

A SCATHING JUDGE'S CRITICISM OF AN AGENCY'S EVALUATION

By Richard D. Lieberman, Consultant and Retired Attorney

In a bid protest issued in July 2025, a Court of Federal Claims Judge issued a scathing criticism of a Navy evaluation of offers for a mixed procurement to provide Egypt with a Nationwide Maritime Surveillance system via a foreign military sale. *Advanced Tech. Sys. Co. v. United States*, (Fed. Cl. No. 25-515), July 16, 2025. Judge Somers said that the Navy used “vague and conflicting past performance criteria [and failed] to provide any explanation for the award decision it made.” The court stayed the case for up to 45 days to remedy the flaws in the evaluation, but did not issue injunctive relief “because national Security Concerns Outweigh [the protester’s alleged harms,” noting that there were serious national security concerns that might arise if the court enjoined this contract.

The Court found that three of the seven protested grounds were meritorious, but four were not, concluding as follows:

- 1) The Navy erred by conducting a flawed best value tradeoff in contravention of the solicitation and the Federal Acquisition Regulation (“FAR”). The justification for the best value determination was wholly conclusory, and was a *post hoc* rationalization. The Navy concluded that “satisfactory” and neutral confidence past performance ratings should be rated equally, and never explained why they should be treated equally.
- 2) The Navy irrationally evaluated two of ATSC (the protester’s) past performance references as “not relevant.” The court found that the Navy’s past performance rating system and accompanying rationale “were incomprehensible.”
- 3) The Navy arbitrarily disregarded the “very relevant” past performance of ATSC’s proposed subcontractor in the evaluation.

The Court rejected four other grounds of protest holding that:

- 4) The Navy had rationally considered Contractor Performance Assessment Report (“CPAR”) comments in its evaluation.
- 5) The Navy did not disregard the evaluation requirement of “experience to perform the entirety of the work.”
- 6) The Navy rationally evaluated and rated ATSC’s proposal under one solicitation factor; and
- 7) The Navy did not err in rating either ATSC or the awardee’s factor 1 technical proposals.

The three errors in the Navy’s evaluation were deemed prejudicial, and formed the basis for sustaining the protest. However, as explained above, the Court deemed injunctive relief not appropriate here because national security concerns outweighed ATSC’s alleged harms.

Takeaway. Even if your protest wins at the Court of Federal Claims, you still may be unable to enjoin the procurement if the Court finds that national security concerns trump the “irreparable harm” requirement for a performance injunction.

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