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## Decision

**Matter of:** Engineered Air Systems, Inc.; Hunter Manufacturing Company

**File:** B-283011; B-283011.2; B-283011.3

**Date:** September 21, 1999

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Timothy F. Noelker, Esq., Steven E. Kellogg, Esq., and Linda L. Shapiro, Esq., Thompson Coburn, for Engineered Air Systems, Inc., and Kenneth A. Martin, Esq., and Jennifer C. Adams, Esq., Martin & Rylander, for Hunter Manufacturing Company, the protesters.

David Vogel, Esq., and Matthew S. Perlman, Esq., Arent Fox Kintner Plotkin & Kahn, for Polartherm Oy, an intervenor.

John E. Lariccia, Esq., and Bradley S. Adams, Esq., Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that the contracting agency treated protester and awardee unequally in assigning risk assessment ratings is denied where record provides a reasonable basis for the agency's conclusions that protester's proposal presented a moderate risk under performance requirements and that the awardee's proposal presented a low risk.
2. Protest challenging the agency's evaluation of the protester's and awardee's past performance is denied where the record establishes the reasonableness of the agency's evaluation and the protester merely disagrees with the agency's determination.
3. Allegation that agency improperly evaluated proposals is denied where the record shows that the agency evaluated in accordance with the criteria announced in the solicitation, and the record reasonably supports the evaluators' conclusions.

4. Where record supports agency's conclusion that awardee's technical proposal was superior to that of the protesters, agency reasonably concluded that award should be made on to the technically superior proposal notwithstanding the associated price premium.

5. Agency conducted meaningful discussions concerning past performance where protester was placed on notice concerning negative past performance information.

## **DECISION**

Engineering Air Systems, Inc. (EASI) and Hunter Manufacturing Company protest the award of a contract to Polartherm Oy under request for proposals (RFP) No. F09603-98-R-71047, issued by the Department of the Air Force for the development, first article test and production of new generation heaters (NGH) to be used as aerospace ground support equipment.

We deny the protests.

## **BACKGROUND**

The RFP, issued February 10, 1999, contemplated the award of a fixed-price contract for eight first article units with five 1-year production options. The acquisition is to provide complete replacement of all existing H-1 heaters currently in use by the Air Force, other services, and foreign customers. Contracting Officer's Statement §1. The requirement is for a deployable, wheeled, trailer-mounted, duct-type heater which operates on multiple fuels, primarily JP-8 jet fuel, depending on environment and available supply. Id. The heater will provide warmth to personnel performing aircraft maintenance and heat aircraft cockpits, engines, cargo areas and temporary structures in various environments. Id. The acquisition was conducted using streamlined source selection procedures in accordance with the Air Force Federal Acquisition Regulation Supplement (AFFARS). RFP § L-900.

The RFP provided for award to be made to the responsible offeror whose proposal conforming to the RFP requirements was judged to represent the best value to the government. RFP § M-900.1.0. The RFP defined best value as the expected outcome of an acquisition that, in the government's estimation, provides the greatest overall benefit in response to the requirement. Id. The RFP listed the following evaluation factors in descending order of importance:

- Factor I. Technical
1. Performance Requirements
  2. Engineering
  3. Production Planning
  4. Management
- Factor II. Cost/Price
- General Considerations

Within Factor I, the subfactors were also listed in descending order of importance. RFP § M.900.2.3. Each subfactor was to receive a color/adjectival rating and a proposal risk rating.<sup>1</sup> RFP § M.900.2.2. A performance risk rating, based upon the offeror's relevant past and present performance as it relates to the RFP requirements, was also to be assigned at the factor level. Id. The three ratings were to receive equal consideration by the source selection authority (SSA) during the evaluation. The RFP listed performance thresholds, which are required to satisfy the user's need, and objectives, which reflect desirable capability above the threshold; for example, for weight conformance, the threshold was 900 pounds, while the objective was 800 pounds.

The government reserved the right to give evaluation credit for proposed features that exceeded the objectives and also reserved the right to evaluate and give evaluation credit for proposed features, other than those described above, that had merit and exceeded specified performance or capability requirements in a way beneficial to the Air Force. RFP § M.900.2.2.a.2. The RFP specifically explained how price would be computed and provided that the government would also assess the realism, completeness, and reasonableness of the proposed cost/price. RFP §§ M.900.2.2.b, 6.0. With respect to past performance, the RFP provided that offerors would be given an opportunity to address negative past performance information if the offeror had not had a previous opportunity to review the rating. RFP § M.900.5.3.(ii). The RFP stated that the performance risk assessment at the factor level would be based upon the offeror's relevant present and past performance and would consider the number and severity of the problems, the appropriateness and/or effectiveness of any corrective actions taken, and the offeror's overall work record; the RFP warned offerors that even prompt corrective action in isolated instances might not outweigh overall negative trends. Id.

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<sup>1</sup>Proposal risk assesses the risks associated with the offeror's proposed approach as it relates to accomplishing the requirements at the subfactor level. The possible evaluation ratings for proposal risk and performance risk were high, moderate and low. The color/adjectival ratings were blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable.

Seven initial proposals were received by the March 12, 1999, closing date. After evaluation of the initial proposals, three proposals were eliminated from the competitive range. Evaluation notices (ENs) were issued to the remaining four offerors. After evaluating responses to the ENs, the Air Force issued a request for final proposal revisions on May 11 and final proposals were received May 17. The Polartherm, EASI, and Hunter proposals were rated as follows:

	Polartherm	EASI	Hunter
TECHNICAL	/L	/M	/L
Performance Requirements	B/L	B/M	B/M
Engineering	G/L	G/L	G/L
Production Planning	G/L	G/L	G/L
Management	G/L	G/L	G/L
COST/PRICE	\$66,276,423	\$54,528,820	\$65,546,822

Under the technical factors, Polartherm received a Blue/Low risk rating in performance requirements, the most critical subfactor, while Hunter and EASI received a Blue/Moderate rating. Agency Report Tab 22; Proposal Analysis Report. The evaluators determined that Polartherm's proposal warranted a low proposal risk rating for this factor because Polartherm's proposed reliability figures, unlike Hunter's and EASI's, were based on actual historical data from fielded units rather than theoretical data derived from engineering analysis and limited testing of developmental units. The evaluators also found that Polartherm's proposal offered other benefits consisting of an additional combustion component and an extended engine warranty resulting in significant cost avoidance. All other ratings of Polartherm and Hunter were identical. The same result was obtained with respect to EASI, except that Polartherm received a low performance risk rating while EASI received a moderate rating. Based on information received concerning the past performance on Polartherm and its subcontractor, Heat Wagon, Inc., the agency concluded that Polartherm posed little risk to timely and successful performance of the requirement. The agency concluded from EASI's past performance information that EASI had problems [deleted].

Based on the results of the evaluations, the SSA concluded that Polartherm's proposal offered the best value to the government. Agency Report, Tab 23, Source Selection Decision Memo. Award was made to Polartherm on May 28. The agency debriefed EASI and Hunter on June 11, and these protests followed.<sup>2</sup>

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<sup>2</sup>After the protests were filed, the agency discovered that an error had occurred in the calculation of transportation costs for EASI; correction of the error resulted in a \$976,648.30 downward adjustment of EASI's total evaluated price. As a result of this error, the SSA reviewed the information and concluded that since the basis of award to Polartherm was its technical superiority and low risk, notwithstanding the  
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## EASI'S PROTEST

EASI contends that the agency failed to apply the same evaluation criteria to EASI's and Polartherm's proposal and unreasonably evaluated EASI's and Polartherm's past performance. EASI also protests that the agency's award to Polartherm did not constitute the best value to the government, and that the award was tainted by bias or undue influence. In a supplemental protest filed on July 27, EASI contends that the agency failed to conduct meaningful discussions with EASI with respect to past performance issues, failed to conduct a cost avoidance benefit analysis regarding verifiable life cycle costs, improperly failed to deem Polartherm's cost proposal as non-responsive and/or assign Polartherm an increased risk, and failed to consider Polartherm's lack of knowledge regarding maintenance at the agency.

## DISCUSSION

### Evaluation of Proposals

EASI contends that the agency's evaluation of EASI's and Polartherm's proposals was inconsistent and unequal in several respects. EASI maintains that it received a moderate proposal risk rating under the performance requirement subfactor because it had never manufactured the precise heat exchanger being offered, while Polartherm received a low proposal risk rating even though it, like EASI, had never before manufactured the precise heat exchanger being offered. EASI also maintains that it received a moderate performance risk rating in part because of performance problems under prior contracts, despite the fact that EASI had resolved the problems, while Polartherm received a low risk rating for having resolved performance problems. Finally, EASI contends that Polartherm received a low performance risk rating even though the model of heater that its proposal was based on had suffered from quality and reliability problems.

In reviewing a protest challenging an agency's technical evaluation, we examine the record only to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 3-4. A protester's mere disagreement with the agency's evaluation determination does not demonstrate that the evaluation was unreasonable. Brunswick Defense, B-255764, Mar. 30, 1994, 94-1 CPD ¶ 225 at 9. Here, the record provides no basis to question the reasonableness of the agency's evaluation of proposals.

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decrease in EASI's total evaluated price, the award to Polartherm represented the best value. Throughout our decision, we use the corrected figures.

EASI's proposal was evaluated as less advantageous than Polartherm's proposal in two respects: it was assigned a moderate proposal risk rating under the performance requirements subfactor, and was assigned a moderate performance risk rating under the technical factor. Polartherm's proposal was assigned a low risk under both. EASI asserts that, according to the agency, it received a moderate risk rating under the performance requirements subfactor because it was offering a newly designed heat exchanger, was integrating components for the first time in this heater and had conducted only limited testing on a prototype. However, EASI maintains that Polartherm was also proposing a heater that it had never produced before but was not downgraded.

The record shows that the basis for EASI's moderate performance requirements risk assessment was that the heat exchanger/combustion chamber proposed was of a new design, as specifically stated by EASI in its technical proposal and, although information was provided to demonstrate system reliability on defined critical components from other heater designs, the agency concluded that there was a risk associated with integrating all of the components into a new system for the first time. While EASI had provided evidence that it had performed limited testing on the new design heat exchanger, the agency concluded that an element of risk was present because the system had not been operated within flight line or similar operating environments and would utilize a heater controller not yet available. Contracting Officer's Statement at 7. EASI's reliability figures were not fully supported by actual experience and, as such, the agency concluded that this presented an increased risk to the government. Polartherm, on the other hand, proposed a heater system configuration that was essentially identical to a unit that it is currently producing. Polartherm's proposal discussed its existing heat exchanger and the minor changes required in order to meet the solicitation requirements and provided information regarding the reliability performance that was substantiated through its customer.

In its comments submitted in response to the agency's report, EASI contends that its proposed heat exchanger, like Polartherm's, is a derivative of an existing EASI heat exchanger which has reliability data that could be relied upon to support the proposed reliability figures. However, in its proposal, EASI referred to its proposed heat exchanger as a "new design" and never claimed that its proposed heat exchanger was a derivative of an existing EASI device. Moreover, in response to the agency's concerns about its reliability data, EASI responded that its proposed heater was a new design, but that its engineers had the technical knowledge and expertise to produce a heater that could achieve high reliability figures because some of its components were individually reliable. Agency Report, Tab 12, EN No. EAS-T-02.

While EASI goes into great details to demonstrate that the agency should have been aware that its proposed heater was a derivative of its current design, EASI simply did not indicate this in its proposal. Since EASI repeatedly represented that its proposed

heater was a new design, we do not think the agency was unreasonable in evaluating it as such.

In its protest, EASI made a general allegation of unequal treatment in the evaluation, but did not provide any specific instances where it believed Polartherm's proposed heater failed to comply with solicitation requirements.<sup>3</sup> EASI does, however, question the agency's assessing Polartherm a low proposal risk because EASI contends it meets or exceeds more of the stated objectives than did Polartherm. The record shows that Polartherm received a low proposal risk rating not because of the number of objectives that it met or exceeded, but rather because, as previously explained, Polartherm (unlike EASI) discussed in detail the modifications of its current heater that were necessary to conform to the solicitation requirements, and it provided operating information to support its proposed reliability figures. The evaluators concluded that the modifications proposed by Polartherm were minor, would not affect the system architecture, and would have a minimal impact on the system's reliability, making the proposed heater a low risk.

Overall, the record here, which includes EASI's and Polartherm's proposals, the evaluation documentation, EASI's protest, the agency's report, EASI's and Polartherm's comments on the report, and additional supplemental submissions by all parties, demonstrates that the agency's evaluation was reasonable. EASI's objection to the agency's evaluation constitutes no more than its disagreement with the evaluation results, which does not demonstrate that the agency's technical evaluation was unreasonable. DBA Sys., Inc., B-241048, Jan. 15, 1991, 91-1 CPD ¶ 36 at 4.

#### Past Performance Evaluation

EASI protests that the agency applied inconsistent evaluation criteria with respect to the past performance evaluation of EASI and Polartherm. EASI contends that

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<sup>3</sup>In a submission filed more than 10 days after EASI received the agency report, the protester included a report from a consultant, who provides detailed arguments alleging that Polartherm's proposed heater does not meet the agency's requirements and that Polartherm's heater is inferior to EASI's. In its initial protest, EASI raised a general allegation of unequal treatment but, other than arguing that it met or exceeded more of the stated objectives than did Polartherm, did not claim that Polartherm was unable to meet certain technical requirements. We consider the allegations raised with consultant's report to be untimely, for the consultant's specific allegations go far beyond the grounds asserted in the initial proposal, and our Regulations do not permit such a piecemeal development of protest issues. See Dial Page, Inc., B-256210, May 16, 1994, 94-1 CPD ¶ 311 at 4. In any event, we view the consultant's report as expressing mere disagreement with the Air Force's determination with respect to the quality of Polartherm's heater design.

Polartherm was given credit for resolving certain technical problems, while EASI was downgraded for having to resolve problems. EASI also contends that Polartherm was not assessed an increased risk when its proposed system experienced a 40-percent failure rate. Lastly, EASI maintains that the agency was intent on portraying EASI in as negative light as possible by carefully selecting a few negative comments, ignoring the vast majority of positive responses and manufacturing a past performance history that is not reflective of how government agencies view EASI.

We have thoroughly reviewed the record and find no basis to question the agency's evaluation of past performance. As noted above, the RFP advised offerors that the performance risk assessment would consider the number and severity of the problems, the appropriateness and/or effectiveness of any corrective actions take, and the offerors' overall work record. The RFP further provided that even prompt corrective action in isolated instances might not outweigh overall negative trends.

Here, the record shows that the agency received positive responses concerning Polartherm's and its subcontractor, Heat Wagon's, past performance. In contrast, EASI's references noted several significant problems with [deleted]. In this regard, the protester contends that the agency improperly relied upon negative comments given by a trainee at Kelly Air Force Base, even though those comments conflict with those of the engineer responsible for the programs, and reflect the views of a disgruntled government employee who criticized his agency as much as he did EASI; in EASI's view, the negative comments do not reflect how the procuring agency perceived the quality of EASI's products. The agency states that this employee is the point of contact regarding problems with the air conditioner programs and his review of EASI's past performance was part of his job in which he relied on supporting information from a database with comments from actual users. [Deleted.]

Furthermore, the Air Force notes that, when informed of its poor past performance record, EASI failed to provide information indicating a positive trend. EASI, in fact, admitted its problems and acknowledged the negative trend in its past and present contracts by advising of several actions taken to resolve many of the concerns, such as corrective actions taken to address [deleted], but EASI failed to furnish evidence of any positive changes or trends as a result of the corrective action. Agency Report, Tab 19, EN No. EAS-P-2-8.

After receipt of the agency report, the protester discovered that the agency had relied on a computer-generated contractor performance assessment report (CPAR) that contained a typographical error, which indicated the author "definitely would not award" to EASI again, while the hard-copy version of the form that the protester had seen correctly reflected the writer's view that he "definitely would award" to EASI again. The protester, noting that the erroneous CPAR was repeatedly cited in the evaluation record, contends that the Air Force relied heavily upon this obvious



typographical error. The agency concedes the error, but states that it did not rely solely upon the inaccurate CPAR to assess EASI a moderate risk rating and maintains that the record without this CPAR supports a moderate risk rating for EASI. While there is no dispute that the CPAR contained an error, we find that it did not prejudice the protester, since the record contains otherwise ample support for the agency's moderate performance risk rating for EASI.

With respect to Polartherm's past performance evaluation, the Air Force states that it specifically investigated the two "failures" alleged in the firm's performance and found that they did not warrant an adjustment of the risk rating as the problems were minor and were quickly corrected by the contractor. EASI contends that the Air Force's evaluation of Polartherm's past performance with two airlines was unreasonable and factually unsupportable because of differences in the type and quantity of the items at issue and because of a high failure rate. The agency reports that a relevance assessment, as required by the RFP, was performed on performance data ranging from very relevant, semi-relevant, to not relevant and that applying these standards to Polartherm's performance on the contract with one airline was very relevant and properly resulted in a past performance rating of low risk. (The Air Force states that it did not consider Polartherm's performance with the other airline.)

It is clear that past performance information on EASI contained numerous negative responses, primarily focused on EASI's problems with [deleted]. While EASI was responsive to the concerns and resolved the matters on individual contracts, it is apparent that EASI did not demonstrate to the evaluators that its corrective actions justified a low risk rating. In contrast, the evaluators had a reasonable basis to find Polartherm's past performance justified a low risk rating. On this record, we find without merit EASI's assertion that the agency's evaluation was improper.

#### Price/Technical Tradeoff

EASI objects to the reasonableness of the cost/technical tradeoff analysis asserting, that the agency failed to justify or explain why the Polartherm heater is worth an additional \$11.7 million. EASI contends that cost was never a serious consideration in the award decision.

In choosing between a higher-cost, higher-rated proposal and a lower-cost, lower-rated one, agency officials have broad discretion, and our review is limited to a determination of whether the cost/technical tradeoff is reasonable and consistent with the solicitation's evaluation criteria. Management Sys. Designers, Inc., B-244383.3, Sept. 30, 1991, 91-2 CPD ¶ 310 at 3.

Here, the SSA, in a detailed, five-page source selection memorandum, noted that all competitive range offerors were rated exceptional or "blue" in performance requirements, the most critical technical subfactor, with a moderate proposal risk

except for Polartherm which was rated “blue” and low proposal risk. He further noted that the technical factor was significantly more important than the cost/price factor. The SSA specifically concluded that Polartherm’s technical superiority (as evidenced by its low risk in the performance requirements subfactor) and its low performance risk rating was worth the higher cost associated with this proposal and that Polartherm offered the best overall value to the government. In this regard, the SSA found that Polartherm’s technical superiority in the performance requirement subfactor was based on the high level of confidence in its reliability commitments. Polartherm, by offering a modified version of its commercially available heater, provided the agency existing reliability data rather than the theoretical data provided by the other offerors. Polartherm’s proposal also offered benefits of a warranty above what was required by the RFP and offered by the other competitive range offerors. In selecting Polartherm’s proposal for award, the SSA provided ample, documented support for his decision.

### Undue Influence and Bias

The protester argues that the agency was improperly influenced by the memorandum of understanding between Finland and the United States and the offset agreement between the Boeing Corporation and Finland, which allegedly played a role because Polartherm is a Finnish company. When a protester contends that contracting officials are motivated by bias or bad faith, it must provide convincing proof, since contracting officials are presumed to act in good faith. *ACS Sys. & Eng’g, Inc.*, B 275439.3, Mar. 31, 1997, 97-1 CPD ¶126 at 5. EASI has provided no evidence to support its speculation in this regard.

### EASI’s Supplemental Protest

In its supplemental protest, EASI argues, first, that the Air Force failed to conduct meaningful discussions with EASI with respect to past performance issues.<sup>4</sup> The agency responds that EASI had the opportunity to respond to the adverse past performance information at the time it was being compiled and in fact did respond. The record shows that during discussions EASI was given the opportunity to respond to numerous instances where negative information was received by the agency through customer feedback. While EASI provided responses that indicated that appropriate corrective action was taken, we do not find it unreasonable for the

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<sup>4</sup> EASI focuses in this regard on its lack of opportunity to respond to the statement in one computer-generated CPAR (discussed above) that erroneously indicated that one respondent had said that he “definitely would not award” to EASI again, when, in fact, he had actually indicated that he definitely would award to EASI again. As noted above, we find that the past performance assessment and the resulting risk rating were unaffected by this error, so that any lack of discussions did not prejudice the protester.

agency to conclude that EASI had not demonstrated that certain systemic problems had been corrected. Accordingly, we find no basis to question the adequacy of the agency's discussions with EASI.

Next, EASI argues that the Air Force went out of its way to manufacture a cost avoidance evaluation criterion and assess Polartherm a benefit for its additional warranty by relying on unsubstantiated data, yet failed to conduct the same analysis with respect to verifiable life cycle cost data. While the solicitation did not provide for the evaluation of life cycle costs, it did state that the Air Force reserved the right to evaluate and give evaluation credit for proposed features that met or exceeded the stated objectives. In this regard, all offerors except EASI offered warranties beyond that which was required by the RFP. The agency found that Polartherm's extended warranty was a feature that exceeded a specific objective found in the solicitation, and the Air Force performed a cost avoidance benefit analysis to estimate the value of the additional warranty. The Air Force did not find any feature in the EASI's proposal that exceeded the solicitation's objectives and that deserved to be quantified. We have no basis to object the reasonableness of the Air Force's conclusions in this regard. Moreover, as stated above, the decision to award to Polartherm was primarily based on its technical superiority, rather than on cost avoidance.

EASI also argues that, although Polartherm failed to include all required cost information in its cost proposal and admitted in its proposal that it was not familiar with the cost structure of ground support equipment use and maintenance, the agency unreasonably determined Polartherm's cost proposal to be realistic, reasonable and complete.

Here, the record shows that with respect to Polartherm, the agency specifically found all elements of the price proposal, except for the ones relating to the warranty costs, to be consistent with the scope of the proposed effort, reasonable and complete. All concerns the agency had with Polartherm's price proposal, including warranty costs, were resolved during discussions. Agency Report, Tab 18, Price Competition Memorandum. Further, there was no requirement in the RFP that offerors demonstrate a familiarity with the agency's cost structure for ground support equipment. On this record, the Air Force's price realism analysis of Polartherm's proposal was reasonable.

#### HUNTER'S PROTEST

Hunter, like EASI, challenges the agency's evaluation and argues that the agency conducted unequal evaluation of its and Polartherm's proposals. Hunter contends that Polartherm's proposal was technically unacceptable because it failed to meet the agency's threshold weight requirements. The protester states that the Air Force specified a maximum weight requirement of not more than 900 pounds for the heaters and that Polartherm's proposed unit had a weight of 1,036 pounds.

The agency reports that it did not waive any requirements for any offeror. The RFP required the gross dry weight of the heater without ducts and adapter not to exceed 900 pounds as a threshold with an objective of 800 pounds. RFP § 3.1.1. The RFP further provided that this standard is met when the offeror provides in its proposal “an acceptable approach, through the required draft parts list/bill of materials and associated estimated weight,” to demonstrate compliance to the standard. RFP § M-900.8, at 23. The record shows that Polartherm in its initial proposal committed to the weight threshold but failed to provide information demonstrating its ability to meet the weight requirement. During discussions, Polartherm was requested to provide additional information to demonstrate its ability to meet the weight requirement. In its final proposal, in accordance with the RFP requirements and the relevant EN, Polartherm provided a bill of materials which listed all the components and their corresponding weights and showed a total weight of all the components equal to 406.5 kilograms or 896 pounds. The protester contends that, although Polartherm committed to the weight requirement, the agency should have taken into consideration the fact that in order to correct technical failures in the past, Polartherm had to add weight to its heater design.

We find nothing unreasonable in the agency’s evaluation here. As previously stated, the RFP specifically provided that the weight requirement would be met by the submission of a parts list/bill of materials and associated weights. Polartherm, like the other offerors, including Hunter, provided such a list, which clearly demonstrated that it would meet the weight requirement. While we recognize that, since all offerors were either proposing a new design or modifying an existing one, there is some uncertainty about whether any offeror will actually meet its weight commitment, there is simply no evidence that the agency relaxed the weight requirement for Polartherm or any other offeror.

Next, the protester attempts to challenge the agency’s evaluation as unreasonable, by listing several instances where Polartherm’s initial proposal failed to meet certain technical requirements. The protester recognizes that these deficiencies were corrected by Polartherm in its final proposal. The record shows that the alleged deficiencies were brought to Polartherm’s attention during discussions and that none of the alleged deficiencies appeared in Polartherm’s final proposal. The technical acceptability of Polartherm’s proposal was properly based on the final proposal including all revisions that were the result of its responses to the agency’s concerns during discussions, and the fact that there were deficiencies in the initial proposal is irrelevant to the final source selection.

Hunter also argues that the agency erred in assessing Polartherm a low performance risk rating in the face of Polartherm’s use of an inexperienced small business to assemble the mass production housing for the heater that Polartherm ships from overseas.

As previously discussed, the agency reviewed Polartherm's and Heat Wagon's prior contracts, determined their relevance and, based on the positive responses, assessed Polartherm as having a low performance risk. The record shows that the agency did have some concerns with Heat Wagon assembling the heater and expressed them to Polartherm during discussions. Polartherm, in response, discussed in detail its relationship with Heat Wagon and specifically outlined its schedule for incorporating Heat Wagon's participation in the assembly of the heater. Based on the details of Polartherm's production plans and the positive responses from Polartherm's and Heat Wagon's references, we believe the agency reasonably assessed Polartherm as having a low performance risk. Hunter's arguments to the contrary merely express its disagreement with the agency's evaluation.

Next Hunter, as did EASI, challenges the agency's assessment of a low risk rating for the performance requirement subfactor for Polartherm and a moderate rating for the protester. Hunter primarily argues that it was downgraded under this factor for its failure to provide documentation to support its reliability commitments, while Polartherm's reliability was based on the redesign of a heater that experienced substantial failures due to vibration problems.

As discussed above, the record shows that Polartherm was assessed a low risk rating under the performance requirement subfactor because its reliability commitments were based on actual historical data from fielded units rather than theoretical data based on engineering analysis and limited testing of breadboard units as was the case with Hunter's. The Air Force thus did not treat Polartherm and Hunter unequally, but had a reasonable basis for its low risk assessment of Polartherm's proposed heater design. Polartherm's proposal demonstrated that it proposed modifications to an existing product, and the agency determined that those modifications were minor in nature. The protester, on the other hand, admits that its proposal was presented more as offering a completely new design that was significantly different from any heater it had previously produced. While the protester presents numerous arguments concerning unequal treatment, the record shows that Polartherm clearly demonstrated in its proposal how, with only minor modification to its existing heater already in production, it would meet the agency's requirements.

As explained in our response to EASI's protest, we find no basis to conclude that the award to Polartherm was tainted by bias or undue influence or unfair advantages. Likewise, we find the cost/technical tradeoff analysis was reasonable. We also find without merit to Hunter's contention that Polartherm was not required to comply with Equal Employment Opportunity (EEO) standards and audits. The EEO compliance standards were properly applied to American firms, including Polartherm's subcontractor, Heat Wagon. Polartherm, a foreign company, does not have to comply with the same socio-economic requirements as domestic firms. There is no legal requirement that procuring activities equalize whatever competitive

advantages foreign firms might have because they are not subject to such requirements.<sup>5</sup> The Hygenic Corp., B-215110, May 24, 1984, 84-1 CPD ¶ 571 at 2.

The protests are denied.

Comptroller General  
of the United States

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<sup>5</sup>The protesters have raised various other collateral issues, such as Polartherm's alleged lack of knowledge regarding maintenance at the agency. We have considered those issues and find them to be without merit.