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# Decision

**Matter of:** Hal Technology, LLC

**File:** B-422686

**Date:** October 2, 2024

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Jonathan D. Perrone, Esq., Whitcomb, Selinsky, P.C., for the protester.  
Alan Fougere, for D-2 Incorporated, the intervenor.  
Hillary A. H. Spadaccini, Esq., Department of the Navy, for the agency.  
Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging the agency's evaluation under the technical factor is denied where the protester fails to demonstrate that the agency's evaluation was unreasonable.
  2. Remaining protest grounds are dismissed where the protester abandoned its initial arguments and instead raised new untimely arguments.
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## DECISION

Hal Technology, LLC (HalTech), a small business of Fontana, California, protests the award of a contract to D-2 Incorporated (D-2), a small business of Bourne, Massachusetts, under request for proposals (RFP) No. N68335-22-R-0216, issued by the Department of the Navy, Naval Air Systems Command, for particle counters. The protester challenges the agency's evaluation of its proposal.

We deny the protest.

## BACKGROUND

The agency issued the RFP on October 6, 2022, using the procedures of Federal Acquisition Regulation (FAR) part 15. Agency Report (AR), Tab 2, RFP at 1. The Navy

sought proposals for particle counters<sup>1</sup> able to detect particles in petroleum, synthetic-based fluids, and phosphate ester fluids. AR, Tab 7, System Specification at 5.

The RFP contemplated the award of an indefinite-delivery, indefinite-quantity contract to the offeror whose proposal represented the best value to the government. RFP at 4, 92. The evaluation would consider the following factors, shown here in order of importance: technical,<sup>2</sup> past performance, price, and small business utilization. *Id.* at 92-93. Proposals were due on December 19, 2022. *Id.* at 4.

The Navy received three proposals by the due date. COS/MOL at 2. All three proposals were included in the competitive range. *Id.* Following the establishment of the competitive range, the Navy conducted three rounds of discussions. *Id.* Final proposals revisions were due April 2, 2024. *Id.* The relevant evaluation results are as follows:

	<b>HalTech</b>	<b>D-2</b>
<b>Technical</b>	Acceptable/Moderate Risk	Good/Low Risk
<b>Technical Approach</b>	Acceptable/Moderate Risk	Outstanding/Low Risk
<b>Logistics</b>	Good/Low Risk	Acceptable/Low Risk
<b>Management</b>	Good/Low Risk	Acceptable/Low Risk
<b>Past Performance</b>	Neutral	Neutral
<b>Small Business</b>	Acceptable	Acceptable
<b>Price</b>	\$15,644,946	\$18,335,097

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<sup>1</sup> A particle counter is used to check fluids for contamination utilizing samples taken from aircraft and government support equipment. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 2.

<sup>2</sup> The technical factor included three subfactors: technical approach, logistics, and management. RFP at 92-94. Proposals would earn two ratings under the technical factor and its subfactors: an adjectival rating reflecting an assessment of the proposed solution’s quality, and a risk rating reflecting an assessment of the potential for scheduling disruptions, increased costs, performance degradation, increased need for oversight, or likelihood of unsuccessful performance. *Id.* at 96-97. Relevant to the protest, the technical approach subfactor contained “elements” which addressed specific requirements. *Id.* at 81-82, 92-93. These elements were called: system performance; commercial-off-the-shelf (COTS); and testing. *Id.* at 80, 92-93. The elements were not weighted or rated; however, offerors were required to address them, and the agency was required to evaluate the offerors’ understanding and ability to meet the requirements. *Id.*

AR, Tab 3, Technical Evaluation Team (TET) Report at 12; AR, Tab 5, Source Selection Decision Document (SSDD) at 2; Protest, exh. 8, Rescinded Debriefing Slides at 16.<sup>3</sup>

On June 11, the Navy awarded the contract to D-2. COS/MOL at 6. The agency concluded that the technical benefits associated with D-2's proposal justified its higher price. AR, Tab 5, SSDD at 3. That same day, the Navy provided HalTech an unsuccessful offeror letter and written debriefing slides. COS/MOL at 6. HalTech timely submitted questions which the agency answered on June 20. *Id.* On June 24, HalTech filed the instant protest with our Office.<sup>4</sup>

## DISCUSSION

HalTech challenges the agency's evaluation of its proposal. According to the protester, but for the alleged errors in the agency's evaluation, HalTech's proposal would have been selected for award.<sup>5</sup> As discussed below, we deny the protest.

### Weakness for HalTech's Degassing Solution

Under the technical approach subfactor, the agency assigned HalTech's proposal a rating of acceptable with moderate risk. AR, Tab 3, TET Report at 8. These ratings were based, in part, on one strength and two weaknesses assessed to HalTech's proposal. *Id.*

Relevant here, the first weakness was assessed for HalTech's approach to a requirement called "degassing." *Id.* The degassing requirement read as follows: "If preparation or processing of a sample creates air bubbles that adversely affect particle count accuracy, a means to eliminate or mitigate air bubbles shall be provided." AR, Tab 7, System Specification at 7. The weakness stated:

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<sup>3</sup> The agency inadvertently transmitted to HalTech a PowerPoint slide deck containing the full technical evaluation results and price of each proposal received. See Protest, exh. 2, Email from Navy to HalTech (stating that the slides were sent inadvertently and requesting deletion). This slide deck was filed with the protest as an exhibit.

<sup>4</sup> HalTech filed its protest *pro se*, *i.e.*, without representation by legal counsel. The protest was filed as a protected document and requested a protective order. Protest at 6. On June 27, our Office acknowledged HalTech's protest; however, we did not issue a protective order because HalTech was proceeding *pro se*. On July 1, HalTech's legal counsel filed a notice of appearance and renewed the firm's request for a protective order. Entry of Appearance & Req. for Protective Order. We issued a protective order later that day. Notice of Protective Order.

<sup>5</sup> The protester raises other collateral arguments. While our decision does not discuss each argument raised, we have thoroughly reviewed them all and conclude that there is no basis to sustain the protest.

The Offeror's proposal stated that there are no provisions at this time in response to [the degassing requirement.] [ ] [T]he Offeror does not demonstrate a means to eliminate or mitigate air bubbles, which may have an adverse effect on particle count accuracy. This weakness [ ] is a flaw in the proposal that increases the risk of unsuccessful performance.

AR, Tab 3, TET Report at 8-9.

During discussions, the agency issued HalTech an evaluation notice (EN) which stated the following: "If air bubbles can significantly affect particle count accuracy, explain means or measures provided to eliminate or mitigate air bubbles or the adverse effect of air bubbles to accurate particle counts." Protest, exh. 3, HalTech Addendum at 2. HalTech responded to the EN as follows:

Air bubbles present in the liquid will be detected by current particle sensor technology as the same as the solid particles. These false counts will significantly affect true particle accuracy. Creation of air bubbles could get worse during a bottle sampling process where a shaking process is applied for well mixing of particles to prevent settling. Degassing is a means or measure to remove or reduce the air [bubbles]. In the past practice, pressurization of the sample is a way to suppress the bubbles. However, we do not feel it is effective since the bubbles will only be reduced in relative size and not removed. Alternatively, heating the sampling fluid could be recommended to reduce and remove the bubbles. We would recommend that the user shake fully filled bottles. Any air space left inside the bottle before shaking could generate extra air bubbles.

A non-invasive ultrasonic air bubble sensor, that many vendors offer now, could be incorporated. However, a bubble sensor's size sensitivity and count capability would still need to be investigated. On the other hand, Hal Technology is developing air bubble detection technology which could be implemented in the same particle sizing platform. We will consider this advanced sensor offering for future upgrade of the Mobile Oil Diagnostic System (MODS) proposed.

*Id.* at 2-3.

After considering Hal's response to the EN, the TET concluded that the agency's concern was not sufficiently addressed. The TET explained that:

[B]ased on the additional information provided this is still considered a weakness because the Offeror's proposed approach is not sufficient for the Government's requirements. This weakness can be resolved if the Offeror implemented one of several commercial off the shelf [(COTS)] solutions therefore this weakness, can be overcome by minor product

modification, special contractor effort and/or close Government monitoring.

AR, Tab 3, TET Report at 9 (emphasis omitted).

HalTech challenges the weakness as unreasonable. Protest at 3-4; Comments at 7-8. The protester explains that in response to the EN it pointed out several methods which could be used to satisfy the degassing requirement. *Id.*; see Protest, exh. 3, HalTech Addendum at 2. According to the protester, because it offered “several viable solutions” to the degassing requirement, it was unreasonable for the agency to assess its proposal with a weakness. Comments at 8.

The agency argues that assessing the weakness was within its discretion, as the basis for the weakness was reasonable and consistent with the terms of the solicitation. COS/MOL at 9-10. That is, the solicitation included a requirement for a degassing approach and HalTech did not address that requirement sufficiently. See *id.* According to the agency, the TET had reasonable concerns with HalTech’s initial lack of an approach to degassing, and even after considering HalTech’s response to the EN, the TET reasonably found that HalTech’s proposed approach did not address the degassing requirement sufficiently. *Id.*; see AR, Tab 3, TET Report at 8-9.

The evaluation of proposals is a matter within the agency’s discretion. *Raytheon Co., B-416211 et al.*, July 10, 2018, 2018 CPD ¶ 262 at 4. In reviewing protests challenging an agency’s evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency. *Master Boat Builders, Inc.; Steiner Constr. Co., Inc., B-421254 et al.*, Feb. 8, 2023, 2023 CPD ¶ 56 at 5. Rather, we will examine the record to determine whether the agency’s judgment was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *CBF Partners JV, LLC, B-419846.2 et al.*, Dec. 14, 2021, 2022 CPD ¶ 10 at 4. A protester’s disagreement with an agency’s evaluation, without more, does not show that the evaluation was unreasonable. *Id.*

Based on our review of the record, we conclude that this protest ground amounts to disagreement with the agency’s reasonable evaluation judgments and does not provide a basis to sustain the protest. The solicitation required proposals to address offerors’ understanding and ability to meet system specification requirements. RFP at 81. Degassing was a system specification requirement. AR, Tab 7, System Specification at 7 (degassing); RFP at 94 (Offeror’s “methods and approach” will be evaluated). As discussed below, the agency reasonably found that HalTech did not address this requirement sufficiently.

Initially, HalTech’s proposal did not list any methods for degassing. Protest, exh. 6, HalTech Proposal at A-16. This prompted the issuance of an EN to which HalTech responded with various options that could be used; however, HalTech did not provide information on how it would meet the degassing requirement, or which of those options it would provide to the agency. See Protest, exh. 3, HalTech Addendum at 2. Rather,

HalTech offered a menu of possible options but never explained its approach. See *id.* at 2-3 (suggesting that users could try pressurizing the sample, shaking the bottle, heating the sample, using an ultrasonic air bubble sensor, or using undeveloped HalTech “air bubble detection technology”). In our view, the TET reasonably concluded that HalTech’s response was insufficient to address the requirement.

In any event, HalTech has not demonstrated that the assessed weakness was unreasonable. In this regard, HalTech simply argues that it provided several options to meet the degassing requirement and that its response should have been enough. See Comments at 8 (“HalTech proposed several viable solutions, including a COTS solution, to the degassing problem. That the Navy found this response to be inadequate, and thus merited a weakness, is unreasonable.”). Such an argument does not provide our Office with a basis to disturb the agency’s evaluation conclusions. It is an offeror’s duty to include sufficiently detailed information to establish that its proposal meets the solicitation’s requirements. *Master Boat Builders, Inc.; Steiner Constr. Co., Inc., supra* at 11. Here, HalTech failed to do that. Accordingly, this protest ground is denied.

#### HalTech’s Remaining Challenges are Dismissed

HalTech’s protest raised three other challenges. First, it argued that the Navy failed to consider its proposed key personnel. Protest at 4. Second, based on the RFP’s definition of a rating of good, it challenged the Navy’s decision to rate its proposal as acceptable under the technical factor, arguing that its evaluation results met the definition for a rating of good or better. *Id.* at 5. Finally, it challenged the second weakness assessed to its proposal under the technical approach subfactor as based on an unstated evaluation criterion. *Id.* at 5-6.

The agency report substantively responds to each of these protest grounds. COS/MOL at 13-21. However, HalTech’s comments do not meaningfully address the agency’s responses. Rather, the comments are either silent or they raise different, supplemental protest grounds in the place of the original protest grounds. Accordingly, we dismiss these remaining protest grounds because they have been abandoned. 4 C.F.R. § 21.3(i)(3) (GAO will dismiss any protest allegation or argument where the agency’s report responds to the allegation or argument, but the protester’s comments fail to address that response); see e.g., *Phoenix Data Sec., Inc., et al.*, B-419956.200 *et al.*, July 10, 2023, 2023 CPD ¶ 172 at 15-17.

With respect to the supplemental protest grounds first raised by HalTech in its comments on the agency report, we dismiss them as untimely. For example, HalTech now challenges the reasonableness of the second weakness based on the stated terms of the solicitation rather than contending that the weakness was based on an unstated evaluation criterion. Compare Protest at 5-6 (“[COTS] was not specified as evaluation criteria”), with Comments at 8 (“the COTS subfactor simply asked for offerors to ‘identify the extent to which the Particle Counter is a COTS item.’ . . . There is nothing in the COTS subfactor alerting prospective offer[ors] to how the lack of a COTS component will, in the Navy’s view, inevitably lead to schedule delays or otherwise create

performance risk.”). In other words, where the original protest ground argued that the agency could not assess COTS utilization at all, the supplemental protest concedes that the agency could consider COTS utilization but argues that the evaluation under the COTS element was unreasonable.

This argument is untimely because it was not raised within 10 days of when the protester knew or should have known of its basis. See 4 C.F.R. § 21.2(a)(2). HalTech received a written debriefing on June 11, which provided the agency’s reasoning for the relevant weakness and described the alleged risks associated with HalTech’s proposed particle counter. COS/MOL at 6; Protest, exh. 3, Debriefing at 17. HalTech did not challenge the reasonableness of the agency’s evaluation under the COTS element until July 26, when it filed comments on the agency report. Comments at 8. This was more than 10 days after learning the basis for the argument. Accordingly, it is dismissed as untimely.<sup>6</sup> 4 C.F.R. § 21.2(a)(2); *Phoenix Data Sec., Inc., et al., supra* at 16-17.

HalTech also argues that the best-value tradeoff decision was an improper mechanical counting of strengths and weaknesses, and that the decision was not properly documented. Comments at 9-10. For the same reasons discussed above, we dismiss these supplemental grounds as untimely because HalTech was aware of the basis for these grounds when it received the debriefing but did not raise them until more than 10 days after receiving the debriefing. 4 C.F.R. § 21.2(a)(2); Protest, exh. 8, Rescinded Debriefing Slides at 21-22 (unredacted copy of the agency’s best-value tradeoff decision).<sup>7</sup>

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>6</sup> HalTech also contends that the Navy had a preference for COTS items, which was unreasonable because the “procurement was not for an existing commercial [product.]” Comments at 8. According to the protester, “[i]f the Navy sought a commercial item, it could have purchased one.” *Id.* To the extent HalTech is challenging the terms of the solicitation’s COTS element, the challenge is untimely and is dismissed. 4 C.F.R. § 21.2(a)(1); *Phoenix Data Sec., Inc., et al., supra* at 14-15 (dismissing untimely challenges to the terms of a solicitation).

<sup>7</sup> We note that this copy of the best-value tradeoff decision was filed as an exhibit with the protest. The protester’s copy was unredacted and consequently includes more information than the copy filed with the agency report, which was redacted by the agency. Compare Protest, exh. 8, Rescinded Debriefing Slides at 21-22, with AR, Tab 5, SSDD at 3.