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## Decision

**Matter of:** Marinette Marine Corporation

**File:** B-400697; B-400697.2; B-400697.3

**Date:** January 12, 2009

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### DIGEST

1. Protester's proposal submitted in response to a solicitation issued by the Coast Guard for Fast Response Cutters, B-Class (FRC-B) was reasonably evaluated under an evaluation subfactor as "unsatisfactory," and subsequently determined to be ineligible for award, where the "unsatisfactory" rating was due to the proposed FRC-B, as set forth in the proposal, failing to meet a material solicitation requirement regarding the stability of the vessel.
2. Awardee's proposal submitted in response to a solicitation issued by the Coast Guard for Fast Response Cutters, B-Class (FRC-B) was reasonably evaluated under an evaluation subfactor as "satisfactory" where certain evaluated weaknesses concerning the structure of the vessel were reasonably found by the agency not to materially affect the compliance of the proposal with the solicitation's requirements.
3. Agency reasonably evaluated the awardee's past performance as "marginal" with "low risk," notwithstanding the awardee's unsatisfactory performance on a relevant contract, where the awardee's past performance on contracts that were reasonably found to be more relevant was "excellent" or "very good," and the agency reasonably accounted for the contract with the unsatisfactory past performance in the evaluation and award selection.

4. Price reasonableness evaluation conducted under a solicitation for the design and construction of a vessel is unobjectionable where the agency's evaluation took into account the specifics of the vessels being offered in determining that the awardee's proposed price was reasonable.

5. Assistance provided to the awardee during the proposal preparation process by an entity that also assisted the contracting agency in the evaluation of proposals did not create a significant "impaired objectivity" organizational conflict of interest that had to be avoided, neutralized, or mitigated, where the record reflects that the entity also provided advice to the protester during the proposal preparation process; any potential benefit to the entity is speculative and too remote to establish a significant conflict of interest; and the record otherwise reflects that there is no reasonable possibility of prejudice, as evidenced by the fact that the entity, in evaluating proposals, was more critical of the awardee's proposal than it was of the protester's proposal.

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## **DECISION**

Marinette Marine Corporation (MMC), of Marinette, Wisconsin, protests the award of a contract to Bollinger Shipyards Lockport, L.L.C., of Lockport, Louisiana, under request for proposals (RFP) No. HSCG23-07-R-AFR001, issued by the United States Coast Guard, Department of Homeland Security (DHS), for the design, construction, and delivery of Fast Response Cutters, B-Class (FRC-B). The protester argues that the agency's evaluation of proposals, and selection of Bollinger's proposal for award, were unreasonable.

We deny the protest.

## **BACKGROUND**

The RFP, issued on June 22, 2007, provided for the award of a fixed-price with economic price adjustment contract for the design, construction, and delivery, of a single FRC-B, with options for up to 33 additional FRC-Bs spread out over a period of 6 to 8 years.<sup>1</sup> RFP, pt. I, § H, at H-17; pt. IV, § L, at L-4, L-7; Contracting Officer's Statement at 2. The RFP provided that the FRC-Bs, which were to have a minimum length overall (LOA) of 120 feet and a maximum LOA of 160 feet,<sup>2</sup> would be used in the performance of, for example, search and rescue, counter narcotic, alien migrant interdiction, and maritime homeland security/defense missions. RFP, pt. III, § J,

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<sup>1</sup> The contract will also include cost-plus-fixed-fee and firm, fixed-price items. RFP, pt. IV, § L, at L-4,

<sup>2</sup> As defined here, "LOA includes everything that contributes to the length of the vessel, including all protrusions, both above and below the surface of the water." RFP, Pt. III, § J, attach. 2, at 000-36.

attach. 8, Concept of Operation Scenarios, at 1-3; pt. III, § J, attach. 2, Circular of Requirements (COR), at 000-34.

The RFP required that the proposed FRC-B “be based on an in-service parent craft,” with the parent craft having “been previously designed, built, and operated as a patrol craft in unrestricted service” that incorporated “armament, electronics, and communications equipment,” and that has performed missions involving “search and rescue, enforcement of laws and treaties, and/or military service.” RFP, pt. 1, § C, at 2-3. Although the solicitation permitted modifications to the parent craft in order to meet other requirements set forth in the RFP, it informed offerors that the “[h]ull form and dimensions,” as well as the type and configuration of “[u]nderwater appendages” (such as the number of rudders), and the “[t]ype of propulsion” (such as diesel driven propeller), were to be identical to those of the parent craft. Id.

The solicitation included detailed proposal preparation instructions, and requested, among other things, that proposals include parent craft design, management, technical, price, and administrative volumes. RFP, pt. IV, § L, at L-12. The RFP requested that the parent craft design volume include “a discussion of the Parent Craft selected, the in-service application of the Parent Craft and the overall proven capability of the Parent Craft design.” RFP, pt. IV, § L, at L-13. Offerors were informed that their management volumes were to include sections addressing their production capability, past performance, past experience, proposed project organization and management, and small disadvantaged business (SDB) participation. RFP, pt. IV, § L, at L-13-L-17. With regard to the technical volumes of proposals, the solicitation provided that each technical volume was to include sections addressing mission effectiveness, cutter boat launch and recovery, performance (including flank speed), and transition from parent craft to FRC-B.<sup>3</sup> RFP, pt. IV, § L, at L-18.

Offerors were informed that the agency would award a contract to the offeror submitting the proposal determined to provide the best value to the government, considering the evaluation factors of management, technical, and price. RFP, pt. IV, § M, at M-2-M-4. The solicitation advised offerors that, in determining which proposal represented the best value to the government, the evaluation results under the management and technical factors would be considered equal in importance, and would be considered individually as well as collectively significantly more important than price. RFP, pt. IV, § M, at M-4. Offerors were further informed that their responses to the management factor would be considered under the following five subfactors listed in descending order of importance: production capability, past

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<sup>3</sup> The RFP required that the FRC-B include a cutter boat with a maximum LOA of 26 feet, and a cutter boat launch and recovery system “capable of rapidly and safely launching and recovering the Cutter Boat” under a range of conditions. RFP, pt. III, § J, attach. 2, COR, at 500-80, 91.

performance, past experience, project organization and management, and SDB participation. RFP, pt. IV, § M, at M-4. The RFP also stated that proposals would be evaluated under the following four equally important subfactors to the technical factor: mission effectiveness, cutter boat launch and recovery, performance (including flank speed), and transition from parent craft to FRC-B. RFP, pt. IV, § M, at M-5. The solicitation also provided that “[a] proposal may be rejected as grossly deficient and excluded from further consideration for award” for a number of reasons, including the failure of the proposal to “materially comply with the [RFP’s] requirements,” the failure of the proposal to comply with certain requirements set forth in the RFP’s statement of work pertaining to the parent craft, and where the proposal requires “a major rewrite of any section or sections . . . to permit evaluation.” RFP, pt. IV, § M, at M-1.

The Coast Guard received six proposals from five offerors, including Bollinger and MMC.<sup>4</sup> Contracting Officer’s Statement at 4; Agency Report (AR), Tab 9, Competitive Range Determination, at 1-2. In accordance with the terms of the solicitation, the proposals were first evaluated on a “Go/No-Go” basis for compliance with the RFP’s parent craft requirements. RFP, pt. IV, § M at M-3; AR, Tab 9, Competitive Range Determination, at 4; Contracting Officer’s Statement at 9. All of the proposals were found compliant with the RFP’s parent craft requirements, and were subsequently forwarded to the management evaluation team, technical evaluation team (TET), and price evaluation team for their consideration. AR, Tab 9, Competitive Range Determination, at 4. Based on its evaluation of the initial proposals, the agency included three proposals in the competitive range, including Bollinger’s and one of MMC’s proposals. Contracting Officer’s Statement at 10; AR, Tab 9, Competitive Range Determination, at 22; Tab 10, Source Selection Authority (SSA) Competitive Range Determination Memorandum, at 1. Written and oral discussions were conducted, and the offerors were provided with an opportunity during discussions to question the agency regarding their respective proposals. Contracting Officer’s Statement at 11-12; see AR, Tab 31, MMC and Bollinger Discussion Questions and Responses.

Revised proposals were received and evaluated, and, as detailed below, during this evaluation the agency found a previously undetected error in MMC’s proposal regarding “existing stability problems with the MMC proposed FRC-B.” Contracting Officer’s Statement at 14. The SSA was “advised that without correction of this deficiency [in MMC’s proposal, MMC’s] proposal would no longer be competitive for award.” AR, Tab 11, SSA Memorandum to Hold Second Round of Discussions, at 1; see Contracting Officer’s Statement at 14. The agency conducted a second round of discussions with the three competitive range offerors, during which MMC was advised in detail of these stability problems that the agency stated were not compliant with the RFP requirements, and offerors were again permitted to submit

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<sup>4</sup> MMC submitted two alternate proposals.

questions to the agency regarding their respective proposals. The agency then requested and evaluated final proposal revisions. Contracting Officer’s Statement at 15-17; AR, Tab 14, Proposal Evaluation and Analysis Group (PEAG) Report (Sept. 10, 2008), at 6; Tab 31, Second Discussion Questions to MMC (July 10, 2008).

The final evaluation results for MMC’s and Bollinger’s proposals were as follows:

	MMC	Bollinger
MANAGEMENT		
-Production Capability	Satisfactory/Moderate Risk	Satisfactory/Low Risk
-Past Performance	Satisfactory/Low Risk	Marginal/Low Risk
-Past Experience	Satisfactory/Low Risk	Satisfactory/Low Risk
-Project Organization & Management	Satisfactory/Low Risk	Satisfactory/Low Risk
-SDB Participation	Marginal/Low Risk	Satisfactory/Low Risk
TECHNICAL		
-Mission Effectiveness	Satisfactory/Low Risk	Satisfactory/Low Risk
-Cutter Boat Launch & Recovery	Satisfactory/Low Risk	Superior/Low Risk
-Performance (including Flank Speed)	Satisfactory/Moderate Risk	Satisfactory/Moderate Risk
-Transition from Parent Craft to FRC-B	Unsatisfactory/High Risk	Satisfactory/Low Risk
PRICE	\$1,090,561,192	\$1,336,213,976

AR, Tab 14, PEAG Report (Sept. 10, 2008), at 7-8, 22.

The SSA determined that Bollinger’s proposal “provide[d] the best overall value to satisfy the U.S. Coast Guard patrol boat requirement.” AR, Tab 20, SSA Decision, at 1. In making this determination, the SSA, while noting that both Bollinger and MMC had “proposed a management approach that will facilitate a successful FRC-B acquisition program,” identified and described certain “[d]iscriminators between proposals.” *Id.* at 3.

The most significant discriminator between the proposals was the evaluation of MMC’s proposal as “unsatisfactory” with “high risk” under the transition from parent craft to FRC-B technical evaluation subfactor, based on the agency’s conclusion that MMC’s proposed FRC-B “failed intact stability requirements for topside icing” under two operating conditions specified in the RFP. *Id.* at 2. The SSA noted that the practical effect of this failure to meet the RFP’s “stability requirements regarding topside icing” would be to “place[] Coast Guard personnel at risk when operating in cold conditions where icing could be encountered.” *Id.* The SSA found that this failure was “one that would require a major revision to the offeror’s proposal” and that MMC’s proposal was “ineligible for award” because of this failure. *Id.* at 3.

The SSA also specifically noted “[d]iscriminators between proposals” as evaluated under the cutter boat launch and recovery technical subfactor. In this regard, the SSA noted that Bollinger’s proposed FRC-B “boasts a [cutter boat] launch & recovery configuration system that improves upon a proven design that has been trialed on Coast Guard platforms for over ten years which gained it a Superior rating,” whereas MMC’s proposed cutter boat launch and recovery system, which was evaluated as “satisfactory,” includes a feature that requires “cutter boat speed and power” for its recovery, which “[o]rganizational experience has shown . . . increases the opportunity for damage to the [cutter] boat.” Id.

Another discriminator between the proposals noted by the SSA related to the evaluation under the past performance management subfactor, where the SSA noted that the rating of Bollinger’s proposal as “marginal” (in contrast to MMC’s proposal’s rating of “satisfactory”) was “due to [Bollinger’s] role in the failure of the 123’ WPB conversion efforts.”<sup>5</sup> The SSA noted that this failure, as evidenced by the proposal’s “marginal” rating, was somewhat offset by Bollinger’s “receipt of ‘exceptional’ and ‘very good’ past performance assessments on U.S. Navy and Coast Guard new construction projects, similar in scope and complexity to that which will be required for the FRC-B,” and the fact that the 123-foot WPB project “differs in scope from the new construction FRC-B program.” Id.

As indicated, the SSA ultimately concluded that the proposal submitted by Bollinger “meets all the [Coast Guard] requirements under the Solicitation, at a fair and reasonable price, and offers the best overall value to the Government.” Id. at 4. The agency subsequently awarded a contract under this RFP to Bollinger, and after requesting and receiving a debriefing, MMC filed this protest.

#### EVALUATION OF MMC’S PROPOSAL UNDER TRANSITION FROM PARENT CRAFT TO FRC-B SUBFACTOR OF TECHNICAL FACTOR

The protester first challenges the agency’s evaluation of its proposal, under the transition from parent craft to FRC-B subfactor to the technical evaluation factor, as “unsatisfactory” with “high risk,” and the agency’s consequent determination that its proposal was ineligible for award because of its failure to meet certain intact stability requirements set forth in the solicitation and as evaluated under this subfactor.

According to the RFP, among the matters to be addressed in the section of the proposals addressing the transition from parent craft to FRC-B technical evaluation subfactor was a detailed discussion of the stability of the proposed FRC-B in a

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<sup>5</sup> The 123-foot WPB program involved the conversion of the Coast Guard’s 110-foot patrol boats into 123-foot patrol boats, and is discussed in more detail later in this decision. AR at 1.

variety of ship, sea, and weather conditions. RFP, pt. IV, § L, at 24; pt. III, § J, attach. 2, COR, at 000-66. The solicitation provided specific parameters for these conditions, and referred offerors to a Department of Navy manual for certain required information. RFP, pt. III, § J, attach. 2, COR, at 000-66; AR, Tab 7, Department of the Navy, Sea Systems Command, Procedures Manual for Stability Analysis for U.S. Navy Small Craft (May 1988). The practical effect of this was that the RFP required that each proposal provide detail as to the relative stability of the proposed FRC-B in a number of different “load conditions,” at different times during the FRC-B’s service life, and with regard to a number of different stability criteria.<sup>6</sup>

The example of the foregoing requirements most pertinent to this protest involved the RFP requirement that a proposal demonstrate that the proposed FRC-B would meet intact stability requirements in a “minimum operating condition,” at the “end of [the FRC-B’s] service life,” and under the stability criterion of “topside icing.” An FRC-B in “minimum operating condition” is defined as where the FRC-B is “ready for service in every respect,” including officers and crew and personnel effects, one-third of the FRC-B’s full load of consumables such as fuel, water, and supplies, a sewage tank at two-thirds full, and a dirty oil tank at one-half full. The “end of service life” margin “is meant to take into account growth in the FRC-B’s weight over its service life.” The “topside icing” stability criterion, under the terms of the RFP here, refers to a situation where the FRC-B is covered with a “uniform ice thickness of 3 inches on all exposed horizontal and vertical surfaces from the weather deck and above” while exposed to a beam wind<sup>7</sup> of 56 knots.<sup>8</sup> The RFP required that the intact stability of the proposed FRC-B would be “considered adequate” if the FRC-B, under the stability criterion of “topside icing” did not exceed a 15 degree angle of heel.<sup>9</sup> RFP, pt. III, § J, attach. 2, COR, at 000-66, 000-145; AR, Tab 7, Department of the Navy, Sea Systems Command, Procedures Manual for Stability Analysis for U.S. Navy Small Craft (May 1988), at 34-35, 41; Protester’s Comments at 19.

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<sup>6</sup> The solicitation required that offerors demonstrate the stability of the proposed FRC-B’s when intact (intact stability), and when damaged (damaged stability). RFP, pt. IV, § L, at 24. The intact stability criteria include beam winds combined with rolling, lifting heavy weights over the side, crowding of passengers to one side, high speed turning, and most relevant here, topside icing. RFP, pt. III, § J, attach. 2, COR, at 000-66, 000-145; AR, Tab 7, Department of the Navy, Sea Systems Command, Procedures Manual for Stability Analysis for U.S. Navy Small Craft (May 1988), at 36-41.

<sup>7</sup> A “beam wind” is one which blows across a vessel’s side.

<sup>8</sup> One of the effects of the “upsetting force” of “topside icing” is to “raise the center of gravity” of the FRC-B. AR, Tab 7, Department of the Navy, Sea Systems Command, Procedures Manual for Stability Analysis for U.S. Navy Small Craft (May 1988), at 35.

<sup>9</sup> When a vessel “heels,” it essentially leans to one side.

MMC's initial proposal included a section addressing the RFP's stability requirements in detail. AR, Tab 36, MMC Initial Proposal (Nov. 19, 2007), vol. III, Technical, Tab 7, Proposed FRC-B Concept Design Stability Calculations. In this regard, MMC's proposal represented that its proposed FRC-B, in a "full load condition"<sup>10</sup> and at any time during the FRC-B's service life, met the RFP's stability requirements under the "topside icing" criterion. *Id.* at 7. However, MMC's proposal specifically provided that for "half-load conditions,"<sup>11</sup> wind speed must be restricted to 54 knots," and that for "minimum operating conditions, wind speed must be restricted to 36 knots," in order for its proposed FRC-B to not exceed a 15 degree angle of heel under the topside icing criterion. *Id.* This, as indicated, fails to meet the RFP's intact stability requirement for minimum operating conditions under the topside icing criterion.

In its evaluation of MMC's initial proposal, the agency identified a number of issues for discussion as evaluated under the transition from parent craft to FRC-B subfactor, but did not specifically identify as a weakness or deficiency MMC's proposal's failure to comply with the RFP's intact stability requirements under the topside icing criterion. The agency did inform MMC during discussions that its proposed FRC-B's "damage stability performance is deficient," and that an element in the protester's calculations regarding damage stability was incorrect. AR, Tab 31, MMC Discussion Questions (May 23, 2008), at 7; Tab 13, PEAG Report, at 15; Contracting Officer's Statement at 12. MMC responded to the agency's discussion questions regarding damage stability by conceding that an error had been made, that it was "in the process of correcting the final damage stability and other calculations," and that "[t]he corrected calculations will be provided in the Final Proposal Revision." AR, Tab 31, MMC Response to Discussion Question T-27.

During its evaluation of final proposal revisions (FPR) submitted on May 31, the agency, due to "inconsistencies found in the centers of gravity, used as input values in MMC's stability calculations," conducted a detailed review of MMC's stability analysis. Contracting Officer's Statement at 14; AR, Tab 25, MMC Technical Evaluation Summary (June 16, 2008), at 7-8; MMC Technical Evaluation Worksheets

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<sup>10</sup> The RFP defined "full load condition" as the FRC-B complete and "ready for service in every respect," including officers and crew and personnel effects, all supplies and stores, 95-percent capacity of fuel and lubricating oil, 100-percent capacity of potable water, a sewage tank one-third full, and an empty dirty oil tank. RFP, pt. III, § J, attach. 2, COR, at 000-145.

<sup>11</sup> The RFP defined "half load condition" as where the FRC-B is "ready for service in every respect," including officers and crew and personnel effects, one-half of the FRC-B's full load of consumables such as fuel, water, and supplies, a sewage tank at one-half full, and a dirty oil tank at one-half full. RFP, pt. III, § L, attach. 2, COR, at 000-145.



for Subfactor Four, (June 13, 2008), attachs. 6-14, at 1-4 and 6-18, at 1-4. The agency determined that MMC had applied an element to be used in the required calculations--the KG margin<sup>12</sup>--incorrectly in both its initial proposal and FPR, and that the correction of this error, as calculated by the agency, “uncovered existing stability problems with the MMC proposed FRC-B.” Contracting Officer’s Statement at 14; AR, Tab 14, PEAG Report, at 6; AR, Tab 25, MMC Technical Evaluation Summary (June 16, 2008), attach. 5-1, at 6-7; MMC Technical Evaluation Worksheets for Subfactor Four, (June 13, 2008), attachs. 6-14, at 1-4, and 6-18, at 1-4. The technical evaluators noted here that “[a]ccepting the proposal as is will introduce performance risk with safety impacts that could place [Coast Guard] sailors in jeopardy.” AR, Tab 25, MMC Technical Evaluation Summary (June 16, 2008), attach. 5-1, at 7; see Tab 25, MMC Technical Evaluation Worksheets for Subfactor Four, (June 13, 2008), attachs. 6-14, at 1-4, and 6-18, at 1-4.

As mentioned previously, the agency decided to reopen discussions, bring this matter to MMC’s attention, and provide MMC with an opportunity to address it in a second FPR. AR, Tab 11, SSA Memorandum to Hold Second Round of Discussions, at 1. Accordingly, the agency held a second round of discussions with the competitive range offerors, during which it informed MMC of a “deficiency.” In this regard, the agency advised MMC that the “KG margin for the proposed FRC-B has been incorrectly calculated,” provided the bases for this conclusion, and stated that the agency’s analysis of the information in the proposal indicated that MMC’s proposed FRC-B failed to meet a number of intact stability requirements, including the intact stability requirements related to “topside icing.” AR, Tab 31, Second Discussion Questions to MMC (July 10, 2008), at 13. MMC was also advised by the agency in this discussion letter that “[f]ailure to correct any deficiency cited in the discussion items may result in the proposal not being eligible for award.” AR, Tab 31, Cover Letter to Second Discussion Questions to MMC (July 10, 2008), at 1.

MMC’s second FPR stated that “[t]he stability of the FRC-B was analyzed” for all loading conditions specified and under the “topside icing” criterion, and that its “FRC-B satisfies the 3”-thick topside ice criterion with 56 knot winds . . . for the full load conditions.” AR, Tab 45, MMC Second FPR, vol. III, bk. 3, Proposed FRC-B Stability Calculations Rev. B, at 8 of 313. Although MMC’s second FPR did not make a similar reference, as it had in its previous submissions, as to whether its proposed FRC-B met the intact stability requirements related to topside icing in any of the

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<sup>12</sup> “KG” refers to the distance (height) from the keel of the vessel to the vessel’s vertical center of gravity. Contracting Officer’s Statement at 14, 17 n.2. The vertical center of gravity (VCG) of the ship is the “vertical location through which all of the ship weight is acting.” Contracting Officer’s Statement at 18 n.3. The record reflects that it “is standard naval practice to include a KG margin on a ship concept design determined VCG to account for unknowns and estimating errors.” Contracting Officer’s Statement at 14.

other load conditions, such as the half-load or the minimum operating conditions, this section of MMC's second FPR included a chart, which included "Heel Angle with 56 [knot] wind & Ice" for various "Loading Condition[s]," and indicated that MMC's proposed FRC-B met the intact stability requirements of the solicitation in the topside icing criterion in all load conditions. Id.

In evaluating MMC's second FPR, the agency found that the proposal included "a completely revised weight estimate report . . . that corrected many of the intact stability deficiencies" previously identified in MMC's proposal. AR, Tab 25, MMC Technical Evaluation Summary (Aug. 12, 2008), attach. 6-14, at 1. However, the agency found that MMC's technical proposal continued to include "errors in the stability calculation . . . for intact stability assessment of icing condition for both minimum operating and full load conditions," and that MMC's "proposed FRC-B fails to meet the stability standard for icing in the minimum operating and full load conditions." Id. In this regard, the agency found, in analyzing MMC's second FPR, that MMC's FRC-B "just fails" to meet the intact stability requirements in a full load condition at the end of its service life under the topside icing criterion, and "fails to meet the [intact stability] requirement by a significant amount" in "the minimum operating condition" at the end of its service life under the topside icing criterion. Id. at 4. The evaluators explained that this was "a critical flaw that places [Coast Guard] sailors in jeopardy," and that in the evaluators' view a "major revision" of the proposal would be required before MMC's proposal would become compliant with the RFP's requirements. The evaluators' determination that MMC's proposal would require a major revision was based upon the evaluators' view that more work would need to be done with regard to MMC's FRC-B's "weight estimate report" (which MMC had been "refining" for months), and that the "magnitude that the VCG must be lowered" in the proposed FRC-B in order to meet the intact stability requirements would likely require a redesign that would have major impacts on the proposal. Id.; see AR, Tab 25, MMC Technical Evaluation Summary (Aug. 7, 2008), attach. 6-18, at 3-4.

Given the failure of MMC's proposal to meet the RFP's intact stability requirements with regard to topside icing, the potential effect of that failure on the FRC-B's mission, as well as the agency's view that a major revision of MMC's proposed FRC-B as set forth in its proposal would be required to satisfy the intact stability requirements, the agency evaluated MMC's proposal as "unsatisfactory" with "high risk" under the relevant transition from parent craft to FRC-B evaluation subfactor to the technical factor. As mentioned previously, the SSA agreed that the practical effect of MMC's proposal's failure here would "place[] Coast Guard personnel at risk when operating in cold conditions where icing could be encountered," and determined that this failure rendered MMC's proposal "ineligible for award." AR, Tab 20, SSA Decision, at 2-3.

MMC now concedes that its proposed FRC-B, as set forth in its proposal, fails to meet the RFP's intact stability requirements as determined by the agency, given that

its proposed FRC-B “reaches a heel angle of 17.7 [degrees]” under the topside icing criterion, as opposed to a maximum heel angle of 15 degrees as required by the RFP.<sup>13</sup> Protester’s Comments at 21. The protester also concedes that the failure of its proposed FRC-B to meet the RFP’s intact stability requirement under the topside icing criterion was raised by the agency during the second round of discussions. Protester’s Comments at 13.

MMC nevertheless argues at length that the agency, and in particular the contracting officer, misunderstood and exaggerated the impact of MMC’s proposed FRC-B’s failure to meet the RFP’s intact stability requirements for the topside icing criterion, and concludes that the agency’s evaluation of its proposal as “unsatisfactory” with “high risk” under the transition from parent craft to FRC-B subfactor, and subsequent determination that this rendered MMC’s proposal ineligible for award, were unreasonable. Protest at 53, 56; Protester’s Comments at 36, 57; Protester’s Supp. Comments (Dec. 1, 2008) at 5-11. MMC further asserts that an extensive revision to its proposal would not be required, arguing that it “could fix the problem by lowering the [proposed FRC-B’s] pilothouse and rearranging the main deck,” and that “[t]he only material changes to the proposal are revisions and updates to existing text, figures and drawings.”<sup>14</sup> Protester’s Comments at 29, 32; see Protest at 56-57; Protester’s Supp. Comments (Dec. 1, 2008) at 13-20.

The evaluation of proposals is a matter within the discretion of the contracting agency, and in reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency’s judgment was reasonable, in accord with the evaluation factors set forth in the RFP, and whether the agency treated offerors equally in its evaluation of their respective proposals and did not disparately evaluate proposals with respect to the same requirements. Hanford Envtl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4. The protester’s mere disagreement with the

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<sup>13</sup> The protester’s concession here stands in contrast to the protester’s second FPR that, as mentioned previously, included a table showing its proposed FRC-B reaching maximum heel angles of 10.05 to 13.93 degrees under the topside icing criterion, with the 13.93 degree angle of heel reached in a minimum load condition at the end of its service life. AR, Tab 45, MMC Second FPR, vol. III, bk. 3, Proposed FRC-B Stability Calculations Rev. B, at 8 of 313.

<sup>14</sup> To the extent that MMC is arguing that the solicitation’s intact stability requirements, including the topside icing criterion, were unnecessary for the FRC-B to meet the agency’s needs, it was required to protest on this basis prior to the deadline for submitting offers in order to be considered timely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (2008); Plasma-Therm, Inc., B-280664.2, Dec. 28, 1998, 98-2 CPD ¶ 160 at 3.

agency's judgment does not render the evaluation unreasonable. Landoll Corp., B-291831 et al., Dec. 23, 2002, 2003 CPD ¶ 40 at 8.

As explained above, there is no question that MMC's proposed FRC-B, as set forth in its proposal, failed to meet the RFP's intact stability requirements under the topside icing criterion. It is well-settled that in a negotiated procurement, a proposal that fails to conform to one or more of the solicitation's material requirements is technically unacceptable, and cannot form the basis for an award. Universal Yacht Servs., Inc., B-287071, B-287017.2, Apr. 4, 2001, 2001 CPD ¶ 74 at 3-4; Plasma-Therm, Inc., *supra*, at 3; see Williams Commc's Solutions, LLC, B-283900, Jan. 18, 2000, 2000 CPD ¶ 57 at 5. As such, the issue here is one of materiality, that is, whether the agency reasonably determined that the degree to which MMC's proposed FRC-B failed to meet the intact stability requirements under the topside icing criterion was material, such that it justified the evaluation of MMC's proposal as "unsatisfactory" with "high risk" under the transition from parent craft to FRC-B subfactor, and whether the agency reasonably determined that because of this failure and the degree of this failure, MMC's proposal was ineligible for award.

In contesting materiality, the protester contends that since the topside icing stability criterion is an "an operational criterion, not a survival criterion, the consequence of this exceedance by the [MMC FRC-B] is benign, resulting in a gradual degradation of mission performance with increasing heel angle," rather than "an immediate capsize or other catastrophic failure." Protester's Comments at 21. The protester points out here that its proposed FRC-B, which "reaches a heel angle of 17.7 [degrees]" under the topside icing criterion, rather than a maximum of 15 degrees as required, does not reach a "point of capsize" until the angle of heel reaches 51 degrees. *Id.* The protester concludes here that "the issue is not wind, icing, or instability," but rather "a 2.7 [degree] heel issue--a 15 [degree] heel vs. 17.7 [degrees]--and nothing more." Protester's Supp. Comments (Dec. 1, 2008) at 9.

The agency, in evaluating the proposals, explained the impact of the failure of MMC's proposed FRC-B to meet the RFP's stability requirements in the topside icing criterion as follows:

Failing to meet an intact stability criterion (topside icing case) is a critical flaw that places [Coast Guard] sailors in jeopardy. Operating in cold conditions that can lead to icing is not uncommon in several of the Coast Guard's operating areas. This deficiency has a major impact on the safety of the vessel and crew.

AR, Tab 25, MMC Technical Evaluation Summary (Aug. 12, 2008), attach. 6-14, at 4; see MMC Technical Evaluation Summary (Aug. 7, 2008), attach. 6-18, at 4.

In response to the protester's arguments here, the agency explains further that "MMC fails to appreciate that the increase in the slope of the decks and the increase in the roll angles in a dynamic sea environment puts Coast Guard crew members at greater

risk.” Agency Supp. Report (Nov. 25, 2008) at 2. In this regard, the agency points out that the FRC-B “will be called upon to operate in environments where topside icing will occur in waves in excess of 18 feet, night and day, under some of the most treacherous and demanding conditions,” and that given the FRC-B’s mission requirements, “[o]thers in peril who have succumbed to these very same conditions depend on that vessel to rescue them.” Id. The agency continues by stating that “MMC’s remarkable discounting of the importance of stability reflects a clear lack of respect for the harsh and unforgiving ocean environment and no appreciation for the risks Coast Guard men and women face when underway on patrol, especially when patrolling northern water during the winter months.” Id. at 6. The agency adds that “icing is a condition that many Coast Guard men and women find themselves in on a regular basis when they patrol northern waters in the winter months,” and that under such conditions, “[t]hree (3) inches of ice is not uncommon, in fact it is easy for the build-up to exceed 3 inches in rapid order.” Id. at 7. The agency states that although the stability requirements set forth in the RFP “do not account for all possible variables they do afford some level of protection when responding to conditions that would overwhelm a lesser craft.” Id. The agency points out here that the angle of heel of MMC’s proposed FRC-B under the topside icing criterion exceeds the requirement set forth in the solicitation by approximately 18 percent, and concludes that in its view, “[a]n 18 [percent] increase in heel with an ice covered deck will certainly place Coast Guard men and women at greater risk.” Id. at 6.

Based on our review of the record, we have no basis to object to the agency’s determinations, that the RFP’s intact stability requirements under the topside icing criterion, as well as the degree that MMC’s FRC-B, as set forth in its proposal, failed to comply with those requirements, were material. In this regard, the agency, in both the contemporaneous evaluation record and during the course of this protest, has reasonably explained its view that the topside icing stability criterion was a material requirement of the solicitation, and that the degree by which MMC’s proposed FRC-B exceeds the RFP’s requirements was material in that it poses an increased risk to Coast Guard personnel. Although the protester disagrees with the agency’s explanation and ultimate conclusions, we find MMC’s contentions here to constitute nothing more than the protester’s mere disagreement with the agency.

The protester also argues that the agency’s conclusions regarding the impact of MMC’s proposed FRC-B’s failure to comply with the RFP’s intact stability requirements under the topside icing criterion were based upon the erroneous view of the cognizant contracting officer that MMC’s FRC-B, as proposed, would capsize and sink. Protester’s Comments at 3-4, 15-16, 18-26; Protester’s Supp. Comments (Dec. 1, 2008) at 4-9. In this regard, the protester points to two e-mails written by the contracting officer, in one of which the contracting officer stated, while referring to MMC’s proposed FRC-B, that “I’m not willing to put my neck out for a boat we know will sink today,” and another that indicated the issue was “will the boat float or sink.” AR, Tab 60, Contracting Officer’s E-mails to Technical Evaluator and Legal Counsel (Sept. 8, 2008).

We find no merit to the protester's contention here. The contracting officer's e-mails were sent in the context of the agency's deciding whether MMC's proposed FRC-B's failure to meet the intact stability requirements in a topside icing criterion, as required by the RFP, should result in the finding that the proposal was "unsatisfactory" with "high risk" under the transition from parent craft to FRC-B evaluation subfactor. They are part of a string of e-mails that, when read together, illustrate, in our view, the agency's thoughtful and careful consideration of the failure of MMC's proposed FRC-B to meet the topside icing criterion, and the options the agency had at that time, given MMC's failure in this regard. The remainder of the record is devoid of any reference to MMC's proposed FRC-B sinking or capsizing because of its failure to meet the RFP's stability requirements in the topside icing criterion.<sup>15</sup> Rather, as indicated above, the agency's determinations regarding the materiality of the RFP's stability requirements, and MMC's proposed FRC-B's failure to meet certain of them, reflect a view that MMC's failure in this regard could impact the safety of Coast Guard personnel during conditions set forth in the topside icing criterion because the ship will heel more than one that meets the RFP's requirements. In sum, although the contracting officer's two e-mails contain hyperbole in overstating the severity of the issue with MMC's proposed FRC-B, the remainder of the record, including the numerous other e-mails of the contracting officer, demonstrate that the contracting officer, evaluators and SSA reasonably understood and evaluated MMC's proposed FRC-B's failure to meet the intact stability requirements.

The protester argues at length that the proposal revisions needed for its proposed FRC-B to meet the RFP's topside icing criterion are not extensive, and that the agency's views to the contrary are incorrect. In this regard, as noted above, MMC asserts that it "could fix the problem by lowering the [proposed FRC-B's] pilothouse and rearranging the main deck," and that "[t]he only material changes to the proposal are revisions and updates to existing text, figures and drawings." Protester's Comments at 29, 32; see Protest at 56; Protester's Supp. Comments (Dec. 1, 2008) at 13-20.

Given that protester admits that "material changes" are required, and that it has to "lower the pilothouse" and "rearrang[e] the main deck" on its proposed FRC-B, we find reasonable the agency's determination that these revisions are not minor, but

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<sup>15</sup> Although the agency's record of the evaluation includes comments regarding the relative instability of MMC's proposed FRC-B because of its failure to meet the RFP's intact stability requirements under the topside icing criterion, we find no merit to the protester's unsubstantiated claim that "[u]nstable is Coast Guard-speak for 'capsize'" and MMC's apparent argument that every agency reference to MMC's proposed FRC-B's relative instability was actually a reference in "Coast Guard-speak" that MMC's proposed FRC-B, if built, would pose an imminent threat of capsizing. See Protester's Comments at 3.

rather can reasonably be characterized as extensive. Moreover, the protester has failed to explain the cascading effect of these revisions. That is, as asserted by the agency, “[t]he lowered pilothouse would impact the ability of the watch standers to view the sea” as required for various anticipated FRC-B missions, such as search and rescue operations and drug enforcement; “would impact the ability to view the cutter boat launch and recovery operations which is a vital part of the FRC-B mission”; and may “force the relocation of the deck head, secure electronic space, and [heating, ventilation, and air conditioning] equipment, all of which are [under the current design] advantageously located in close proximity to the pilothouse.” Agency Supp. Report (Nov. 25, 2008) at 11-12. We also note that while the protester argues throughout this protest that the necessary revisions to its proposal could be “reasonably done in 200 man hours of labor,” Protester’s Comments at 31, it offers no reasonable explanation as to why these revisions were not made prior to its submission of its FPR, nor does it provide any real detail regarding the necessary revisions in any of its protest submissions.

In sum, we have no basis to object to the agency’s determination that MMC’s proposed FRC-B failed to materially comply with the terms of the RFP, or the evaluation of MMC’s proposal as “unsatisfactory” with “high risk” under the transition from parent craft to FRC-B subfactor to the technical factor. Nor, given the reasonable concerns of the agency, as reflected in the evaluation as to the potential impact of this failure, do we have any basis to object to the agency’s determination that MMC’s proposal’s failure to comply with a material term of the solicitation rendered the proposal ineligible for award.<sup>16</sup>

MMC argues that because, in its view, its proposed FRC-B’s failure to meet the RFP’s intact stability requirements under the topside icing criterion “represents a manageable design problem, which could have been quickly and effectively resolved on paper,” that the agency’s decision not to reopen discussions to allow MMC to address this failure was unreasonable. Protester’s Comments at 21; see Protest at 61.

When an agency engages in discussions with an offeror, such discussions must be meaningful. Shaw Infrastructure, Inc., B-291121, Nov. 19, 2002, 2003 CPD ¶ 9 at 7. However, this requirement for meaningful discussions does not create an obligation for agencies to continue to conduct successive rounds of discussions and request proposal revisions until all proposal defects have been corrected. Id. Here, the agency’s determination that MMC’s proposed FRC-B failed to comply with certain of the stability requirements set forth in the solicitation was raised during both rounds of discussions, and what ultimately became the agency’s primary

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<sup>16</sup> As mentioned previously, the RFP expressly provided for the rejection of a proposal that failed to meet a material term or where a major rewrite to the proposal would be needed in order to satisfy the RFP requirements and permit evaluation. RFP, pt. IV, § M, at M-1.

concern, that is, MMC's proposed FRC-B's failure to comply with the topside icing intact stability criterion, was expressly raised by the agency during the second round of discussions. Given this, and the protester's failure to submit a FPR that demonstrated compliance with the RFP's topside icing stability criterion, the agency's decision not to engage in further discussions was reasonable. See id. at 8.

#### EVALUATION OF BOLLINGER'S PROPOSAL UNDER TRANSITION FROM PARENT CRAFT TO FRC-B SUBFACTOR OF TECHNICAL FACTOR

MMC argues that Bollinger's proposal should have been found "ineligible for award" because its proposed FRC-B suffers from certain "structural inadequacies." Protester's Comments at 47-48, 52-53. The protester argues here that in designing its FRC-B, Bollinger, as reflected in its proposal, "stripp[ed] steel from the hull of the Parent Craft," resulting in a "weakened hull" that will "most certainly risk premature fatigue, buckling and failure" during performance of its anticipated missions. Protester's Comments at 52.

The solicitation required that in the transition from parent craft to FRC-B section of the technical proposal, offerors were to include, among other things, "a narrative to fully demonstrate the Offeror's understanding with regard to the technical effort to develop the Offeror's selected Parent Craft into a fully compliant proposed FRC-B," a narrative "describing the Offeror's thorough understanding of what is required to transition from the selected Parent Craft to the proposed FRC-B that meets the [American Bureau of Shipbuilding (ABS)] classification requirements," and "a discussion of any [allowable] modifications to the Parent Craft structure . . . along with the effect of these changes on the overall structural strength of the FRC-B design."<sup>17</sup> RFP, pt. IV, § L, at L-23. The solicitation added here that offerors were to provide certain "Parent Craft Data for an ABS HSNC [High Speed Naval Craft] Classification Assessment as well as any preliminary data that exists for the proposed FRC-B." Id.; see RFP, pt. III, § J, attach. 1, at 10. With regard to the evaluation of proposals, the solicitation advised offerors that proposals would be evaluated under the transition from parent craft to FRC-B subfactor of the technical factor "to assess the technical feasibility to transition from the Parent Craft design to an FRC-B design that meets the requirements for ABS classification." RFP, pt. IV, § M, at M-5.

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<sup>17</sup> The ABS is 1 of 10 classification societies worldwide, and a "key mission of ABS is to set safety standards for the marine industry through the development and verification of standards for the design, construction, and operational maintenance of marine-related facilities," including ships. Agency Supp. Report (Nov. 25, 2008) at 27. A vessel that "has been designed and built to the appropriate rules" of ABS may apply for classification, and 46 U.S.C. § 3316 (2000) provides that "[e]ach department, agency, and instrumentality of the United States Government shall recognize the [ABS] as its agent in classifying vessels owned by the Government."



The Coast Guard contracted with ABS to aid in the evaluation of proposals submitted in response to this RFP. The record reflects that in evaluating Bollinger's initial proposal, ABS found that a number of "Bollinger Structures," including its proposed FRC-B's "bottom shell plating," "bottom stiffeners," and "side frames," were inadequate "to withstand slamming pressure" of the sea and waves, as calculated in accordance with the HSNC Guide, and that this posed a "moderate risk." AR, Tab 23, ABS Report on Bollinger's FRC-B, at 3. The ABS evaluation, while commenting that "[a]n increase in bottom shell plating is required to withstand slamming pressures," qualified its evaluation by noting that Bollinger's proposed FRC-B "has a ride control and depending on the effectiveness of the Ride Control System, the actual slam loads may be reduced." *Id.* The ABS report concluded here that "ABS is prepared to review the designer's assumptions and the effectiveness of the ride control to reduce acceleration that cause slam loads." *Id.*

The agency's evaluation of Bollinger's initial proposal references the ABS findings, stating that an ABS "analysis of the proposed FRC-B shows that the bottom plating is not sufficient to withstand slamming pressure as calculated in the ABS HSNC Guide," and that "[a]n increase in thickness will result in an increase in weight which would also have to be addressed to insure that the ability to meet other performance requirements is maintained." AR, Tab 28, Bollinger Technical Evaluation Worksheet (Jan. 30, 2008), attach. 6-16, at 2. However, the agency also noted that "[t]his weakness is tempered by the fact that the proposed FRC-B has a [ride control] system which should reduce slamming pressure that the hull sees and that [ABS] stated was not part of their analysis." *Id.* The agency's evaluation of Bollinger's initial proposal reflects similar determinations with regard to Bollinger's proposed FRC-B's bottom stiffeners and side frames, that is, that ABS had found them inadequate, but that these findings were tempered by the fact that ABS had not considered Bollinger's proposed FRC-B's ride control system in its analysis. *Id.* The agency assessed this aspect of Bollinger's initial proposal as representing a "weakness" posing "risk," noting that "bottom plating and stiffeners, and side frames may need to be increased to resist hull slamming pressures," which could result in "possible increase [in] . . . weight." AR, Tab 28, Bollinger Technical Evaluation Summary (Jan. 30, 2008), attach. 6-14, at 2. The agency concluded that because Bollinger's selected "Parent Craft for the proposed FRC-B . . . was classed to current Lloyd's Registry of Shipping . . . rules," which are "comparable to those of the ABS HSNC Guide," there appeared "to be no technical issues of the Parent Craft which could preclude the proposed FRC-B to be classed according to the ABS HSNC Guide." AR, Tab 28, Bollinger Technical Evaluation Worksheet (Jan. 30, 2008), attach. 6-16, at 3.

Although these issues were not raised by the agency in its first round of discussions with Bollinger, Bollinger responded to another discussion question posed by the agency by including in its first FPR additional drawings that provided the agency with greater detail regarding the structural design of Bollinger's proposed FRC-B. AR, Tab 53, Bollinger FPR, vol. III, app., Drawings FRC-B 100-001, 002, 003. Bollinger

also stated in the first FPR that it had evaluated its proposed FRC-B's hull strength using available ABS HSNC software, that "[a]ll calculations within the HSNC software program were validated," and that "[t]he FRC-B high-strength steel modifications to the parent craft structure meet all the requirements of the ABS HSNC and the COR." AR, Tab 53, Bollinger FPR, vol. III, at 117-117a.

The agency found, in evaluating Bollinger's first FPR, that the additional information provided by Bollinger "better depicts the proposed structure for the proposed FRC-B," and was "helpful in that it highlights areas not used in the initial structural analysis." AR, Tab 28, Bollinger Technical Evaluation Worksheet (June 20, 2008), attach. 6-16, at 2. The agency nevertheless concluded that it was "still unclear whether the proposed structure will be adequate to withstand anticipated loads." Id. As such, the agency continued to assess this aspect of Bollinger's proposal as a "weakness" with "risk." AR, Tab 28, Bollinger Technical Evaluation Worksheet (June 20, 2008), Attach. 6-14, at 2-3.

The agency expressly raised this issue with Bollinger during the second round of discussions, informing Bollinger, among other things, that "[a] Government analysis of the proposed FRC-B shows that the bottom plating, bottom stiffener scantling, side frame scantlings, and longitudinal strength may not be sufficient to withstand slamming pressure as calculated in the ABS HSNC Guide."<sup>18</sup> AR, Tab 32, Second Discussion Questions to Bollinger (July 10, 2008), at 11.

Bollinger responded to the agency's question by stating, among other things, that "[t]he bottom plating, bottom stiffener scantling, side frame scantlings, and longitudinal strength were designed to withstand slamming pressure as calculated in the ABS HSNC Guide," and that it would be able to "further refine the hull structure design, both decreasing and increasing the . . . scantlings as needed, during the detail design phase of the FRC-B program." AR, Tab 32, Bollinger Discussion Responses, at 29. Bollinger also stated in its second FPR that it had included a structural weight margin of 5.85 metric tons, as well as a total design and builder's weight margin of 23.98 metric tons.<sup>19</sup> AR, Tab 57, Bollinger Second FPR, vol. III, at 116.

In evaluating Bollinger's second FPR, the agency found that should increases to the FRC-B's structure be needed to meet the ABS HSNC Guide requirements, the risk posed by the additional weight to Bollinger's proposed FRC-B was further mitigated

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<sup>18</sup> "Scantlings" is the collective term for the structural systems of the vessel, including plating, stiffeners and framing. Protester's Comments, exh. B, Declaration of Protester's Consultants (Nov. 16, 2008), at 16.

<sup>19</sup> Weight margins "compensate for weight and moment changes to the weight caused by design development, growth in Contractor-furnished material weights, and omissions and errors in the weight estimate." AR, Tab 4, TET Statement, at 22.

by Bollinger's explanation regarding the weight margins. AR, Tab 28, attach. 6-16, Technical Evaluation Worksheet (Aug. 11, 2008), at 3. However, the agency continued to assess as a "weakness" its view that the structures and scantlings of Bollinger's proposed FRC-B may "need to be increased." AR, Tab 28, Bollinger Technical Evaluation Summary (Aug. 19, 2008), attach. 5-1, at 9, 11.

The protester's argument that Bollinger's proposal should have been found "ineligible for award" because its proposed FRC-B suffers from certain "structural inadequacies" fails for a number of reasons. First, MMC's argument here is based entirely on the findings of ABS. However, as set forth above, the ABS findings that certain of Bollinger's proposed FRC-B's structures were inadequate were made without consideration of the proposed ride control system in Bollinger's FRC-B, and without consideration of the explanations and drawings provided by Bollinger in its responses to discussion questions and first and second FPRs. The record reflects that while considering ABS's evaluation of Bollinger's initial proposal, the agency recognized that ABS had qualified its concerns, and reasonably considered them in this manner.

With regard to the agency's evaluation of Bollinger's second FPR, we cannot find unreasonable the agency's conclusion, given the additional information provided by Bollinger in responses to the discussion questions and first and second FPRs, that this aspect of Bollinger's proposal continued to represent no more than a "weakness," rather than an issue of material noncompliance with the RFP's requirements. That is, the agency's evaluation reflects the agency's reasonable view that certain of Bollinger's proposed FRC-B's structures may or may not have to be increased, and the risk that any possible increase in the FRC-B's structures that may be necessary and that this would result in an increase in weight, was mitigated by Bollinger's weight margins and its proposed ride control system.

Thus, the record evidences that the agency had a reasonable basis for not regarding this problem as one that involved a material noncompliance with RFP requirements requiring a major revision of Bollinger's proposal.<sup>20</sup>

Additionally, the protester has failed to establish, and the record does not reflect, that a proposed FRC-B's failure to comply with every term of the ABS HSNC Guide, at the stage of the design process anticipated by the RFP here, mandates the rejection of a proposal. To the extent that the ABS findings should be considered in the manner as argued by MMC, we note, as pointed out by the agency, that certain

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<sup>20</sup> This is in contrast to the protester's concession that its proposal failed to comply with the RFP's intact stability requirements regarding topside icing, and the agency's reasonable determination that the protester's proposed FRC-B's failure in this regard, given its degree, was material and would require a major revision of the proposal to correct.

aspects of MMC's proposed FRC-B were also found by ABS to pose "moderate" risk, with ABS noting in two areas that MMC's proposed FRC-B's "bottom stiffeners . . . are inadequate for slamming pressure" and that an "[i]ncrease in scantling is required to withstand slamming pressure." AR, Tab 23, ABS Report on MMC's proposed FRC-B, at 2, 4. Given that the structures of both MMC's and Bollinger's proposed FRC-Bs were found by ABS to be "inadequate" and to pose "moderate" risk in similar respects, we cannot find that MMC was treated unequally vis-à-vis Bollinger, or was prejudiced by the agency's findings and determination that this aspect of Bollinger's proposal represented only a "weakness." See Geo-Seis Helicopters, Inc., B-294543, Nov. 22, 2004, 2004 CPD ¶ 237 at 3-4.

#### EVALUATION OF BOLLINGER'S PAST PERFORMANCE AND RESPONSIBILITY

The protester argues that the agency's evaluation of Bollinger's proposal under the past performance subfactor to the management factor was unreasonable. The protester asserts that the Bollinger's proposal, which was evaluated by the agency under the past performance subfactor as "marginal" with "low risk," should have been evaluated by the agency as "unsatisfactory" with "high risk." The protester's argument in this regard is based upon Bollinger's role in the failed effort to convert the Coast Guard's 110-foot patrol boats into 123-foot patrol boats. Protest at 30-33.

As a general matter, the evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. In determining whether a particular evaluation conclusion is reasonable, we examine the record to determine whether the judgment was reasonable, adequately documented, and in accord with the solicitation's evaluation criteria. Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 8.

The solicitation required that offerors forward past performance questionnaires, for up to five projects completed within the past 3 years, to the "customer's representative most knowledgeable of the project," and have the customer's representative submit the completed questionnaire directly to the Coast Guard. RFP, pt. IV, § L, at L-14. The solicitation further required that each offeror, in its proposal, discuss "your evaluation of your past performance on the projects for which you initiated past performance questionnaires," and advised offerors that "[t]he Government may consider past performance information obtained from sources outside an Offeror's proposal, to include the United States Coast Guard." Id. The solicitation provided that the past performance information would be evaluated to determine the "[l]evel of confidence in the Offeror's ability to successfully perform this contract." RFP, pt. IV, § M, at M-4.

The agency received three questionnaires pertaining to Bollinger's past performance, each of which the agency "considered applicable from a value and complexity standpoint." AR, Tab 29, Bollinger Management Evaluation Summary

(Aug. 14, 2008), at 3. The agency found that two of these questionnaires assessed Bollinger's performance of the contracts as "exceptional" overall, while the third evaluated Bollinger's performance as "very good." Id.

The agency also considered Bollinger's performance as a "third tier subcontractor" on the 123-Foot WPB program, determining that this "needed to be considered when evaluating [Bollinger's] past performance," given the "close at hand" nature of this information. AR at 19; AR, Tab 29, Bollinger Management Evaluation Summary (Aug. 14, 2008), at 3. The agency thus solicited and reviewed "[n]arrative assessments" of Bollinger's performance on the 123-Foot WPB program that were prepared by Coast Guard personnel that had held the positions of program manager/contracting officer's technical representative or contracting officer during the 123-Foot WPB program. Id.; AR at 19.

The agency determined that Bollinger's performance in the 123-Foot WPB program "failed to meet requirements," that, considered in conjunction with Bollinger's "exceptional" and "very good" performance of other relevant contracts, warranted a "marginal" rating under the past performance subfactor. In reaching this conclusion, the record reflects that the agency determined that Bollinger was "responsible for the Hull, Mechanical and Electrical . . . portion of the [123-Foot WPB] conversion up to the point where the Coast Guard developed structural modification #1," and that at the time of the initial structural failure of the first 110-foot patrol boat that was converted, Bollinger's design did not meet certain ABS requirements. During its consideration of this aspect of Bollinger's past performance, the agency evaluators noted that "[d]etermining the required structural changes to convert the 110's to the 123's was paramount to the successful execution of the 123-Foot WPB program," and that "[i]ncorrectly determining the structural changes and incorporating those changes into the conversion is viewed by [the evaluators] as a failure on the part of [Bollinger] to meet the requirements." AR, Tab 14, PEAG Report (Sept. 10, 2008), at 16; Tab 29, Bollinger Management Evaluation Summary (Aug. 14, 2008), at 3-4.

The agency also noted, in reviewing Bollinger's performance on the 123-Foot WPB program, that "[t]he 123-Foot WPB Delivery Task Order required self certification of the design and build standards during contract performance as opposed to the traditional role of the government performing Quality Assurance," and that "[a]ll complete certificates of compliance were to be submitted prior to or at delivery." AR, Tab 29, Bollinger Management Evaluation Summary (Aug. 14, 2008), at 4. Based upon their knowledge of Bollinger's performance of the 123-Foot WPB program, the agency evaluators noted that "[a]t the time of cutter deliveries there were only a handful of certificates submitted and the remaining certificates were identified . . . as not submitted." Id. The evaluators found that since "[c]ertification is a verification and quality assurance process," and that the "[f]ailure to execute the certification process properly equates to a failure in the Quality Assurance process," Bollinger's performance here was "another example of where the Offeror failed to meet requirements." Id. The agency also commented, in evaluating Bollinger's past

performance on the 123-Foot WPB program, that “[a]ll Coast Guard personnel” that provided information regarding Bollinger’s performance of and role in the 123-Foot WPB program “experienced less than satisfactory Customer Satisfaction.” Id.

While evaluating Bollinger’s proposal under the past performance subfactor as “marginal,” the agency also assessed Bollinger’s past performance as posing “low risk.” The “low risk” rating was due to the agency’s consideration of Bollinger’s “excellent” and “very good” performance on the other contracts considered by the agency, as well as its conclusion that there are “fundamental differences” between the 123-Foot WPB program and the FRC-B program that the agency determined “directly relate to the suitability of using past performance from the 123-Foot WPB program as an indicator of future performance under the FRC-B program.” Id. at 5. In this regard, the agency evaluators, in detailing the differences between the 123-Foot WPB program and the FRC-B, noted, among other things, that the “FRC-B imposes strict limitations on the extent of modifications to the parent craft,” and that, as opposed to the self-certification process used in the 123-Foot WPB program, the FRC-B contract requires that the contractor “obtain [an] ABS Classification Certificate to HSNC rules.” Id. The agency also noted another difference between the FRC-B contract and the 123-Foot WPB program conversion contract was that “[n]o involvement from the original Parent Craft design company was obtained on the 123-Foot WPB,” whereas “[s]ignificant involvement from the Parent Craft designer was obtained during the RFP proposal phase to establish and . . . support the finalization of the FRC-B design.” Id.

We have reviewed the agency’s evaluation record and conclude that the agency’s consideration of Bollinger’s past performance, including Bollinger’s performance on the 123-Foot WPB program, was adequately documented, consistent with the terms of the solicitation, and provided a reasonable basis for the agency’s rating of Bollinger’s proposal under the past performance subfactor. With regard to Bollinger’s performance on the 123-Foot WPB program, the record, as indicated above, demonstrates that the agency had access to and considered input from Coast Guard personnel who had first-hand experience with Bollinger on the 123-Foot WPB program and who documented that Bollinger’s performance on the program was materially deficient. Although the protester cites to numerous examples of documented poor performance by Bollinger on the 123-Foot WPB program that it states the agency did not consider or improperly discounted, the record shows that the agency thoughtfully and reasonably reviewed all pertinent past performance information on the 123-Foot WPB program. Additionally, the record reflects that the agency, in considering this adverse past performance information, also considered the relative relevance of that past performance to the FRC-B contract, while also considering the other past performance information received regarding Bollinger on contracts that the agency reasonably considered more relevant, which, as set forth in the evaluation documents, would if considered alone have resulted in Bollinger’s proposal receiving an evaluation of “superior.” Id.

Consistent with the principle, stated above, that the evaluation of an offeror's past performance is properly within the discretion of the contracting agency, and that our Office will not substitute our judgment for that of the agency, it is similarly well-settled that a protester's mere disagreement with the agency's judgment is insufficient to establish that an evaluation was improper. Triple Canopy, Inc., *supra*, at 9. As such, while the protester argues at length and in considerable detail why, in its view, Bollinger's failings on the 123-Foot WPB program should have resulted in a past performance rating here of "unsatisfactory" with "high risk," we cannot find, based upon this record, that the agency's evaluation of Bollinger's proposal as "marginal" with "low risk" under the past performance subfactor to be unreasonable.<sup>21</sup> In any case, regardless of the ratings assigned the proposals, the record shows that the SSA was fully apprised of, and specifically and appropriately accounted for, Bollinger's adverse past performance on the 123-Foot WPB program in making his source selection.<sup>22</sup>

The protester also asserts that Bollinger's role in the 123-foot WPB program "brings into question whether [Bollinger] is even a responsible contractor." Protest at 32; *see* Protester's Comments at 84-88. Because the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion, our Office generally will not consider protests challenging affirmative determinations of responsibility except under limited, specified exceptions. 4 C.F.R. § 21.5(c); T.F. Boyle Transp., Inc., B-310708, B-310708.2, Jan. 29, 2008, 2008 CPD ¶ 52 at 5. The exceptions are protests that allege that definitive responsibility criteria in the solicitation were not met, and those that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c).

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<sup>21</sup> MMC argues that the ratings are not in accordance with the performance evaluation procedures, which define "marginal" as "[o]ne or more examples where past performance failed to meet the requirements due to fault of the contractor" and "unsatisfactory" as "[o]ne or more examples where past performance significantly failed to meet requirements due to fault of the contractor." AR, Tab 33, Proposal Evaluation Plan, app. 3, at 3-2. However, allegations of deviations from an agency's rating plan do not constitute a basis for questioning the validity of an award selection, where, as here, the evaluation plan was not incorporated into the solicitation. Rather, such plans are internal agency instructions and, as such, do not give outside parties any rights. Ralph G. Moore & Assocs., Feb. 28, 1996, 96-1 CPD ¶ 118 at 4.

<sup>22</sup> In this regard, adjectival ratings are merely guides for intelligent decision making in the procurement process; they do not mandate selection of a particular proposal. KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13.

The protester's arguments here do not allege that a definitive responsibility criterion was not met, and as to the other exceptions to our general rule to not consider protests of affirmative responsibility determinations, we will consider protests where, for example, the protest includes specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. T.F. Boyle Transp., Inc., *supra*, at 5. As indicated above in our discussion of the agency's evaluation of Bollinger's proposal under the past performance subfactor to the management factor, the record reflects that the contracting officer was aware of Bollinger's failures in its performance of the 123-foot WPB program, as well as the fact that the Department of Justice is conducting an investigation into the 123-foot WPB program [DELETED]. AR, Tab 21, Responsibility Determination, attach. 16, at 1. Although MMC complains that Bollinger should have been found nonresponsible, we cannot conclude, based upon our review of this record, that the contracting officer failed to consider all relevant information in making the affirmative determination of Bollinger's responsibility.

#### EVALUATION OF BOLLINGER'S PRICE

MMC argues that the agency improperly and unreasonably determined that Bollinger's proposed price was reasonable. Specifically, the protester contends that because Bollinger's proposed price was \$245 million higher than MMC's proposed price, Bollinger's proposed price should have been found to be unreasonably high. The protester also argues that the methodology by which the agency determined price reasonableness was flawed, in that the agency, rather than "mak[ing] an independent estimate of the Solicitation's cost and establish an independent baseline," instead "created *several* IGCEs [Independent Government Cost Estimates], with each IGCE estimation based upon each offeror's proposal." Protester's Comments at 105. The protester concludes that the agency's "unusual resorting to a relative IGCE [was] irrational and unreasonable." Protester's Comments at 106. We disagree.

Where, as here, a fixed-price contract is contemplated, the government may use various price analysis techniques and procedures to ensure a fair and reasonable price, including the comparison of proposed prices received in response to the solicitation; adequate price competition can establish price reasonableness, as can a comparison of proposed prices with an IGCE.<sup>23</sup> See Federal Acquisition Regulation (FAR) § 15.404-1(b); MVM, Inc., B-290726 *et al.*, Sept. 23, 2002, 2002 CPD ¶ 167 at 6.

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<sup>23</sup> Although we recognize that the RFP included some cost reimbursable elements, it essentially provided for the award of a fixed-price contract, offerors were not required to submit cost or pricing data, and MMC only challenges the agency's overall price reasonableness determination. See RFP, pt. IV, § L, at L-24. As such, our discussion here is limited to the agency's price reasonableness determination.



A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that we will question only where it is unreasonable. Comprehensive Health Servs., Inc. B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8.

Here, the RFP expressly provided that “[p]rice reasonableness will be established by competition and determined primarily by comparison with other offers submitted,” and that “[t]he prices may also be compared with the [IGCE].” RFP, pt. IV, § M, at M-5. The record reflects that the agency evaluated price reasonableness based upon a comparative assessment of the prices received, and determined that the prices proposed by both Bollinger and MMC were fair and reasonable. Agency Supp. Report (Nov. 25, 2008) at 31; AR, Tab 30, Price Evaluation Report for Second FPR, at 12-13. The agency noted during its price reasonableness evaluation that “[t]he values of tonnage, length, speed and horsepower are significant cost drivers needed to determine realistic costs for the FRC-B,” and that the proposed FRC-Bs “vary in length from 146.0 to 153.54 feet, 324.00 to 353.20 metric tons, [and] 8,949.98 to 11,532.79 horsepower with theoretical speeds ranging from 28.6 to 29.50 knots.” AR, Tab 30, Price Evaluation Report for Second FPR, at 5. The record reflects that because of this the agency created an IGCE “using a 220 metric ton theoretical FRC-B,” and used this data “extensively to parametrically determine the IGCE . . . for each variation of proposed craft.” *Id.* at 2, 5. The agency found, after performing its calculations, that Bollinger’s proposed price was fair and reasonable based upon a comparison with the IGCE, as adjusted to account for the size of Bollinger’s proposed FRC-B. In examining the offerors’ proposed prices, the agency also found that when MMC’s proposed price per FRC-B “was adjusted for the higher tonnage and horsepower” of Bollinger’s proposed FRC-B, the price of an MMC FRC-B was “within \$1.1 [million] of the actual price proposed” for a Bollinger FRC-B. *Id.* at 5.

In our view, the record reflects that the agency performed a detailed and relatively extensive price reasonableness analysis, which considered a comparison of the offerors’ proposed prices, as well as a comparison of the offerors’ proposed prices as adjusted to account for the differences in the FRC-Bs. Although MMC objects to the methodology used by the agency, wherein it adjusted its IGCE to conform to each offeror’s proposed FRC-B in order to determine whether the price for the particular FRC-B proposed was fair and reasonable, we note that MMC has provided no authority to support its disagreement with the agency’s methodology, and that our Office has found that an agency in performing a price reasonableness analysis should consider price relative to the particular approach taken by the offeror. Newport News Shipbuilding and Dry Dock Co. et al., B-261244.2 et al., Sept. 11, 1995, 95-2 CPD ¶ 192 at 8. Accordingly, we find no basis to object to the methodology used by the agency in the performance of its price reasonableness analysis, or the agency’s conclusion that Bollinger’s proposed price was reasonable.

## ORGANIZATIONAL CONFLICT OF INTEREST

The protester argues that the agency improperly failed to consider that Bollinger has an impermissible organizational conflict of interest (OCI) that “possibly gave [Bollinger] an advantage in this procurement and potentially prejudiced [MMC].” Protester’s Comments at 96. As discussed above, the Coast Guard contracted with ABS to analyze certain aspects of the offerors’ proposals. The protester points to Bollinger’s FPR, which provides in relevant part as follows:

The feedback from ABS on our proposal was positive, and all concerns were addressed. From this meeting Bollinger has developed and revised plans and procedures to incorporate the recommendations of ABS. ABS feedback has validated the FRC-B design illustrated [below] . . . ABS and Bollinger have evaluated responsibilities during plan review and agreed to milestone and submittal dates required to meet the construction schedule. ABS has reviewed the Bollinger engineering schedule to verify that ABS resources can sustain an individual drawing review cycle of 30 days to support production.

AR, Tab 48, Bollinger Proposal, vol. III, at 108. The protester adds that the agency was aware of Bollinger’s relationship with ABS, in that the PEAG Report provides in relevant part that “ABS was sought and provided [Bollinger] with a review of their proposal.” AR, Tab 14, PEAG Report, at 15. The protester concludes that because ABS assisted Bollinger in some manner with the preparation of its proposal, and then assisted the Coast Guard in its evaluation of proposals, an impermissible OCI existed that rendered the award to Bollinger improper.

When the facts of a procurement raise a concern that a potential awardee might have an OCI, the FAR requires the agency to determine whether an actual or apparent OCI will arise, and whether the firm should be excluded from the competition. The specific responsibility to avoid, neutralize or mitigate a potential significant conflict of interest lies with the cognizant contracting officer. Overlook Sys. Techs., Inc., B-298099.4, B-298099.5, Nov. 28, 2006, 2006 CPD ¶ 185 at 10-11; see FAR § 9.504. As relevant here, one of the situations that creates a potential OCI is where a firm’s work under a government contract entails evaluating itself or its own products. FAR §§ 9.505, 9.508; Overlook Sys. Techs., Inc., supra, at 10. The concern in such situations is that a firm’s ability to render impartial advice to the government will be undermined or impaired by its relationship to the product or services being evaluated; as a result, such situations are often referred to as “impaired objectivity” conflicts if interest. Overlook Sys. Techs., Inc., supra.

The agency explains that “[t]he assistance” it received from ABS in the evaluation process, which was limited to the consideration of initial proposals, “was specifically in the area of classification of the proposed ships.” Agency Supp. Report (Nov. 25, 2008) at 27-28. The agency also states that to its knowledge both Bollinger and MMC

“sought advice from ABS, but neither of them obtained that advice under a contract with ABS or any of its affiliates.” Id. at 28. The agency asserts that because “ABS did not have a contract with either of the two firms that sought its assistance, there was no conflicting interests to avoid, neutralize or mitigate.” Id. The agency adds here that “[s]ince ABS’ true role with the offerors and with the Coast Guard was to take an independent position regarding the application of their rules, there could be no internal conflicts of interests.” Id. at 29.

Based upon our review, we find that no significant conflict of interest exists here. As set forth above, with regard to Bollinger’s pre-award relationship with ABS, although Bollinger received some advice from ABS during the proposal preparation process, ABS clearly was not part of Bollinger’s “team” and there was no financial relationship between Bollinger and ABS. Moreover, as indicated above, both MMC and Bollinger obtained advice from ABS during the proposal preparation process.<sup>24</sup> There is no evidence or claim that the post-award relationship between ABS and Bollinger as the result of Bollinger’s status as the awardee is any different than would be the relationship between ABS and MMC had MMC been awarded the contract. That is, as recognized by the protester, the RFP required that during the performance of the contract awarded here, the awardee must contract with ABS for classification of the FRC-B and structural analysis, and that “all offerors, including [MMC], were required to demonstrate in their proposals that they had arranged with ABS to provide post-award classification services.” Protester’s Supp. Comments (Dec. 11, 2008) at 5-6; see Protester’s Comments at 97 n.14; RFP, pt. III, § J, attach. 2, COR, at 000-33. Given the lack of any financial relationship between ABS and Bollinger prior to the award, and the fact that the relationship of ABS with the awardee would be the same or similar whether Bollinger or MMC were the awardee, we find that the potential benefit to ABS here, if any, is speculative and too remote to establish a significant conflict of interest that the contracting agency had to avoid, neutralize, or mitigate pursuant to FAR subpart 9.5. See § 9.504(a)(2); American Mgmt. Sys., Inc., B-285645, Sept. 8, 2000, 2000 CPD ¶ 163 at 6; Professional Gunsmithing, Inc., B-279048.2, Aug. 24, 1998, 98-2 CPD ¶ 49 at 4 (FAR requires that agencies avoid or mitigate “significant potential conflicts”).

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<sup>24</sup> The record reflects, and the protester “readily admits,” that during the proposal preparation process, MMC “inquired about ABS’s classification rules” with ABS. Protester’s Supp. Comments (Dec. 11, 2008) at 7. While MMC asserts that ABS provided Bollinger with more assistance than it gave MMC, Protester’s Supp. Comments (Dec. 11, 2008), at 6-11, ABS has provided statements and other evidence to show that it provided assistance to MMC while that firm was preparing its proposal, and, contrary to MMC’s assertions, that its discussions with MMC were not limited to arranging a post-award contract. Agency Supp. Report (Dec. 9, 2008), encls.

Additionally, we do not find any possible prejudice to the protester by the existence of the alleged OCI. We recognize that the strict limitations on both actual and apparent conflicts of interest reflect the reality that the potential harm flowing from such situations is, by its nature, frequently not susceptible to demonstrable proof of bias or prejudice, and that because of this, where the record establishes that a conflict of interest exists on the part of the evaluators, to maintain the integrity of the procurement process, we will presume that the protester was prejudiced, unless the record establishes the absence of prejudice. Celadon Labs., Inc., B-298533, Nov. 1, 2006, 2006 CPD ¶ 158 at 7-8.

Here, as discussed previously, the record reflects that in considering Bollinger's proposal, ABS noted that in its view certain aspects of Bollinger's proposed FRC-B were "inadequate," and posed "moderate risk." The record, which includes the ABS reports on both Bollinger's and MMC's proposed FRC-Bs, as well as Bollinger's and MMC's proposals and the agency evaluation documents, reflects that ABS was slightly more critical of Bollinger's proposal than it was of MMC's proposal (which was also found by ABS to be "inadequate" and pose "moderate risk" in certain respects). See AR, Tab 23, ABS Report on Bollinger's FRC-B, at 3; ABS Report on MMC's FRC-B, at 2, 4. Additionally, as detailed earlier, the record reflects that the allegedly "conflicted" entity, ABS, was more critical of Bollinger's proposed FRC-B than were the Coast Guard evaluators, about whom no credible allegation of bias or conflict of interest has been raised (as discussed below). This independent review by the agency evaluators mitigated any potential bias or conflict of interest in this particular situation. Also, while recognizing the somewhat limited value of this in a conflict of interest context, we note that MMC, despite access to the complete agency record in this protest under protective order and to which a number of naval architects were admitted to assist MMC's counsel in this protest, has failed to point to any aspect of the evaluation evidencing the effect of a conflict of interest. Given this, and the agency's reasonable conclusion that MMC's proposal was ineligible for award because of the degree of its noncompliance with the solicitation's material intact stability requirements under the topside icing criterion, the record evidences that MMC was not prejudiced by the alleged improper OCI.

#### PERSONAL CONFLICTS OF INTEREST

The protester also contends that two agency evaluators who assisted in the evaluation of proposals had "personal conflicts of interest" because they also participated in the administration of contracts that Bollinger has held with the Coast Guard, including Bollinger's efforts on the 123-foot WPB program. Protester's Comments at 100-101; Protester's Supp. Comments (Dec. 1, 2008) at 51-52.

The protester has not adequately explained why the fact these evaluators participated in the administration of Bollinger contracts constitutes an impermissible personal conflict of interest, and we find no legal basis for precluding evaluators who participated in the administration of government contracts from evaluating

proposals under subsequent contracts, absent other evidence of a conflict of interest or the appearance of a conflict of interest in Government-contractor relationships. See FAR § 3.101-1.

The protester's argument here is more akin to an allegation of bias than a conflict of interest, and in this regard, we note that Government officials are presumed to act in good faith and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Silyn Commc'ns, Inc., B-310667, B-310667.2, Jan. 23, 2008, 2008 CPD ¶ 36 at 8. Where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester's competitive position. Id. Not only has the protester made no such showing, but our review of the record has showed no evidence of bias on the part of these individuals in favor of Bollinger.

#### COAST GUARD'S ALLEGED LACK OF PROCUREMENT AUTHORITY

The protester asserts, based upon information posted on the Coast Guard's website, that the Coast Guard "did not have the requisite authority to make award under [this] Solicitation because the [DHS] rescinded the Coast Guard's acquisition decision authority prior to the date of award." Supp. Protest (Oct. 31, 2008) at 1. The protester asserts that "the simple question is whether the DHS agency head has delegated authority to the Coast Guard to enter into contracts." Protester's Supp. Comments (Nov. 19, 2008) at 9. The Coast Guard explains that the protester misread the website posting, and has submitted a number of documents in support of its position that it had the authority to award the contract, including the declaration of the DHS Deputy Chief Procurement Officer prepared in response to MMC's protest basis here. Agency Supp. Report, exh. 11, Declaration of DHS Deputy Chief Procurement Officer (Nov. 14, 2008). This declaration states that "[t]he Coast Guard was in compliance with DHS acquisition procedures and authorized to proceed with the Fast Response Cutter acquisition program." In the absence of any evidence to the contrary, we see no reason to consider this issue further.

#### AWARD DECISION

MMC contends that the agency award decision was unreasonable and undocumented. However, this contention is based upon its arguments that its and Bollinger's proposals were unreasonably evaluated and that a cost-technical tradeoff was required. Since, as explained above, we find the agency's evaluation of MMC's and Bollinger's proposals to be reasonable, and the SSA reasonably explained and documented the bases for his selection of Bollinger's proposal for award and the reasons that MMC's proposal was found ineligible for award, MMC's contentions here provide no basis for overturning the award determination. Matrix Int'l Logistics, Inc., B-277208, B-277208.2, Sept. 15, 1997, 97-2 CPD ¶ 94 at 14. Moreover, because MMC was reasonably found ineligible for award, the agency was not

required to make a cost-technical tradeoff.<sup>25</sup> Richie Sawyer Corp., B-281241.2, Jan. 25, 1999, 99-1 CPD ¶ 21 at 3.

The protest is denied.

Gary L. Kepplinger  
General Counsel

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<sup>25</sup> In light of our conclusions here, we need not address the other issues or arguments raised by the protester. These issues include, but are not limited to, the protester's argument that the evaluation of the proposals under the production capability subfactor to the management factor (where MMC's proposal was rated as "satisfactory" with "moderate risk," and Bollinger's proposal was rated as "satisfactory" with "low risk") was unreasonable and evidenced unequal treatment; that the agency's evaluation of MMC's proposal under the cutter boat launch and recovery subfactor to the technical evaluation factor as "satisfactory" with "low" risk was unreasonable; and that the agency failed to conduct meaningful discussions with MMC regarding its proposal under this subfactor; or the propriety of the agency's determination that Bollinger's proposed FRC-B would be capable of a flank speed of 29.5 knots, rather than 28.6 knots as calculated by the protester (the RFP required a minimum flank speed of 28 knots, RFP, pt. III, § J, attach. 2, COR, at 000-34).