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## Decision

**Matter of:** Savannah River Tank Closure, LLC

**File:** B-400953; B-400953.2; B-400953.3

**Date:** March 30, 2009

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H. Jack Shearer, Esq., Charmaine A. Howson, Esq., and Mary-Ellen Noone, Esq., Department of Energy, for the agency.

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### **DIGEST**

In a procurement for liquid waste remediation, agency reasonably selected technically superior but higher priced proposal for award, where awardee's technical approach for tank cleaning was significantly superior to the protester's less feasible approach, the awardee's proposal exceeded the requirements of the solicitation to a much larger degree than did the protester's in several technical areas, and the awardee demonstrated proposal superiority under nearly all of the evaluation factors.

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### **DECISION**

Savannah River Tank Closure, LLC (STC), of Aiken, South Carolina, protests the award of a contract to Savannah River Remediation, LLC (SRR), also of Aiken, South Carolina, issued by the Department of Energy (DOE) under request for proposals (RFP) No. CE-RP09-07SR22505, for liquid waste remediation services. STC contends that the agency's evaluation of proposals under the non-price evaluation factors was unreasonable and unequal.

We deny the protest.

## BACKGROUND

### The Liquid Waste Program

This procurement involves the operation and maintenance of the liquid waste system at the DOE Savannah River Site (SRS), a 310 square mile industrial complex in the southern part of South Carolina adjacent to the Savannah River. The liquid waste system is a key component of the Environmental Management Cleanup Project, which is one of three SRS mission areas,<sup>1</sup> and is comprised of an integrated series of facilities that manages the existing radioactive waste inventory. Contracting Officer's Statement at 2. The purpose of this procurement is to treat, store, and dispose of radioactive liquid waste. RFP § C, Introduction.

DOE currently stores approximately 36 million gallons of liquid radioactive waste in 49 underground storage tanks at the SRS<sup>2</sup> that are located in two "tank farms."<sup>3</sup> These tanks are classified as Types I through IV. Type III tanks, (of which there are 27) are "double wall tanks," that is, each is a "tank within a tank," and are not the subject of this procurement. Contracting Officer's Statement at 4; Hearing Transcript (Tr.) at 15.<sup>4</sup> This is so because Type III tanks comply with Environmental Protection Agency (EPA) requirements to have "full secondary containment and leak protection" and, therefore, need not be closed. The remaining 22 tanks (Types I, II, and IV) are "single shell" tanks that do not meet the EPA requirements, and they must be closed in accordance with a "Federal Facilities Agreement" between DOE, the EPA, and the state of South Carolina. Contracting Officer's Statement at 4. These 22 non-compliant tanks are part of this procurement. Sixteen of these non-compliant tanks are Type I or II tanks,<sup>5</sup> each of which contains 3 to 4 miles of closely-packed coils and piping that are serpentine and criss-crossed horizontally and vertically, from floor to ceiling, throughout the tanks. *Id.* According to DOE,

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<sup>1</sup> The other two SRS mission areas involve the operation of the Savannah River National Laboratory, and activities involving the National Nuclear Security Administration.

<sup>2</sup> There were initially 51 tanks at the SRS, but two of the tanks (Tanks 17 and 20) have been closed and are no longer used to store waste.

<sup>3</sup> The two farms are referred to as the "F" tank farm and the "H" tank farm. The tank farms contain a number of waste treatment operations that prepare and condition the waste that is fed to the two major waste disposition facilities at the site. Contracting Officer's Statement at 5.

<sup>4</sup> Our Office conducted a 3-day hearing, during which testimony was presented on a number of the issues raised in this protest.

<sup>5</sup> Twelve tanks are Type I tanks and four tanks are Type II tanks.

this “maze-like array of piping and stanchions” that exists in Type I and II tanks “poses a serious obstacle to tank cleaning.” Id. Type IV tanks are unobstructed. Tr. at 16.

The radioactive waste stored in the tanks is in the forms of salt (both liquid supernate and solidified saltcake) and mud-like sludge. Salt waste (which consists of both low- and high-level radioactive waste) comprises about 90 percent of the total volume of stored waste; sludge waste (which is highly radioactive) comprises the other 10 percent. Waste removal approaches vary depending on the form of the waste and the type of tank involved. Salt waste, for example, is easily dissolved in water and may be removed by pumping out the dissolved salt from the tank. Sludge waste is more difficult to remove and often requires some type of chemical or mechanical cleaning to assist with the waste removal process. See Tr. at 18-22, 31-32, 34-35.

Once waste is removed from the tanks, it is treated and then transferred to one of two major disposition facilities at the SRS, where the waste is converted into a final form of either saltstone grout or glass. The two disposition facilities at the SRS are the “Saltstone Facility,” which receives low-level radioactive salt waste and converts it to saltstone grout, and the “Defense Waste Processing Facility” (DWPF), which receives high-level radioactive sludge and salt waste and converts it to glass, which can be stored in canisters.<sup>6</sup> Contracting Officer’s Statement at 3-7.

After all the waste is removed from a tank and the tank is cleaned, the contractor can complete the remaining steps necessary to close the tank. These steps include disabling all waste transfer lines and ventilation systems and filling the tank with grout. Id. at 4 n.5. The tank closure process is highly regulated and requires contractor compliance with various regulations, laws, permits, and other legal documents. See RFP § C.2.1.

### The RFP

The RFP provided for the award of a cost-plus-award-fee contract with a period of performance that consists of a 3-month transition period, a 6-year base period, a 2-year option period, and a separate option for salt waste processing facility operation during the option period. RFP amend. 4, § B.2.

The RFP was “performance-based” and required the selected contractor to be responsible for all aspects of the liquid waste program, including, among other activities, waste removal and treatment, the Saltstone Facility and DWPF operations, tank farm operations, tank closure, and program support. RFP § C. A detailed

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<sup>6</sup> This process of converting radioactive waste to a glass-like substance is referred to as “vitrification.” See Contracting Officer’s Statement at 41; Tr. at 825.

statement of work described the liquid waste program requirements and specified “end state” requirements for the contractor to meet. Among the “end state” requirements are that the contractor must (1) produce at least 1,100 canisters at the DWPF during the contract base period and another 440 canisters at the DWPF during the contract option period; (2) deliver 12,750,000 gallons of salt waste to the salt waste processing facility for processing during the contract base period and another 12,000,000 gallons of salt waste to the salt waste processing facility for processing during the contract option period; (3) operationally close 10 non-compliant tanks (that is, Type I, II, and IV tanks) during the base period and another 2 non-compliant tanks during the option period; and (4) perform planning and execution of work necessary for the future operational closure of additional tanks. RFP amend. 4, § C, Introduction.

The RFP provided that the contract would be awarded on a best value basis, considering the following evaluation criteria listed in descending order of importance: technical approach, organizational structure and key personnel, risk management, safety analysis, relevant experience, and past performance. The RFP stated that the technical approach factor was “significantly more important than” the organizational structure and key personnel factor, and that the two factors together were “significantly more important than” the other factors combined. RFP § M.4. Cost and fee were to be evaluated to determine if the proposed costs were reasonable, realistic, and complete. RFP § M.6.

Section L of the solicitation required each offeror to submit a technical proposal and cost proposal. Technical proposals were to address the statement of work requirements and were limited to 300 pages (excluding letters of commitment, resumes of key personnel, past performance, and Section 3116 compliance documentation<sup>7</sup>). RFP amend. 4, § L.4. With regard to technical approach, each offeror was to

describe its technical approach to the execution of each of the requirements of the [statement of work] and the feasibility of the approach. Sufficient detail shall be provided to communicate the Offeror’s understanding of the requirements of the [statement of work].

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<sup>7</sup> Section 3116 refers to Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, 118 Stat. 1811 (2004), which prescribes an elaborate regulatory process for the closure of tanks. Pursuant to this process, in January 2006, the Secretary of Energy issued a plan for salt waste disposal at the SRS called a “Basis for Section 3116 Determination.” The RFP required the contractor to demonstrate compliance with the Section 3116 Determination and various implementing permits, regulations, and agreements in a separate, stand-alone document from the rest of proposal. Contracting Officer’s Statement at 4-5; RFP §§ C.2.1.1.1, L.4(a).

In more detail, the Offeror shall describe its proposed approach to optimize system performance, *i.e.*, maximizing waste throughput at DWPF and tank closure rates while ensuring sufficient tank space for continued long term operation.

RFP § L.4(a). For key personnel, the RFP required, at a minimum, that each offeror propose a project manager and individuals responsible for operations; engineering; environmental, safety, health, and quality; and “other positions that are critical to the overall performance of the contract.” However, it was up to the offeror to designate which additional positions were to be considered key personnel, to develop an organizational structure for these positions, and to provide supporting explanation for both the organizational structure and designation of key personnel. RFP amend. 2, § L.4(b).

Section M of the solicitation specified how proposals would be evaluated under the stated evaluation factors. As is relevant here, for the technical approach factor, offerors were advised that DOE would evaluate their approaches, including their “integrated critical path schedule” and sequence of work activities “to determine if a safe, efficient execution of workscope is planned.”<sup>8</sup> Also, the RFP advised that offerors’ “approach[es] to optimize system performance to maximize waste throughput at [the] DWPF and tank closure rates while ensuring sufficient tank space for continued long term operation” would be evaluated. Additionally, the RFP stated that DOE would evaluate proposals to determine compliance with section C.2.1.1 of the solicitation, which required conformity with the Section 3116 Determination for the SRS and other applicable permits and regulatory matters. RFP § M.5.1.

With regard to the organizational structure and key personnel factor, offerors were advised that proposals would be evaluated based on written proposal information and oral presentations. The RFP stated that personnel would be evaluated “for demonstrated leadership; demonstrated experience in performing work similar in size and complexity to the [statement of work]; and qualifications (*e.g.*, education, certifications, licenses).” Also, DOE was to evaluate the “designation of Key Personnel positions relative to the approach to the management and execution of the work proposed by the Offeror,” including the rationale provided by the offeror to explain the selection of key personnel positions and the suitability of these individuals for the positions. The project manager, specifically, was to be evaluated for the “extent of his/her qualifications in the management of large technology-based industrial complexes . . . and the extent of experience in the management of diverse

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<sup>8</sup> Under the risk management factor of the RFP, the agency was to evaluate each offeror’s approach to managing the risks associated with performing the work. RFP § M.5.3.

teams”; the evaluation of this position was considered more important than the evaluation of any other key personnel.<sup>9</sup> RFP amend. 2, § M.5.2.

Under the relevant experience factor, the RFP provided that proposals would be evaluated to determine an offeror’s experience (and the experience of the offeror’s proposed subcontractors and other performing entities) “in performing relevant work similar in size and/or complexity to that described in the [statement of work].” RFP § M.5.5. For the past performance factor, proposals were to be evaluated to assess the “quality of the Offeror’s (including proposed subcontractors and other performing entities) past performance to determine the degree to which the past performance . . . demonstrates the Offeror’s ability to successfully perform the [statement of work].” In assessing past performance, the solicitation stated that DOE would evaluate “independent data as well as data provided by Offerors.” Id. § M.5.6.

### Evaluation of Proposals

SRR and STC were the only offerors that responded to the solicitation by the proposal closing date.<sup>10</sup> DOE appointed a cadre of approximately 20 individuals, who had expertise in liquid waste remediation—including a source evaluation board (SEB) and expert technical advisors—to evaluate proposals. Tr. at 437. The SEB held oral presentations with each offeror and then convened to evaluate initial proposals. After initial evaluations were completed, the SEB conducted discussions with both offerors and requested initial and then final revised proposal submissions. After conducting a comprehensive evaluation, the SEB documented its evaluation in

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<sup>9</sup> The oral presentation evaluation, which was not challenged here, assessed offerors’ responses to a managerial problem and interview questions. All proposed key personnel participated in the oral presentation and were evaluated for (among other things) their understanding of the management challenges posed by the problem, their interaction and participation in responding to the managerial problem and interview questions as an integrated management team, and the quality and effectiveness of communicating their responses. RFP amend. 2, § M.5.2.

<sup>10</sup> SRR and STC are newly created corporate entities consisting of teams of established government contractors. The SRR team is comprised of URS Washington Division, Babcock & Wilcox Technical Services Group, Inc., Bechtel National, Inc., and CH2M Hill Constructors, Inc., with critical subcontractors AREVA Federal Services, LLC, EnergySolutions Federal EPC, Inc., and Washington Safety Management Solutions, LLC. The STC team is comprised of Parsons Infrastructure & Technology Group, Inc., Fluor Federal Services, Inc., Newport News Nuclear, Inc., with critical subcontractors Nuclear Fuel Services, Inc., ARES Corporation, TMR Associates, LLC, Omicron Safety & Risk Technologies, Inc., and Special Applications Robotics, Inc. (S.A. Robotics). Contracting Officer’s Statement at 12 n.10.

a 174-page SEB Report, accompanied by 13 detailed attachments and evaluation summaries that addressed specific areas of the evaluation. As reflected and documented in the SEB’s report, offerors’ final proposal revisions were rated as follows:

	STC	SRR
Technical Approach	Marginal	Outstanding
Organizational Structure and Key Personnel	Good	Outstanding
Risk Management	Satisfactory	Satisfactory
Safety Analysis	Outstanding	Outstanding
Relevant Experience	Good	Outstanding
Past Performance	Outstanding	Good
Total Evaluated Price	\$2,780,564,311	\$3,331,172,426

Agency Report (AR), Tab G, SEB Report, at 3-4; see also Tab H, Source Selection Decision, at 5.

The SEB found that the major discriminator between the two offerors’ proposals was in the technical approach factor, where SRR’s proposal received an “outstanding” rating, based on 5 significant strengths, 14 strengths, and 1 weakness, and was determined to be “significantly superior” to STC’s proposal, which received a “marginal” rating, based on no significant strengths, 11 strengths, 2 weaknesses, and 2 significant weaknesses. AR, Tab G, SEB Report, at 30, 34. The major discriminators in the evaluation of the technical approach factor involved the offerors’ proposed approaches for tank cleaning and closure, and their approaches for DWPF operations. In this regard, the SEB noted that SRR’s approach would close at least six more non-compliant tanks than STC’s approach, and would produce approximately 50 percent more canisters at the DWPF at a higher waste load per canister. As discussed below, SRR’s technical approach was found to be “robust and integrated” and the agency concluded that it would result in “significant improvements to essentially all aspects of the [liquid waste] program, significantly exceeding the RFP requirements and STC’s proposal.” *Id.* at 34. In contrast, STC’s technical approach presented a number of significant weaknesses. The evaluation of these and other proposal discriminators are discussed below.

### 1. Tank Cleaning and Closure

Tank cleaning and closure were evaluated under the technical approach factor. SRR proposed to close all 22 non-compliant liquid waste tanks during the base and option periods, which was 10 more than was required by the RFP, through a “structured approach to mechanical and chemical cleaning” that employed a variety of waste removal and cleaning processes. AR, Tab E.2, SRR Proposal, at A-20. The waste removal process employed depended on whether the waste in the tank was liquid, salt, supernate, or sludge. *Id.* at A-21. These processes included the use of

“Waste on Wheels” (WOW) for bulk waste removal,<sup>11</sup> mixing pumps to remove sludge,<sup>12</sup> a “modified density gradient process followed by mechanical agitation” to remove salt,<sup>13</sup> submersible mixing pumps with “hydro-lancing” if necessary for heel waste removal,<sup>14</sup> chemical cleaning with bulk oxalic acid washing,<sup>15</sup> and “enhanced chemical cleaning” (ECC) to perform tank cleaning.<sup>16</sup> Id. at A-34 to A-40. SRR also proposed to use mechanical robotic devices to remove waste from Tanks 23 and 24, and the annulus<sup>17</sup> of Tank 16.<sup>18</sup> Id. at A-21.

The SEB found that this approach was a significant strength in SRR’s proposal and accounted for one of the proposal’s five significant strengths. Not only did SRR propose to close more tanks than was required by the solicitation, but also the SEB found that SRR’s proposed ECC approach would “optimize system performance to

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<sup>11</sup> A WOW system consists of submersible mixing pumps, a mobile waste removal control center, and a portable substation. Tr. at 504. It can be used for bulk waste removal, to perform mechanical cleaning with water, or to perform chemical cleaning with oxalic acid. Tr. at 67-68. It involves the introduction of liquid (water or chemical) into the tank, agitation to dissolve the solid waste, and removal of the waste for processing. Tr. at 66-67.

<sup>12</sup> Mixing pumps are used to suspend solids in solution so they can be transferred from the tank for disposition. AR, Tab E.2, SRR Proposal, at A-36.

<sup>13</sup> The modified density gradient process is a means of segregating the radionuclides into a smaller volume of solution so they can be removed from the tank. Tr. at 401.

<sup>14</sup> Hydro-lancing means directing a concentrating spray of water or other liquid into a tank using a spray nozzle. Tr. at 185. Heel waste refers to the insoluble waste left in a tank after bulk waste removal. Tr. at 20.

<sup>15</sup> With bulk oxalic acid washing, dilute concentrations of oxalic acid are mixed with large volumes of water and introduced into a tank, then the oxalic acid solution is agitated with mixing pumps so that it binds with the waste, and then the solubilized waste is removed from the tank. Tr. at 34-35, 216-17. According to DOE, this is a proven method of waste removal and has been used successfully at the SRS. Tr. at 25. The downside of this approach is that this process produces large volumes of radioactive water that must be stored or disposed of. Tr. at 25, 36.

<sup>16</sup> ECC was developed by AREVA, which is one of SRR’s subcontractors. Tr. at 37.

<sup>17</sup> The annulus is the space between a tank and its outer shield. Tr. at 75. Because radioactive waste has leaked into this space, the annulus of Tank 16 must be cleaned. Id. at 75-76.

<sup>18</sup> Tanks 23 and 24 (which are Type IV tanks) and the annulus of Tank 16 do not contain any internal obstructions.



maximize tank closure rates” and would “appreciably increase[] the probability of successful contract performance.” AR, Tab G, SEB Report, at 38. As the SEB noted, the ECC process employs dilute concentrations of oxalic acid in a tank to dissolve solid waste and pump the dissolved waste into a recirculation loop, where free oxalic acid and metal oxalates are sent through a destruction unit and the acid is replenished and recycled for continued tank cleaning. This regeneration feature, the SEB noted, has been successfully used for commercial nuclear reactor decontamination and has the potential to accelerate the removal of heel waste at the SRS, especially in tanks with obstructions. *Id.* at 37-38; Tr. at 25. A benefit of ECC is that it uses only a “fraction of the liquid currently used for bulk chemical cleaning,” which is important since there is only limited tank space available at the SRS that is available to store this liquid. SRR Proposal at A-38-39; AR, Tab G, SEB Report, at 38. The SEB concluded that although ECC has not previously been used with oxalic acid, the use of oxalic acid is a proven approach at the SRS and should not pose a development problem.<sup>19</sup> Tr. at 25, 107-09.

In contrast, STC proposed to close 16 of the 22 non-compliant tanks--6 fewer than SRR proposed to close. For bulk waste removal, STC proposed to use WOW or slurry and transfer pumps to remove bulk sludge, liquid waste system transfer pumps to remove bulk supernate, and inhibited water and transfer pumps to remove salt cake. AR, Tab D.2, STC Proposal, at II-28. For heel waste removal and tank cleaning, STC proposed to use a robotic device called a “mini mantis” to clean nine tanks, a larger robotic device called a “mantis” to clean 4 tanks, and WOW to clean two tanks.<sup>20</sup> *Id.* at II-30. The mini mantis is a robotic crawler device, with either 2- or 4-wheels, that is maneuvered through a tank on an umbilical tether to spray solution and vacuum waste and liquid from the bottom of the tanks. The mini mantis is based on larger mantis technology that is currently used at the SRS in Tanks 18 and 19,

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<sup>19</sup> Although SRR’s proposal received a significant strength under the technical approach factor, the SEB assigned a weakness to the proposal under the risk management factor in recognition of the fact that further development of ECC for use at the SRS was found to pose a “schedule uncertainty.” AR, Tab G, SEB Report, at 83. While the SEB had no doubt that the approach was feasible, it believed that further development of ECC for use at the SRS would take longer than SRR proposed. Tr. at 104, 106.

<sup>20</sup> If these approaches fail, STC proposed to use the mini mantis as a back up approach for cleaning the two tanks where WOW is identified as the primary cleaning approach, and it proposed to use WOW as a backup approach for cleaning the nine tanks where the mini mantis is identified as the primary cleaning approach. AR, Tab D.2, STC Proposal, at II-30.

which are tanks that do not contain obstructions.<sup>21</sup> STC proposes to use the smaller mini mantis on Type I and II tanks, which, as noted above, contain serpentine coils and other obstructions. STC plans on using two mini mantis units in tandem in each tank. Id. at II-32-33.

The agency found that STC's proposed approach presented a significant weakness. AR, Tab G, SEB Report, at 50-53. The agency found that STC's proposed use of the mini mantis as a primary cleaning approach in nine Type I and II tanks was not "an effective technology to be deployed in the tanks," given the significant obstructions in those tanks. Tr. at 116-17. In the agency's view, the mini mantis would not be able to successfully maneuver around, under, and over the serpentine tank coils and other obstructions and would get tangled, which would impede waste removal. AR, Tab G, SEB Report, at 50. As noted by the SEB, STC had not shown that the mini mantis could operate in an environment resembling the Type I and II tanks, that it could successfully remove hardened waste deposits, or that it could be maneuvered with remote controls only using lights and cameras, as required. Id. at 50-51. Furthermore, the agency noted that the "substantial" additional development of the mini mantis necessary to make it "field-ready and reliable" for cleaning Type I and II tanks was likely to take longer than STC planned for in its proposal. Id.

Also contributing to the significant weakness was STC's proposed use of WOW chemical cleaning as a back up approach to the mini mantis. The agency did not believe that STC's proposed use of WOW as a backup approach would be viable for two reasons. First, the SEB noted that the extensive use of WOW would produce significant quantities of liquid, but it was not clear from STC's proposal whether there was sufficient tank capacity to hold this liquid. Id. at 52. Second, the SEB found that STC proposed "conflicting" uses of WOW; that is, STC proposed to use a single WOW system as either a primary or back up approach on more tanks than a WOW system can simultaneously handle. Id. Furthermore, STC's other proposed back up approaches (the "Sluice Cannon" and "Disco Ball" sprayer) were found not to be viable because they would not be available until 2012. Contracting Officer's Statement at 33-35. In sum, the SEB assigned a significant weakness to STC's proposal because the mini mantis was not feasible for its proposed use in Type I and II tanks, and because STC's proposed back up approaches either were not available or would impact critical path activities so as to jeopardize STC's ability to meet the "end state" requirements of the RFP. Id. at 53.

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<sup>21</sup> Tanks 18 and 19 were cleaned prior to the commencement of this contract, although the cleaning of some residual waste in Tank 19 continues with the mantis under this contract.

## 2. DWPF Operations

Another significant discriminator under the technical approach factor involved the offerors' proposed approaches to DWPF operations. As noted above, the DWPF facility processes radioactive waste and converts it into a glass-like substance for storage in canisters. This "vitrification" process is conducted in "melters," which melt the radioactive waste together with a sandy substance called "frit" that turns into glass when melted. Tr. at 824-25. The RFP required the production of 1,540 canisters during the life of the contract (1,100 for the base period and 440 during the option period). RFP amend. 4, § C, Introduction. At the SRS, only one melter is operational at any one time. Melter No. 1 is no longer in use; Melter No. 2 is currently operational and has been working for approximately 6 years, Melter No. 3 is awaiting use when Melter No. 2 fails or is shut down, and Melter No. 4 is currently being fabricated for future use. Tr. at 826-27. As stated in amendment No. 4 to the RFP, the expected date of availability for Melter No. 4 is August 2012. RFP amend. 4, § L.5(f).

SRR proposed to increase canister production at the DWPF from the current production rate of 186 canisters per year, to 325 canisters per year in fiscal year 2010, and to 400 canisters per year in fiscal year 2011, for a total of 1,945 canisters during the base period and another 770 canisters during the option period. AR, Tab E.2, SRR Proposal, at A-47, A-49-50, A-160. To accomplish this, SRR proposed a number of innovations to optimize feed preparation (that is, the amount of waste that is transferred, or "fed," to the DWPF) and melter operations at the DWPF. For example, SRR proposed to install five "bubblers" on each of the three melters at the SRS (Nos. 2, 3, and 4) to double the average canister production,<sup>22</sup> to install rotary microfilters to reduce washwater by 40 percent,<sup>23</sup> and to introduce seven other innovations to improve canister production. *Id.* at A-50-51, A-83. The installation of bubblers in Melter No. 2 will occur in fiscal year 2010, which is within 11 months of the contract start date. SRR's expected production rate assumes that Melter No. 2 will be operational for 7 years and 9 months, at which time it will be replaced with Melter No. 3. *Id.* at A-160; Tr. at 832-33.

For these features, the SEB credited SRR's proposal with a number of strengths and significant strengths. AR, Tab G, SEB Report, at 34-37, 40-41. It concluded that these features, many of which were introduced early in the contract, individually and collectively optimized DWPF performance and canister production. Tr. 868-70, 888.

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<sup>22</sup> A bubbler acts like a "spoon" that disseminates the heat faster by stirring the materials being heated. Tr. at 839.

<sup>23</sup> A rotary microfilter is a compact filtration system that uses a membrane filter mounted on rotating disks to filter waste using less washwater. AR, Tab E.2, SRR Proposal, at A-83.

Although the SEB did not believe that SRR was likely to achieve production rates of 400 canisters per year (and assessed a weakness to SRR's proposal under the technical approach factor as a result), the SEB was confident that at least 325 canisters per year could be produced, such that SRR was likely to significantly exceed the "end state" requirement of 1,100 canisters during the base period and 400 canisters during the option period of the contract. AR, Tab 6, SEB Report, at 45; Tr. at 877-79.

STC proposed to increase canister production from the current production rate of 186 canisters per year, to 210 canisters per year in fiscal year 2011, and to 250 canisters per year in fiscal year 2015, for a total of 1,273 canisters during the base period and another 500 canisters during the option period. AR, Tab D.2, STC Proposal, at II-53, II-134. STC proposed to install bubblers in Melter No. 4 at the end of fiscal year 2012, but did not propose to install bubblers on any other melter.<sup>24</sup> Id. at II-53-54; II-134. STC proposed to optimize canister production through the use of alternative glass compositions and by promising to "evaluat[e]" four other "elements," such as the use of higher temperatures in the melting process. Id. at II-53. STC assumed a 9-year operational life for Melter No. 2, and assumed that the availability of Melter No. 4 could be "accelerated" 4 months through the use of incentives and overtime. Id. at II-53-54, II-134.

For several of these features, including bubbler installation, STC's proposal was credited with a number of strengths. AR, Tab G, SEB Report, at 46. However, STC's proposal was also credited with a significant weakness based on its assumptions about the operational life of Melter No. 2 and the availability of Melter No. 4. Id. at 53-55. In this regard, the SEB noted that STC's proposal showed that an early failure of Melter No. 2, coupled with the inability to accelerate the availability of Melter No. 4, would negatively impact STC's production capability, so that STC would only produce 2 canisters more than the "end state" requirement of 1,100 canisters for the base period. Id. at 54. The SEB noted that any unexpected DWPF equipment outages would cause STC to not meet the "end state" requirements for canister production. Id. at 54-55. The foregoing concerns, the SEB concluded, "appreciably increase[d] the risk of unsuccessful contract performance" and constituted a significant weakness in the proposal under the technical approach factor. Id. at 55.

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<sup>24</sup> STC's proposal does not identify how many bubblers it will install in Melter No. 4. See, e.g., AR, Tab D.2, STC Proposal, at II-54. Protester's counsel asserts that it is only one bubbler, STC Comments at 77, but the agency gave STC credit for installing multiple bubblers. AR, Tab G, SEB Report, at 46.

### 3. Effluent Treatment Facility

Another discriminator between offerors' proposals under the technical approach factor concerned the offerors' approaches to effluent treatment facility (ETF) operations. As noted above, the selected contactor will be responsible for all tank farm operations. This includes the operation of the ETF, which is located in the H tank farm. The ETF treats low-level radioactive wastewater, so that the treated water can be released to the environment and the concentrated low-activity waste can be fed to the saltstone processing facility. RFP § C.1.2.5. A weakness was assessed to STC's proposal under the technical approach factor because STC assumed an ETF processing volume of 5.7 million gallons per year, which the agency noted was three to four times lower than current ETF processing requirements. The SEB found that, although this issue was raised during discussions, STC failed to justify its assumption in its final proposal revision. AR, Tab G, SEB Report, at 57; Tr. at 640-43; DOE Hearing exh. 24, Evaluators' Contemporaneous Notes of Discussions. In contrast, SRR's proposal was found to have met the requirements of the RFP with respect to the ETF and was not assessed either a strength or a weakness in the evaluation. See AR, Tab G, SEB Report, at 34-45.

### 4. Salt Waste Disposal Regulatory Requirements

SRR's proposal also was found superior to STC's in terms of demonstrating compliance with certain requirements for salt waste processing. The RFP identified 18 specific requirements, which offerors were to address in a stand-alone document apart from the rest of the proposal to demonstrate compliance or "conformity" with the Secretary of Energy's Section 3116 Determination (i.e., DOE's plan for salt waste disposal at the SRS), state issued permits, and various regulations and agreements. RFP §§ C.2.1.1.1, L.4(a). The SEB found that STC's proposal "failed to exhibit a complete understanding" of 2 of the 18 listed requirements because statements in the stand-alone document were inconsistent with the 2 requirements. AR, Tab G, SEB Report, at 55-56. Although the SEB noted that documentation in other areas of STC's proposal established compliance with these requirements, the SEB concluded that STC's statements that were inconsistent with RFP requirements demonstrated a lack of understanding of regulatory issues that justified a proposal weakness under the technical approach factor. Id.; Tr. at 1017-19. In contrast, the SEB determined that SRR's proposal showed both compliance with and an understanding of the regulatory requirements, and assigned SRR's proposal a significant strength under the technical approach factor as a result. AR, Tab G, SEB Report, at 38-39.

### 5. Organizational Structure and Key Personnel

Another key discriminator among proposals was in the evaluation of the organizational structure and key personnel factor, where SRR's proposal received an "outstanding" rating, based on four significant strengths and four strengths; and STC's proposal received a "good" rating, based on two significant strengths, three

strengths, and one weakness. AR, Tab G, SEB Report, at 58. As determined by the SEB, SRR proposed a stronger team of key personnel who performed better during oral presentations. Many of SRR's key personnel were either currently performing, or had performed, the specific roles for which they were proposed. Also, the SEB found that SRR's organization and assignment of key personnel focused on the operational functions of the SRS, such as waste removal and tank closure, tank farm operations, and DWPF operations. Another notable aspect of SRR's approach, the SEB noted, was that SRR proposed a "stand-alone" waste determination organization with a designated waste determination manager as a key personnel, which was advantageous because the waste determination process is a highly regulated and critical aspect of tank closure. Id. at 59, 70; Tr. at 739-41.

In contrast, the SEB found that STC's proposed key personnel were not as strong a team and did not perform as well during oral presentations as SRR's team. Although STC's key personnel received strengths and significant strengths for numerous aspects of their experience, two of the proposed individuals also received weaknesses because they had not managed work of similar size or complexity to their proposed assignments here. In addition, the organizational structure of STC's approach was found to be not as strong as SRR's approach because several of STC's key personnel were "mission enablers," meaning that fewer of STC's key personnel were performing operational functions as compared to SRR's key personnel. Contracting Officer's Statement at 96; AR, Tab G, SEB Report, at 59-60; Tr. at 743-44. Also, STC did not propose a separate waste determination manager or separate waste determination organization, like SRR did. Tr. at 741. In sum, STC's "distribution" and "organization" of key personnel were found to be less advantageous to the agency than SRR's approach. Tr. at 781-83, 789.

## 6. Relevant Experience

SRR's proposal was also found to be superior under the relevant experience factor, where SRR's proposal received an "outstanding" rating, based on seven significant strengths, and STC's proposal received a "good" rating, based on three significant strengths and one strength. AR, Tab G, SEB Report, at 93. Although both SRR and STC were newly formed entities consisting of experienced contractors as team members and critical subcontractors, the SEB found that SRR's team had more "significant and highly relevant experience" than STC's team. Id. at 93-94. A significant strength assessed to SRR's proposal was due to the experience of its team member URS Washington Division and URS's subsidiary (Washington Savannah River Company (WSRC)), which managed and operated most SRS activities under a \$14.8 billion contract from 1996 until now, including activities involving the liquid waste program. Id. at 95; AR, Tab E.2, SRR Proposal, at E-280.

## 7. Past Performance

Past performance was the only evaluation factor where STC's proposal was rated superior to SRR's. Here, STC's proposal was rated "outstanding," based on two significant strengths and seven strengths, and SRR's proposal was rated "good," based on three significant strengths and nine strengths. AR, Tab G, SEB Report, at 115. The agency found that the past performance of the STC team was "highly favorable, with little or no unfavorable data," which contributed to its "outstanding" rating. Id. at 117.

In contrast, the agency found that although SRR's team had "mostly favorable" past performance, there were three instances of adverse performance associated with URS and WSRC, and one instance of adverse past performance associated with two SRR subcontractors (AREVA and EnergySolutions). The SEB raised these issues with SRR during discussions, and found that SRR's responses and the corrective actions taken adequately addressed the agency's concerns; thus, the SEB concluded that the incidents did not warrant the assessment of a weakness. However, the SEB still viewed the incidents as "unfavorable data" that did not justify a rating higher than "good" under the past performance evaluation factor. Id. at 116, 119-21; attach. 13, Evaluation Summaries, at 12-17, 55-58.

## Source Selection Decision

The source selection authority (SSA) reviewed the SEB Report, discussed the evaluation with the SEB and technical evaluators, and agreed with the SEB's evaluation judgments under each of the evaluation factors. The SSA found that SRR's "substantially superior" proposal under the technical approach factor was the "major discriminator" in the evaluation. AR, Tab H, Source Selection Statement, at 6. The SSA stated that SRR's proposal superiority under the organizational structure and key personnel and relevant experience factors were also discriminators, but "not as significant discriminators" as in the technical approach factor. Id. Although the SSA agreed that STC's proposal was superior to SRR's under the past performance factor, he noted that this was the least important factor of all of the evaluation criteria. Id. The SSA documented his comparative analysis of proposals under each of the evaluation factor, highlighting many of the issues discussed above in the decision. Based on his analysis, the SSA found that SRR's superior proposal offered the "highest likelihood of success" and "significantly reduces" performance risk, which "has great value to DOE." The SSA concluded that the "much greater technical value of the SRR offer far exceeds the differential in evaluated price [between proposals], and represents the best value to the Government." Id. at 6, 10. The SSA selected SRR's proposal for award, and STC protested.

## DISCUSSION

STC raises numerous objections to DOE's evaluation of proposals. It challenges the evaluation of proposals under the technical approach, organizational structure and key personnel, and past performance evaluation factors, and contends that the agency treated offerors unequally. STC also asserts that the agency failed to hold meaningful discussions with the firm.

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Cherry Rd. Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

In response to the protest, DOE provided a detailed record of its evaluation and source selection decision. This analysis shows that the agency evaluated the relative merits of proposals, and assessed ratings in a fair and impartial manner consistent with the RFP. The record demonstrates that the SEB and SSA considered the information available, drew reasonable conclusions based on their technical judgment and knowledge of the SRS conditions, and issued a well-reasoned and rational source selection decision that highlighted the key discriminators among the offerors' proposals. Although we do not address each and every one of STC's numerous protest arguments, we have evaluated all of them and find them to be without merit. We address the more significant arguments below.<sup>25</sup>

### Tank Cleaning

STC contends that the agency miscalculated the offerors' proposed cleaning approaches under the technical approach factor.

STC asserts that its proposal was undeserving of a significant weakness for offering to use the mini mantis as its primary tank cleaning approach. As noted above, the agency assessed a significant weakness to STC's proposal, in part, because of concerns about the mini mantis' maneuverability, range, and cleaning effectiveness

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<sup>25</sup> In addition to the numerous examples discussed in this decision, STC asserts that, when evaluating its proposal under the technical approach factor, the agency should have elevated several evaluated strengths to significant strengths because the features exceeded the requirements of the RFP. Protest at 41-42. However, the agency explained why each of the cited areas did not deserve a higher rating and pointed out, also, that SRR's proposal was treated similarly in the evaluation of these areas. Contracting Officer's Statement at 59-63.



in Type I and II tanks. These tanks contain significant obstructions and are the majority of tanks to be cleaned and closed under this RFP. The agency believed that the mini mantis was likely to become entangled in the obstructions and that it might not be recoverable, and that this would impede waste removal and cleaning activities. The agency was concerned that even if the approach could be made feasible (which the agency doubted), development would take longer than proposed. AR, Tab G, SEB Report, at 50-51; Tr. at 116-17.

STC contends that the significant weakness is unreasonable because it is based on a “flawed assessment of the viability of STC’s proposed mechanical cleaning approach” and other factual errors. Protest at 12. For example, STC asserts that the mini mantis should have been considered favorably since it is based on established mantis technology that was tested by STC’s subcontractor and proven to work in Type I and II tanks, which was illustrated in pictures and explained in the narrative portions of STC’s proposal. STC Comments at 5-14. STC also provided video clips during the development of this protest to further illustrate that the mini mantis can work in Type I and II tanks.

Our review of the record, including the video clips, confirms the reasonableness of the agency’s conclusions. While the mantis technology has been successfully used on tanks without obstructions, the agency found that it had never been successfully used on tanks with obstructions, as is proposed here. Tr. at 121; Contracting Officer’s Statement at 30. The testing performed by STC’s subcontractor, the agency found, did not adequately simulate Type I and II tank conditions or demonstrate the feasibility of the mini mantis as a cleaning approach for these tanks. Contracting Officer’s Statement at 19-23, 26. As depicted in STC’s proposal, the testing occurred in an open vessel that contained far fewer, less condensed, and less intertwined coils and obstructions than exist in Type I and II tanks. Compare AR, Tab D.2, STC Proposal, at II-34-35 with AR, Tab G, SEB Report, attach. 12, at 2 (depicting actual Type I tank). Also, during testing, the mini mantis was operated from above the vessel with adequate day light and visibility, and it was not remotely operated in a closed tank with cameras and lighting as the only visual guide as would occur with actual operations. AR, Tab D.2, STC Proposal, at II-34-35; Contracting Officer’s Statement at 29-30. Even under the less restrictive testing conditions, the video clips show the mini mantis having difficulty maneuvering over and around obstructions, which “reinforc[ed],” “validated”, and “heightened” the agency’s concerns. Tr. at 264-68. Based on this record, we find the agency’s concerns about the mini mantis’ feasibility to be reasonable.

STC asserts that the agency failed to hold meaningful discussions with it concerning the impact of an unrecovered mini mantis on cleaning activities, the deployment of remote cameras and lighting, and the fact that DOE viewed STC’s approach as “fundamentally flawed.” STC Comments at 51, 54. However, we find that the agency provided meaningful and detailed discussions on this issue. The record confirms that, during discussions, DOE advised STC that the “feasibility of STC’s proposed

tank cleaning approach has not been demonstrated.” It provided STC with detailed concerns about the use of the mini mantis in Type I and II tanks, including DOE’s concerns regarding maneuverability and entanglement with tank obstructions, and requested further information about demonstration conditions and testing “to determine if conditions similar to those anticipated to be found in the tanks were adequately simulated.” AR, Tab C2, STC Discussion Questions (July 2, 2008), encl. 2, at 1. In our view, these discussions were sufficient to lead STC into the areas of concern. USFilter Operating Servs., Inc., B-293215, Feb. 10, 2004, 2004 CPD ¶ 64 at 3.

STC complains that if STC’s proposal deserved a significant weakness, then SRR’s proposal also should have received a significant weakness because SRR similarly proposed robotic devices for manual cleaning. STC Comments at 57. However, the record shows that, unlike STC, SRR proposed to use robotic devices only for Tanks 23 and 24 (which are Type IV tanks) and the annulus of Tank 16.<sup>26</sup> AR, Tab E.2, SRR’s Proposal at A-21, A-34, A-41. These tank areas do not contain internal obstructions. Thus, the agency did not have the same concerns with SRR’s approach as it did with STC’s approach. Contracting Officer’s Statement at 71-73.

STC also challenges the evaluation of SRR’s proposed ECC approach. As noted above, the agency found that SRR’s ECC approach was deserving of a significant strength under the technical approach factor because it provided “substantial potential for acceleration of the removal of waste heels” and the regeneration feature “greatly reduces” the amount of liquid waste generated from tank cleaning

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<sup>26</sup> STC asserts that SRR’s proposal did not limit the use of robotic mechanical cleaning to these tanks and that it is not clear from SRR’s proposal what type of robotic devices SRR will use. STC Comments at 58-61; STC Post-Hearing Comments at 7. However, DOE found, and we agree, that SRR’s proposal was sufficiently clear in this regard. SRR’s proposal only references the use of robotic devices for Tanks 23 and 24, and the annulus of Tank 16. AR, Tab E.2, SRR Proposal, at A-21, A-34, A-41. SRR’s proposal states that it will use the same remotely operated equipment to clean Tanks 23 and 24 as is currently being used in Tanks 18 and 19, which is depicted as the “Sand Mantis” in SRR’s proposal. *Id.* at A-21, A-35; Tr. at 98. The proposal also depicts the robotic crawler which is being developed to clean the annulus of Tank 16, which the agency understood to be the same equipment that is currently being developed under a subcontract at the SRS. AR, Tab E.2, SRR Proposal, at A-35; Tr. at 392. To the extent that STC asserts that a spreadsheet at page A-133 of SRR’s proposal introduces ambiguity or contradiction in SRR’s proposal, the proposal makes clear that this spreadsheet was only a partial “illustration” of how SRR would track operations; it did not depict all activities of every tank or distinguish between the various mechanical cleaning approaches, and it was not considered by the agency to reflect SRR’s proposed tank cleaning approach. *See* AR, Tab E.2, SRR Proposal, at A-132; Tr. at 373.

(compared to the current approach), thereby conserving available compliant tank space.<sup>27</sup> AR, Tab G, SEB Report, at 38.

STC contends that the significant strength associated with SRR's ECC approach was unreasonable because ECC has not been proven effective for use with the kind of waste that exists at the SRS. STC Comments at 70. The agency explains, however, that ECC has been successfully used to clean commercial nuclear reactors and, although commercial nuclear reactor waste is somewhat different than the waste at the SRS, the ECC approach will be adapted here to use oxalic acid, which is a well-established and effective cleaning method for waste at the SRS. Tr. at 107-08, 115-16, 124-29, 255-57. Thus, the SEB has reasonably explained and justified why it had "high confidence" that the ECC technology can be successfully deployed at SRS. Tr. at 120.

STC nevertheless contends that the significant strength was unsupportable because SRR's proposal lacked the necessary detail for DOE to reasonably evaluate the approach—such as the volume and concentration of oxalic acid that will be used, the number of recirculation cycles that will take place, or details proving that ECC can clean a tank in 6 months as proposed by SRR. STC Post-Hearing Comments at 23-24. However, the agency explains that the volume, concentration, and number of cycles are irrelevant due to the regeneration feature of the ECC approach; that is, because the chemical liquid will be continuously recycled for a period of time (and therefore will be continuously binding with waste), the exact concentration, volume, or number of cycles used was "not an issue."<sup>28</sup> Tr. at 258, 261-63. With regard to STC's suggestion that 6 months may not be sufficient for ECC to clean a tank, the agency explains that 6 months is "substantially more time" than is currently needed for traditional chemical cleaning, which does not contain the innovations and efficiencies of ECC. Tr. at 311. Therefore, in the SEB's technical judgment, after considering all of the information before it, "six months is not at issue in terms of achieving the objectives . . . set forth for ECC by SRR's proposal." Tr. at 312-13. STC

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<sup>27</sup> STC also asserts that the agency's apparent preference for SRR's ECC approach over STC's mechanical cleaning approach is an "unstated criterion [that] appears to have permeated the entire evaluation process." STC Comments at 66. However, the RFP was a performance-based solicitation, to which offerors (not the agency) decided how to accomplish the statement of work, and it expressly stated that proposed approaches would be evaluated for how well offerors optimized system performance to maximize tank closure rates while ensuring sufficient tank space for long term operation. RFP § M.5. The agency's evaluation fell squarely within this stated criteria.

<sup>28</sup> In contrast, STC used a two-time application of oxalic acid. Because there is not a continuous application of acid, the volume and concentration becomes more important. Tr. at 262, 314.

has provided no evidence to show that ECC cannot be accomplished in the time proposed.

STC complains that SRR's ECC approach should have been deemed less feasible than STC's approach because ECC is at a lower technical "maturation" level (i.e., development level) than the mini mantis. First Supplemental Protest at 15. However, maturation levels were self-declared by the offerors in their proposals and were given "little weight" by the SEB; instead, the agency was concerned with the "effectiveness" and "application" of the proposed technologies, and whether the technologies were feasible for deployment as proposed by the offerors. Tr. at 114. In this regard, as noted above, due to the application of the mini mantis in tanks with obstructions, the agency found that there was little chance that the approach could be successfully deployed, whereas ECC was deemed to be feasible and innovative. Tr. at 115-18, 122-23, 270.

STC also asserts that SRR's development schedule for ECC is more aggressive and riskier than STC's development schedule for the mini mantis. First Supplemental Protest at 15. Although the agency recognized in the evaluation that both offerors' development efforts would take longer than proposed (and assessed each offeror's proposal a weakness under the risk management factor as a result<sup>29</sup>), the SEB determined that a schedule delay would have less of an impact on SRR's approach than a schedule delay or failure of the mini mantis would have on STC's approach. Tr. at 151-52. In this regard, the agency explained that the delayed use of ECC affected the cleaning of only two tanks, and SRR had adequately available back up cleaning approaches, including three WOW systems. In contrast, the delayed use of the mini mantis impacted the cleaning of at least nine tanks,<sup>30</sup> and the agency reasonably found that STC did not have adequately available back up approaches (e.g., only one WOW system). DOE Post-Hearing Comments at 18-27; Tr. 143-44, 151-52.

STC complains that the agency subjected its mini mantis approach to a far more rigorous level of review and testing requirements than it did with regard to SRR's ECC approach.<sup>31</sup> STC Comments at 69-72; STC Post-Hearing Comments at 21-36.

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<sup>29</sup> STC's proposal was also assessed a significant weakness under the technical approach factor, in part, because of developmental issues with the mini mantis. See AR, Tab G, SEB Report, at 50-51. However, these concerns pertained to feasibility of the mini mantis as a technical approach for cleaning Type I and II tanks. Schedule risk for both offerors was addressed under the risk management factor.

<sup>30</sup> As noted above, the mini mantis was proposed as the primary cleaning approach for nine tanks, and the back up approach for several others.

<sup>31</sup> On the one hand, STC complains that the agency requested detailed testing information during discussions and, on the other hand, it complains that the agency  
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However, the record shows that the agency applied similarly rigorous standards to both offerors' proposals. With regard to STC's approach, a technical advisor to the SEB had observed the mantis technology at the developer's site, the SEB raised its concerns about the feasibility of the approach and testing conditions during discussions, and the SEB reviewed STC's discussion responses that addressed mini mantis testing, development, operation, and use. The SEB reasonably found that none of this information demonstrated the feasibility of the mini mantis in Type I and II tanks. Tr. at 428-29; Contracting Officer's Statement at 64-67. With regard to SRR's approach, the SEB reviewed a publicly available 72-page test report and consulted with the federal program manager (a chemical engineer who is overseeing the development of ECC) and technical advisors, who opined that ECC was viable and would be "deployment ready" for use at the SRS in the time proposed. All of this information supported the feasibility of the ECC approach at the SRS. Tr. at 37-38. The fact that the agency concluded from its review that STC's approach was not feasible, but that SRR's approach was, does not demonstrate that offerors were subjected to different standards in the evaluation.

STC also disagrees with the agency's assessment of its back up cleaning approaches and again asserts unequal treatment. STC Comments at 23-30, 71-72. Our review of the record supports the reasonableness of the agency's evaluation. For example, the record shows that STC proposed multiple simultaneous uses of WOW for both primary and back up cleaning, which exceed the capability of the single WOW system that is available at the SRS. AR, Tab D.2, STC Proposal, at II-28, II-30, II-132-33. Also, it is not clear from STC's proposal whether there is sufficient compliant tank space to store the additional liquid waste generated from the use of back up approaches in the highly likely event that the mini mantis will not be operational. In this regard, STC's estimations about available tank space are premised on successful deployment of the mini mantis and, as the agency notes, the estimations do not take into account the heightened use of back up approaches. Id. at II-63; Tr. at 166-69.

In contrast, SRR's back up approaches were less of a concern to the agency because SRR's primary cleaning approach was deemed more feasible than STC's mini mantis approach, and thus, the agency concluded, SRR was less likely to utilize its back up approaches. Tr. at 143. In any event, the agency notes that SRR proposed to purchase two additional WOW systems so there was no issue with conflicting use.<sup>32</sup>

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did not directly contact the developer of the mini mantis technology for additional testing information.

<sup>32</sup> Although STC asserts that it also proposed to purchase additional WOW "equipment," the record shows that STC only proposed to purchase components for other equipment systems. AR, Tab D.2, STC Proposal, at III-33; Tr. at 155-56.

Tr. at 24, 143. SRR also proposed to minimize liquid use and production to a greater degree than STC through the regeneration feature of ECC, through implementing numerous enhancements at the DWPF, and by making an additional 1.3 million gallons of compliant tank space available approximately 2 years earlier during contract performance than did STC. Tr. at 41-57; 164-74. This, the agency reasonably found, gave SRR more “capability” to store additional volumes of liquid waste. Tr. at 48. Given that SRR proposed a more viable primary cleaning approach that would require less use of back up methods, and given that SRR’s approach minimized the production of liquid waste to a larger degree than did STC’s, the agency did not have the same concerns with available space as it did with STC’s proposal. Tr. at 167-70. We find no evidence of unequal treatment in this aspect of the evaluation.

In sum, based on our review of the record, we find the evaluation of cleaning approaches under the technical approach factor to be fair and reasonable.<sup>33</sup>

### DWPF Operations

STC complains that the agency unfairly assessed its proposal a significant weakness for the impact of melter assumptions on canister production. STC Comments at 30-38. As noted above, the agency determined that STC’s assumptions that Melter No. 2 would have a service life of 9 years, and that Melter No. 4 would be available 4 months earlier than stated in amendment No. 4 to the RFP, appreciably increased the risk of unsuccessful performance. Unexpected melter outages, the agency found, would likely result in STC not achieving the RFP’s “end state” requirement of 1,102 canisters during the base period. AR, Tab G, SEB Report, at 53-55.

STC asserts that its assumption of a 9-year service life for Melter No. 2 was reasonable, given that Melter No. 1 survived 8.5 years. STC Comments at 34. However, as explained by DOE, the design service life of a melter is only 4 years, and, although Melter No. 1 lasted 8.5 years, it experienced “significant degradation of its performance in the last four or five months”; expectations that Melter No. 2 would last longer than Melter No. 1 were unreasonable, in the agency’s view.<sup>34</sup> Tr. at 835-36.

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<sup>33</sup> For the first time in its post-hearing comments, STC raised other allegations of evaluation error in connection with SRR’s proposed approaches for waste removal and tank cleaning, stemming from STC’s belief that SRR’s proposal lacked detail or contained contradictory statements. STC Post-Hearing Comments at 8-19. These allegations, based on information contained in SRR’s proposal that was provided nearly 2 months before the GAO hearing, are untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2008). In any event, the agency has satisfactorily responded to these issues and we find them to be without merit.

<sup>34</sup> SRR’s proposal assumed a service life for Melter No. 2 of 7 years and 9 months, but the proposal was not assessed a weakness because this assumption was less than the  
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The agency raised this concern with STC during discussions and STC failed to substantiate its assumed melter life expectancy. Contracting Officer's Statement at 67-69.

With regard to Melter No. 4, the agency disagrees with STC that availability could be accelerated by 4 months through incentives and overtime. The agency notes that acceleration is not likely to be achieved by incentives because the \$100,000 in incentives proposed by STC is a relatively small amount in the context of the overall cost of the melter, which is \$33 million.<sup>35</sup> Tr. at 952-53. Also, there is little opportunity to accelerate the procurement activities because the activities are already underway and the "margin" for improving the schedule is "decreasing by the day." Tr. at 953-54. Furthermore, offerors were advised by the RFP to assume an availability date of August 2012, which STC chose to ignore. Tr. at 929. STC's disagreement with the agency's analysis of this issue does not demonstrate that the analysis is unreasonable.

STC also asserts unequal treatment in the assessment of canister production. It argues that DOE assumed "worst case" scenarios when evaluating whether STC's proposal would meet "end state" requirements, and "best case" scenarios when evaluating whether SRR's proposal would meet these requirements. First Supplemental Protest at 28-32. However, as the record reveals, the agency did not assume "best" or "worst" case scenarios when evaluating either offeror's approach. Rather, the agency evaluated each offeror's approach based on the schedule of events included in the offeror's proposal, and considered how interruptions in DWPF operations, including unanticipated melter failures and equipment outages, would impact an offeror's ability to meet "end state" requirements for canister production. In this regard, as the agency notes, "historical operations show[] [that] the DWPF facility has averaged a dozen forced outages per year from 2004 through 2006 due to equipment issues." AR, Tab G, SEB Report, at 55.

As discussed above, SRR's proposal included a number of innovations and enhancements that increased canister production to a far greater degree and earlier

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actual service life of Melter No. 1 (unlike STC's assumption) and SRR's proposal included other innovations that increased canister production sufficiently so that unexpected melter outages would still enable the firm to exceed "end state" requirements for canister production. Tr. at 836; 893-906.

<sup>35</sup> The SEB report identifies the cost of procuring the melter as \$25 million, but the agency explains that the actual cost is approximately \$33 million. Compare Tr. at 952 with AR, Tab G, SEB Report, at 54.

in contract performance than STC's proposal.<sup>36</sup> In fact, SRR proposed to produce 50 percent more canisters than STC. AR, Tab G, SEB Report, at 34. As reasonably determined by the agency, SRR's production capability exceeded "end state" requirements to such a significant extent that there was little risk that SRR would fail to meet "end state" requirements, even if faced with unplanned DWPF outages or early melter failure.<sup>37</sup> *Id.* at 45; Tr. at 905, 913, 925-26. In contrast, STC's projected canister production only slightly exceeded the "end state" requirements when STC's melter assumptions are taken into account; thus, unplanned DWPF outages of just 4 days would result in STC not meeting the "end state" requirement to produce 1,100 canisters during the base period of the contract. AR, Tab D.2, STC Proposal, at II-251; Tab G, SEB Report, at 55. Given the differences in proposed canister production, we find the agency's determination that SRR's proposal was superior to STC's to be reasonable and not the result of unequal treatment.

### ETF Operations

STC challenges the agency's assessment of a weakness in its proposal under the technical approach factor relating to its proposed ETF operations. As noted above, the weakness was assessed because the agency determined that STC's proposal's was based on a reduction in ETF processing volume that was three to four times lower than the current volume flowing through the ETF. AR, Tab G, SEB Report, at 57. STC asserts that it did not assume volume reductions and complains that the agency misinterpreted its proposal. STC Comments at 41-49.

According to the SEB report, the current ETF processing volume ranges from 11 to 24 million gallons per year. AR, Tab G, SEB Report a 57. The agency concedes that, consistent with this report, STC's cost proposal states that the "current utilization of

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<sup>36</sup> For example, while SRR proposed to install five bubblers in each of the melters as early as 11 months into contract performance, STC proposed to install bubblers only in Melter No. 4 and not until fiscal year 2012. Compare AR, Tab D.2, STC Proposal, at II-53-54, II-134 with Tab E.2, SRR Proposal, at A-49. As noted above, the agency credited both SRR's and STC's proposal for these enhancements, but SRR's proposal was credited with significant strengths and STC's proposal was credited with strengths because SRR's enhancements increased production both individually and collectively to a much larger degree than STC's enhancements. Tr. at 869-70, 888, 912-13; Contracting Officer's Statement at 82 n.63.

<sup>37</sup> For example, because SRR was installing five bubblers on each melter, if one of the melters failed early and had to be replaced, there would be no loss in production capability. Tr. at 926. Conversely, because STC was installing bubblers only in Melter No. 4, the failure to accelerate that melter's availability could result in lost production. Tr. at 898.



ETF is . . . estimated at 15-20 [million gallons] per year throughput.”<sup>38</sup> AR, Tab D.2, STC Proposal, at III-1753, III-1778; Tr. at 615. However, STC’s proposal included other statements that suggested to the agency that STC was assuming significant reductions in ETF processing volumes. For example, STC priced its ETF chemical treatment costs “based on a treated flow of 5.7 [million gallons] per [y]ear,” and proposed in its technical approach to deactivate ETF processing “trains”<sup>39</sup> and reduce staffing from three shifts to one, which the agency concluded was insufficient to process the current ETF volume. AR, Tab D.2, STC Proposal, at II-60, III-1855; Tab C2, STC Discussion Questions (July 2, 2008), encl. 2, at 8; Tr. at 645-48, 661-62, 665. STC was specifically informed during discussions about the agency’s concerns with the 5.7 million gallon assumption and the reduction in processing trains, was asked to substantiate its volume assumptions and the train reductions in its final proposal revision, and advised that current “ETF requirements may be 3 to 4 times that assumed by STC.” AR, Tab C2, STC Discussion Questions (July 2, 2008), encl. 2, at 8; DOE Hearing exh. 24, Evaluator’s Contemporaneous Notes of Discussions; Tr. at 641. STC failed to address this issue in response to discussions, and based on our review, the agency reasonably assessed a weakness to the proposal as a result. AR, Tab G, SEB Report, at 57.

#### Salt Waste Disposal Regulatory Requirements

STC also disputes the weakness found in its proposal under the technical approach factor for not “demonstrat[ing] a complete understanding” of two regulatory requirements for salt waste disposal that were listed in the solicitation. AR, Tab G, SEB Report, at 55-56. STC contends that the weakness was unreasonable because the issues were minor and were addressed elsewhere in the proposal. STC Comments at 39-40.

Tank closure operations, including salt waste disposal, involve compliance with the Secretary of Energy’s “Section 3116 Determination” and myriad regulatory and legal requirements that are critical to the successful and safe closure of tanks at the SRS. The failure to comply with any of these requirements was “not minor” to the agency. Tr. at 1006. Simply put, tanks cannot be closed at the SRS without the contractor meeting these rigorous requirements. Tr. at 989-90.

The two requirements at issue here involve 10 C.F.R. § 61.41 (2008), which requires the contractor to maintain the release of radioactivity into the environment at the lowest achievable levels, and 10 C.F.R. § 61.42, which requires the contractor to

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<sup>38</sup> Contrary to STC’s arguments (see STC Comments at 45), the agency did not misinterpret this statement in STC’s proposal.

<sup>39</sup> “Trains” refer to processing systems. There are currently three “trains” operational at the ETF. Tr. at 662.

perform the contract in a manner so as to protect from radioactive hazards individuals who may inadvertently intrude onto the SRS after DOE's institutional controls are removed from the site. RFP § C.2.1.1.1(b)(16), (17); Contracting Officer's Statement at 50-55.

With regard to the first requirement, STC asserted that its compliance was demonstrated because the amount of radioactivity released was below limits set in a state issued permit, and because DOE had "administrative control[s]" in place "well beyond 100 years." AR, Tab D.2, STC Proposal, at II-460-461. However, the agency found that these statements reflected a lack of complete understanding because the Section 3116 Determination expressly states that institutional controls are assumed to not continue beyond 100 years, and the permit referenced by STC applied to industrial landfill hazards and not radioactive hazards, as was at issue here. Contracting Officer's Statement at 52.

With regard to the second requirement to prevent against intrusions, STC asserted that the risk of intrusion by individuals was "not credible as long as [DOE's] institutional controls are in place." AR, Tab D.2, STC Proposal, at II-461. Yet, the requirement sought protection for intruding individuals when institutional controls were not in place, which STC did not address. Contracting Officer's Statement at 54.

The SEB determined from other information in STC's proposal that the offeror would comply with both requirements—and recognized this in the evaluation. However, given the importance of regulatory compliance in performing liquid waste remediation at the SRS, the SEB reasonably determined that STC's "fail[ure] to exhibit a complete understanding of the concept related to compliance with [the] performance objective[s]" constituted a proposal weakness. AR, Tab G, SEB Report, at 56; Tr. at 1017-19. Based on our review of the record, we find no error in this evaluation.<sup>40</sup>

### Key Personnel

STC complains that DOE misevaluated the offerors' key personnel. For example, STC contends that SRR's proposed waste determination manager should have been assessed a weakness because the individual is a lawyer and not an engineer, he has never supervised engineers, and he lacks the necessary technical background to perform the job he is assigned. According to STC, "the overwhelming majority of

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<sup>40</sup> STC also contends that the agency evaluated unstated criteria when it considered the firm's "understanding" of the regulatory requirements because the RFP only permitted the agency to evaluate "compliance" with the regulatory issues. STC Post-Hearing Comments at 65. Clearly, an offeror's understanding of a requirement is encompassed within the evaluation of compliance, or conformity, with that requirement.

work” required for this position is technical, not legal, in nature. STC Post-Hearing Comments at 66-67, 73.

However, the agency explains that the role of the waste determination manager is primarily legal and regulatory; that is, the waste determination manager’s role is to ensure conformity with the Section 3116 Determination (which is a legal and regulatory document), to act as a liaison with regulators and stakeholders, and to manage and resolve potential regulatory roadblocks. DOE Post-Hearing Comments at 42-43. In addition to being a lawyer, the waste determination manager proposed by SRR has a technical background and his resume demonstrates that he possesses an in-depth knowledge of the entire waste determination process. AR, Tab E.2, SRR Proposal, at B-231. The agency determined him to be “uniquely qualified” in performing the proposed role, in large part, because he was instrumental in issuing the first successful waste determination at the SRS for the disposition of salt waste-- which was one of only two successful waste determinations issued to date. DOE Post-Hearing Comments at 43; Tr. at 722. Based on our review, we agree with the agency that SRR’s proposed waste determination manager possesses highly relevant experience that was reasonably be found to be a significant strength.<sup>41</sup>

STC also asserts unequal treatment in the evaluation of key personnel. It complains that two of its proposed key personnel (the operations manager, and the operations and maintenance support services manager) were unfairly criticized for “not previously directly manag[ing] comparably-sized workforces.” Yet, according to STC, two of SRR’s proposed key personnel (the project manager and tank farm manager) also had not managed comparably-sized staff. STC Post-Hearing Comments at 79-83; STC Comments at 96-100.

The record supports the agency’s basis for distinguishing between SRR’s and STC’s proposed key personnel. With regard to STC, the two individuals had only managed staff of no more than half of what they would be responsible for here. That is, STC’s proposed operations manager, who would be responsible for the overall project, would be responsible for approximately 1,000 core, matrix and subcontractor personnel here, but had previously only managed 500 personnel for a limited period of time. Similarly, STC’s proposed operations and maintenance support manager would be responsible for 365 full time equivalents plus additional subcontractor support personnel, but had only previously supervised, at most, 95 personnel. AR,

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<sup>41</sup> STC also complains that the agency ignored weaknesses in the experience of SRR’s proposed project manager because the individual was “removed” as a key person in a prior contract due to poor performance. STC Comments at 79-82. However, the record shows only that the individual was replaced in accordance with the contract, and the agency denies that this was due to the individual’s poor performance. DOE Post-Hearing Comments at 41-42; Contracting Officer’s Statement at 92. STC has not provided any convincing evidence to rebut the agency’s denial.

Tab G, SEB Report, at 79; Contracting Officer's Statement at 97; Tr. at 792, 794. In contrast, SRR's proposed project manager, who would be responsible for 1,772 personnel, had managed workforces as large as 2,000; and SRR's tank farm manager had previously managed both tank farms separately so managing both tank farms together was not considered a proposal risk. AR, Tab E.2, SRR Proposal, at B-182, B-206; Tr. at 804-07. Based on our review, we find the agency's evaluation to be reasonable.

STC also complains that the SEB report contains identical language describing both STC's and SRR's proposals with regard to key personnel, yet the SEB treated offerors unequally by assigning STC's proposal a strength and SRR's proposal a significant strength. STC Comments at 93. Although it is true that both proposals were described as providing a "clear rationale for the designation of Key Personnel positions," designating key personnel positions that were "well aligned with [the offeror's] approach," and "clearly show[ing] how [the offeror] factored DOE's stated desire to 'optimize [liquid waste] system performance . . . into its selection of Key Personnel,'" the proposals differed in the offerors' designation of key personnel positions, which led to different proposal ratings. AR, Tab G, SEB Report, at 60, 78; Tr. at 747; DOE Post-Hearing Comments at 44. One key discriminator was that SRR proposed more key personnel to concentrate on performing "operating functions," such as waste removal and tank closure, DWPF, and tank farm operations, than did STC.<sup>42</sup> Compare AR, Tab E.2, SRR Proposal, at B-176 with AR, Tab D.2, STC Proposal, at II-155; see also Contracting Officer's Statement at 96; Tr. at 740-44. In addition, only SRR proposed a waste determination manager to ensure timely and efficient tank closure in a high profile and highly regulated environment. Contracting Officer's Statement at 96; Tr. at 741. In contrast, STC's proposed key personnel were more focused on "mission enabl[ing]" activities, such as engineering, nuclear safety, and integration and control, which were found to be less advantageous in terms of accomplishing the work. Contracting Officer's Statement at 96; Tr. at 743-44. Given these and the many other discriminators identified by the SEB in its report, we conclude that proposals were evaluated fairly and reasonably under the organizational structure and key personnel factor.

### Past Performance

STC contends that SRR's proposal should have received a lower past performance rating due to the poor performance of its team members or subcontractors. Most significantly, STC contends that the agency misevaluated the past performance of

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<sup>42</sup> SRR's proposal also received a separate strength for proposing an "organization [that] is effectively structured to execute the work as proposed." AR, Tab G, SEB Report, at 70.

WSRC in assessing it as a strength in the evaluation.<sup>43</sup> As noted above, WSRC is a wholly owned subsidiary of URS Washington Division (an SRR team member) that performed tank closure activities at the SRS. STC contends that WSRC had “repeated instances of poor performance” under the SRS contract. STC Comments at 105. According to STC, the firm has not closed any tanks since 1997, missed regulatory commitments for closing Tanks 18 and 19, faced two allegations of False Claims Act violations (including an allegation of fraud), and committed other acts of poor performance. *Id.* at 105-10.

The record shows that the agency reasonably considered all of the adverse information that has been cited by STC. For example, with regard to WSRC’s failure to close tanks and meet deadlines, the agency noted that this was not due to the poor performance of WSRC. Rather, delays were due to the “complex regulatory framework” governing this work, the numerous legal challenges from outside entities to DOE’s tank closure activities, and the often changing decisions of DOE and other regulatory authorities to alter tank closure requirements and timetables for closure, all of which were outside of WSRC’s control. Contracting Officer’s Statement at 102-04; Tr. at 1032-51, 1077-81, 1088-100. Moreover, the alleged False Claims Act violation was resolved by the parties and the contracting officer for that contract ultimately determined that it would not be reported as adverse past performance. Contracting Officer’s Statement at 104. SRR addressed these and other areas of past performance during discussions, and its responses alleviated the agency’s concerns. AR, Tab G, SEB Report, attach. 13, Evaluation Summaries, at 55-58.

The record shows considerable favorable past performance references for WSRC, which the SEB also took into account. The SEB considered all the allegations of adverse performance pointed out by the protester, and reasonably determined that the negative performance issues did not increase the risk of performance when balanced against the many instances of positive past performance.<sup>44</sup> Taken as a

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<sup>43</sup> STC also asserts that DOE should have downgraded SRR’s proposal for the poor past performance of two subcontractors (AREVA, EnergySolutions) under a “Uranium Disposition Services” contract, rather than judging their past performance to be a strength. STC Comments 111-12. However, the agency reasonably determined that the poor past performance was “only marginally relevant” to the liquid waste procurement, and the other more relevant past performance information for these subcontractors warranted a strength under this factor. Contracting Officer’s Statement at 106-07; AR, Tab G, SEB Report, at 128-32. Based on our review, we find the agency’s judgment to be reasonable.

<sup>44</sup> STC asserts that the agency should have considered a DOE Inspector General audit report of WSRC. Second Supplemental Protest at 2-3. However, this report was not issued until over 5 weeks after the source selection, and the agency reasonably did not consider it. Although some preliminary findings were made available to DOE

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whole, the SEB assessed WSRC's performance to be a strength, and, based on our review, we find this conclusion to be reasonable. AR, Tab G, SEB Report, 119-21. In any case, the SEB and SSA found STC's past performance to be superior to SRR's, primarily because of the negative past performance discussed above, and the SSA considered STC's superior past performance in making the source selection decision.

#### Best Value Decision

STC asserts that the agency's source selection decision is unreasonable and does not support the agency's conclusion that SRR's proposal was worth the additional \$550.6 million in cost over STC's proposal. However, as discussed above, we find that the agency performed a comprehensive evaluation that was reasonable and consistent with the evaluation criteria and applicable procurement laws and regulations. This record is well-documented and shows that the SSA made a reasoned judgment, based on all of the information before him, that SRR's proposal was the best value to the government and was worth the additional cost.

The protest is denied.

Gary L. Kepplinger  
General Counsel

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prior to the report's issuance, DOE did not concur with those preliminary findings. Contracting Officer's Statement at 110.