a weight limit of not more than 16 pounds. Id. at 84. Additionally, as detailed below, weapon reliability was both an essential criterion and a rated requirement.

Five offerors, including Remington and Knight's, submitted proposals by the March 11, 2005, closing date. The agency's evaluation of initial proposals determined that only the Knight's proposal was acceptable and that the remaining four offers were unacceptable. AR, Tab 11, Agency Competitive Range Determination, at 10-11. The Army determined that Remington's proposal was unacceptable because its bid sample exceeded the solicitation weight requirement. AR, Tab 10, Agency Technical Evaluation of Initial Proposals, at 25-26.

The Army notified Remington that it had been excluded from the competitive range on August 23, and subsequently provided the offeror with a preaward debriefing on September 14. At the debriefing the agency informed Remington why its bid sample had been found unacceptable (i.e., failure to comply with the bid sample essential weight criterion). AR, Tab 16, Remington Debriefing Presentation. The Army also provided Remington with its evaluation ratings for all other bid sample requirements, including weapon reliability.

Remington questioned the agency's weight test determination of its bid sample, believing that it had been performed improperly and had included various SASS items that should not have been part of the weight test. On September 16, the Army informed Remington that it had re-weighed the bid sample and determined that it complied with the RFP's weight requirement. Protest, Oct. 6, 2005, attach. 4, Contracting Officer's Letter to Remington, Sept. 16, 2005, at 1. As a result, the agency now considered Remington's proposal to be within the competitive range. Id.

The Army held discussions with Knight's and Remington, and received final proposal revisions (FPR) from the offerors on September 23.<sup>3</sup> The agency then completed its evaluation of the offerors' FPRs, which were rated as follows:

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<sup>2</sup> The solicitation also set forth the adjectival rating systems that the agency intended to use for all other nonprice evaluation factors. Id. at 90-93.

<sup>3</sup> Offerors were able to address the agency-identified weaknesses as well as to revise any other areas of their initial written proposals. FPRs did not involve the submission of additional bid samples, and the Army's subsequent evaluation of FPRs did not involve the reevaluation of bid samples.

| <b>Factor</b>                   | <b>Knight's</b> | <b>Remington</b> |
|---------------------------------|-----------------|------------------|
| Bid Sample                      | Good            | Unsatisfactory   |
| Technical                       | Good            | Good             |
| Combined Bid Sample & Technical | Good            | Unsatisfactory   |
| Evaluated Price                 | \$16,561,656    | \$10,919,716     |
| GPLR Availability               | Submitted       | Submitted        |
| Past Performance                | Low Risk        | Low Risk         |
| SDB Participation               | Excellent       | Excellent        |

AR, Tab 17, Source Selection Decision, at 2-3.

After having reviewed the evaluation ratings and findings, the contracting officer determined that Knight's higher technically-rated, higher-priced proposal represented the best value to the government. *Id.* at 5-6. These protests followed.

#### DISCUSSION

Remington raises four separate bases of protest. First, the protester argues that the Army's evaluation of its bid sample with regard to weapon reliability was improper. Second, Remington argues that the agency failed to document the evaluation of offerors' proposals with regard to the GPLR availability and SDB participation factors. Third, the protester alleges that the evaluation of the Knight's proposal under the technical factor was unreasonable. Fourth, Remington contends that the agency's source selection decision was flawed insofar as the Army failed to consider all evaluation factors and failed to perform a meaningful price/technical tradeoff in its award determination.<sup>4</sup> We have considered all of Remington's arguments and find that they afford no basis to sustain the protest of the award decision here.

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<sup>4</sup> Remington's original protest also raised two additional issues: (1) the Army misled Remington and did not evaluate its FPR in good faith; and (2) the agency's evaluation of the Knight's proposal as to past performance was unreasonable. Protest, Oct. 6, 2005, at 12-15. The Army specifically addressed these protest issues in its report, discussing why the agency's actions were reasonable and consistent with the solicitation. The protester's comments offered no rebuttal of the agency's position regarding the first issue; Remington expressly withdrew the second issue. Comments, Nov. 14, 2005, at 25 n.4. Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that fails to substantively rebut the agency's position, we deem the initially-raised arguments abandoned. L-3 Communications Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 4; Citrus Coll.; KEI Pearson, Inc., B-293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

## Reliability Testing

Remington first protests the agency's reliability evaluation of its bid sample. Specifically, Remington argues that one of the six failures identified by the Army upon which its reliability score and rating were based was unreasonable because the Army improperly deviated from the terms of the solicitation. The protester contends that had the agency's testing been performed in accordance with the RFP, Remington would have been found to have only five failures, thereby resulting in a reliability evaluation rating of at least satisfactory. Moreover, had Remington received a reliability rating of at least satisfactory, that would in turn have resulted in both its overall bid sample rating and its combined bid sample and technical merit rating also being elevated to at least satisfactory.

In reviewing an agency's evaluation, we will not reevaluate offerors' proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

As set forth above, the RFP informed offerors that reliability was both an essential criterion and a rated requirement in the evaluation of bid samples. Specifically, the solicitation established that, as a minimum requirement, an offeror's bid sample was to be able to fire a basic load of 100 rounds of ammunition without incurring a critical failure at least 80 percent of the time. Further, the solicitation informed offerors that weapon reliability would also be rated as follows:

| <b>Rating</b>  | <b>Definition</b>   |
|----------------|---|
| Excellent      | The weapon fires at least 95 percent of rounds without incurring a critical failure. <sup>5</sup> |
| Good           | The weapon fires between 90 and 95 percent of rounds without incurring a critical failure.        |
| Satisfactory   | The weapon fires between 87 and 90 percent of rounds without incurring a critical failure.        |
| Unsatisfactory | The weapon fires less than 87 percent of rounds without incurring a critical failure.             |

RFP amend. 5, § M, at 86.

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<sup>5</sup> The RFP is imprecisely worded here: consistent with other parts of the solicitation a more accurate wording would have been that "the weapon fires at least 95 percent of 100-round basic loads without incurring a critical failure."

Thus, if an offeror's bid sample was determined to have a reliability score of at least 80 percent but less than 87 percent, it would be rated as acceptable, but unsatisfactory. Moreover, given the relative importance of reliability as a bid sample requirement, both the offeror's overall bid sample rating as well as its combined bid sample and technical merit rating would be "unsatisfactory," notwithstanding the ratings received on all remaining bid sample rated requirements and the technical proposal. See id. at 88-91.

The solicitation also set forth a definition of critical failure as, among other things:

- a. Any stoppage that cannot be corrected by the operator within 10 seconds (hereinafter, a Type A critical failure).<sup>6</sup>
- b. Any parts that are replaced.<sup>7</sup> Each part that is replaced shall be counted as one failure, except where the parts failures are interrelated. In this case, all the parts failures that are interrelated shall be counted as one failure. . . . (hereinafter, a Type B critical failure).

RFP, amend. 5, § M, at 84-85.

The Army performed the reliability testing by firing a total of 6,000 rounds from each offeror's bid samples. For each round, the agency determined if any critical failures occurred before or after firing.<sup>8</sup> For example, on four occasions (rounds 705, 725, 1,145, and 1,495), Remington's bid sample failed to properly advance, or "feed," the ammunition round and, because each stoppage took the operator longer than 10 seconds to correct, the agency considered each instance to be a critical failure. AR, Tab 10, Agency Technical Evaluation of Initial Proposals, at 39-40.

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<sup>6</sup> Stoppage was in turn defined as "any incident resulting in unplanned cessation in firing or inability to commence firing. This includes stoppages traceable or chargeable to an unserviceable part. Descriptions include, but are not limited to, failures to feed, extract, eject, close, fire, or failure to function of the magazine." RFP amend. 6, § C, at 14.

<sup>7</sup> The RFP instructed offerors to submit a quantity of spare/repair parts with their bid samples sufficient to support the agency's evaluation, without specifying exact parts or quantities. RFP amend. 5, § L, at 75.

<sup>8</sup> The agency later applied a "chi squared" distribution methodology to the recorded critical failures to determine the offeror's reliability score. Remington does not challenge the Army's reliability methodology.

The following sequence of events is relevant to the protest here. After firing round 685 from Remington's bid sample, the agency tester observed that the weapon's bolt catch had broken and the outside half of the bolt catch had fallen off.<sup>9</sup> Contracting Officer's Statement, Dec. 22, 2005, at 1. In order to determine whether any additional pieces of the broken bolt catch were within the weapon's chambering and firing mechanisms, the tester then stopped firing. This was done as a safety precaution: splintered or sheared pieces of internal weapon components in a rapid-fire, precision weapon can lead to even greater and possible catastrophic system failures. Id.; Agency Test Director's Statement, Dec. 22, 2005, at 2. Upon disassembly of Remington's bid sample, the agency did not find any other pieces of the broken bolt catch but it did find a broken extractor.<sup>10</sup> The Army replaced the broken extractor with a spare part that Remington had provided with its bid samples. The agency was unable to replace the broken bolt catch, however, because Remington had not provided a spare one with its bid samples.<sup>11</sup> The Army subsequently continued the reliability testing of Remington's bid sample without a working bolt catch, and considered the broken bolt catch to be a critical failure.

Remington does not contest the agency's determination that a bolt catch broke during reliability testing. Rather, Remington argues that the broken bolt catch here was improperly identified as a critical failure by the agency because it did not constitute a critical failure as defined by the solicitation. Remington asserts that the broken bolt catch did not cause a stoppage in the ability to fire the weapon, as evidenced by fact that the Army continued testing the weapon afterwards, and was therefore not a Type A critical failure. Remington also asserts that the broken bolt

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<sup>9</sup> A bolt catch holds the weapon's bolt in the rearward position when the magazine is empty and no round is automatically chambered. Depressing the bolt catch release lever releases the bolt, thereby allowing it to slide forward and chamber the first round of a loaded magazine. Without a functioning bolt catch, the operator must chamber the magazine's first round by pulling the charging lever (and bolt assembly) to the rear and then releasing it.

<sup>10</sup> An extractor is a hook-like piece that removes the expended cartridge case from the weapon chamber by catching onto the cartridge rim. The cartridge case is then ejected from the weapon through the ejection port. Remington does not protest the Army's determination that the broken extractor constituted a critical failure.

<sup>11</sup> The agency states that had Remington provided a spare bolt catch with its bid samples, it would have replaced the broken part (even if weapon firing was possible without the replacement). Contracting Officer's Statement, Dec. 22, 2005, at 2; Agency Test Director's Statement, Dec. 22, 2005. Further, in those instances when an offeror failed to furnish a spare for a broken part, the Army considered this to be a critical failure notwithstanding its ability to perform the actual replacement, and continued reliability testing if possible. Id.

catch was not a broken part that was actually replaced, and was therefore not a Type B critical failure.

As a preliminary matter, the Army argues that Remington's protest of the weapon reliability testing is untimely. Specifically, the agency asserts that Remington learned at the preaward debriefing on September 14 that the broken bolt catch was considered to be a critical failure but did not protest the issue until October 6, more than 10 days after the debriefing occurred.

Our Bid Protest Regulations require that protests not based upon alleged improprieties in a solicitation be filed not later than 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (2005). More specifically, a protest based upon information provided to the protester at a statutorily-required debriefing is generally untimely if filed more than 10 days after the debriefing. The New Jersey & H St. Ltd. P'ship, B-288026, B-288026.2, July 17, 2001, 2001 CPD ¶ 125 at 2; Clean Venture, Inc., B-284176, Mar. 6, 2000, 2000 CPD ¶ 47 at 4 n.5.

Here, during the preaward debriefing, the protester was informed of the specific critical failures upon which its bid sample reliability rating was based, including the broken bolt critical failure which it now challenges. Subsequent to the debriefing, however, the agency reinstated Remington in the competitive range and continued to consider Remington's proposal for contract award. It is clear, we think, that once the Army reinstated Remington's proposal in the competitive range of offerors to be further considered for award, there was no agency action prior to the award determination that was prejudicial to, and protestable by, Remington. In fact, had Remington filed a protest here challenging the agency's reliability testing after being reinstated in the competitive range and before award, the protest would have been speculative and premature because it would have merely anticipated prejudicial agency action. See Computer Assocs. Int'l, Inc., B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157 at 4; Parcel 47C LLC, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 10 n.13. Thus, we find Remington's protest here, filed within 10 days after Remington was advised of the award decision, to be timely.

We find the agency's determination that Remington's broken bolt catch constituted a critical failure for reliability testing purposes to be reasonable and consistent with the solicitation. First, the record supports the Army's conclusion that the broken bolt catch was a Type A critical failure because it necessitated a stoppage in firing which could not be remedied by the operator within 10 seconds. After observing that part of the bolt catch had broken off, it was reasonably necessary to determine whether any additional pieces of the bolt catch were within the weapon's chambering and firing mechanisms before continuing firing. We consider the safety concern articulated by the agency's test director to be eminently reasonable--as cited above, the concern that splintered or sheared pieces of internal weapon components in a rapid-fire, precision weapon can lead to even greater and possible catastrophic



system failures. The fact that no additional pieces of the broken bolt catch were found upon disassembly is irrelevant, as the operator was unaware of this when safety concerns necessitated that firing stop. Moreover, Remington's assertion that the weapon could still be fired afterwards with a broken bolt catch does not negate the reasonableness of the Army's decision to first determine whether the weapon remained safe to fire.

We also find reasonable the Army's conclusion that Remington's broken bolt catch constituted a Type B critical failure, as the only reason the Army did not actually replace the broken bolt catch is because Remington failed to provide a spare bolt catch with its bid samples.<sup>12</sup> As set forth above, the solicitation expressly instructed offerors to provide sufficient spare parts with bid samples to support evaluation testing. RFP amend. 5, § L, at 75. While Remington did provide certain spare parts (e.g., an extractor), it did not provide a spare bolt catch. If Remington had provided a spare bolt catch with its bid samples, the agency would have replaced the broken part (and again considered this to be a critical failure) even if weapon firing was possible without the part replacement. Further, when an offeror failed to furnish a spare for a broken part, the agency considered this to be a critical failure notwithstanding its inability to perform the actual replacement.

We reject Remington's argument that the broken bolt cannot be considered a critical failure unless it was actually replaced. The record reflects that the agency decided to continue reliability testing of Remington's bid sample notwithstanding Remington's failure to provide sufficient spare parts. Under the circumstances here, it would be inappropriate to essentially penalize the agency for continuing testing instead of waiting for Remington to furnish the necessary spare part, just as it would be inappropriate to essentially reward Remington for failing to furnish all necessary spare parts and thereby precluding actual replacement. Quite simply, the determining factor of what constitutes a critical failure should not be based upon what spare parts an offeror decided to provide.

#### Evaluation of GPLR Availability and SDB Participation

Remington also protests the agency's evaluation of offerors' proposals with regard to the GPLR availability and SDB participation factors. The protester contends that the agency record contains no documentation indicating how the agency reached the evaluation ratings that it did for both offerors for both of these evaluation factors.

In order for us to review an agency's evaluation of proposals, an agency must have adequate documentation to support its judgment. Northeast MEP Servs., Inc.,

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<sup>12</sup> We also find no evidence that the broken bolt catch and broken extractor were interrelated part failures and, as such, should have been considered as one Type B critical failure.

B-285963.5 et al., Jan. 5, 2001, 2001 CPD ¶ 28 at 7. While an agency is not required to retain every document or worksheet generated during its evaluation of proposals, the agency's evaluation must be sufficiently documented to allow review of the merits of a protest. KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447 at 10. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source selection decision. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10.

In determining the rationality of an agency's evaluation and award decision, we do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments, explanations, and/or hearing testimony. Id. While we consider the entire record, including the parties' later explanations and arguments, we accord greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest contentions. Northeast MEP Servs., Inc., supra; Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

The RFP informed offerors that the agency considered the SASS program to be essential to national defense, and that the Army required the ability to acquire the legal rights to all technical data and software (including proprietary data and software) to permit future competitive reprocurments. RFP amend. 5, § L, at 79. Consequently, the RFP established that the agency would evaluate the availability of GPLR necessary for the competitive reprocurment of SASS program end items: less restriction on the data rights, and a smaller quantity of proposed units to obtain data rights, would be given a more favorable evaluation. Id., § M, at 92.

The RFP also set forth an adjectival rating system for the evaluation of GPLR availability as follows:

| <b>Rating</b>  | <b>Definition</b>   |
|----------------|---|
| Excellent      | Government Purpose License Rights are received upon award of the contract.  |
| Good           | Government Purpose License Rights are given upon completion of the basic contract.  |
| Satisfactory   | Government Purpose License Rights are given upon completion of the basic contract and a maximum quantity of 50,000 under options and/or new contract. |
| Unsatisfactory | Government Purpose License Rights are not given.  |

Id.

Both Knight's and Remington addressed GPLR availability in their proposals. The Knight's proposal stated that "[t]he data rights are available to the government at the

time this contract is issued or at any time an option is completed or issued,” and also set forth a data rights purchase price.<sup>13</sup> AR, Tab 8, Knight’s Proposal, GPLR Availability, at 1. Remington’s proposal stated only that the technical data rights for its SASS submission were available to the government at the listed price. AR, Tab 9, Remington’s Proposal, GPLR Availability, at 1. The agency subsequently rated both the Knight’s and Remington proposals as “submitted” with regard to the GPLR availability factor, an evaluation rating that was not among those set forth in the solicitation. AR, Tab 17, Source Selection Decision, at 2.

With regard to the SDB participation evaluation factor, the RFP required offerors to address the extent of planned SDB participation within their proposals. RFP amend. 5, § L, at 81. Specifically, offerors were to set forth SDB target participation in both dollars and percentages of total contract value, describe their plans to utilize SDBs, and explain how the SDB utilization percentage was appropriate. *Id.* The RFP also established that SDB participation would be evaluated using an adjectival rating system (*i.e.*, excellent, good, satisfactory, and unsatisfactory) based upon the quality of the offeror’s rationale (*i.e.*, strong, adequate, weak, and none, respectively) to support the percentage of SDB utilization proposed. *Id.*, § M, at 93.

The Knight’s proposal included a subcontracting plan which set forth an SDB target participation of 4.5 percent of contract value by the end of the contract. AR, Tab 8, Knight’s Proposal, SDB Subcontracting Plan, at 2. Remington’s proposal included a subcontracting plan, which set forth an SDB participation goal of 5 percent of total planned subcontracting dollars (Remington’s proposal did not express an SDB participation goal as a percentage of total contract value).<sup>14</sup> AR, Tab 9, Remington’s Proposal, Subcontracting Plan, at 2-3. The agency rated both the Remington and the Knight’s proposals as excellent under the SDB participation evaluation factor. AR, Tab 17, Source Selection Decision, at 2.

We requested additional information from the agency, because the evaluation documentation prepared and retained by the Army did not adequately explain the agency’s evaluation of the Knight’s and Remington proposals with regard to the GPLR availability and SDB participation factors. In response to our inquiry, the contracting officer stated that, with regard to GPLR availability, “when both proposals were reviewed for compliance to the subject solicitation, it was

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<sup>13</sup> While the RFP required, as a contract line item, a price for the delivery of a technical data package, the solicitation did not also require the submission of a price for GPLR availability. RFP, § B, at 8; AR, Tab 17, Source Selection Decision, at 2.

<sup>14</sup> Both the Knight’s and Remington subcontracting plans also set forth separate participation percentage goals for other socio-economic business concerns (*e.g.*, women-owned small businesses, historically underutilized business zone companies, service-disabled veteran-owned small businesses).

determined that the GPLR rights proposed by both companies did not strictly fall within the criteria of the four possible rating categories described in the solicitation.” Contracting Officer’s Statement, Dec. 27, 2005, at 1. Apparently, although both companies addressed the issue of data rights, the agency determined that GPLR availability would be negotiated with the successful offeror after contract award. Thus, the agency decided that a neutral rating of “submitted” should be assigned to both proposals. Id. With regard to the SDB participation factor, the contracting officer stated that Remington’s plan to award 5 percent to SDBs, as well as Knight’s plan to award up to 4.5 percent to SDBs, were each found to provide a strong rationale to support an appropriate percentage of SDB utilization and thus warranted ratings of excellent. Id.

While we generally give little weight to reevaluations prepared in the heat of the adversarial process, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, as is the case here, simply fill in previously unrecorded details, and will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. Based on the entire record in this case, we conclude that, while not recorded at the time, the agency did compare the GPLR availability and SDB participation levels offered by Knight’s and Remington prior to the selection decision. Accordingly, we view the post-protest documentation as merely a memorialization of contemporaneous analysis and judgment. See id.

We find the agency’s evaluation of proposals as to GPLR availability does not provide a basis upon which to sustain the protest. The record shows Remington was not prejudiced by the agency’s decision to rate both offerors as essentially neutral, given that the proposals of Knight’s and Remington both indicated that technical data rights were available to the government. In fact, the Knight’s proposal was superior to Remington’s in this area in that Knight’s offered to provide the data rights at the time of contract award (an offer which warranted a rating of excellent under the RFP), while Remington failed to specify at what stage it would give the data rights to the government. With respect to the SDB participation factor, we find the agency’s evaluation to be reasonable and consistent with the solicitation. Based upon the approximately equal participation percentages proposed by the offerors here, the agency’s determination that both Knight’s and Remington offered strong rationales to support appropriate percentages of SDB utilization was not improper.

#### Evaluation of Knight’s Technical Proposal

Remington also protests that the agency’s evaluation of the Knight’s technical proposal was unreasonable. The protester contends that the Army upgraded the awardee’s technical rating from satisfactory to good despite the firm’s failure to address any of the significant concerns and weaknesses that the agency had

identified in its initial technical proposal. Remington argues that the lack of evidence that Knight's addressed the technical weaknesses cited by the Army suggests that the subsequent change in the awardee's evaluation rating lacked any reasonable basis.

The RFP informed offerors that the technical evaluation factor consisted of four subfactors: projected production capabilities; quality assurance plan; supportability and maintenance plan; and configuration management plan.<sup>15</sup> RFP amend. 5, § M, at 90. The solicitation also established an adjectival rating system for each subfactor—very low risk, low risk, medium risk, and high risk—and a separate adjectival rating system for the overall technical evaluation factor—excellent, good, satisfactory, and unsatisfactory. Id.

The agency rated the Knight's initial technical proposal as low risk under the projected production capability subfactor; medium risk under the quality assurance plan, supportability and maintenance plan, and configuration management plan subfactors; and satisfactory overall. AR, Tab 10, Technical Evaluation of Initial Proposals, at 20. The agency's initial evaluation report also identified various weaknesses (i.e., areas that were not included or adequately addressed) in the Knight's initial technical proposal. Id. Among the cited weaknesses were: handling of incoming material; handling of critical characteristics; quality control of incoming products from other vendors; handling of nonconforming material; handling of customer complaints; and handling of hazardous materials. Id. The identified weaknesses became the subject of written discussions that the agency subsequently held with Knight's. AR, Tab 21, Agency Discussions with Knight's, at 2.

The FPR submitted by Knight's consisted of a revised price proposal and a separate revised technical proposal. AR, Tab 12, Knight's FPR (Pricing); Tab 22, Knight's FPR (Technical).<sup>16</sup> The awardee's revised technical proposal totaled 77 pages and contained 18 attachments, including select pages from the firm's quality procedure plan, quality work instruction, quality work procedure, and hazardous chemical communication plan manual. AR, Tab 22 Knight's FPR (Technical). The Knight's revised technical proposal also "cross-mapped" each of the various attachments

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<sup>15</sup> The first two technical subfactors were of equal importance to each other, and both were more important than the remaining two subfactors, which also were of equal importance to each other. RFP amend. 5, § M, at 90.

<sup>16</sup> The Army's initial agency report filed with our Office contained only the awardee's revised price submission, and failed to include the firm's revised technical submission. Thus, Remington was unaware of the Knight's revised technical proposal when it protested that the awardee had not addressed the weaknesses identified in its initial technical plan but the agency had nonetheless raised Knight's technical evaluation rating.

contained in its submission to the specific technical weaknesses identified by the agency. *Id.* at 1-2. For example, in response to the “handling of incoming material” weakness, Knight’s submitted various documents demonstrating the firm’s internal plans and procedures for the handling of incoming material.<sup>17</sup> The agency then evaluated the Knight’s revised technical proposal, rating it as low risk under the projected production capability and the supportability and maintenance plan subfactors, very low risk for the quality assurance plan and the configuration management plan subfactors, and good overall. AR, Tab 14, Technical Evaluation of FPRs, at 22.

Contrary to the protester’s assertions, the awardee’s revised technical proposal did address each of the weaknesses that were originally cited by the agency. As shown above, Knight’s provided the agency with additional information in response to each area which the awardee’s initial technical proposal either did not include or adequately address. We realize, as explained above, that Remington was unaware of the existence of the Knight’s revised technical proposal when raising this protest issue. Nonetheless, as Knight’s did in fact address each of the weaknesses originally identified by the Army, the agency did have a reasonable basis for its higher evaluation ratings of the awardee’s revised technical proposal.<sup>18</sup>

#### Source Selection Decision

Lastly, Remington protests the agency’s source selection decision. The protester asserts that the Army improperly deviated from the terms of the solicitation by failing to consider three of the six stated evaluation factors (*i.e.*, GPLR availability, past performance, and SDB participation) in the award determination. In support of its position, Remington contends that the source selection decision mentions only

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<sup>17</sup> Similarly, in response to the “handling of hazardous materials” weakness, the Knight’s revised technical proposal included its Hazardous Chemical Communication Plan Manual, which set out in detail the company’s program responsibilities as well as the procedures for identification, handling, and removal of hazardous substances.

<sup>18</sup> Remington in its comments also argued that the agency’s evaluation of the Knight’s technical proposal was inadequately documented. As stated above, where an agency fails to document or retain evaluation records, it bears the risk that there is inadequate supporting rationale in the record for its evaluation and source selection decision and that we will not conclude that there is a reasonable basis for the agency’s evaluation or decision. Southwest Marine, Inc.; American Sys. Eng’g Corp., supra. However, we will not disrupt an agency’s procurement merely because the agency has failed to adequately document its evaluation or source selection decision where the record otherwise shows the evaluation or source selection decision to be reasonable. *Id.* Here we do not find on this record that the agency’s evaluation of Knight’s technical proposal was unreasonable.

the bid sample, technical, and price evaluation factors. Remington also argues that the agency failed to perform a meaningful price/technical tradeoff as required by the solicitation. The protester contends that the Army's source selection decision fails to document why the supposed technical superiority of the Knight's higher-priced proposal warranted the additional cost involved.

An agency may not announce in the solicitation that it will use one evaluation plan and then follow another; once offerors are informed of the criteria against which their proposals will be evaluated and the source selection decision made, the agency must adhere to those criteria or inform all offerors of significant changes. American Guard Servs., Inc., B-294359, Nov. 1, 2004, 2004 CPD ¶ 225 at 6; DynCorp, B-245289, B-245289.2, Dec. 23, 1991, 91-2 CPD ¶ 575 at 5. Where solicitations provide for award on a "best value" or "most advantageous to the government" basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher price, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. See Chenega Technical Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 8; Leach Mgmt. Consulting Corp., B-292493.2, Oct. 3, 2003, 2003 CPD ¶ 175 at 3-4. Where a price/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs.<sup>19</sup> Federal Acquisition Regulation (FAR) §§ 15.101-1(c), 15.308; All Star-Cabaco Enter., Joint Venture, B-290133, B-290133.2, June 25, 2002, 2002 CPD ¶ 127 at 8-9.

In conducting the tradeoff here, the contracting officer premised her determination upon review and acceptance of the evaluation findings and ratings of the offerors' proposals under all stated evaluation factors, including the GPLR availability, past performance, and SDB participation evaluation factors where Remington and Knight's were equivalently rated. AR, Tab 17, Source Selection Decision, at 2. The contracting officer then reviewed both offerors' evaluation ratings under the bid sample essential criteria, the bid sample rated requirements, and the offerors' technical ratings, as well as the combined bid sample and technical merit ratings. Id. at 3-5.

The contracting officer then considered the "significant, key aspects differentiating the bid samples" of Knight's and Remington, in the areas of weapon accuracy, weapon reliability, and user assessment, which the RFP had established were the three most important bid sample rated requirements. Id. at 5. As to accuracy, the contracting officer found that Knight's had a discernable technical advantage over

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<sup>19</sup> This explanation can be given by the source selection authority in the award decision, or it can be evidenced from the documents on which the source selection decision is based. TRW, Inc., B-260788.2, Aug. 2, 1995, 96-1 CPD ¶ 11.

Remington (36 percent more accurate), notwithstanding equivalent ratings. With regard to reliability, the contracting officer found that there was a substantial difference in scores and ratings: no critical failures and 97.3 percent computed reliability for Knight's, in comparison to six critical failures and 86.0 percent computed reliability for Remington.<sup>20</sup> Under user assessment, the contracting officer determined that actual snipers in various operational environments and scenarios had found the Knight's bid sample superior to Remington's in five of the six assessment subcategories.

The contracting officer then determined that although Remington's total evaluated price was \$5,641,938.95 less than the evaluated price of Knight's, the bid sample and technical evaluation factors when combined were significantly more important than price and, as such, the Knight's proposal represented the best value. Id. at 6. The contracting officer concluded as follows:

A weapon with unsatisfactory reliability could possibly be detrimental to a sniper's ability to successfully engage targets and complete missions. The Government is not willing to risk failure during tactical engagements due to the failure of an unreliable weapon. The survival of the sniper, and the soldiers that depend on him is a more important factor in relation to the cost difference.

Id.

Contrary to Remington's assertions, we find that the record demonstrates that the contracting officer did take all evaluation factors—including GPLR availability, past performance, and SDB participation—into account in making her source selection decision. There is simply no requirement that a source selection authority restate every evaluation factor in the tradeoff determination, and nothing unreasonable about a decision not to discuss the evaluation factors that did not amount to discriminators between the offerors' proposals. Here, the source selection authority found Remington and Knight's to be equivalent under the GPLR availability, past performance, and SDB participation factors. As these factors were not deemed to be discriminators between the offerors' proposals, the contracting officer's decision not to further discuss these criteria in the tradeoff determination does not support the conclusion that they were not in fact considered.

We also find, contrary to the protester's assertions, that the source selection decision adequately documented the agency's rationale for the tradeoff made, including the benefits associated with the higher price. The propriety of such a price/technical tradeoff decision turns not on the difference in the technical scores or ratings per se,

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<sup>20</sup> The contracting officer also took into account that the statement of work established a 90 percent reliability requirement for contract deliverables. Id. at 5.



but on whether the selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP's evaluation scheme. Chenega Technical Prods., LLC, supra; Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. Here, the contracting officer properly looked behind the evaluation ratings and considered the underlying qualitative merits that distinguished the offerors' proposals--accuracy, reliability, and user assessment. Consistent with the RFP's provision that bid sample and technical merit were significantly more important than price, the contracting officer reasonably concluded that the price premium associated with Knight's proposal was justified by its greater technical merit. As the contracting officer stated, "The Government is not willing to risk failure during tactical engagements due to the failure of an unreliable weapon. The survival of the sniper, and the soldiers that depend on him is a more important factor in relation to the cost difference." Id. at 6. We do not agree with the protester that the agency was required to do more in its tradeoff of Remington's lower price and lower technical quality. Under these circumstances, we see no basis to question the agency's decision to make award to Knight's.

The protests are denied.

Anthony H. Gamboa  
General Counsel