

PUBLIC VERSION

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
OFFICE OF DISPUTE RESOLUTION FOR ACQUISITION

Protest of)	
)	
Rockwell Collins, Inc.)	21-ODRA-00886
)	
Under Solicitation 693KA8-18-R-0007)	

Appearances:

FOR ROCKWELL COLLINS, INC.:

Anuj Vohra, Esq.
Crowell & Moring

FOR GENERAL DYNAMICS MISSION SYSTEMS:

Noah B. Bleicher, Esq.
Jenner & Block LLP

FOR THE FAA PRODUCT TEAM:

Carolyn Mech, Esq.
R. Jason Miller, Esq.
Kelly Ghassemieh, Esq.

FINDINGS AND RECOMMENDATIONS

Rockwell Collins, Inc. (“Rockwell”) protests the award of a contract to General Dynamics Mission Systems (“GDMS”) for emergency-use radios and related support services.¹ The FAA Product Team awarded the contract to GDMS based on best value. Rockwell asserts that its proposal offered the best value because it received a higher technical score than GDMS, proposed a significantly lower price, and received high risks for only three out of 259 binding “shall” requirements. The Product Team, however, determined two of Rockwell’s high risks were enough to favor GDMS.² The evaluators assessed those two risks because they believed that efforts to correct unacceptably high levels of [DELETED] created by Rockwell’s product would significantly delay the deployment of these crucial radios.

Rockwell raises several protest grounds. It challenges the assessed risks, argues that the Product Team deviated from the evaluation criteria by double-counting risks, and claims the Product Team erred by treating them as dispositive. Of lesser

¹ Agency Response (“AR”) Tab 2, at C-4.

² AR Tab 41, at 32, 39.

importance, Rockwell also challenges the scope of communications and its management and past performance evaluations.

The Office of Dispute Resolution for Acquisition (“ODRA”) finds that the FAA Product Team followed the solicitation and rationally made the award to GDMS in light of Rockwell’s high-risk assessments. The ODRA recommends that the Administrator dismiss the supplemental protest as untimely and deny the initial protest in its entirety.

I. Standard of Review

A protester, as the party seeking relief, bears the burden of proof and must demonstrate by the preponderance of the evidence that the challenged decision lacks a rational basis; is arbitrary, capricious, or an abuse of discretion; or is inconsistent with the Acquisition Management System (“AMS”) or the underlying solicitation.³

II. Factual Background

The Emergency Transceiver Replacement (“ETR”) Program issued the solicitation for commercial-off-the-shelf Very High Frequency (“VHF”)/Ultra High Frequency (“UHF”) hand-held radios for use in air/ground communications.⁴ The radios provide emergency communications in the event of a catastrophe, such as an earthquake, severe weather, or terrorist attack that renders standard air traffic systems inoperable. The radios must operate as stand-alone equipment with minimal signal deterioration when next to each other.⁵ The solicitation required offerors to submit radios for operational capabilities testing (“OCT”).⁶

The solicitation contained a very detailed evaluation scheme. It included four factors:

- Factor 1 – Technical, weighted at 65% of the total score;
- Factor 2 – Management, weighted at 25% of the total score;
- Factor 3 – Past Performance, weighted at 10% of the total score; and
- Factor 4 – Price, which was significantly less important than Factors 1, 2, and 3 combined.⁷

³ 14 C.F.R. § 17.21(m) (2021); *see also* 5 U.S.C. § 556(d), *Protest of Alutiiq Pacific LLC*, 12-ODRA-00627 (citing *Protest of Adsystech, Inc.*, 09-ODRA-00508).

⁴ AR Tab 2, Product Description (“PD”) at 1.

⁵ *Id.*

⁶ AR Tab 2, at L-17.

⁷ *Id.* at M-5.

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Factor 1 contained five separate subfactors, and Factor 2 contained eight separate subfactors. The first three factors (and their subfactors) were scored numerically, weighted, and combined into overall scores. Subfactors 1.3 and 1.4 were significantly detailed and included 259 “shall” requirements and 88 “should” requirements that specifically referenced the requirements stated in the Product Description document.⁸ Evaluation points received for subfactors 1.3 and 1.4 were combined and collectively accounted for 80% of the technical score under Factor 1.⁹ In addition to the four evaluation factors described above, the solicitation also included a risk evaluation as an unweighted, stand-alone evaluation criterion.¹⁰

The risk assessment played the determinative role in the ultimate award. The Source Selection Evaluation Board (“SSEB”) recommended the award to GDMS because Rockwell’s radios received high risks for two critical “shall” functions related to signal deterioration and noise (shall71 and shall101).¹¹ The Product Team determined that, unlike Rockwell, GDMS could complete Factory Acceptance Testing (“FAT”) “without significant delays.”¹² The SSEB concluded, and the Source Selection Official agreed, that this was worth paying a much higher price because Rockwell’s solution “presents a degree of program risk that does not provide the best value, even with the cost savings.”¹³

On April 23, 2021, Rockwell filed the instant protest challenging the decision to award to the higher-priced offeror. On June 14, 2021, in the midst of an alternative dispute resolution (“ADR”) process, Rockwell filed a supplemental protest.

III. Discussion

Rockwell challenges many aspects of the evaluation and award, but the outcome-determinative challenges concern the risk evaluations of Rockwell’s remediation plans under shall71 and shall101.^{14, 15} In this regard, Rockwell asserts the FAA

⁸ AR Tab 2, PD at 1-20, Section K, Appendix A, at A-1-A-37; Section M, at M-6-M-7. The “shall” requirements were binding and the “should” desired. AR Tab 2, at PD at 5.

⁹ *Id.* at M-6.

¹⁰ *Id.* at M-8.

¹¹ AR Tab 41, at 37.

¹² *Id.* at 38.

¹³ *Id.* at 39.

¹⁴ The ODRA has adopted the lower case, compound convention that the parties use to identify the requirements like “shall71.” Rockwell failed thirteen shall requirements but of those only shall71 and shall101 impacted the award decision. AR Tab 19.

¹⁵ Rockwell also challenges the high risk assessment of [DELETED]. The ODRA finds the record demonstrates that the high risk assessment for [DELETED] was not material to the award decision

erred in its risk evaluation, “double-counted” risk, and failed to conduct a proper best-value decision. Rockwell’s supplemental protest renews the attack by asserting that the evaluators used unstated evaluation criteria and engaged in disparate treatment for these “shalls” in favor of GDMS. The ODRA finds no merit in these grounds. The ODRA recommends denying the initial protest and dismissing the supplemental protest as untimely.

A. The Product Team followed the solicitation and did not double count when it assigned high-risk ratings to Rockwell.

As briefly mentioned above, the solicitation provided for risk assessments. Risk could be assessed in any aspect of the proposal except for the price.¹⁶ The solicitation stated:

M.6.4 Evaluation of Risk

Risks identified within any aspect of an Offeror’s proposal, and within any of the evaluation factors, will be analyzed as to their potential impact on the ETR program. Risks identified due to inconsistencies and discrepancies between various aspects of the proposal will be considered, as will risks that pertain to unsubstantiated representations made by any Offeror within any aspect of their proposal.

Risk will be assessed in Factors 1, 2, and 3 (Technical, Management, and Past Performance) and all Sub-Factors. Definitions of high, medium, and low risk are provided in Section M.8, Table M-4. Risk will not be separately assessed in Factor 4 - Price.¹⁷

The solicitation included a special procedure for assessing risk for the “shall” requirements found in subfactors 1.3 and 1.4.

The evaluation of subfactors 1.3 and 1.4 began with a process that omitted risk from consideration.¹⁸ It first required the Product Team to evaluate whether an offeror’s radio satisfied each of the 259 “shall” requirements. The evaluators granted 1 point for passing each requirement. The total points awarded were

and not determinative. Nevertheless, the ODRA finds that the high risk rating for shall162 has a rational basis. Shall162 is a binding shock and vibration requirement for the power supply and battery charger. AR Tab 2, PD at 25. The evaluators concluded that it is [DELETED] that an inadvertent drop of the radio would cause [DELETED] and would not [DELETED] necessary to meet certain shock requirements. AR Tab 41, at 18. A thorough review of Rockwell’s remediation plan shows that it did not address this issue. *See generally* AR Tab 20.

¹⁶ AR Tab 2, at M-8.

¹⁷ *Id.*

¹⁸ *Id.* at M-6-M-7.

divided by the “shall” requirements to yield a passing percentage.¹⁹ The percentage was multiplied by the factor weights to produce a numeric score for subfactors 1.3 and 1.4 combined.²⁰ Risk, up to this point, was not factored into the score.

The evaluators rendered risk determinations based on the remediation plans that offerors could submit for each failed “shall” requirement. Section M.6.1.1.1 of the solicitation explained this process:

The requirement is that the awardee *would implement their remediation plan(s) prior to Factory Acceptance Testing (FAT)* at no cost to the Government. The submitted *Remediation Plans would be evaluated for technical risk and schedule risk* by the Government as defined in paragraph M.8, Table M-4 and *will not change the Offeror’s numerical score*. Failure to submit a Remediation Plan will automatically make that “Shall” a High-risk rating.²¹

As the emphasized text shows, the solicitation plainly established FAT as a critical milestone for completing remediation efforts. Further, risk would be evaluated as to technical and schedule feasibility. Importantly, the numeric score was not to change based on the risk ratings.

1. No double counting occurred.

Before turning to the individual “shall71” and “shall101” risk assessments, the ODRA addresses the charge that the Product Team double-counted risk. Rockwell bases its charge on the false belief that the underlying numeric score included (or should have included) the risk assessments.²² Based on that incorrect premise, Rockwell concludes that the SSEB erred in considering risk in the best value decision.²³

Nothing in the record supports this charge of double counting. The arithmetic calculation of points for subfactors 1.3 and 1.4 show that the evaluators awarded 1 point for each successful “shall,” with no modifications for risk.²⁴ Nor should there have been any modification, given the quote above from § M.6.1.1.1 stating that risk “*will not change the Offeror’s numerical score.*”²⁵ The Product Team applied the

¹⁹ *Id.* at M-6.

²⁰ *Id.* at M-5-M-6.

²¹ *Id.* at M-6-M-7 (emphasis added).

²² Protest at 14-15.

²³ *Id.* at 15.

²⁴ AR Tab 41, at 14.

²⁵ AR Tab 2, at M-6-M-7.

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risk assessment results for the first time in the best-value decision, which the ODRA finds below was consistent with the solicitation.²⁶ The ODRA recommends denying this ground of the protest.

2. A rational basis supports each finding of “high” risk.

As § M.6.1.1.1 (quoted above) states, the definitions of risk are in § M.8, Table M-4,²⁷ which provides:

RISK RATING	DESCRIPTION
High Risk	Highly likely to cause significant decreases in performance or increases in cost and/or schedule, even with increased Contractor emphasis and increased Government monitoring.
Medium Risk	Could potentially cause some decreases in performance or increases in cost and/or schedule. However, increased Contractor emphasis and increased Government monitoring may be able to overcome difficulties.
Low Risk	Limited potential to cause decreases in performances or increases in cost and/or schedule. Normal Contractor effort and normal Government monitoring will probably be sufficient to overcome difficulties.

Using the description of a “high risk,” Rockwell claims that the evaluators lacked a rational basis for their assessments.²⁸ On the contrary, the ODRA finds that the evaluators “high risk” assessments had rational bases for both assessments that were well-grounded in the definition of “high risk.” Breaking down Table M-4’s definition above, “high risk” could be assessed for “[1] significant decreases in performance or [2] increases in cost and/or schedule.” As discussed below, the administrative record shows that Rockwell’s remediation plans for shall71 and shall101 satisfied both “high risk” thresholds, *i.e.*, the plans would decrease performance *and* pose schedule delays in reaching the critical FAT milestone.

²⁶ The SSEB explained that “risk is not a component of the numerical calculations used to determine numerical scores” for the technical evaluation and OCT results. AR Tab 41, at 34; *see also* AR Tab 2, at M-7 (stating that risk “will not change the Offeror’s numerical score”).

²⁷ AR Tab 2, at M-16.

²⁸ Protest at 20.

a. The remediation plan for shall71 did not correct performance.

Shall71 requires that interference from collocated radios not degrade the overall signal “by more than 7 dB [Decibels].”²⁹ A 7 dB degradation in the signal under shall71 accounts for some expected loss of clarity while providing “a safety margin that ensures the minimum amount of signal power is still achievable” for use by air traffic control.³⁰ The Technical Evaluation Team’s (“TET”) OCT data shows that Rockwell’s [DELETED] by [DELETED] to [DELETED] dB across [DELETED] frequencies, which is [DELETED] times worse than the requirement.”³¹

The evaluators found that Rockwell’s remediation plan failed to address this [DELETED] issue adequately.³² Rockwell’s plan confirmed the FAA’s [DELETED] findings at OCT.³³ Rockwell’s own lab results showed that the [DELETED] was from the [DELETED], which caused “[DELETED]” resulting in [DELETED].³⁴ To reduce [DELETED], Rockwell proposed to use a “[DELETED].”³⁵

The evaluators determined that the [DELETED] solution was inadequate. The TET lead declared the [DELETED] was “a simplistic solution utilizing only an [DELETED], demonstrating [that Rockwell] did not understand the well-known receiver design tradeoff between receiver noise figure and linearity.”³⁶ The [DELETED] failed to consider that [DELETED] is highly dependent on front end filtering and linearity, as well as interfering transmitter adjacent channel wideband power.”³⁷ Thus, the SSEB found [DELETED] described in the remediation plan unlikely to correct the radios’ signal [DELETED].³⁸

The remediation plan itself supports the SSEB’s conclusion. The plan shows that the [DELETED] would “[DELETED],” a number that still exceeds the [DELETED].³⁹ It also obfuscates the issue by stating in a conclusory fashion that

²⁹ AR Tab 2, PD at 7, *Id.* at 11-12.

³⁰ AR Tab 52, at ¶ 17.

³¹ *Id.* at ¶ 20, *see also* AR Tab 41, at 17.

³² AR Tab 41, at 17.

³³ AR Tab 20, at 14.

³⁴ *Id.*

³⁵ *Id.*

³⁶ AR Tab 52, at ¶ 31.

³⁷ AR Tab 41, at 17.

³⁸ AR Tab 52, at ¶ 31.

³⁹ *Compare* AR Tab 20, at 14 *with* AR Tab 1, PD at 7.

Rockwell's radio will meet the [DELETED], but not shall71, which was the subject of the evaluation findings.⁴⁰

Based on Rockwell's OCT results for shall71 and its failure to cure the deficiencies in its remediation plan, the TET concluded that the radios are [DELETED] to cause [DELETED], significant decreases [DELETED] and increase schedule related to FAT, even with increased Contractor emphasis and increased Government monitoring."⁴¹ The TET assessed Rockwell a consensus rating of high risk.⁴²

Based on the evidentiary record, the ODRA finds that Rockwell has not met its burden to demonstrate that the Product Team acted irrationally.⁴³ Rather, Rockwell merely disagrees with the TET's findings that its proposed solution of [DELETED] does not adequately address [DELETED].⁴⁴

b. The remediation plan for shall101 also did not correct performance.

Rockwell asserts that the Product Team's high-risk finding for [DELETED] under shall101 lacks a rational basis.⁴⁵ Shall101 requires that the channel 25 kHz band-power cannot exceed the noise limits established in the specifications when modulated with a standard test signal.⁴⁶ It purposefully limits the amount of energy overlapping with adjacent channels to reduce noise interference from collocated radios. If the noise exceeds the limits established in shall101, the overlap will be too great for the adjacent channel and degrade (or block) the other receiver's signal.⁴⁷ In other words, the evaluators found that when two air traffic controllers use their portable radios next to each other, [DELETED]. Indeed, Rockwell's radio transmitter was found to be "[DELETED]" with "[DELETED]"⁴⁸

⁴⁰ AR Tab 20, at 14.

⁴¹ AR Tab 41, at 18.

⁴² *Id.*

⁴³ *Protest of Alutiiq Pacific LLC*, 12-ODRA-00627.

⁴⁴ *See Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179 (An offeror's mere disagreement with the Agency's judgment concerning the adequacy of its proposal is not sufficient to establish that the Agency acted irrationally.).

⁴⁵ Protest at 24.

⁴⁶ AR Tab 2, PD at 13, 16.

⁴⁷ AR Tab 52, at ¶ 39.

⁴⁸ AR Tab 52, at ¶ 41.

In its technical proposal, Rockwell conceded that [DELETED] was [DELETED] off the FAA's requirement.⁴⁹ OCT test data revealed an even greater disparity from the [DELETED] requirement.⁵⁰ The OCT data showed a total of [DELETED] of which are [DELETED] above the requirement (i.e., [DELETED] times worse).

Rockwell attempted to address this failure in its remediation plan, but the SSEB still concluded that its remediation plan did not demonstrate how Rockwell would bring its transmitter into compliance.⁵¹ Rockwell conceded in its remediation plan that its radio is off the requirement by [DELETED] [DELETED].⁵² The plan attributed the failure to the "Translator's [DELETED] [being] [DELETED]."⁵³ To resolve the issue, the remediation plan proposed to "[DELETED]."⁵⁴ Rockwell's plan, however, hedged its compliance by admitting "[DELETED]"⁵⁵ This is far from demonstrating an ability to correct the deficiency by FAT.

Again, the ODRA finds that Rockwell fails to meet its burden on this ground of protest but rather only disagrees with the evaluators' conclusion that its remediation plan does not adequately remedy noise interference from poor transmitter adjacent channel performance.⁵⁶

⁴⁹ AR Tab 41, at 17.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² AR Tab 20, at 20.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *See Protest of Universal Systems & Technology, Inc., supra.*

- c. The Product Team rationally concluded that Rockwell's solution posed a high risk of delay in achieving Factory Acceptance Testing and deployment.

The solicitation required offerors to implement their proposed solutions by FAT.⁵⁷ The evaluators found that Rockwell's failure to meet the binding requirements of shall71 and shall101 would cause unacceptable delay to FAT.⁵⁸ The SSEB agreed that Rockwell's radios posed "a significant negative impact [to] the ETR program in terms of completing an on-time and successful [FAT] and providing effective operation in the [National Airspace System]."⁵⁹ The ODRA has no difficulty accepting this obvious conclusion as a rational basis. Further, it finds that the serious need for conforming radios in the field rationally supports the evaluators' schedule concerns.

In support of the contemporary evaluation finding for delayed FAT, the Product Team submitted a declaration from the TET Lead and SSEB co-chair.⁶⁰ He declares that the FAA urgently needs readily deployable emergency transmitter radios.⁶¹ Emergency transmitters have a useful life expectancy of about 20 years, and the majority of the FAA's legacy transmitters are more than 20 years old.⁶² As these radios deteriorate, the FAA faces repair and replacement issues, such as power board capacitor blowouts, that render them useless.⁶³ Moreover, the average demand for repair and replacement of radios is 89 units per year, but the FAA only has five such units in inventory.⁶⁴ The TET Lead further declared that the assessment of high risks reflected the view that Rockwell's remediation plan "will unnecessarily add months or even years to the wait to replace the FAA's aging and deteriorating [radios]."⁶⁵ Thus, "if FAT cannot be successfully completed, [in-service decision] cannot be achieved and no replacement of [emergency transmitters] can occur."⁶⁶

⁵⁷ AR Tab 2, at M-6.

⁵⁸ AR Tab 52, at ¶¶ 24, 31, 35-38, 43-44, 49-54, 56-58.

⁵⁹ AR Tab 41, at 40.

⁶⁰ The TET Lead has 18 years of experience as an electronics engineer and led the evaluation and implementation of ground based communications systems. He has also overseen FAT for other FAA programs. AR Tab 51, Declaration of TET Lead, dated July 11, 2021, at ¶ 2. In contrast, Rockwell did not submit any evidence to rebut this declaration.

⁶¹ AR Tab 52, at ¶ 63.

⁶² *Id.*

⁶³ *Id.* at ¶ 67.

⁶⁴ *Id.* at ¶ 68.

⁶⁵ *Id.* at ¶ 69.

⁶⁶ *Id.* at ¶ 70.

The record does not support Rockwell's arguments. Instead, the ODRA finds that the Product Team rationally determined that the high risks assessed to shall⁷¹ and shall¹⁰¹ will lead to unacceptable decreases in contract performance and delay in implementation. The ODRA recommends that the Administrator deny Rockwell's protest on these grounds.

B. The supplemental protest, which alleges unstated criteria and disparate treatment, is untimely.

The relevant FAA regulation for protests requires interested parties to file protests within seven business days from when the party knew or should have known of the protest grounds.⁶⁷ The Product Team moved for dismissal of the supplemental protest because Rockwell delayed filing its supplemental protest for 17 business days after receiving the information it relies upon to make its case.⁶⁸ The ODRA agrees and recommends that the Administrator dismiss the supplemental protest.

The timeline of events is not in dispute:

- On May 6, 2021, the Product Team and Rockwell entered into an ADR Agreement in an attempt to resolve the protest.
- On May 19, 2021, as part of that process, the Product Team provided a copy of the administrative record, including unredacted evaluation findings for GDMS.⁶⁹
- The parties met in a joint session on June 10, 2021.
- On June 14, 2021, Rockwell filed its supplemental protest.

Unlike the Product Team, Rockwell measures the filing deadline from the date of the ADR session—specifically June 10, 2021—rather than the document production on May 19, 2021.⁷⁰ Rockwell contends, therefore, that it filed its supplemental protest a mere four days after receiving the relevant information and is well within the filing deadline.

Resolving the Product Team's motion to dismiss depends on the nature of the supplemental protest grounds and the date that Rockwell received the supporting information. Rockwell's supplemental protest asserts that the Product Team applied unstated evaluation criteria in measuring risk against the First Article

⁶⁷ 14 C.F.R. § 17.15(a)(3)(i) (2021).

⁶⁸ AR at 64.

⁶⁹ AR Tab 48, at 2.

⁷⁰ Supplemental Protest at 2.

Testing schedule.⁷¹ It also says that disparate treatment occurred when the Product Team treated GDMS more favorably in the risk assessment.⁷² Both charges rely extensively on the written evaluation materials released to Rockwell on May 19, 2021.⁷³ Further, even a cursory attempt to examine relevant portions of those documents as they relate to the initial protest would have flagged these issues (assuming they are issues) for Rockwell.⁷⁴ Whether the parties also discussed these materials during the mediation is not germane.⁷⁵ Mediation sessions usually include discussions of the facts and issues. Still, those discussions do not extend the due date for protesting actions that the protester knew about from documents in its possession.⁷⁶

The ODRA finds that Rockwell knew or should have known about the grounds of its supplemental protest starting on May 19, 2021, when it received the evaluation documents. The ODRA also finds that Rockwell waited 17 business days until filing the supplemental protest. Therefore, the supplemental protest was filed after the seven-day deadline found in the regulation and should be dismissed.

⁷¹ *Id.* at 5.

⁷² *Id.* at 9.

⁷³ *Id.* at 6 (citing Tab 4.5.0, SSEB Report at 19 and Tab 4.5.0, SSEB Report at 39); at 9 (citing Tab 3.2.1.5, GDMS Tech. Prop. Vol. 1, Part E, at 1); at 10 (citing Tab 3.2.1.5, GDMS Tech. Prop. Vol. 1, Part E at 1 (emphasis supplied)); at 10 (citing Tab 4.1.6, GDMS Risk Eval. at F-3, F-6); at 11 (citing Tab 4.1.6, GDMS Risk Eval. at F-3, F-6); at 11 (citing Tab 4.5.0, SSEB Report at 15); at 11 (citing Tab 4.5.0, SSEB Report at 19-20); *see also id.*, at 12, 14 (citing Tab 4.5.0, SSEB Report at 40).

⁷⁴ For example, the Protest challenged the risk assessment, and the Technical Evaluation Report has an extensive discussion of the risk evaluation for both offerors. Page 47 explains that the concerns with Rockwell's product included the "increase schedule related to FAT." AR Tab 29, at 47. Similarly, as to the charge of disparate impact, the same Technical Evaluation Report describes in full the risk assessment of GDMS's product. *Id.* at 81-90. The basis for allegations of disparate treatment lies in that section of the report.

⁷⁵ Multiple members of the Product Team present during the June 10th mediation declare that the parties did not discuss GDMS's technical proposal. AR Tabs 49-51, Contracting Officer Declaration at ¶ 7; TET Lead Declaration at ¶ 21; and the OCT Team Coordinator Declaration at ¶ 14. Declarations submitted by Rockwell representatives describe their recollection of the June 10th mediation, but notably do not indicate that they addressed the evaluation of GDMS's technical proposal. *See generally* Declarations of [DELETED], dated July 16, 2021; [DELETED], dated July 16, 2021; [DELETED], dated July 16, 2021; and [DELETED], dated July 16, 2021.

⁷⁶ Rockwell was on full notice that it must file any supplemental protest based on information disclosed during the ADR process within the required timeframes. The ADR Agreement explicitly provides:

The mediation process conducted under this agreement does not toll any applicable filing deadlines for supplemental protests grounded on or related to information provided during the mediation to the Protester. Such information is not confidential. See 5 U.S.C. § 574(b)(2), (b)(7), and (f).

ADR Agreement, dated May 6, 2021.

C. The Product Team made a best-value determination consistent with the solicitation requirements.

The record shows that the Product Team made a best-value tradeoff weighing risk as an important consideration coextensive with the numeric scores against Rockwell's much lower price. The solicitation required the Product Team to award the contract based on the best value to the government.⁷⁷ A best value determination requires the source selection officials to make "a tradeoff between price and non-price factors."⁷⁸ Here, the best value involved comparing the numeric scores with the offered price.⁷⁹

The solicitation stated that the offeror's price might determine the best value if the numeric scores are close.⁸⁰ But the solicitation also cautioned that the best value determination might lead to a contract award to a higher-priced offeror. Indeed, it provides that best value neither requires the government to favor "the highest-rated technical proposal" nor "the lowest price."⁸¹

While risk was not expressly part of the tradeoff between price and non-price factors, the ODRA reads the solicitation as a whole.⁸² Reading the solicitation in context, the risks clearly constitute a part of the non-price factors. It would be illogical for the ODRA to conclude otherwise that the solicitation requires a risk analysis but simultaneously prohibits the Product Team from considering it in the award decision.

In the instant case, the Product Team made its best value tradeoff between the non-price factors and price consistent with the solicitation. After evaluating proposals, the TET and the SSEB found the numeric difference between overall non-price factors negligible.⁸³ The following chart summarizes the ratings.⁸⁴

Rating	Rockwell	GDMS
Technical weighted	0.57	0.52
Management weighted	0.13	0.19

⁷⁷ AR Tab 2, at M-5.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Protest of Northrop Grumman Systems Corporation*, 06-ODRA-00384 ("[A]ll of the solicitation's parts must be read together and harmonized if possible, so that no provisions are rendered meaningless."); *see also Protest of Sentel Corporation*, 09-ODRA-00512.

⁸³ AR Tab 41, at 34.

⁸⁴ *Id.* at 33-34.

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Past Performance weighted	0.08	0.09
Total weighted	0.77	0.80

As the chart shows, for the non-price factors, the ratings of the proposals were close. For both management and past performance factors, GDMS received higher ratings than Rockwell, i.e., 0.19 versus 0.13 for management and 0.09 versus 0.08 for past performance, respectively.⁸⁵ GDMS's technical rating, however, was lower than that of Rockwell, i.e., 0.52 versus 0.57. Even so, GDMS had the higher total overall weighted score.⁸⁶ In comparison, the difference between the offerors' total evaluated prices was significantly greater than the difference between their non-price ratings:⁸⁷

Rockwell Collins	GDMS	Price Difference	Percentage Difference
[DELETED]	\$99,384,797.38	[DELETED]	[DELETED]

The SSEB considered all of this information in its best value analysis but focused on the impact of the high risks assigned to Rockwell's technical solution when weighing against its lower price.⁸⁸ In pertinent part, the SSEB concluded that Rockwell's higher technical score was due to points assigned for alerts and "[DELETED]," "[DELETED]," which were not mandatory "shall" requirements.⁸⁹ The SSEB also showed concern with the high risks of Rockwell's failure to meet specific mandatory requirements.⁹⁰ The evaluators ultimately determined that the high risks associated with Rockwell's radios would "indeterminately increas[e] the time of FAT."⁹¹ Thus, weighing these considerations in the best value tradeoff analysis, the Product Team decided to pay a higher price to GDMS instead of facing the high risks in Rockwell's technical solution that "significantly reduce[d] the likelihood of an on-time and successful FAT."⁹²

Rockwell has not shown evidence demonstrating that the Product Team's best value analysis was irrational, unsupported in the record, or otherwise improper

⁸⁵ *Id.*

⁸⁶ Notably, the assignment of the numerical scores occurred before the evaluation of risks relative to any failed shalls. AR Tab 1, at M-6, M-8.

⁸⁷ AR Tab 41, at 28.

⁸⁸ *Id.* at 34-35.

⁸⁹ *Id.* at 37.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 39.

under the AMS.⁹³ Accordingly, the ODRA finds that the Product Team rationally made the best value determination that properly considered the risk, consistent with the evaluation requirements in the solicitation. The ODRA recommends the Administrator deny this ground of protest.

D. Rockwell's failed shall's 71 and 101 precluded it from having a substantial chance of award regardless of its management and past performance scores.

Rockwell challenges the Product Team's evaluation of its management and past performance proposals. Rockwell argues that nine weaknesses assigned across five management sub-factors are erroneous and lack a rational basis.^{94, 95} Rockwell further asserts that four additional weaknesses assessed against its past performance references also lack a rational basis.⁹⁶

1. The weaknesses are not material in this protest.

The ODRA does not need to reach these protest grounds because Rockwell cannot establish the required prejudice.⁹⁷ The stated evaluation criteria expressly incorporated a risk evaluation separate from the proposals' numerical scoring. In this case, the risk was pivotal to the best value award determination.⁹⁸ The Product Team found Rockwell's failed shall's 71 and 101 to present a risk so substantial that it would "significantly reduce the likelihood of an on-time and successful FAT."⁹⁹ In fact, the Product Team determined *on that basis* that it was in the FAA's best interest to pay a higher price and award the contract to GDMS.¹⁰⁰ There is no evidence in the record to suggest that if Rockwell were able to raise its non-price scores, it would have "a substantial chance of receiving an award."¹⁰¹ Rather, the evidence shows that Rockwell could not demonstrate that it could have its radios ready by FAT, i.e., it could not meet a minimum requirement of the solicitation.¹⁰²

⁹³ *Protest of Alutiiq Pacific LLC, supra.*

⁹⁴ Protest at 31-40.

⁹⁵ *Id.*

⁹⁶ *Id.* at 40-43.

⁹⁷ *Protest of Enterprise Engineering Services, LLC*, 09-ODRA-00490 ("The ODRA will recommend sustaining a protest where the protester has shown prejudice.").

⁹⁸ AR Tab 2, at M-6, M-8.

⁹⁹ AR Tab 41, at 39.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² AR Tab 41, at 39.

2. Even if the weaknesses were material, they are supported by the record.

Regardless of the overarching risk issue, the ODRA has carefully considered Rockwell's assertions about the nine management and past performance weaknesses. On an individual basis, the ODRA finds each claim meritless and based on mere disagreement with the evaluators. While a lengthy recitation of all nine challenged weaknesses would serve only to belabor the discussion, a few examples demonstrate this conclusion.

a. The Challenge to Two Weaknesses for Repair Services

Section L.5.2.4 of the solicitation required all offerors to provide an Integrated Support Approach ("ISA") to address, in relevant part, how their "warranty and non-warranty repair service will ensure quality and timely repair of all [radio] components."¹⁰³ The TET evaluated warranty and non-warranty repairs separately.¹⁰⁴ The Technical Evaluation Report demonstrates that the evaluators thoroughly reviewed and cited the relevant proposal sections before concluding that Rockwell's approach did not "demonstrate their [DELETED]."¹⁰⁵ Similarly, the evaluators concluded that Rockwell's approach did not "demonstrate their [DELETED]."¹⁰⁶ For both requirements, the TET found that Rockwell merely rephrased or restated solicitation requirements rather than adequately addressing quality or timeliness.¹⁰⁷

Rockwell challenges the decision to issue two different weaknesses because it characterizes them as "functionally identical."¹⁰⁸ Rockwell also argues that the evaluators were wrong. Rockwell cites proposal language stating that it would [DELETED]."¹⁰⁹ These arguments lack merit.

Rockwell is the party with the burden of proof.¹¹⁰ Rockwell provides the ODRA no basis to question the decision to assess separate weaknesses for warranty and non-warranty processes where the solicitation itself separates these matters.¹¹¹ Rockwell also fails to direct the ODRA's attention to information that the evaluators

¹⁰³ AR Tab 2, at L-19.

¹⁰⁴ AR Tab 31, at 46-47.

¹⁰⁵ AR Tab 31, at 46 (emphasis added).

¹⁰⁶ *Id.* at 47 (emphasis added).

¹⁰⁷ *Id.* at 46-47.

¹⁰⁸ Protest at 36.

¹⁰⁹ *Id.*

¹¹⁰ *See supra* Part I.

¹¹¹ *See* AR Tab 2, at L-19.

failed to consider. On the contrary, the evaluation report and the Protest cite the same portions of Rockwell's proposal.¹¹² Thus, Rockwell merely disagrees with the assessment, which is not a valid ground of protest.

b. The Challenge to Two Weaknesses for Task Orders

In another example, Rockwell challenged two weaknesses under management sub-factor 2.7, Technical Support Approach.¹¹³ Solicitation § L.5.2.7 required offerors to describe their team structure to respond to task orders, and their process “to promptly respond to ad-hoc task orders resulting from Operational Testing, Field Familiarization test activities, or any other activity or event that may require additional, unanticipated Contractor technical support services.”¹¹⁴ The Product Team would evaluate proposals as to “the degree the offeror's team structure, knowledge, and expertise [could] effectively execute task orders,” and to demonstrate “a viable approach and methodology to promptly respond to ad-hoc task orders.”^{115, 116}

Rockwell challenges the two weaknesses assessed under these provisions by paraphrasing and simplifying the evaluation. Rockwell writes:

The FAA assigned two weaknesses to Collins' proposal under this subfactor, for (1) failing to address how its [DELETED] could [DELETED]; and (2) not providing a [DELETED].¹¹⁷

Rockwell attempts to refute these simplified versions of the weaknesses by citing proposal language describing [DELETED].¹¹⁸ But oversimplifying the weakness, coupled with minimal citation to the proposal, does not win the day for Rockwell.

¹¹² Compare AR Tab 31, at 46-47 with Protest at 36.

¹¹³ Protest at 37.

¹¹⁴ AR Tab 2, at L-20.

¹¹⁵ *Id.* at M-11-M-12.

¹¹⁶ The TET concluded that Rockwell did not demonstrate “[DELETED].” AR Tab 31, at 56.

Rockwell's description of its team structure is limited to only its [DELETED] who “[DELETED]” to the FAA Logistics Center. *Id.* at 56-57. Rockwell did not address how its approach relates to [DELETED]. *Id.* The TET further observed that Rockwell did not address how it would ensure timely response to ad hoc task orders. *Id.* at 57.

¹¹⁷ Protest at 37.

¹¹⁸ *Id.* at 38.

In reality, the evaluators assessed the first weakness relating to Rockwell's general approach to task orders based on three reasons:

[DELETED].¹¹⁹

The second weakness addressed the requirement in § L.5.2.7 to demonstrate a viable approach to a wide variety of ad hoc task orders. The second weakness rested upon the observation that Rockwell's approach did not address the stated requirements, i.e., it did "[DELETED]."¹²⁰ In reaching these conclusions, the evaluators specifically acknowledge Rockwell's [DELETED] approach.¹²¹

Once again, Rockwell has not demonstrated merit for its challenges. It does not point to proposal language that the TET failed to consider. Indeed, the proposal does not address its approach and methodology to timely respond to ad hoc task orders as required.¹²² Again, the ODRA finds that Rockwell's arguments in this matter constitute a mere disagreement with the evaluators' findings.

3. The management and performance evaluation issues are immaterial and meritless.

The preceding discussion demonstrates that the Administrator should deny Rockwell's challenge to the nine weaknesses assessed against its proposal's management and past performance sections. These were not determinative in the best value decision, and they do not demonstrate that the Product Team lacked a rational basis or otherwise erred in the evaluation.

E. The Product Team properly communicated with Rockwell during the acquisition process.

Rockwell complains that the Product Team failed to exercise its discretion to open communications during the procurement.¹²³ It argues that this led to harm to both the Product Team and Rockwell.¹²⁴ Specifically, Rockwell asserts: (1) the

¹¹⁹ AR Tab 31, at 58-59.

¹²⁰ *Id.* at 59.

¹²¹ *Id.* at 58-59.

¹²² *Id.* at 59.

¹²³ Protest at 13.

¹²⁴ *Id.*

Product Team acquired technologically outdated radios; and (2) Rockwell could not correctly respond to the weaknesses found in shall101 because the Product Team did not share its OCT results.¹²⁵ The ODRA finds that both issues lack merit.

1. Rockwell does not meet its burden to demonstrate that the Product Team acquired technologically outdated radios.

Rockwell asserts that the lack of communications led the Product Team to award to a contractor with technically less advanced radios.¹²⁶ The AMS provides that “[c]ommunications with all potential offerors should take place throughout the source selection process.”¹²⁷ “The purpose of communications is to ensure there are mutual understandings between the FAA and the offerors about all aspects of the procurement, including the offerors’ submittals/proposals.”¹²⁸ Notably, “[o]ne-on-one communications may continue throughout the process, as required, at the *discretion* of the service organization.”¹²⁹ The ODRA has held that this language allows flexibility in the Product Team’s communications with offerors.¹³⁰ The burden is on Rockwell to demonstrate that the lack of communications here violated the AMS.¹³¹

In the instant case, multiple documents show that the Product Team held robust and repeated communications with both offerors throughout the source selection process.¹³² Still, Rockwell generally asserts that these were inadequate and that GDMS’s radios are outdated.¹³³ Rockwell provides no support of its argument other than assertions by counsel.¹³⁴

In contrast, the Product Team submitted a declaration from the TET Lead in response to Rockwell’s allegation. The TET Lead unequivocally contravenes Rockwell declaring that “[t]he FAA’s requirements for the ETR program have not changed since the release of the solicitation, and [the radios] are *not a rapidly evolving technology*.”¹³⁵ Accordingly, Rockwell has not met its burden that its

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *AMS Policy* 3.2.2.3.1.2.2.

¹²⁸ *Id.*

¹²⁹ *Id.* (emphasis added)

¹³⁰ *Protest of Columbus Technologies, Inc.*, 10-ODRA-00514.

¹³¹ 14 C.F.R. § 17.21(m) (2021).

¹³² AR Tabs 18, 19, 21, 24, 25, 28, 30, 33, 34-38, and 40.

¹³³ Protest at 13.

¹³⁴ *See Protest of Systems Atlanta, Inc.*, 10-ODRA-00535 (Mere argument of counsel is not evidence).

¹³⁵ AR Tab 51, at ¶¶ 6 and 7 (emphasis added).

communications with the FAA were inadequate and led to the acquisition of inferior radios.

2. The Product Team shared detailed OCT data related to shall101 in communications with Rockwell.

Next, Rockwell alleges that the Product Team failed to open communications to share the results of its OCT. The record, however, shows that the FAA attached a spreadsheet with the OCT results for shall101 in an email to Rockwell, dated October 25, 2019.¹³⁶ The attachment provides that Rockwell's radio "[f]ailed for the . . . [DELETED]." ¹³⁷ The attachment further provides the configuration failures, and Rockwell confirmed receipt and submitted its remediation plan in a subsequent email dated November 8, 2019.¹³⁸

If the OCT data contained therein was somehow inadequate, Rockwell does not submit any evidence or expert testimony in support other than the assertion of counsel.¹³⁹ Thus, the ODRA finds that Rockwell has not met its burden to show that the FAA failed to provide it with the results of OCT. Accordingly, the ODRA recommends that the Administrator deny this ground of protest.

IV. Conclusion

Based on the discussion above, the ODRA recommends that the Administrator grant the Product Team's motion to dismiss and deny the Protest in its entirety.

/S/ C. Scott Maravilla
C. Scott Maravilla
Dispute Resolution Officer and
Administrative Judge
FAA Office of Dispute Resolution for Acquisition

¹³⁶ AR Tab 19.

¹³⁷ *Id.*, Attachment, at A-2.

¹³⁸ AR Tab 23.

¹³⁹ *See Protest of Systems Atlanta, Inc., supra.*