



Comptroller General
of the United States

Washington, D.C. 20548

REDACTED VERSION

Decision

Matter of: Scheduled Airlines Traffic Offices, Inc.

File: B-253856.7

Date: November 23, 1994

Kenneth S. Kramer, P.C., James S. Kennell, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.

Lars E. Anderson, Esq., J. Scott Hommer III, Esq., and Wm. Craig Dubishar, Esq., Venable, Baetjer & Howard, for Carlson Travel Network, an interested party.

Gerald P. Kohns, Esq., Department of the Army, for the agency.

Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest raising the same issues as those resolved in a recent decision on a protest by the same protester is dismissed as no useful purpose would be served by further consideration of the protest.

2. Review by source selection officials of limited materials related to awardee's protest that resulted in agency reevaluation of proposals and contract award to the awardee did not amount to improper discussions.

3. The General Accounting Office will review an evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria; the determination of the merits of proposals is primarily a matter of administrative discretion which we will not disturb unless the evaluation was arbitrary or unreasonable. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable.

"The decision issued November 23, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

DECISION

Scheduled Airlines Traffic Offices, Inc. (Sato) protests the award of a contract to Carlson Travel Network under request for proposals (RFP) No. DAHC22-92-R-0002, issued by the Military Traffic Management Command, Department of the Army, for commercial travel management services.¹ Sato principally argues that the solicitation and award to Carlson are unlawful because, under the contract as awarded, appropriated funds will be used to subsidize and support non-appropriated fund instrumentalities (NAFIs) in contravention of laws governing the expenditure of appropriated funds; that undue consideration of "leisure" travel, as opposed to "official" travel (both were being procured by the agency in this combined official and leisure solicitation) improperly influenced the agency's evaluation and award decision; that one of the evaluators possessed an inherent conflict of interest; that the agency evaluators improperly considered information from Carlson's previous protest during the reevaluation; and that the agency's reevaluation and selection decision were arbitrary since the agency allegedly failed to adhere to the evaluation scheme and otherwise miscalculated the proposals of Sato and Carlson.

We dismiss the protest in part and deny it in part.

BACKGROUND

The RFP was issued on June 19, 1992, soliciting proposals for a fixed-priced, no-cost contract to provide travel management services for both official and leisure ("unofficial") travel by Army personnel and other eligible patrons within an eight-state region known as Defense Travel Region 5 (DTR-5).² The RFP required the successful offeror

¹The award to Carlson followed a reevaluation of proposals that was performed by the agency following a decision to take corrective action in response to protests filed by Carlson in 1993. At that time, the agency had initially awarded the contract to Sato based on the results of the first evaluation. The record in this case is voluminous; we will generally limit our discussion to matters we deem dispositive.

²"Official" travel is paid for with appropriated government funds; "leisure" or "unofficial" travel is personal travel by government personnel and their families and is paid for by private funds. DTR-5 is comprised of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

to provide "all personnel, equipment, tools, materials, supervision, and other items or services necessary to perform the management and operation of a Commercial Travel Office (CTO) at each of the 59 locations spread throughout DTR-5.³ The RFP contemplated a 2-year base period with three 1-year option periods. Under the RFP, the agency was required to provide, at no cost to the contractor, adequate facilities, complete with telephone lines, utilities, janitorial, and other maintenance-type services. Except for such use of government-furnished facilities, the successful contractor will bear the entire cost of furnishing its services to the agency and will be compensated by means of the commissions it receives for booking government travelers with airlines, hotels, and other providers of transportation and lodging. The RFP required offerors to pay a "discount" to the United States Treasury, representing a portion of their fees and commissions earned from booking official government travel. For unofficial or leisure travel, the RFP required offerors to pay a portion of their fees and commissions to the local Morale, Welfare, and Recreation (MWR) Fund maintained for each of the military facilities serviced by a CTO.⁴

The RFP stated that award would be made on the basis of the "best overall proposal," considering the evaluation criteria contained in the RFP. The RFP stated that the agency would perform an integrated assessment of these criteria to determine which offer was most advantageous to the government. The RFP contained the following evaluation criteria, listed in descending order of importance:

³The RFP defined a CTO as a manned commercial travel office providing the full range of commercial travel reservation and ticketing services for the designated military activities. Thus, the RFP required offerors to provide, among other things, travel reservations and ticketing, lodging and rental car arrangements, and management information reports.

⁴MWR Funds are Non-appropriated Fund Instrumentalities (NAFI).

I. TECHNICAL EVALUATION AREA [DELETED]⁵

Factor A: Project Operations

1. Staffing Plans
2. Operations Plans
3. Quality Control Plan
4. Transition Plan

Factor B: Hardware and Software Capabilities

1. Back Office Automation, Reconciliation and Management Information Reports
2. Automation Features
3. Computer Reservation System

Factor C: Subcontracting

II. BUSINESS MANAGEMENT AREA [DELETED]

Factor A: Marketing

1. Approach/Planning for Marketing Travel Services
2. Customer Incentives

Factor B: Organization

1. Organizational Structure
2. Current and Past Experience
3. Appearance Standards

⁵The RFP advised offerors that Factor I, Technical, was of greatest importance, and was more important than Factor II, Business Management, and Factor III, Discounts/ Concession Fees/Third Party Commissions: The RFP further stated Factor II, Business Management, was of second most importance and was of greater importance than Factor III. However, with respect to Factor III, the RFP cautioned offerors that while the discount area was less important than the Technical and Business Management Area, "[t]he degree of its importance will increase as the degree of equality among technical and business management scores increases." The bracketed percentage weights shown above were the actual weights given by the evaluators to each area; these specific weights were not revealed to the offerors in the RFP but appeared in the agency's internal Source Selection Plan. Each subfactor of every factor shown above contained numerous "elements" which were set forth in the RFP and evaluated by the agency.

Factor C: Financial Capability of the Offeror

III. DISCOUNTS/CONCESSION FEES/THIRD PARTY COMMISSIONS
(DELETED)⁶

In August 1992, the agency received five proposals in response to the RFP, including proposals from Sato and Carlson. The agency followed a formal source selection process, including evaluation of proposals by a Source Selection Evaluation Board (SSEB) that reported to a Source Selection Advisory Council (SSAC), with the final selection made by a Source Selection Authority (SSA). The negotiation process included discussions with offerors, submission of best and final offers (BAFO), a second round of discussions, and a second set of BAFOs on April 2, 1993. On June 14, the agency awarded the contract to Sato. Carlson timely filed a protest challenging the agency's evaluation of proposals with our Office, which it subsequently supplemented several times.

On October 8, 1993, during the course of Carlson's protests, the agency determined to take corrective action. Offerors, including Sato, were advised as follows:

"[T]he agency has decided to appoint a new [SSAC] and a new [SSA]. Once appointed, the SSAC will receive the existing Source Selection Evaluation Board [SSEB] evaluations and report and will perform its own evaluation and compile a briefing and recommendation for the SSA upon which he or she will make the award decision."

On November 3, the agency sent another letter to the offerors, including Sato, again advising them of the reevaluation and stating as follows:

"The offer submitted by your firm is within the competitive range and is eligible for consideration for award. I am requesting that you provide, in writing, confirmation as to whether or not you desire your offer, as supplemented on April 2, 1993 by your second best and final offer, to be considered for award by the Government.

⁶The RFP gave equal weight to proposed discounts/concession fees and third party commissions derived from official and leisure travel. Stated differently, it was obvious from the terms of the solicitation that each offeror's entire rebate, both from official travel (to be paid to the Treasury) and from leisure travel (to be paid to the local MWR Fund), would be evaluated to determine the most advantageous offeror from a price/cost standpoint.⁶

Negotiations will not be conducted with any firms in the competitive range. Additionally, firms within the competitive range will not be permitted to make changes to their proposals. Your decision to request consideration for award at this time should be based solely on your offer as previously submitted to the Government."

Sato did not file a protest against the corrective action (reevaluation of proposals) taken by the agency. Instead, in a letter dated November 5, it responded that it did want its proposal considered for award under the reevaluation process.

The SSAC conducted its reevaluation during the next several months and briefed the SSA.⁷ On April 19, 1994, approximately 7 months after the agency's initial decision to take corrective action, the agency awarded the contract to Carlson as the technically superior offeror. This protest, supplemented at various times, followed.

ALLEGEDLY IMPROPER SOLICITATION TERMS

Sato argues that, as structured, the solicitation and any award under the solicitation violate the laws governing the expenditure of appropriated funds. Sato states that appropriated funds will be used to subsidize and support NAFIs because the agency has improperly combined official and leisure travel services "under the rubric of a single procurement" under which contractors are invited to subsidize their contribution to the MWR funds with proceeds derived from services relating to official government travel.⁸ According to Sato, a potential contractor, by

⁷While the new SSAC considered the previous SSEB' evaluation results, it also reviewed the respective proposals of Sato and Carlson in conducting its reevaluation following the agency's decision to take corrective action. Contrary to the protester's arguments, we know of no law or regulation which would preclude the evaluators from evaluating the competing proposals themselves as part of the reevaluation/corrective action process. The issue remains whether the reevaluation itself was reasonable and fair, and consistent with the terms of the solicitation.

⁸As noted above, the RFP required the successful contractor to pay a portion of fees for official travel to the United States Treasury, and a portion of fees for leisure travel to the local MWR Fund. Sato believes that this combination of official and leisure travel in one procurement will result in "diversion of funds derived from appropriated accounts into quasi-private NAFIs [which] is illegal."

proposing to pay a disproportionately higher percentage of concessions derived from leisure travel as compared to the percentage to be paid from official travel concessions, cannot be effectively prevented from subsidizing contributions to the MWR funds with money that properly should be received by the United States Treasury," Sato argues that this practice violates the Miscellaneous Receipts statute, 31 U.S.C. § 3302(b) (1988), which generally requires a government official receiving money for the government from any source to deposit that money in the United States Treasury, because the leisure concession fees are "money for the government" and "are nothing less than payment in exchange for the exclusive right to occupy the government office space set aside for the CTO contractor, to utilize government services associated with that office space, and to operate as the Army's exclusive on-site travel agent."

Sato also argues that the agency's combined approach to procuring travel services is unlawful because it permits leisure travel factors to influence and possibly control the selection of a contractor in violation of the Competition in Contracting Act, 10 U.S.C. § 2305(b)(4)(B) (Supp. V 1993) (requiring award to the offeror whose proposal represents the best overall benefit to the government). Sato states that the agency source selection plan identified and described evaluation factors and subfactors to be used in selecting an awardee without distinguishing between the relationship of these factors to official travel services versus their relationship to unofficial travel services, or without distinguishing whether the United States Treasury or the local MWR funds would receive the money. Here, we simply note that the combination of official and leisure travel in one procurement and the agency's intent to evaluate them on a combined basis, giving leisure travel substantial weight, was apparent on the face of the solicitation.

Recognizing that our Office would usually dismiss these allegations as untimely, see 4 C.F.R. § 21.2(a)(1) (1994)

⁹In this regard, Sato states that its price proposal offered the best value to the United States Treasury (that is, exclusive of fees paid to the MWR Funds for leisure travel) because it proposed to pay [DELETED] more to the United States Treasury than did Carlson. Carlson was evaluated by the agency as the lower-priced (higher rebate) offeror considering both official and unofficial rebates as required under the terms of the solicitation. Specifically, under the DTR-5 contract, Carlson proposed to pay the agency [DELETED] more than the total fees, rebates, and commissions offered by Sato.

(protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed before the time set for receipt of proposals), Sato argues that for various reasons our Office should invoke the "significant issue" exception which allows consideration of untimely protests "where it is determined that a protest raises issues significant to the procurement system," 4 C.F.R. § 21.2(c). Sato extensively argues that the issue here (alleged unlawful combination of official and unofficial travel with resulting diversion of appropriated funds) is of widespread interest to the procurement community, and that a decision by our Office would have a significant impact on the future structure of the travel services marketplace and will affect the future status of smaller companies engaged in meeting the government's travel service needs. Finally, Sato also states that our Office has never before considered the issue presented by this protest so that the case is one of first impression.

Since both grounds of protest concern alleged improprieties apparent on the face of the solicitation, we dismiss them as untimely filed. 4 C.F.R. § 21.2(a)(1). Even if one or both issues were "significant" within the meaning of our Regulations, and not previously considered, we would not invoke the exception where the protest was filed more than 1 year (here, approximately 2 years) after the time it should have been filed. See Sabreliner Corp., B-221857, Apr. 29, 1986, 86-1 CPD ¶ 414. SATO elected to compete under the initial solicitation's fee schedule and evaluation scheme. It cannot now allege flaws in that process.

Additionally, the issues raised in this protest are identical to those raised in Scheduled Airlines Traffic Offices, Inc., 73 Comp. Gen. ____ (1994), 94-2 CPD ¶ 107. In that decision, issued after Sato's protest was filed, we determined that it was proper for the terms of a solicitation to require the payment of concession fees by a contractor to a NAFI where the solicitation, as here, requires strict accounting by the contractor to keep official and unofficial travel funds separate and where, as here, the required payments to the NAFI are derived solely from travel paid by travelers' personal funds. We also determined that solicitation terms providing for the evaluation of leisure travel services as a significant factor in the award determination were reasonable since the provision of unofficial travel services promotes the morale, welfare, and recreation of the agency's personnel and thus provides a bona fide benefit to the agency in fulfilling its mission.

Since the issues raised by Sato in this protest are identical to those we resolved in our recent decision, we

see no useful purpose to be served by our further consideration of them. Wallace O'Connor, Inc., B-227891, Aug. 31, 1987, 87-2 CPD ¶ 213; Cryptek, Inc., B-241580, Feb. 12, 1991, 91-1 CPD ¶ 156; Government Contract Advisory Servs., Inc., B-255918; B-255919, Mar. 8, 1994, 94-1 CPD ¶ 181.¹⁰

ALLEGEDLY IMPROPER DISCUSSIONS

Sato initially argued that the new SSAC and SSA, during their reevaluation, improperly relied upon and were influenced by the extensive protest arguments advanced by Carlson in its earlier protest and that Sato did not have the same opportunity to explain its proposal, contrary to the axiomatic rule that all offerors must have equal opportunity to engage in discussions with agency officials during the course of a negotiated procurement. See, e.g., Keystone Eng'g Co., B-228026, Nov. 5, 1987, 87-2 CPD ¶ 449. Sato stated that Carlson "had been afforded the opportunity, through the protest process, to elaborate upon and supplement the supposed real meaning" of its proposal. Sato cited numerous instances where the new SSAC allegedly changed the conclusions of the original SSAC to the benefit of Carlson based on Carlson's protest submissions which explained what Carlson intended in its proposal, including the areas of staffing plan, leisure travel marketing, automation features, and customer incentives.

In its report, in response to these allegations by the protester, the agency explains that its legal staff

¹⁰In view of our earlier decision, we also dismiss Sato's allegation that one of three members of the agency's evaluation team had a conflict of interest because he was a "NAFI employee" (of the Army Morale, Welfare, and Recreation Fund (AMWRF)) whose organization stands to receive direct payments of leisure travel concession fees from at least four DTR-5 sites. The agency explains that no concession fees resulting from the DTR-5 contract will be paid to AMWRF since agency policy requires concession fees to be paid to the MWR Fund of the local installation where the income is generated, not to the AMWRF. Although no MWR Funds currently exist at four of the locations listed in the RFP, fees will be paid to the local MWR Fund at these locations when they are established. Further, since we have determined in our recent decision that the role of NAFIs relates directly to the mission of the agency and provides direct benefits to the agency, and since the RFP here provided for a combined evaluation of official and unofficial travel services, we think it was entirely appropriate for the agency to have one member of the evaluation team who represented NAFIs.

"prepared an extract of alleged facts arising out of the Carlson protest, and made it available to the reevaluation staff."¹¹ The agency states that the factual extract list was reviewed by the new SSAC after the initial reevaluation, but before its comparative analysis; that the new SSAC concluded that the extract was of little value and that its reevaluation was squarely based on the proposals themselves; and that this extract of facts was the only "protest record" reviewed by the reevaluation team.

In response,¹² Sato argues that the reevaluation team was influenced in favor of Carlson by the factual extract. Sato gives examples of items of fact in the extract which correspond to evaluation conclusions by the new SSAC which benefitted Carlson. For example, one alleged new fact in the extract highlighted the fact that Carlson's accounting clerks were cross-trained [DELETED] while Sato's corresponding associate agents [DELETED]. While not denying that this was an accurate fact, Sato argues that until the extract "brought Carlson's allegations to the new SSAC's attention, the new SSAC had no basis to discount [Sato's untrained personnel]." Sato makes similar arguments in the areas of customer incentives, automation features, and use of certain proposal "discriminators."

In our view, the reevaluation team did not engage in unfair discussions with Carlson during its reevaluation of proposals. In the first place, Carlson's arguments during its protest about the merits of its proposal as submitted added nothing new to the proposal but instead alleged that procurement officials ignored or miscalculated relevant material, already contained in the proposal, and therefore did not conduct a proper evaluation. Second, contracting officers who are source selection officials and other agency

¹¹The agency explains that each factual extract was one or two sentences in length. As an example, the extract stated as follows:

"I. Alleged Fact/New Fact (Referenced by document date, page)

"SSA determined that [Sato's] [DELETED] were superior to [Carlson's] [DELETED]. Carlson Supplement dated 7/23/93, pp. 9-10; Carlson Letter dated 9/28/93, pp. 21-23.

"[Carlson:] For evaluation purposes, [Carlson's] [DELETED] are equal to [Sato's] [DELETED]. Duties of these two positions are virtually identical."

officials are, as a matter of routine administrative practice, generally involved with and exposed to a protest record after a protest concerning a negotiated procurement is filed with our Office; in the event our Office recommends reevaluation or in the event of corrective action by the agency, as a general rule the participation of agency officials in proposal reevaluation is not subject to question. Third, as mentioned above, the record shows that only the material extracted from Carlson's protest was looked at by the reevaluation team and was found to be of little or no value.

We also note that the extract of facts prepared by the agency's legal counsel was prepared in anticipation of a protest of the reevaluation in order to help the evaluators avoid "pitfalls" and "errors" in the reevaluation. We think that the agency counsel, in preparing this extract, was simply performing his duty to help the reevaluation team avoid errors based on his review of the protest record. This protest ground is therefore denied.

EVALUATION OF PROPOSALS

We will review an evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. See Space Applications Corp., B-233143.3, Sept. 21, 1989, 89-2 CPD ¶ 255. The determination of the merits of proposals is primarily a matter of administrative discretion which we will not disturb unless the evaluation was arbitrary or unreasonable. See Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable. Logistics Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173.

Here, as a preliminary matter, we note that Sato, at several points in its submissions, argues that its proposal was most advantageous to the government based, in part, on the assumption that Sato was the low offeror (high rebate offeror) pursuant to Sato's belief that only official travel rebates to the government should have been evaluated. However, as discussed above, since Carlson was in fact the low offeror under the terms of the RFP because its proposed fees for official and leisure travel were the highest proposed by any offeror, in order to overcome Carlson's fee advantage, Sato must show that its proposal should have been evaluated by the agency not just as essentially technically equal to Carlson's proposal but as overall technically superior to Carlson's proposal.

Sato asserts numerous challenges to the agency's choice of Carlson's proposal as most advantageous to the government. Some, such as Sato's contention that Carlson's relationship with the Radisson hotel chain will allow it to skew its fee payments to the detriment of the government, are unsubstantiated and appear therefore to be based only on Sato's speculation that Carlson might be able to take such action. The majority of Sato's contentions reflect its disagreement with the agency's evaluation but do not demonstrate that the evaluation was unreasonable.

The evaluation areas challenged by Sato and our conclusions concerning them are discussed below. We have also generally reviewed the reasonableness of the agency's evaluation of the competing proposals in all of the RFP's evaluation factors, including those not specifically challenged by Sato, and discuss relevant aspects of our overall review as well.

Technical Evaluation Area

Factor A: project operations

1. Staffing Plan

Sato makes numerous arguments concerning the accuracy of the evaluation of the Full Time Equivalents (FTEs) proposed by each offeror, including arguments concerning a last-minute recalculation by the agency of FTE reservation agents for Sato.

The Staffing Plan was the most important subfactor under the most important factor in the RFP's Technical Evaluation Area. The evaluators generally found that Carlson's proposal was superior, offering more dedicated staff (in terms of FTEs) than Sato's proposal.¹² Specifically, the agency found that Carlson offered a total staff of [DELETED] FTEs, while Sato offered [DELETED] FTEs. The evaluators also found that Carlson offered [DELETED] FTE¹³ reservation agents, while Sato offered [DELETED] FTE reservation agents. The agency also found that Carlson offered superior staff enhancements.

¹²The RFP defined FTEs as 40 hours per week, regardless whether those hours are worked by one employee or several part-time employees.

¹³This figure is substituted for the incorrect figure of [DELETED] FTE reservation agents appearing in the SSAC's comparative analysis report. The higher figure was attributed by the agency to a clerical error.

It is undisputed that Carlson offered a total staff of [DELETED] FTEs. Sato disputes the evaluators' findings that it offered total staffing of [DELETED] FTEs; it states that it offered a total staff of [DELETED] FTEs.¹⁴ While not free from doubt, and while Sato's proposal as a whole may have been less than clear, for purposes of our decision, we will accept Sato's calculation; we note that, even under Sato's version, the protester offered fewer total personnel than Carlson.

As stated above, the agency found that Carlson offered a total reservation staff of [DELETED] FTEs. Sato argues that the evaluators should have reasonably found this figure to be [DELETED] FTEs, a reduction of [DELETED] FTEs; we accept this latter figure.¹⁵ Sato's own BAFO was unequivocal as

¹⁴To arrive at a figure of [DELETED] FTEs, the evaluators relied on Sato's technical proposal which stated that [DELETED] full-time and [DELETED] part-time personnel were offered in support of the total contract requirement. However, Sato's proposal did not show the hours normally worked by its part-time employees. The evaluators therefore assumed that all [DELETED] of Sato's part-time employees would work half-time, or 20 hours per week, as Carlson had proposed for its part-time employees. Sato argues that this analysis is flawed because its BAFO clearly proposed [DELETED] FTE reservation clerks, [DELETED] FTE Site Managers, and [DELETED] personnel from its Regional Service Center dedicated to the contract, for a total of [DELETED] FTE personnel.

¹⁵As a preliminary matter, Sato argues that Carlson's total reservation clerk FTEs include [DELETED] Site Supervisors who, while fully trained as reservation clerks, will be performing administrative functions for an unspecified amount of time. Sato states that the entire [DELETED] supervisors should be subtracted from Carlson's total reservation FTEs. The record shows that, in its proposal, Carlson made a commitment that "[i]n the event the management duties of a Site Supervisor exceeds [DELETED] of his or her weekly time, [Carlson] will add an additional reservation clerk." We therefore find a definite commitment of at least [DELETED] of the time of Carlson's Site Supervisors for reservation clerk duties. In this regard, Carlson essentially argues that these Site Supervisors can work more than 40 hours a week and should be fully credited as reservation clerks. However, we find that Carlson only legally obligated itself to dedicate [DELETED] of the time of these [DELETED] Site Supervisors to reservation clerk duties. Accordingly, we think a reduction of [DELETED] FTEs ([DELETED] of the [DELETED] Site Supervisors' time) was required from Carlson's total reservation clerk FTEs.

to the total dedicated reservation clerk FTEs that it was offering;

"Of the total number of employees who will function as Travel Counselors, the breakdown of FTE official and leisure agents is as follows: [DELETED] official, [DELETED] leisure, and [DELETED] combined official and leisure agents [total equals [DELETED]]."¹⁶

We therefore conclude that the agency was correct in determining that Carlson offered more staffing--here, reservation agents ([DELETED] FTEs)--than Sato did in its proposal ([DELETED] FTEs).

Additionally, Carlson, in its proposal offered [DELETED] FTE "Accounting Clerks" who were not required by the solicitation. In addition to their primary accounting functions, each of the accounting clerks is fully trained as a reservation agent. Thus, the agency determined that they provide an available reserve of trained personnel to respond to travel surges and unexpected contingencies. They are also available, in addition to performing many other functions, as routine back-up for the regular reservation clerks in the event of unexpected absences or temporary problems. The evaluators here found that Sato's corresponding "Associate Agents" were "diminished" in value because they were completely untrained as reservation clerks. The agency's determination that this feature (trained accounting clerks) was a significant positive feature of Carlson's proposal was reasonable, in our view.

Finally, we note that Carlson offered to provide an additional FTE reservation agent for each [DELETED] in

¹⁶The protester itself repeatedly stated during the course of this protest that it had offered [DELETED] reservation agent FTEs. The agency, in the last supplemental report filed in this protest, recalculated upward Sato's reservation agent FTEs by adding "management personnel who also perform the reservation function." The record does not support this recalculation. In addition to its specific commitment of reservation agent FTEs quoted above, Sato, in its proposal, provided a detailed breakdown for each location which listed the time devoted by anyone to reservation duties (including site managers and part-time employees). Sato's total is [DELETED] "Total FTE Travel Counselors Proposed." Sato also provided another section in its BAFO in which it listed each FTE Travel Counselor proposed for each DTR-5 site by official, leisure or combined travel duties; again, the "Grand Total FTE Travel Counselors Proposed" was [DELETED].

official travel volume; Sato only proposed one new FTE for each [DELETED] in official travel volume. Carlson also offered to provide one additional FTE reservation agent for each [DELETED] in leisure travel sales, while Sato offered to provide an additional agent for each [DELETED] in leisure travel sales.

Accordingly, the agency's determination that Carlson's proposal was significantly technically superior in the most important subfactor of the most important evaluation factor was reasonable, in our view.¹⁷ In this regard, we have upheld agency determinations of technical superiority of a technical proposal in the manning evaluation area with less factual support in the record than here. See John Brown E & C, B-243247, July 5, 1991, 91-2 CPD ¶ 27.

2. Operations Plan

The RFP contained numerous elements to be evaluated under this subfactor, including the flexibility of staffing and work flow procedures to accommodate fluctuating work load and short notice time frames under emergency services and peak travel periods; the adequacy of each offeror's work flow procedures for providing travel cost estimates, processing travel orders, inputting funding data, ticketing, and providing itinerary/invoices and boarding passes to travelers; sufficiency of policies and procedures for guarantee of services; capabilities for arranging all types of non-air travel services and accommodations for both official and leisure travelers; procedures for processing Lost Ticket Applications (LTA); procedures for processing reservation changes, ticket issues and reissues, and refunds for services processed by any CTO; capability for providing domestic and international travel services, including air, rail, bus, water, lodging, vehicle rentals, passport and visa assistance; and capabilities to provide telephone support to CTOs to include adequacy of equipment and its distribution to CTOs.

The SSAC's major findings under this subfactor follow. First, the SSAC determined Carlson to be superior under this subfactor [DELETED].

[DELETED]

[DELETED]

¹⁷Our conclusion that the agency reasonably determined Carlson's proposal to be technically superior was reached irrespective of the agency's additional consideration of Carlson's (the incumbent) required staffing being "in-place" as an added benefit of Carlson's proposal.

[DELETED]

[DELETED]. We therefore agree with the contracting officer that the "SSAC found distinction in Carlson's Emergency Service Center which presented resources and capability not matched in [Sato's] offer."¹⁸

Concerning the agency's finding that Carlson's emergency travel personnel had more extensive training, Sato argues that Carlson's proposal, while providing for annual training, including "Government related training," for the travel counselors, should not have received an advantage because Carlson does not indicate that the annual training "is tailored [to the government's] emergency travel requirements and does not distinguish the training provided to its emergency services personnel from the annual training that Sato provides its own travel counselors."

Carlson proposed a full [DELETED] weeks of training for each of its Emergency Service Center travel counselors annually, including [DELETED] hours dedicated to government related travel. In contrast, Sato's personnel generally receive only [DELETED] days of training per year. We think it was reasonable for the agency to assume that the substantially greater amount of training proposed by Carlson would in all likelihood have meant a greater amount of emergency response training than as proposed by Sato. The advantage found by the SSAC with respect to emergency response and training was therefore reasonable, in our view.

The next most important element listed under the subfactor, Operations Plans, was the adequacy of offeror's work flow procedures. The SSAC determined that Carlson submitted the best offer under this element, [DELETED].

We find nothing in the record, including the protester's submissions, that negates this finding by the evaluators.

¹⁸The contracting officer states that Carlson also offered [DELETED] portable computer terminals and [DELETED] portable printers, maintained in storage and immediately available to support emergency requirements at any location. We agree with the contracting officer that similar expansion capability was not presented by Sato. Sato is correct in its statement that this information was not contained in the SSAC or the SSA's record of deliberations. However, while we afford more weight to contemporaneous documents in reviewing an evaluation, we consider additional evidence and arguments presented by an agency in support of its position during the protest process. See Burnside-Ott Aviation Training Ctr., Inc.; Reflectone Training Sys., Inc., B-233113; B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158.

Based on our review of the record, we find the agency reasonably found and credited Carlson [DELETED].

[DELETED]. Sato has not attempted to rebut these findings. We conclude that the agency reasonably determined Carlson's proposal superior in these areas.¹⁹

Finally, in the element concerning capability of arranging all types of air and non-air transportation and accommodations and services (official and leisure), the agency found Carlson and Sato to have been essentially equal. [DELETED]. None of the parties has contested this determination.

Under this subfactor, Sato argues that several other elements were misevaluated such that Carlson should not have been given an advantage. [DELETED]. Even assuming that Carlson should not have been afforded an advantage in these elements, we would still conclude that the agency reasonably determined that Carlson had submitted a technically superior proposal under the second most important subfactor, Operations Plans, under the most important evaluation factor.

3. Quality Control Plan

Under this subfactor, the agency stated in the RFP that it would evaluate the sufficiency of the quality control plan; the adequacy of the methodology for handling customer complaints; internal control procedures, and the adequacy of procedures to ensure a "proactive" approach to quality service.

The agency evaluators found that Carlson's proposal offered features unmatched by other offerors. [DELETED]

Concerning the alleged specificity by which Carlson committed itself to using [DELETED], we think the agency can reasonably assume that Carlson will act in good faith and deliver on its representation even though its specific commitment to do so could have been stated more exactly. We

¹⁹The agency also gave Carlson credit because it proposed to keep [DELETED] open on Saturday. In contrast, Sato promised to expand office hours "if necessary in accordance with mutual agreement between the CTO Site Manager" and the Contracting Officer's Representative (COR). While the difference in the proposals on this point appears negligible, from the point of view of the evaluators' subjective judgment, Carlson's proposal could reasonably be deemed to show some added initiative. We therefore conclude that the agency's finding is supportable.

agree with the contracting officer that there are real benefits to the [DELETED] procedure; [DELETED]:

[DELETED]

The contracting officer also reports that the Army's Ethics Counselor has advised the SSAC that the Carlson proposal for [DELETED] was legally acceptable. As for [DELETED], the extent of any legal limitations on the use of such a device is for the Army, not Sato, to determine. In sum, we think that the agency reasonably determined that Carlson's proposal was technically superior under the Quality Control Plan subfactor, the third most important subfactor under this factor.²⁰

Summary: Factor A

Under the most important factor, Project Operations, of the most important Technical Evaluation Area, we find that the agency reasonably determined that Carlson's proposal was significantly technically superior to Sato's proposal.

Factor B: hardware and software capabilities

1. Back Office Automation, Reconciliation and Management Information Reports

²⁰The least important subfactor under the Project Operations factor was "Transition Plan," under which offerors were to provide for an orderly transfer of responsibilities from the incumbent to the successor contractor in the required time frame. The agency rated Carlson's transition plan as superior because, among other things, the agency found that Carlson and its personnel were already in place and that Carlson offered to begin contract performance in advance of the anticipated start date. As Sato argues, the RFP set forth, for each travel office location, the dates that contract performance was expected to start, and required that the transition plan be adequate to meet that requirement. We agree with Sato that nowhere in the RFP, as reasonably read, was there any provision for affording an offeror credit for being able to transition earlier than required. The agency therefore did not adhere to the RFP's evaluation criteria in granting Carlson credit for early performance. We therefore conclude that the agency had no reasonable basis to judge proposals under this subfactor as other than essentially equal as between Sato and Carlson. Since this subfactor was the least important subfactor, and since the offerors are still essentially equal under this subfactor, our finding here does not affect our conclusion concerning the agency's ultimate selection of Carlson.

Under this subfactor, the RFP stated that the agency would evaluate each offeror's ability to capture various data in the computer system and to manipulate these data in a variety of formats. The agency would also evaluate back-office system capability to produce reconciliation reports.

The agency evaluators found Carlson's proprietary automation system as fully capable of supporting all requirements. [DELETED]. The agency determined Sato's proposal to be equal to Carlson's proposal [DELETED]. The agency found that both proposals contained features above the minimum requirements and with similar benefits. Accordingly, the agency concluded that the proposals of Carlson and Sato "were rated equal."

With the exception of an unsupported allegation concerning problems Carlson allegedly had on an unrelated contract, Sato does not challenge this rating by the agency. Based on the record, we find reasonable the agency's conclusion that both proposals were equal under this subfactor.

2. Automation Features

Under this subfactor, the agency evaluated each offeror's hardware and software enhancements and their benefit to the government, including the offeror's plan for distribution of computer terminals to contractor personnel to provide travel services and to government COR to monitor performance, as well as the number of airlines with which the offeror proposes to provide services. Software would be evaluated for user friendliness, flexibility of querying management information data, and proposed distribution of software.

The agency found Carlson's proposal to be superior [DELETED]. The protester here has presented no substantive evidence to rebut the major findings of the agency regarding its evaluation under this subfactor. Based on the record, we find that the agency reasonably evaluated Carlson as superior under this subfactor.

3. Computer Reservation System

Under this subfactor, the agency evaluated the offerors' computerized reservation and ticketing services, including the soundness of the offeror's method to transfer data from the incumbent's system; viability of procedures in case of failure; and effectiveness of training plan. [DELETED]

We find that the agency reasonably found that Sato submitted the technically superior proposal for this subfactor.

Summary: Factor B

Under the first and most important subfactor, both offerors were equal; under the second subfactor, Carlson was superior; under the least important subfactor, Sato was rated superior. We conclude that for the entire factor, Carlson was slightly superior overall.

Factor C: subcontracting

For this factor, we quote from the SSAC's determination:

"[Sato's] offer was rated as above the other offerors for this factor based on [DELETED]

"Consideration was given to [Sato's] experience in subcontracting particularly with regard to [its] experience with the Defense Travel Region 3 contract. After a review of the [Sato] plan for subcontracting in Defense Travel Region 5 and a review of the record regarding [Sato's] subcontracting past performance in the Defense Travel Region 3 contract, the SSAC is persuaded that [Sato] made reasonable efforts to meet [its] contract commitments for Defense Travel Region 3 and has a thorough well integrated approach for meeting [its] stated subcontracting goals for Defense Travel Region 5."

We therefore again conclude that the agency properly gave full credit to Sato as being the technically superior offeror under this third factor.²¹

Conclusion With Respect To The Technical Evaluation Area Of The RFP

Given Carlson's technical superiority in staffing plans, operations plans, and its quality control plan under factor A, Project Operations, and given its slight advantage in factor B, specifically, in automation features, we conclude that the agency reasonably decided that Carlson submitted the generally superior technical proposal in the most important evaluation area, designated by the RFP as "Technical Evaluation Area."

²¹We do note that Carlson also met all requirements under this factor.

Business Management Area²²

Factor B: organization

1. Organizational Structure

Under this subfactor, the agency evaluated appropriateness of each offeror's work force size, structure, managerial accountability, and availability of sufficient personnel with the required skills, experience, and education to ensure "proactive" contract performance.

[DELETED]

Since Sato does not dispute the agency's comparison of the [DELETED] qualifications of its key personnel with Carlson's key personnel, we think the agency reasonably rated Carlson's proposal as superior in this subfactor.

2. Current and Past Experience

We only need note under this subfactor that the record shows that both Sato and Carlson are highly experienced travel services contractors that can easily and successfully perform the requirements and that the selection of one over the other in any given procurement depends on the amount of resources each decides to dedicate in their proposals to a specific government requirement. The agency here rated both offerors equal in this area; we find nothing persuasive in the record to suggest otherwise.

3. Appearance Standards for Employees

Again, we need only note here that both Sato and Carlson's proposals contained fully developed information on employee dress (uniform) and employee identification and grooming

²²As stated above, the Technical Area was of "greatest importance" under the terms of the RFP. The Business Management Area was therefore of secondary importance. In this decision for the reasons stated below, we discuss only factors B and C, "Organization" and "Financial Capability of the Offeror," respectively. Concerning Factor A, Marketing, with its subfactors of approach/plan for marketing travel services, and customer incentives, the agency found Sato's proposal to be the best proposal. However, even if maximum credit were to be given to Sato as having the best proposal under this factor, our final conclusion as to the propriety of the selection decision would not change. We again note that the agency found that Carlson met all requirements under this same factor.

standards. The agency rated both offerors equal; we have no basis to disturb this finding.

Summary: Factor B

Primarily because of the higher [DELETED] standards of Carlson's employees, we find the agency's determination that Carlson submitted the technically superior proposal under this factor to have been reasonable.²³

Conclusion With Respect To Business Management Area Of The RFP

Because of its superior business management and marketing plan, Sato was found by the evaluators to be technically superior in factor A, Marketing. Carlson was found to be technically superior in factor B, Organization. We assume that Sato and Carlson were essentially equal with respect to factor C, Financial Capability. We conclude that the record supports the view that Sato submitted the overall superior proposal under the Business Management Area of the RFP.

²³Under Factor C, the agency evaluated essentially the documented stability of the current financial condition of each company and the sufficiency of financial resources which would be available to perform the contract. The agency found Carlson's proposal to be superior based in part on its finding that Carlson [DELETED]; had a [DELETED] line of credit, while Sato had a line of credit of [DELETED]; and that Carlson has a current equity of [DELETED] as compared to Sato's equity of [DELETED]. For purposes of this decision, we will assume, as Sato argues, that the two firms were essentially equal for this factor. Additionally, Sato raises some miscellaneous issues. Sato argues that the agency should have assigned a risk to Carlson's offer based on Carlson's agreement to rebate to the government all commissions received from third party sales (for example, car rentals and hotels). This allegation is simply an allegation that Carlson is "bidding below cost." We do not consider such allegations. See Robocom Sys., Inc., B-244974, Dec. 4, 1991, 91-2 CPD ¶ 513. Sato also alleges that because of Carlson's affiliation with the Radisson Hotel chain, Carlson is in a position to manipulate the commissions to be rebated to the government. As discussed above, this allegation is not substantiated and appears to be based on speculation. In any event, we will not assume bad faith performance in the future by a successful offeror.

FINAL CONCLUSION

The agency's determination that Carlson's proposal was most advantageous to the agency in terms of price was reasonable. The agency's evaluation of Carlson's proposal as overall technically superior to that of Sato also was reasonable. Accordingly, the determination that Carlson's proposal represented the best value to the government is not subject to question.

The protest is dismissed in part and denied in part.

Robert P. Murphy
Acting General Counsel