

Things We Learned From The Protest

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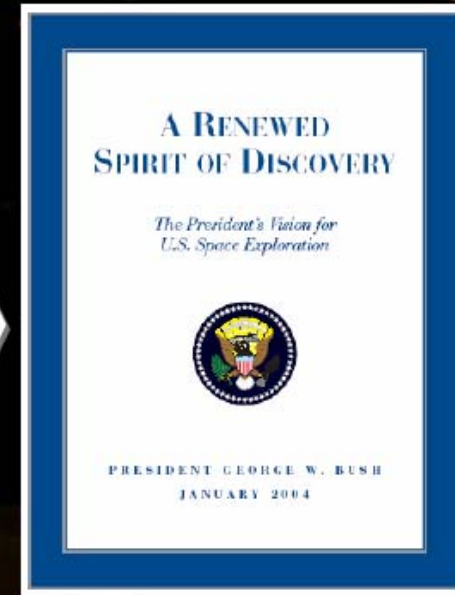
October 23, 2008



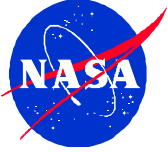
Things We Learned From The Protest

A Bold Vision for Space Exploration, Authorized by Congress

- Complete the International Space Station
- Safely fly the Space Shuttle until 2010
- Develop and fly the Crew Exploration Vehicle no later than 2014 (goal of 2012)
- Return to the Moon no later than 2020
- Extend human presence across the solar system and beyond
- Implement a sustained and affordable human and robotic program
- Develop supporting innovative technologies, knowledge, and infrastructures
- Promote international and commercial participation in exploration



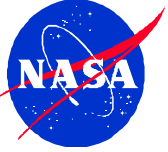
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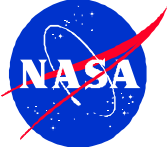
Four Mission Directorates:

- Exploration Systems
- Space Flight
- Aeronautics Research
- Science



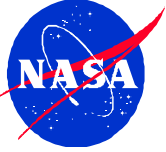
Things We Learned From The Protest

- Exploration Systems
 - Orion
 - Ares
- Space Flight
 - Space Shuttle
 - International Space Station
 - United Launch Alliance
- Aeronautics Research
 - SOFIA
- Science
 - Landsat
- Agency-wide
 - NASA Protective Services
 - Information Technology Infrastructure Improvement Program



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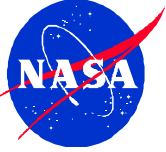
- **Best Practices:**
 - Early Inclusion and Coordination
 - Continuing Inclusion and Coordination
 - Monthly Legal/Procurement Meetings



Things We Learned From The Protest

Source Evaluation Boards (SEB):

- Preliminary coordination—alert Procurement and Legal to issues EARLY
 - Conflicts of interest
 - Evaluation Factors
- Experienced SEB members
 - SEB Chair to have previous SEB experience
 - Support for the SEB
- Pricing Support
- Evaluation Plan
 - Follow it....



Things We Learned From The Protest

SEB Documentation:

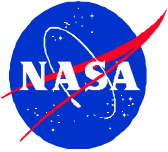
–Adequate Record of SEB Actions

- E-mails
- Document resolution of discrepancies/disagreements/ adverse information
- Traceability

–Source Selection Decision

- Thought process of the Selection Authority
- Trade-off decision
- Link decision statements to findings

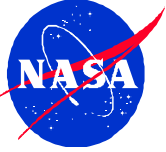
–Eliminate conclusory statements in presentations and reports



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FEMME COMP INC., TECHNICAL AND PROJECT ENGINEERING, v. THE UNITED STATES (08-409C, 08-419C, 08-432C, 08-454C, and 08-474C), September 30, 2008.

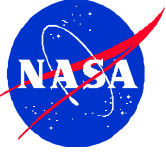
First, **the court finds that the Source Selection Authority did not adequately document her best value tradeoffs in the Source Selection Decision Document. Pursuant to the FAR, the Source Selection Authority was required to document the tradeoffs she made, FAR § 15.308, and conclusory statements are insufficient to meet this requirement, see Serco Inc., 81 Fed. Cl. at 497. Yet, the Source Selection Decision Document was replete with conclusory statements.** For example, many of the Source Selection Authority's "comparisons" between the offerors' Performance Risk volumes lacked any comparative language and merely indicated that the two offerors received the same adjectival rating. See, e.g., AR 10528 ("[. . .]."), 10550 ("[. . .]."), 10558 ("[. . .]."). **The Source Selection Authority did not document any effort that she made to compare the two proposals to determine whether, despite the identical ratings, one was stronger than the other, as she did in other factor comparisons.** Given that the Performance Risk factor was the second most important factor, the Source Selection Authority's brusque nonsubstantive "comparisons" are inadequate. Also inadequate are the instances where the Source Selection Authority noted the proposals' identical ratings and then, without further explanation, declared that the proposals were "essentially equal." See, e.g., id. at 10528 ("[. . .]."), 10533 ("[. . .]."), 10534 ("[. . .]."), 10536 ("[. . .]."), 10537 ("[. . .]."), 10544 ("[. . .]."). Although the Source Selection Authority used comparative language, she provided no explanation for why she considered the proposals to be equal.⁴² It appears that the Source Selection Authority's conclusions relied upon the Army's assigned ratings instead of the Army's underlying evaluations. The FAR requires more detail. See Serco Inc., 81 Fed. Cl. at 498 ("[I]t is conceivable that the [Source Selection Authority], in his own mind, made such . . . comparisons, but merely failed to capture them on paper. But, that too would violate the FAR and its documentation requirements."). Moreover, the Source Selection Authority's conclusory statements contradicted her assertions that she [. . .]. See AR 10475. If the Source Selection Authority did, in fact, perform an "[. . .]," the fruits of that effort should be contained within the Source Selection Decision Document. However, the Source Selection Decision Document is bereft of such evidence.



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SEB Exchanges:

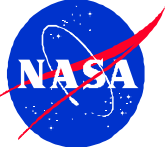
- Award on Initials
- Value of Discussions
- Documentation of Oral Proposals
- Documentation of Discussions
- Documentation of Competitive Range Decision



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Organizational Conflicts of Interest:

- Presentation by Michael Golden, Assistant General Counsel, U.S. Government Accountability
 - http://www.ndia.org/Content/ContentGroups/Divisions1/Procurement/6pc3_golden.PPT
- “ORGANIZATIONAL CONFLICTS OF INTEREST: A GROWING INTEGRITY CHALLENGE,” Daniel I. Gordon, PCLJ, Fall 2005.
- Organizational conflicts of interest (OCIs) are “situations where an entity plays two or more roles that are, in some sense, at odds with one another.”
 - Concept of organizational conflicts of interests focuses on an individuals “other activities or relationships with other persons...”
 - Such other activities or relationships could 1) impair the person’s objectivity or 2) could create an unfair competitive advantage for a person or organization
- The Government must recognize potential OCIs and take reasonable steps to address them.

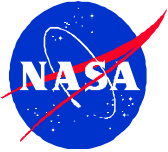


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Innovative Strategies:

–Space Act Agreements

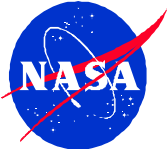
- Commercial Orbital Transportation Services (COTS)
- Exploration Partners, LLC, B-298804, 2006 CPD 201m December 19, 2006



Things We Learned From The Protest

	FY 2007	FY 08
Number of procurements protested	<u>5</u>	<u>10</u>
Sustained	0	1
Dismissed (Withdrawn)	3	3
Dismissed (Corrective Action)	0	1
Denied	1	4
Partials	1	0
Pending	-	1

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For America to continue to be preeminent in the world economy, to be the world's leader in innovation, science, and technology, and to be a leader on the frontier of space exploration and aeronautics research, NASA will need the best ideas, hard work, and dedication from **all** those who would like to be involved with this most exciting enterprise of our time.

*Michael D. Griffin
Administrator
National Aeronautics and Space Administration*

October 23, 2008