United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 4, 2026 Decided July 24, 2026
Reissued August 20, 2026

No. 25-1148

ADSYNC TECHNOLOGIES, INC.,
PETITIONER

v.

FEDERAL AVIATION ADMINISTRATION,
RESPONDENT

ADACEL SYSTEMS, INC.,
INTERVENOR

On Petition for Review of an Order
of the Federal Aviation Administration

Paul A. Allulis argued the cause for petitioner. With him on the briefs was *Samuel Finnerty*.

Antonia R. Soares, Attorney, U.S. Department of Justice, argued the cause for respondent. With her on the brief were *Brett A. Shumate*, Assistant Attorney General, and *Steven Michael Mager*, Attorney.

Elizabeth B. Deutsch argued the cause for intervenor in support of respondent. With her on the brief was *Maura E. Smyles*. *Matthew S. Hellman* and *Arjun R. Ramamurti* entered appearances.

Before: MILLETT, KATSAS and WALKER, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WALKER.

WALKER, *Circuit Judge*: Two competitors bid for a government contract. Adsync lost. Adacel won.

Because Adacel had enjoyed an unfair competitive advantage, Adsync was allowed to bid again. But after Adsync's do-over, Adacel still received the contract.

Adsync says it is entitled to a do-over of the do-over.

Under our deferential standard of review, it isn't.

I

Air traffic control personnel can achieve proficiency on airport tower operations through the Tower Simulation System, a training program with both hardware and software components. The system's simulators "replicate airport layouts allowing controllers to train for complex airport configurations, . . . practice runway crossing coordination and rehearse phraseology." *Tower Simulation System*, FAA (May 13, 2025), https://perma.cc/TX42-HFZH. The software features "enhanced graphics matching real-world tower views, which help[] familiarize controllers with an airport's layout, runways, taxiways, and weather patterns." *Id.*

By 2023, the hardware and software components both needed an update. Over the course of about a month, the FAA issued two solicitations, one seeking "new hardware, maintenance, and system support" for the Tower Simulation System (the hardware contract) and the other seeking software for use with the hardware (the software contract). Pet'r Add. 9.

Adacel won the software contract. And because it won the software contract, it knew that its own MaxSim software would be used under the related, not-yet-awarded hardware contract.

Adsync wanted the hardware contract. But it didn't know that the FAA had chosen the MaxSim software. So Adsync factored that uncertainty into its proposal.

Adsync's hardware proposal came in at about $58.9 million. Adacel's was about $52.5 million. Because of that 6.4-million-dollar difference, Adacel won the hardware contract award.

Adsync filed a protest with the FAA's Office of Dispute Resolution for Acquisition. ODRA found that Adacel had an unfair competitive advantage in its proposal for the hardware contract because Adacel knew about the software contract, while Adsync did not.

The FAA Administrator adopted ODRA's recommendation to give Adsync the opportunity "to revise any aspect(s) of its proposal" in light of the software selection decision. Pet'r Add. 34–35; A 1703 (adopting ODRA's recommendation). But because Adsync now knew Adacel's proposed price and Adacel was not allowed to submit a revised proposal, the Administrator also required that Adsync **"[l]imit changes to only those due to identification of the . . . software"** and **explain how any revision "relates to th[at] fact."** Pet'r Add. 34–35 (emphases added); A 1703.

Adsync submitted a revised proposal with \$6.5 million in price reductions. That made Adsync's proposal a bit less expensive than Adacel's. Adsync said that it had reduced costs by eliminating the risk premium that was unnecessary now that Adsync knew what software the FAA had selected.

The FAA's contracting team accepted most of Adsync's price reductions. But it rejected \$734,697 in reductions for contract line items like "cables, computer mice, and power strips" as well as "monitors and computers." A 1696. The contracting team found that "basic hardware and computer related items . . . work with any software." A 1499. And the contracting team concluded that Adsync had failed to convincingly explain why some of its proposed reductions correlated to its new knowledge about software.

The rejection of those price reductions made Adsync's proposal price slightly higher than Adacel's. Seeing "no difference" in quality "between" Adsync's and Adacel's offers, a contracting authority found that "the FAA obtain[ed] better value" from Adacel's offer. A 1509. Thus, Adacel secured the contract once again.

Adsync filed a second protest before ODRA, challenging the technical and price evaluations and the best value determination. It argued that its price reductions complied with the FAA order from the first protest and that the rejection of its reductions violated the Acquisition Management System Guidance – a comprehensive set of standards governing FAA contracting.

ODRA found that the contracting authority "had a rational basis for determining that [a portion of] Adsync's hardware cost reductions were not related to mitigating the [software knowledge disparity]" underlying the first protest. A 1696; *see* 14 C.F.R. § 17.21(m). ODRA also found that compliance with the FAA's remedial order required an analysis of Adsync's price reductions. Finally, ODRA found that a rational basis supported the determination that Adacel offered a better value.

Because of those factual findings, ODRA affirmed the contracting team's credibility determination and recommended that the FAA deny Adsync's second protest. The FAA adopted ODRA's findings and recommendations in its final order. Adsync filed a petition for review of the FAA's final order in our court. *See* 49 U.S.C. § 46110.

II

We review the FAA Administrator's adoption of ODRA's findings and recommendations. That review "is confined to determining whether the FAA's order . . . is arbitrary or capricious or contrary to law." *Multimax, Inc. v. FAA*, 231 F.3d 882, 886 (D.C. Cir. 2000). We "may reverse only if the agency's decision is not supported by substantial evidence, or the agency has made a clear error in judgment." *Id.* (cleaned up).

The FAA's findings of fact are "conclusive" provided they are "supported by substantial evidence[.]" 49 U.S.C. § 46110(c). "Substantial evidence means more than a scintilla of evidence." *Archer Western Contractors, LLC v. DOT,* 45 F.4th 1, 6 (D.C. Cir. 2022) (cleaned up). Even if the record is "unclear," the agency may rely on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (cleaned up). That "conclusion may be supported by substantial evidence even though a plausible alternative interpretation of the evidence would support a contrary view." *Id.* (cleaned up).

III

Adsync makes three arguments. First, it says the FAA violated the Acquisition Management System Guidance for "price realism." AMS Guidance T.3.2.3.A.1(d)(3). Second, it says the FAA lacked substantial evidence for rejecting $734,697 of Adsync's price reductions. Third, it says it deserves bid and proposal costs.

We disagree.

A

The FAA did not violate the "price realism" provision of the Acquisition Management System when it adjusted Adsync's proposed price. *See* AMS Guidance T.3.2.3.A.1(d)(3).

The price realism provision bars "adjust[ment]" of an "offeror's proposed fixed price or time and material labor rates." AMS Guidance T.3.2.3.A.1(d)(3).2, .3(v). So if it applied here, it might well have barred the FAA from rejecting price reductions in Adsync's revised proposal. But the price realism provision does not apply here.

That's because the agency conducts a price realism analysis "when new requirements may not be fully understood by the offeror, there are quality concerns, or past experience indicates that contractors' proposed prices have resulted in quality or service shortfalls." AMS Guidance T.3.2.3.A.1(d)(3); *see id.* (listing the provision as one of several "Price Realism Evaluation Steps"). Adsync's rebid doesn't fall in any of those categories. So when the contracting team rejected some of the price reductions in Adsync's revised proposal, it was not — and did not purport to be — conducting a price realism analysis. Instead, it was implementing a tailored remedial order following a bid protest. To implement that order, the contracting team needed to evaluate and, if necessary, reject any of Adsync's price reductions that went beyond updating the bid in light of the now-known software. Adsync has not pointed to any authority that would require us to export a narrow guidance provision that applies solely to price realism analysis to this entirely different context.

Adsync's expansion of the price realism provision would contravene "the fundamental [Acquisition Management System] principle that favors competition." A 1696. That principle is the reason the FAA required Adsync to explain how each of its price changes "related to" its new knowledge about software selection, rather than letting Adsync use its knowledge of Adacel's bid in formulating its own competing bid. A 1695–96. Only with that requirement could the FAA eliminate the competitive advantage Adacel enjoyed in round one *without* providing Adsync its own competitive advantage in round two.

As a result, ODRA acted reasonably in not transforming the price realism provision from a *pro*-competitive provision into an *anti*-competitive provision by applying it to the implementation of this tailored remedial order.

B

Substantial evidence supports ODRA's determination that the contracting authority "had a rational basis for rejecting the $734,697 portion of the price reduction" as unrelated to the identification of software for use under the hardware contract. A 1696.

For starters, Adsync reduced the price of "basic hardware . . . items that work with any software." A 1499. So right out of the gate, there was reason to doubt that Adsync had added a risk premium to those items due to uncertainty about software.

Relatedly, Adsync reduced the price of 43-inch monitors and 75-inch monitors but not 55-inch monitors. When contracting personnel asked Adsync for an explanation, Adsync said that "the 55-inch monitor did not have risk cost apportionment assigned to it in the original proposal," citing an internal "Bill of Materials" (allegedly included in Adsync's original proposal) that featured a "risk" column at the outset for each hardware item. A 1495–96, 1697.

The problem for Adsync is that it did not include the Bill of Materials in the original proposal. Nor did Adsync include it in the revised proposal. So there was no way for the contracting authority to verify Adsync's assertions about which items were assigned a risk premium in the original proposal.

To make matters worse, Adsync itemized hardware separately from the labor required to integrate the hardware with software. If Adsync had limited the risk premium to the labor costs for integration, Adsync could have easily explained why its original proposal had included a risk premium and why its revised proposal had eliminated it. Indeed, the pricing team accepted Adsync's price reductions to line items "that ha[d] labor components to them." A 1499. But the contracting team reasonably concluded that Adsync had failed to explain why "any risk cost [would be] added to the price of . . . commercially available hardware items." A 1501.

When all that evidence is taken together — the inexplicably disparate treatment of monitors based on their size, the missing Bill of Materials, and the separate itemization of the labor required to integrate hardware with software — more than a scintilla of evidence supports ODRA's conclusion that Adsync failed to fulfill the remedial order's requirement to justify the relevant price changes.[1]

C

We deny Adsync's request for bid and proposal costs.

In bid protests, bid and proposal costs are "awarded to a protestor to provide relief for its wasted efforts in bidding on an unfair, erroneous, or illegal procurement." *Q Integrated Companies, LLC v. United States*, 132 Fed. Cl. 638, 642 (2017). ODRA has "broad discretion to recommend and impose protest remedies that are consistent with the [Acquisition Management System] and applicable law," which "may include" "[a]ward bid and proposal costs[.]" 14 C.F.R. § 17.23(a), (7).

Adsync points to ODRA's findings and recommendations following the first protest, which Adsync won. At that time, ODRA said that "it would be a windfall for Adsync to receive both the award and its bid and proposal costs." Pet'r Add. 33. According to Adsync, that statement implies that ODRA "would have awarded Adsync [the] costs but for its assumption that Adsync would ultimately be awarded the contract[.]" Pet'r Br. 65.

But ODRA neither made that assumption nor implied that the assumption was the reason for its decision. Rather, ODRA acknowledged existing uncertainties and refrained from

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[1] Adsync argued that the FAA's best value and award decision lacked a rational basis because both depended on the rejection of certain price reductions. Because we've rejected the premise for Adsync's argument — its challenge to the rejection of the price reductions — the analysis ends there.

awarding bid and proposal costs where there was a *possibility* that Adsync would win the contract award following remedial measures. And Adsync has failed to develop any legal argument that would support the award of bid and proposal costs even if we otherwise deny Adsync's petition.

* * *

The petition is denied.

So ordered.