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

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Decision

Matter of: Recon Optical, Inc.

File: B-310436; B-310436.2

Date: December 27, 2007

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DIGEST

Agency's decision not to select protester's proposal for award is unobjectionable, where the proposal was reasonably assessed the lowest possible ratings ("red" or "high risk") under the three most important evaluation factors and was higher in price than the other proposals, which were technically superior.

DECISION

Recon Optical, Inc. (ROI) protests the award of a contract to Kongsberg Defence & Aerospace AS by the Department of the Army under request for proposals (RFP) No. W15QKN-06-R-1409, for common remotely operated weapon stations (CROWS). ROI challenges the evaluation of its and Kongsberg's proposals under each of the evaluation factors.

We deny the protest.

BACKGROUND

The CROWS is a multi-vehicle weapon mounting and control system that attaches to the top of an armored vehicle and allows the gunner to remain inside the vehicle while firing the weapon. This remote weapon station is to be capable of mounting various small to medium caliber machine guns (the MK19 grenade machine gun, M2 HB machine gun, M240B machine gun, or M249 squad automatic weapon) and is to include, at a minimum, the weapon mount above the roof with sensors, fire control

processor, display and controls, and other associated hardware. RFP, Executive Summary, at 7; Statement of Work, at 29. The specific requirements and capabilities of the proposed CROWS were contained in a detailed statement of work and performance specifications that were included with the RFP. Among other things, the CROWS was to provide remote day and night sighting, ballistic control capability, remote weapon charging, and first burst engagement of targets at the maximum effective range of the weapon. Agency Report (AR), Tab 3, Award Decision Document, at 1.

The RFP provided for award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract (with time-and-material line items for depot operations). The RFP contemplated six “ordering periods”: the first beginning on the date of contract award and ending on December 31, 2007, followed by four 1-year ordering periods, and concluding with a period running from January 1 to August 12, 2012. RFP § B. Production deliveries were to start 6 months after the first delivery order award at a rate of 30 CROWS per month, with a production rate ramp up by December 2007 to a minimum capacity of 100 CROWS per month. *Id.* § F. The solicitation stated that a minimum quantity of 1,000 CROWS and a maximum quantity of 6,500 CROWS would be ordered over the life of the contract. *Id.* § B.

The RFP announced that the evaluation would be conducted in two phases, each with its own evaluation factors. “Phase I” (not challenged here) reviewed physical characteristics to determine eligibility for “Phase II,” and Phase II (which is the subject of this protest) evaluated proposals and bid sample testing for award. RFP §§ M.1, M.7, M.8. The Phase II evaluation criteria announced that award would be made on a best value basis considering the following factors, listed in descending order of importance: technical, schedule, management, logistic support, price, government purpose license rights (GPLR), past performance, and small disadvantaged business.¹ *Id.* § M.5. The technical, management, and logistic support factors each contained a number of equally rated subfactors. *Id.* § M.6. The RFP stated that proposals would be given adjectival ratings (major strength, strength, weakness, major weakness) for each of the subfactors, and color ratings (blue, green, amber, red) for each of the factors, and included the rating definitions for each factor and subfactor in the solicitation.² *Id.* §§ M.9.1, M.11.

¹ Combined, all non-price factors were more important than price. RFP § M.5.1.

² At the factor level, color ratings were defined as follows:

Blue	[T]he Offeror demonstrates an excellent understanding of the requirements and provides exceptional strengths that will significantly benefit the Government. The relative value of the sub-factors rated as Major Strengths and Strengths significantly outweigh the relative value of the sub-factors rated as Weaknesses. There are no Major Weaknesses.
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(continued...)

The RFP required each offeror to provide a “bid sample,” which was to be identical to the CROWS production system unit offered. The solicitation stated that each sample would be tested to “determine if the proposed design meets the minimum standards as specified in the solicitation and then competitively evaluated against the evaluation plan.”³ *Id.*, Executive Summary, at 7. After each “test event,” any “unexpected incidents, potential failures or unexplained events”⁴ that occurred during testing were to be reported to the offerors in a “Test Incident Report” (TIR), and each offeror was to be given an opportunity to diagnose the failure and make repairs before the next test event. *Id.* § M.8.1. Bid sample testing was to be conducted concurrently with proposal evaluation.

As is relevant here, ROI and Kongsberg based their proposals and bid samples on existing CROWS systems that each firm had provided under prior contracts, with modifications or proposed modifications to meet the RFP requirements. ROI’s proposed CROWS was based on a system it provided under predecessor contracts⁵

(...continued)

Green	[T]he Offeror demonstrates a good understanding of the requirements and provides strengths that will benefit the Government. The relative value of the sub-factors rated as Major Strengths or Strengths outweigh the relative value of the sub-factors rated as Weaknesses and Major Weaknesses.
Amber	[T]he Offeror demonstrates an acceptable understanding of the requirements. The relative value of the sub-factors rated as Major Strengths and Strengths are outweighed by Weaknesses and Major Weaknesses. The relative value of sub-factors rated as Weaknesses outweigh the relative value of sub-factors rated as Major Weaknesses.
Red	[T]he Offeror does not demonstrate an acceptable understanding of the requirements or [has] not sufficiently supported claims. The relative value of the sub-factors rated as Major Weaknesses and Weaknesses significantly outweigh the relative value of the sub-factors rated as Strengths and Major Strengths.

RFP § M.9.1.

³ Details about the testing requirements were included in the solicitation. RFP §§ L.7, M.8.1.

⁴ A failure was defined as “something that prevents the system from operating as intended or creates an unsafe condition.” RFP § M.8.1.

⁵ The first contract was competitively awarded in 2000; the subsequent contracts were “Urgent Material Requirement” contracts awarded on a sole-source basis.

(which had similar, but not identical, requirements to those here), and ROI asserts that it has fielded over 250 systems in Iraq since it was awarded the initial contract in 2000. ROI's Comments at 58. Since February 2007, however, no units have been fielded; the agency has issued ROI a show cause letter and termination for default cure notice due to performance problems. Kongsberg's Comments, attach. 2, Army's Stay Override, at 3. Kongsberg's proposed CROWS was based on its "M151 Protector," which has been in full scale production since 2001; more than 1,500 systems have been delivered to the Army through the Stryker program, and over 1,000 have been fielded in Iraq since 2003. Kongsberg's Comments, attach. 3, Declaration of Kongsberg's Vice President, ¶¶ 2-3.

Three offerors, including ROI and Kongsberg, were invited to participate in Phase II of the competition after submitting proposals and bid samples for evaluation.⁶ Proposals and bid sample testing were evaluated by a source selection evaluation board (SSEB), which consisted of separate technical, schedule, management, logistics, price, GPLR, past performance, and small disadvantaged business teams.⁷ After initial evaluations, offerors were provided the technical evaluation reports of their proposals and were invited to participate in discussions. Offerors were issued written "items for negotiation" (IFN) that identified weaknesses and major weaknesses in their proposals under each of the evaluation factors and subfactors; some of these addressed failures or concerns identified during bid sample testing as reported in TIRs. Each offeror responded to the IFNs and discussion issues in their final proposal revisions (FPR). The SSEB evaluated FPRs against the stated evaluation criteria and reported its findings to a source selection advisory committee (SSAC) and the source selection authority (SSA).⁸ The SSAC performed a comparative analysis of proposals and provided its analysis to the SSA. The SSA adopted the findings of the SSEB and SSAC and rated proposals as follows:

⁶ A fourth offeror responded to the RFP but did not provide a bid sample, so was excluded from the competition.

⁷ The SSEB also obtained assistance from "subject matter experts" during the course of the evaluation.

⁸ Briefings to the SSAC and SSA occurred after both the initial and final evaluations.

		Kongsberg	ROI
Technical		Blue	Red
	Vehicle Interfaces	Strength	Major Weakness
	Weapon Installation & Operation	Major Strength	Strength
	Target Acquisition	Strength	Strength
	Accuracy & Boresight Retention	Major Strength	Strength
	Stabilization	Strength	Weakness
	Temperature	Major Strength	Major Weakness
	Safety	Major Strength	Weakness
	Reliability	Major Strength	Major Weakness
Schedule		Low Risk	High Risk
Management		Blue	Red
	Program Management Plan	Major Strength	Weakness
	Subcontractor Management Plan	Major Strength	Major Weakness
	Software Management Plan	Weakness	Major Weakness
	Quality Management Plan	Major Strength	Major Weakness
Logistic Support		Blue	Green
	Depot Level Operations	Major Strength	Strength
	Fielding & Operational Support	Strength	Strength
GPLR		Blue	Amber
Past Performance		Low Risk	Moderate Risk
Small Disadvantaged Business		Green	Blue
Evaluated Price		\$513,270,432.40	\$539,446,515.80

AR, Tab 3, Award Decision Document, at 8.⁹ The SSA discussed in detail the merits of each offeror’s proposal under each of the evaluation factors, then determined not to award the contract to ROI because ROI received either a “red” or “high risk” rating under the three most important factors. According to the SSA,

This represents a strong lack of confidence in the ability of the Recon Optical system to meet the Government requirements. It also raises uncertainties regarding their ability to meet schedule, resulting in delayed fielding of the Urgent Material Release (UMR) item with attendant increase in expenditure of [government] resources. Recon Optical was also the highest evaluated price among all the offerors. Based on this analysis[,] I have determined not to award to Recon Optical.

⁹ The third competing offeror’s proposal was rated “green” under the technical, management, logistics support, and small disadvantaged business factors; “amber” under the GPLR factor, “medium risk” under the schedule factor, and had an evaluated price of \$488,482,668.37. AR, Tab 3, Award Decision Document, at 8.

Id. at 20. The SSA performed a best value tradeoff between the proposals of Kongsberg and the other competing offeror (which received the second highest technical rating and was the lowest in price) and selected Kongsberg for award. This protest followed.

DISCUSSION

ROI protests the ratings assigned to its proposal under each of the evaluation factors, as well as each of the “weakness” and “major weakness” ratings assessed under the subfactors, and contends that its proposal was evaluated disparately to Kongsberg’s. In reviewing protests of an agency’s evaluation, our Office does not reevaluate proposals, but instead examines the record to determine whether the agency’s judgment was reasonable and in accord with the RFP criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Offerors have the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Beck’s Spray Serv., Inc., B-299599, June 18, 2007, 2007 CPD ¶ 113 at 3. Mere disagreement with the agency’s conclusions does not render the agency’s judgment unreasonable. UNICCO Gov’t Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

In response to the protests, the agency has provided a detailed and voluminous record illustrating that the agency performed a comprehensive evaluation and assessed ratings in a fair and equitable manner that was consistent with the RFP’s stated evaluation criteria. The extensive record shows that ROI’s proposal and the results of bid sample testing raised serious doubts that ROI’s proposed CROWS would be able to meet the requirements of the solicitation in accordance with the required schedule, and ROI did not satisfactorily address the agency’s concerns during discussions. In contrast, Kongsberg provided a technically superior proposal at a lower price, and thus its proposal was reasonably selected for award. We have considered each of the protester’s numerous arguments and find them to be without merit, although we discuss here only the three most heavily weighted factors.¹⁰ As we explain, ROI’s proposal was reasonably given the lowest possible ratings (“red” or “high risk”) under the three most important factors, which provided a reasonable basis for the agency not to select the proposal for award.

¹⁰ Although we do not specifically address all of the numerous contentions raised by ROI with regard to these three factors (some of which were untimely raised), we have taken them into account and determined that there is no basis to find the agency’s evaluation of these factors unreasonable or inconsistent with the RFP.

Technical Factor

ROI complains that its proposal should not have received a “red” rating under the technical factor, or “weakness” or “major weakness” ratings under the technical subfactors.

For example, under the vehicle interfaces subfactor, ROI’s proposal was assessed a “major weakness” rating because

Recon Optical’s bid sample did not operate successfully at 20 VDC [volts direct current] during bid sample testing and a critical message instructing the user to shut down the system was displayed. Recon Optical stated in its [FPR] that it has initiated corrective actions to address bid sample voltage input test failures as evidenced in [TIRs]. No root cause analysis¹¹ was provided to support these corrective actions . . . Also Recon Optical had ECP [Engineering Change Proposal] changes required which raised the issue that weight may be over 400 [pounds] when included. Weight reduction ECPs were not documented.

AR, Tab 3, Award Decision Document, at 9. ROI complains that the “major weakness” rating was not warranted because its proposed CROWS, in fact, weighed less than 400 pounds, and the inability to operate at 20 VDC was an intentional “safety feature” of the proposed CROWS that could easily be modified with a design change. ROI’s Comments at 14, 17.

The RFP defined a “major weakness” rating for this subfactor as:

System weight for the external components above the roof is more than 400 [pounds] not including the weapon and ammunition and the Offeror has not provided a plan with sufficient detail and analysis on how the weight will be reduced to less than 400 [pounds] without any negative impacts to overall performance. OR [t]he bid sample System did not operate effectively and/or safely between the ranges of 20-30 Volts DC and sufficient evidence has not been provided to demonstrate with high confidence that the system will be capable of meeting this requirement prior to delivery.

RFP § M.11.1.a. Thus, a major weakness rating would be reasonable if the agency identified either a weight or a voltage issue described above.

¹¹ A “root cause analysis” is the process of identifying the cause of an incident or problem.

Here, ROI admits that its system did not operate at 20 VDC, and its FPR response to an IFN on this issue explains only that “[c]orrective actions have been initiated” through design changes that are being tested. ROI’s Response to IFN 212 at 1-14. ROI’s proposal did not explain that the failure was an intentional safety feature, as ROI now alleges in its protest, or provide any “root cause analysis” of this problem, and the proposal did not contain explanation or evidence to “demonstrate with high confidence” that the system would be capable of meeting this requirement prior to delivery. Thus, we find that the record supports the agency’s assessment of a “major weakness” rating under the vehicle interface subfactor on this issue alone.

We find the agency’s conclusions with regard to weight under this subfactor also to be reasonable. Again, our review of the record confirms that although ROI asserted in its FPR that the weight of the proposed CROWS would be less than 400 pounds after implementation of all “existing and planned design modifications” as a result of numerous ECPs, ROI’s Response to IFN 174 at 1-425, the offeror did not provide sufficient detail regarding the effects of the ECPs on performance, or testing analysis to support its assertion the ECPs would in fact reduce the weight as asserted. Thus, the agency could reasonably conclude that there “may” be an issue with whether the proposed CROWS would be too heavy.

ROI also protests its “weakness” rating under the stabilization subfactor. The definition of a “weakness” rating under this subfactor was:

Offeror has provided documentation, analyses, and test data on the proposed stabilization system design but lacks sufficient detail and clarity to substantiate that the subsystems are fully integrated. There is some doubt that the offeror will be able to meet the stabilization performance requirements prior to production delivery.

Id. § M.11.1.e.

The record shows that the SSA credited ROI’s proposal for offering a fully integrated system, but assessed a “weakness” rating because there was “some doubt that that offeror will be able to meet the stabilization performance requirements prior to production delivery.” The SSA noted that the agency was unable to “extrapolate . . . the true weapon stabilization performance” of ROI’s proposed CROWS from the data and information that ROI provided. AR, Tab 3, Award Decision Document, at 11. As explained in the SSEB report, the agency was unable to evaluate stabilization performance because ROI’s stabilization tests did not account for weapon movement in the cradle, and ROI’s stabilization system did not account for linear disturbances. The SSEB noted that although ROI “provided conclusions from the stabilization test and test procedures[, ROI] did not provide data reduction methodology to support the results.” These concerns led the agency to conclude that there was “some doubt” that ROI’s CROWS would achieve the required level of stabilization performance prior to production delivery. AR, Tab 1, SSEB Final Report, at 78-79.

ROI does not dispute the agency's findings regarding linear disturbances or deny that it failed to provide data reduction methodology, and ROI admits that its in-house measurement technique did not take into account weapon movement in the cradle. ROI's FPR, vol. 1, 1-570. However, ROI asserts that its proposal deserved a higher subfactor rating because it provided some test data and explained that weapons movement in the cradle did not impact stabilization. Although ROI's FPR does address these issues and did provide test data, id. at 1-559 to 1-570, the agency considered all of the information provided by ROI and still had doubt as to stabilization performance based on the lack of data reduction methodology to support ROI's claimed performance and ROI's failure to address linear disturbance issues. AR, Tab 1, SSEB Final Report, at 78-79. Although ROI disagrees with this assessment, it has not shown it to be unreasonable.

ROI next challenges the assessment of a "major weakness" rating under the temperature subfactor. The definition of a "major weakness" rating under this subfactor was:

Bid sample testing did not demonstrate an ability to reliably and/or safely operate the system at -20 degrees [Fahrenheit] and 140 [degrees Fahrenheit] or the Offeror has not provided an acceptable plan with supporting data that the production systems will be capable of operating reliably and safely with high confidence at temperatures as low as -50 degrees [Fahrenheit] for external components and -20 degrees [Fahrenheit] for internal components and up to 140 [degrees Fahrenheit] for both internal and external components prior to production delivery.

Id. § M.11.1.f. ROI's proposal was assessed a "major weakness" rating under this subfactor because the SSA had "doubt that ROI will be capable of providing a production system capable of operating reliably and safely down to -50 [degrees Fahrenheit] prior to production delivery." AR, Tab 3, Award Decision Document, at 12.

ROI's initial proposal, ROI's internal testing, and the agency's bid sample testing revealed that ROI's production system did not meet rotation or elevation speeds at -50 degrees Fahrenheit. In response to discussion questions on this issue, ROI provided a root cause analysis explaining that the "problem is caused by the increased viscosity of the grease at low temperatures." ROI's Response to IFN 201 at 1-795; see also ROI's Response to IFN 212 at 1-15. ROI identified three possible "design solutions" to address this problem: (1) replacing the grease with one that will function at the required temperatures, (2) increasing power to the motors, or (3) adding heaters to the motors to warm the grease. Id. ROI stated that it did "not know which is the best approach or combination of approaches" to solve the problem; the potential solutions were in early stages of testing. ROI's Response to

IFN 212 at 1-15. ROI's schedule contemplated that system level testing of these solutions would not begin until 3 months after award. *Id.*, attach. 212-11. Given these uncertainties, we find reasonable the SSA's determination that there was "doubt" that ROI's production system would be capable of operating reliably and safely at low temperatures prior to delivery.¹² AR, Tab 3, Award Decision Document, at 12.

ROI complains that its proposal was evaluated more severely under this subfactor than Kongsberg's, who, according to ROI, identified a similar "grease issue" causing a failure of Kongsberg's azimuth release mechanism at low temperatures. However, the record shows that the two issues were not similar. With ROI, the agency reasonably noted that the offeror was investigating changing the type of grease as one of three possible solutions to correct an identified problem with performance of the bid sample, and ROI had not demonstrated that any of these possible solutions would in fact work. With Kongsberg, the issue related to simple maintenance (poor lubrication) on a Stryker program unit, not the bid sample, and was not related to a design defect.¹³ Agency Supplemental Report at 18; Kongsberg's Response to IFN 84 at 2. As the agency convincingly explains, an isolated issue of unperformed maintenance (not lubricating the parts) not related to system design is far different

¹² Testing of ROI's bid sample within the temperature range also revealed problems with the display (the "monitor was distorted and several vertical lines appeared on the screen" and lasted for "approximately three minutes") and with "uncommanded movement in the form of a continuous side to side tremble of the mounted weapon." AR, Tab 30, TIR 73-1, Screen Overlay; *id.*, Aberdeen Test Center (ATC) Test Record No. AD-F-55-07, at 4. ROI attempts to minimize the severity of these issues, but the agency has persuasively explained that these operational problems could significantly impact safety and reliability of the CROWS in combat situations, thus putting the operator at serious risk. Agency Supplemental Report at 10-13. With regard to the display problem, ROI complains of unequal treatment because Kongsberg's proposal was rated a "major strength" under the temperature subfactor even though its CROWS display showed an "error message" during testing. *See* AR, Tab 31, ATC Test Record No. AD-F-56-07, at 4. However, it is not clear from the record that the display issues of the two bid samples were in fact the same, as ROI asserts. In any event, the display was not the basis for Kongsberg's "major strength" rating, and although the SSEB mentions ROI's display problem as a concern in its report, the SSA did not identify this issue as a basis for ROI's rating under the temperature subfactor. Thus, even if ROI were correct that bid samples were evaluated unequally, it was not prejudiced as a result.

¹³ ROI cannot reasonably complain that the agency should have given greater weight to Stryker unit performance, when it asserts that any consideration of information outside of the proposal and the bid sample was "inconsistent with the Solicitation's evaluation scheme." ROI's Supplemental Comments at 10-11.

from, and is of a less serious nature than, the performance failures associated with ROI's proposed system design.¹⁴

ROI contends that a failure of Kongsberg's visible imaging module (VIM) at cold temperatures was also evaluated less harshly than similar failures identified in ROI's bid sample under the stabilization subfactor. Again, the VIM issue arose in connection with the predecessor Stryker unit performance and not with the bid sample. Agency Supplemental Report at 4-5; see also Kongsberg's Response to IFN 84 at 2 (denying "any failure or functional deviation of the VIM in connection with tests performed on the [Kongsberg] bid sample."). The SSEB, in consultation with subject matter experts, later determined that the problem was caused by the government's failure to perform maintenance on the VIM and was not the result of a design flaw. Thus, the agency reasonably concluded that the incident did "not negatively affect the [system's] capability to operate reliably and safely" at low temperatures. AR, Tab 1, SSEB Final Report, at 19; Agency Supplemental Report at 4-5. In contrast, ROI's stabilization issues (movement in the weapons cradle and

¹⁴ ROI disputes that the "failure" of Kongsberg's azimuth release mechanism occurred only with the Stryker units or that the root cause and a solution were identified. It quotes from Kongsberg's response to IFN 84, discussing this issue, where Kongsberg states:

The root cause of the [azimuth release mechanism] failure experienced as part of [t]he [Kongsberg] Bid sample testing at low temperature may be poor lubrication of the mechanical parts; [Kongsberg] will investigate this problem on the [Kongsberg] Bid sample when it is returned to [Kongsberg].

Kongsberg's Response to IFN 84 at 2. However, as the agency explains, Kongsberg was responding to a mistaken belief that the agency had found a bid sample failure; in fact, no testing failures of the azimuth release mechanism occurred at low temperatures with Kongsberg's bid sample. See AR, Tab 31, TIR 73-1, Phase II Cold Temperature Testing ("no faults were observed"); id., Test Record No. AD-F-56-07 (no failure identified). Kongsberg's confusion may have occurred because the agency did not fully explain that the IFN was discussing a failure previously identified in units from the Stryker program (of which the SSEB members were aware) and not the bid sample. Agency Supplemental Report at 18. The agency's explanation seems correct given that, as the protester notes, bid sample testing under the temperature subfactor occurred after the IFN was issued to Kongsberg, so the IFN could not have been asking about bid sample failures. In any event, these issues were later determined not to be design related. AR, Tab 1, SSEB Final Report at 19-20. The protester has not pointed to any evidence in the record that shows a failure of the azimuth release mechanism in Kongsberg's bid sample at low temperatures, other than Kongsberg's statement in this IFN.

linear disturbances) were in fact design related. Furthermore, both government and Kongsberg testing confirmed satisfactory performance of Kongsberg's CROWS at the required temperatures, whereas ROI provided insufficient testing data for the agency to conclude that ROI's CROWS could meet the stabilization requirements at delivery. AR, Tab 1, SSEB Final Report, at 19-20, 78-79. Based on our review, we find that proposals were not evaluated unequally under this subfactor.

Next, ROI challenges the evaluation of its proposal under the safety subfactor of the technical factor where the SSA assessed a "weakness" rating. The RFP defined a "weakness" rating under this subfactor as:

The Offeror has not demonstrated a pro-active approach to addressing hazards and safety risks. Limited testing is available and/or the system is not mature. The system may require design changes to meet the requirement.

RFP § M.11.1.g. Consistent with this definition, the SSA found that

Recon Optical did not demonstrate a proactive approach to address hazards, safety risks and known field issues.^[15] Recon Optical admits, in the FPR, the need to further analyze its system once/if the contract is awarded. Some level of hazard analysis has been conducted to identify potential safety risks. The mention of unspecified post award ECPs creates concern that the system may require further design changes the effects of which are unknown. These ECPs have no documentation and limited test data to address their impact on software and system safety of the proposed system.

AR, Tab 3, Award Decision Document, at 13.

ROI complains that the SSA "failed to give ROI credit for safety improvements identified in [ECPs¹⁶]," Protest at 14, and ignored "more than 700 pages of safety information" in ROI's proposal. ROI's Comments at 47. However, based on our review, the agency reasonably determined that none of the safety information provided by ROI adequately addressed the agency's concerns over the impact of

¹⁵ ROI complains that the SSA's findings are inconsistent with those of the SSEB, which found that ROI had a "proactive system safety program in place to address hazards and safety risks." AR, Tab 1, SSEB Final Report, at 80. However, it is well settled that an SSA is not bound by the recommendation of lower level evaluators. Hubbell Elec. Heater Co., B-289098, Dec. 27, 2001, 2002 CPD ¶ 15 at 6.

¹⁶ ROI asserts that the agency has "deliberately withheld approval of ECPs," ROI's Comments at 45, but provides no evidence to support this assertion.

ECPs and whether the system may require further design changes, and thus we find no basis to question the SSA's rating assessment for this subfactor.¹⁷

ROI challenges the "major weakness" rating assessed to its proposal under the reliability subfactor of the technical factor. A "major weakness" rating under this subfactor was defined as:

The Offeror has an immature system or does not have any demonstrated or documented system reliability that provides confidence that at a minimum an inherent reliability of 1000 hours mean time between system aborts [MTBSA] is achievable prior to production delivery. Significant doubt exists that an inherent reliability of 1000 [MTBSA] will be met prior to production delivery.

RFP § M.11.1.h. Recon Optical was assessed a "major weakness" rating because

Recon Optical provided insufficient data to support[]its claim that the system will meet the threshold requirement for [MTBSA] prior to production. In the FPR, ROI did not address the impact to reliability as a result of implementing individual ECPs, nor did it state at what level the proposed ECPs will affect the system reliability. This lack of information raises concerns of the actual reliability of the proposed system. ROI has not provided sufficient evidence to show that its burn-in process and the submitted/proposed ECPs will improve the MTBSA of [REDACTED] to 1000 [hours] prior to delivery.

AR, Tab 3, Award Decision Document, at 13.¹⁸

¹⁷ ROI complains that Kongsberg's proposal was assessed a "strength" for implementing design changes, which evidences disparate treatment in the evaluation because ROI's proposal was assessed a "weakness" for design changes. ROI's arguments ignore the fact that its "weakness" rating was due to its plan to implement numerous future design changes, the impact of which was unknown, and ROI's failure to provide sufficient information for the agency to evaluate the impact of those changes on safety and performance. In contrast, Kongsberg's proposal "display[ed] the ability to initiate and implement design changes to mitigate or eliminate risks," and Kongsberg provided sufficient supporting data to prove its claims. AR, Tab 1, SSEB Final Report, at 20, 80.

¹⁸ ROI complains that the agency's demand (during discussions) for additional documentation supporting the reliability of ECPs was unreasonable and was not required by the RFP. However, the RFP expressly provides for the consideration of "demonstrated or documented system reliability." RFP § M.11.1.h.

ROI complains that the agency should not have considered MTBSA failures that occurred over a year ago during “burn-in” testing in the field, because burn-in is now done in the factory before fielding. According to ROI, MTBSA should only measure “aborts on the battlefield” after factory burn-in. ROI’s Comments at 49. However, the RFP language makes no such distinction, and since ROI proposed reliability data based on the fielded units, we find the agency’s consideration of the MTBSA failures associated with these units unobjectionable.

In sum, we find that the assessment of subfactor ratings supports the overall “red” rating that ROI’s proposal received under the technical factor.

Schedule Factor

ROI protests the assessment of a “high risk” rating to its proposal under the schedule factor. A “high risk” rating was defined as:

Offeror does not have an active production line or has not demonstrated an ability to meet the CROWS production delivery as described in this solicitation to include a spares kit delivery schedule that supports the systems delivered based on the reliability documented and supported. The bid sample performance and written proposal[] provide significant doubt that the Offeror can meet these schedules without start-up delays.

RFP § M.12. The SSA assessed ROI’s proposal a “high risk” rating because

The Recon Optical design does not appear to be stable and mature. Numerous requirements are identified by Recon Optical that are in development, under validation or have root cause issues identified with multiple design approaches that are still under evaluation as of the submittal of the [FPR]. Recon Optical lists 24 design changes to its current bid sample design. Limited information is available to assess the level of confidence regarding the feasibility of these changes and the impact to schedule with regard to performance, reliability and safety compliance. System level testing is not planned to be completed until three months after contract award. Recon Optical rationalizes that the “final official production configuration” is identified after FAT [first article test] and PVT [product verification test] rather than prior to delivery to the Government. It is not clear that Recon Optical understands the requirement that the FAT and PVT tests are to be conducted on systems that are “final official production configuration” representative. These factors raise significant doubt that Recon Optical will meet production delivery schedules with fully compliant weapon stations.

AR, Tab 3, Award Decision Document, at 14. The SSEB further explains that ROI provided limited evidence that supported their claim that they had a current production capacity of 60 systems per month; the protester's production process is highly dependent on the success of its subcontractors because ROI maintains minimal stock; ROI provided only limited information regarding one of its major subcontractors (which is responsible for building approximately half of the CROWS systems), and the information provided raised additional concerns related to the major subcontractor's efforts to outsource components and its ability to meet and maintain the manufacturing schedule; ROI did not appear to understand environmental screening requirements; ROI made distinctions between major and minor characteristics, even though all verifications were classified as major requirements; ROI's design did not seem to be stable or mature due to numerous design changes, and limited information was available to assess the feasibility and schedule impact of these changes; safety analysis and documentation was not finalized and available prior to delivery; software safety analysis would not be conducted until government testing was complete; and it was not clear that ROI understood that FAT and PVT testing were to be conducted on systems that are representative of the final official production configuration. AR, Tab 1, SSEB Final Report at 81-84; Agency Report at 35-36. All of these issues created "significant doubt" whether ROI would meet the production delivery schedules with fully compliant CROWS. Although ROI disagrees with several of the individual concerns expressed by the SSEB and the overall rating of its proposal as providing "high risk" under the schedule factor, ROI has not shown the agency's judgment to be unreasonable or inconsistent with the record.

For example, ROI contends that the agency misread or ignored portions of ROI's proposal that addressed scheduling concerns, and evaluated ROI's proposal using a "higher evaluation standard than [for] other offerors." Protest at 15-17; Supplemental Protest at 10-12; ROI's Comments at 51-68. ROI contends that its proposal should have been rated higher than Kongsberg's under the schedule factor largely because "as the incumbent contractor, ROI is the only offeror which has produced stabilized CROWS units," and therefore, ROI contends, it is more likely to meet the delivery schedule than the other offerors. ROI's Comments at 58-59. However, the record shows that ROI had difficulty meeting schedule and performance requirements under the incumbent contract,¹⁹ and its proposed system here likewise encountered numerous problems during bid sample testing. ROI's promises that it could provide compliant CROWS by the scheduled due dates were not supported, and the information that ROI did provide in its proposal raised additional concerns about schedule risk. In contrast, Kongsberg has fielded over a 1,000 stabilized systems and, unlike ROI, provided detailed information demonstrating to the agency that it would, and could, meet the schedule requirements with fully compliant CROWS. Thus, we

¹⁹ As stated above, ROI was issued a show cause notice and termination for default cure notice.

find no merit to ROI's arguments that its proposal was evaluated unfairly or unequally as compared to Kongsberg's.

Management Factor

ROI protests the assessment of a "red" rating to its proposal under the management factor, challenging the "weakness" and "major weakness" ratings of each of the four subfactors under this factor.

Under the program management plan subfactor, ROI's proposal was assessed a "weakness" rating, which was defined as:

The Offeror appears to understand the requirements of the RFP. The Offeror is lacking in some knowledge or experience in managing a project with the demands and ability to adapt to changes required for fielding a system of a complexity such as CROWS.

RFP § M.13.1.a.

In evaluating ROI's proposal, the SSEB favorably recognized that ROI had shown "general traceability" to the RFP's requirements and that several of its program managers were certified. However, the SSEB also noted a number of "negative observations" that precluded a higher rating, including discrepancies in the proposal regarding the number of project leads and their roles and responsibilities; proposal statements that ROI was planning on changing its tools for enterprise resource and material planning because the tools it currently uses are "not well suited for a program of this caliber"; concern with potential problems with ROI's cost management system requiring the Defense Contract Management Agency to audit ROI's systems bimonthly; and proposal responses providing only "generic answers" to issues relating to program risk and "generic high level information" on proposed program management processes. AR, Tab 1, SSEB Final Report, at 85-86. The SSEB considered ROI's repeated reference to delivery under its incumbent contract as proof of its overall management system's "effectiveness, efficiency, and capability," but did not find that this warranted a strength because ROI had not "actually delivered any systems on the identified contract that have met the performance specifications." *Id.* at 86. The SSA agreed with the SSEB that ROI's proposal warranted a "weakness" rating under this subfactor, concluding that ROI "is lacking in some knowledge or experience in managing a project with the demands and ability to adapt to changes required for fielding a system of a complexity such as CROWS." AR, Tab 3, Award Decision Document, at 15.

ROI disagrees with this assessment, essentially complaining that some of the SSEB's conclusions are "factually incorrect" because the agency either misread or ignored ROI's proposal, which ROI asserts addressed the SSEB's criticisms. Protest at 17-18; ROI's Comments at 68-72. However, our review of the record confirms that the agency's evaluation was reasonable. For example, although ROI asserts that it did

not admit its enterprise resource and material planning tools were “not well suited” for the CROWS program, its FPR does in fact state that ROI “has formed a committee to evaluate replacements for [the tool]” and that “[other tools] perhaps more suited to a company like Recon Optical . . . will be evaluated for planned implementation.” ROI’s Response to IFN 103 at 1-466. Similarly, although ROI complains that the agency misread discrepancies in the number of project leads, we note that its proposal does vary the numbers in at least three places. Compare ROI FPR, vol. II, table 2, at 1-326 to 1-328 (identifying 13 “key personnel”) with id., fig. 95-3 (identifying 9 project leads); id. at 1-329 (referring to 14 project leads). It is the offeror’s burden to submit an adequately written proposal, and based on our review of the record, ROI has not met its burden here. See Beck’s Spray Serv., Inc., supra, at 3.

ROI makes similar challenges to the assessment of “major weakness” ratings to its proposal under the subcontractor management plan, software management plan, and quality management plan subfactors. That is, ROI contends that the agency misread or ignored aspects of its proposal addressing several of the cited concerns. Again, we find no error in the agency’s evaluation. For example, under the three subfactors, the agency found several instances of proposal inconsistencies, insufficient documentation to support ROI’s promises, or “generic” responses to proposal weaknesses, AR, Tab 1, SSEB Final Report, at 87-92, and our review of the record confirms the reasonableness of the agency’s concerns. The RFP warned offerors that “[u]nexplained inconsistencies . . . may be grounds for rejection of the proposal,” cautioned that “unsupported promises to comply with the contractual requirements will not be sufficient,” and required that proposals “provide convincing documentary evidence in support of a conclusionary statement.” RFP § M.2.1. In light of the RFP’s clear directives, we are unpersuaded by ROI’s arguments, which amount to mere disagreement with the agency’s judgments and are insufficient to render those judgments unreasonable.²⁰ UNICCO Gov’t Servs., Inc., supra, at 7.

²⁰ ROI alleges disparate treatment in the evaluation of its and Kongsberg’s proposal under the program management plan and subcontractor management plan subfactors. It asserts it deserved higher ratings since its plans were greater in page count than Kongsberg’s. However, ROI ignores the fact that much of its proposal was reasonably found to contain inconsistencies, was generic, and despite the length lacked sufficient detail, whereas Kongsberg provided “detailed interrelated and coherent documentation” of its plans and responded fully to agency concerns in its FPR and responses to IFNs. AR, Tab 1, SSEB Final Report, at 24-25. Other assertions of unequal treatment are similarly without merit.

In sum, the record shows that ROI's proposal was reasonably rated "red" or "high risk" under the three most important factors, and was lower technically rated and higher priced than the two other competing offers.²¹ As a result, we find the SSA's decision not to select ROI's proposal for award to be reasonable and consistent with the RFP.²²

The protest is denied.

Gary L. Kepplinger
General Counsel

²¹ ROI also challenges the evaluation of its proposal under the logistic support, GPLR, past performance, and price factors, and asserts that the "blue" rating it received under the small disadvantaged business factor should have been given more weight in the evaluation. Although we do not discuss these aspects of the evaluation, we have reviewed the protest issues raised and find them to be without merit.

²² ROI also challenges the evaluation of Kongsberg's proposal, but ROI is not an interested party to raise these protest grounds. An "interested party" is an actual or prospective offeror whose direct economic interest is affected by the award, or failure to award, a contract. 4 C.F.R. § 21.0(a)(1) (2007). An offeror who is not next in line for award is not an interested party to protest the evaluation of the awardee. Ridoc Enter., Inc., B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 9. As discussed above, ROI's proposal was reasonably rated the lowest of three offerors and was the highest in price, and therefore it is not next in line for award even if its protest of Kongsberg's proposal were sustained. Since ROI did not challenge the evaluation of the intervening offeror's proposal, ROI is not an interested party to challenge the evaluation of Kongsberg's proposal in this case. Id.