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Decision

Matter of: CapRock Government Solutions, Inc.; ARTEL, Inc.; Segovia, Inc.

File: B-402490; B-402490.2; B-402490.3; B-402490.4; B-402490.5

Date: May 11, 2010

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DIGEST

1. Protests challenging the agency's evaluation of the awardee's past performance are denied where the agency's assessment of the performance record of the awardee's proposed partners was consistent with the terms of the solicitation.
2. Protests challenging the agency's evaluation of offerors' technical proposals are denied where the evaluation was consistent with the terms of the solicitation. The fact that the source selection authority reached different conclusions than lower-level evaluators is unobjectionable because the conclusions were reasonable and adequately documented.
3. Protest that the agency failed to address an unequal access to information organizational conflict of interest arising from the awardee's alleged knowledge of other offeror's prices is denied where the information in dispute was not obtained as part of the awardee's performance of a government contract.

DECISION

CapRock Government Solutions, Inc.,¹ of Fairfax, Virginia; ARTEL, Inc., of Reston, Virginia; and Segovia, Inc., of Herndon, Virginia, protest the award of a contract to Intelsat General Corporation, of Bethesda, Maryland, under request for proposals (RFP) No. HC1013-09-R-0001, issued by the Department of Defense, Defense Information Systems Agency (DISA), for performance of the Navy's Commercial Broadband Satellite Program (CBSP). CapRock, ARTEL, and Segovia challenge DISA's evaluation of the offerors' technical proposals and past performance. In addition, CapRock argues that the agency's price evaluation was flawed, and that the selection decision failed to adequately consider offerors' proposed prices in a manner consistent with the RFP, while ARTEL argues that award to Intelsat was improper because of an organizational conflict of interest (OCI), and because the agency's affirmative determination of responsibility was based upon Intelsat's corporate parent, rather than the awardee itself.

We deny the protests.

BACKGROUND

The RFP was issued on March 2, 2009, and sought proposals to support the Navy's CBSP. The purpose of the acquisition was to provide satellite capacity in C, Commercial X, and Ku frequency bands, as well as terrestrial connectivity, and to meet the Navy's increased need for satellite throughput. Statement of Objectives (SOO) ¶ 1.1.

The CBSP architecture consists of three segments or parts: user terminals, space, and shore. The terminal segment consists of the mobile and fixed communications terminals on Navy ships or land-based locations. Id. ¶ 1.2. The space segment consists of the satellite resources required to provide a connection between the user terminal segment and the shore segment, via one of the three types of bandwidth discussed above. Id. ¶ 3.2.1. The shore segment consists of contractor-provided land-Earth stations (LESEs), which receive transmissions from terminals via the satellites of the space segment, and provide terrestrial connectivity, known as backhaul, from the LESEs to the Navy-owned telecommunications networks, known as points of presence (PoP). Id. ¶ 3.2.2. These three segments comprise the end-to-end service that allows a ship-based user to communicate with land-based Navy networks. The RFP only addresses commercial services for the space and shore segments. Id. ¶ 1.2.

¹ At the time it submitted its proposal, and during the procurement, CapRock was known as Arrowhead Global Solutions. Protest at 1.

The SOO identified a number of objectives and requirements for the space and shore segments and for contract performance. For example, the SOO identified as objectives for the space segment “assured access”² to satellite resources in commercial C, X, and Ku frequency bands and “frequency band portability” that allows Navy operators of multi-band user terminals to select and/or change frequency bands and/or satellites. SOO ¶ 3.2.1. With respect to the shore segment, offerors were informed that they must provide LES services in sufficient quantity and in appropriate geographical locations to interface with the space segment. Id. ¶ 3.2.2. The SOO identified requirements for end-to-end service, including identifying a bit error rate and an “operational availability” of 97 percent, with no more than a 1.4 second delay or latency for each end-to-end service provided. Id. ¶ 3.2.1. The SOO also identified objectives for required operational support for the CBSP. Id. ¶ 3.3.

Detailed instructions were provided for the preparation of proposals. Among other things, offerors were instructed that their technical/management proposals must include a performance work statement (PWS) and quality assurance surveillance plan that delineate how the proposal will be implemented and performance will be assured. RFP attach. 6, ¶ 4.

The solicitation anticipated award of a single indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base year and four option years. The RFP advised offerors that proposals would be evaluated on the basis of the following three factors: price, technical approach,³ and past performance. RFP attach. 5, ¶ 4. The technical approach factor had six subfactors, which were listed in decreasing order of importance: (1) space segment; (2) end-to-end service; (3) shore segment; (4) operational support; (5) security and information assurance; and (6) management

² “Assured access” was defined to mean that satellite resources would be available to the user terminal segment when, where, and for as long as required. SOO ¶ 3.2.1.

³ The RFP provided for the assignment of color ratings of blue, green, yellow, orange, or red for the evaluation of proposals under the technical approach factor. RFP attach. 5, ¶ 7. A blue rating reflected a proposal that exceeded requirements, contained numerous strengths of direct benefit to the government, and any weaknesses were considered insignificant with no apparent impact to the program. A green rating reflected a satisfactory proposal that met requirements, contained some strengths that offset weaknesses, and contained a few weaknesses that were correctable with minimal government oversight. A yellow rating reflected a minimally adequate proposal with no significant strengths and no significant weaknesses. An orange rating reflected an inadequate proposal, while a red rating reflected a highly inadequate proposal.

approach.⁴ Id. ¶¶ 4, 5. For purposes of award, technical approach was stated to be “more important” than past performance, and, when combined, those two factors were “significantly more important than price.” Id. ¶ 5. The RFP further added that “[t]he importance of price as an evaluation factor will increase with the degree of equality of the proposals in relation to the remaining evaluation factors.” Id.

The RFP stated that the quality of offerors’ past performance would be evaluated on the basis of six factors: (1) conformance to contract requirements; (2) standards of good workmanship; (3) schedule; (4) business relations; (5) management of key personnel; (5) management of subcontracts; (6) and record of complying with subcontracting goals.⁵ Id. ¶ 8. In addition to these factors, the agency evaluated

⁴ The RFP further explained that offerors’ technical proposals would be evaluated for strengths, weaknesses, and deficiencies, as follows:

Major strength: Adds a significant benefit to the Government by significantly exceeding one or more threshold requirements. Also is either inherent in offeror’s proposal or will be made a contract requirement through the PWS or a contract clause.

Strength: A strength represents a benefit to the Government for which the proposal goes beyond meeting threshold requirements. Also is either inherent in offeror’s proposal or will be made a contract requirement through the PWS or a contract clause.

Weakness: Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

Deficiency: Deficiency is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. Examples of deficiencies may include a statement by the offeror that it cannot or will not meet a requirement, an approach that clearly does not meet a requirement, or omission of data required to assess compliance with the requirement.

RFP attach. 5, ¶ 7.

⁵ The RFP also provided for the assignment of color ratings of blue, green, yellow, red, and white (neutral) for the evaluation of past performance and advised offerors that past performance would be “evaluated for recency, relevancy, and quality in the context of the technical/management subfactors and scope of work.” RFP attach. 5, ¶ 8. With regard to relevance, the RFP stated that a past performance reference was
(continued...)

offerors' record of performing tasks relevant to the six technical approach subfactors.

DISA received proposals from five offerors, including Intelsat, CapRock, ARTEL, and Segovia. Proposals were evaluated by the agency's source selection evaluation board (SSEB), which produced a consensus report and briefed the agency's source selection advisory counsel (SSAC). The SSAC accepted most of the SSEB's evaluation conclusions but found that, although four of the five offerors had exceeded the requirements for the end-to-end service subfactor, only CapRock and ARTEL had been assigned strengths by the SSEB. The SSAC recommended assigning strengths for Intelsat and Segovia under the end-to-end service subfactor, and raising those offerors' proposal ratings from yellow to green for this subfactor. Agency Report (AR), Vol. IB, Tab 13, SSAC Memorandum, at 5, 10; see also Supp. AR (SAR) at 13. The SSAC also recommended assigning an additional strength for Intelsat's proposal under the space segment subfactor, but did not recommend revising the awardee's green rating for this subfactor. Id. at 4-5.

The source selection authority (SSA) reviewed the SSEB's and SSAC's evaluations, and performed an independent, integrated assessment of the merits of the firms' proposals, which she detailed in a written selection decision. The SSA concurred with the SSAC's recommendation to assign additional strengths to Intelsat and Segovia's proposals. As relevant here, the SSA also disregarded the SSEB's evaluation of CapRock's proposed price, concluding that the SSEB evaluated an operations support contract line item number (CLIN) in a manner that was inconsistent with the RFP. AR, Vol. IB, Tab 19, Source Selection Decision, at 18.

The final evaluation ratings relied upon by the SSA were as follows:

(...continued)

"highly relevant" when it "involved many of the complexities, size, scope and services required by the SOO," and demonstrated performance of all of the four following requirements: (1) managing commercial satellite bandwidth on a worldwide basis for a single customer; (2) providing end-to-end satellite services for at least 25 terminals concurrently; (3) providing LES services; and (4) performance and/or monitoring of end-to-end services. Id. A past performance reference was "relevant" when it "involved some of the complexities and services required by the SOO," and demonstrates performance of two or more of the following requirements: (1) managing commercial satellite bandwidth on a multi-regional basis; (2) providing end-to-end satellite services for multiple user terminals; and (3) providing LES services or performance and/or monitoring of end-to-end services. Id.

	INTELSAT	CAPROCK	ARTEL	SEGOVIA
TECHNICAL APPROACH	GREEN/ LOW RISK	GREEN/ LOW RISK	GREEN/ LOW RISK	RED/ HIGH RISK
Space segment	Green/ Low Risk	Green/ Low Risk	Yellow/ Low Risk	Orange/ Medium Risk
End-to-end service	Green/ Low Risk	Green/ Low Risk	Green/ Low Risk	Green/ Low Risk
Shore segment	Yellow/ Low Risk	Yellow/ Low Risk	Yellow/ Low Risk	Green/ Low Risk
Operational support	Yellow/ Low Risk	Yellow/ Low Risk	Yellow/ Low Risk	Yellow/ Low Risk
Security and information assurance	Yellow/ Low Risk	Yellow/ Low Risk	Yellow/ Low Risk	Yellow/ Low Risk
Management approach	Green/ Low Risk	Yellow/ Low Risk	Green/ Low Risk	Red/ High Risk
PAST PERFORMANCE	GREEN	GREEN	GREEN	YELLOW
PRICE (in millions)	\$341.5	\$304.1	\$345.5	\$348.2

AR, Vol. IB, Tab 19, Source Selection Decision, at 4-18.

The SSA concluded that Segovia’s proposal would not be considered in the price-technical tradeoff evaluation, based on its overall rating of red under the technical approach factor. *Id.* at 18.

As discussed in more detail below, the SSA also found that, despite the equal ratings, Intelsat’s proposal was superior to CapRock’s under the space segment factor, and that CapRock and ARTEL’s proposals were superior to Intelsat’s under the end-to-end service subfactor. *Id.* at 20. The SSA concluded, however, that Intelsat’s advantage over CapRock’s and ARTEL’s proposal for the space segment subfactor was more significant than the other offerors’ advantages over Intelsat under the end-to-end service subfactor. *Id.* The SSA also concluded that, despite equal ratings, Intelsat’s proposal was superior to ARTEL’s under the management approach subfactor. *Id.* at 20-21. The SSA concluded that, overall, Intelsat had the “strongest” proposal under the technical approach factor. *Id.* at 19. With respect to the past performance factor, the SSA found that Intelsat had a higher number of highly relevant contracts and the “strongest overall performance levels.” *Id.* at 21.

In the tradeoff decision, the SSA concluded that Intelsat’s advantages under the space segment and management approach subfactors, and its higher-rated past performance, merited award over CapRock’s higher ratings for the end-to-end service subfactor and its lower price. *Id.* at 22. DISA notified the offerors of the award to Intelsat and provided each offeror a debriefing. These protests followed.

CapRock, ARTEL, and Segovia challenge DISA’s evaluation of the offerors’ proposals and the selection of Intelsat’s proposal for award. We begin our discussion with the challenges to the evaluation of past performance raised by all three protesters, and

then turn to each protester's other arguments. As discussed below, we find no merit to the challenges to the evaluation of the offerors' past performance, and no merit to CapRock or ARTEL's other arguments. With regard to Segovia's challenges to the evaluation of its technical proposal, we think that the record shows that, in light of the protester's relative standing in the competition, there is no basis to conclude that it could have been prejudiced by any of the alleged errors.⁶

The evaluation of an offeror's technical proposal, and its past performance, is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

CHALLENGES TO PAST PERFORMANCE

CapRock, ARTEL, and Segovia all argue that DISA improperly evaluated Intelsat's past performance, and CapRock and ARTEL each argue that their own past performance should have been rated higher. As discussed below, we find no merit to these arguments.

Intelsat submitted six past performance references for itself, and its five teaming partners: Americom Government Services (AGS), Paradigm Secure Communications, SKY Perfect JSAT International, Windward IT Services, and Lunarline, Inc. The SSEB rated three of the references as relevant, and three as highly relevant. AR, Vol. IB, Tab 14, SSEB Final Report, at 39. Of the six contracts, Intelsat was the prime contractor on one of the relevant contracts, and was a subcontractor on all three highly relevant contracts. Intelsat's partners for this proposal, AGS, Paradigm, and JSAT, were the prime contractors on the three highly relevant contracts.

Intelsat's past performance was rated by the SSEB as green based on the assessment of the firm's past performance as either highly relevant or relevant, and because "Intelsat (or one of their partners) demonstrated capability in 6 of the 6 CBPS technical subfactors." Id. The SSA concurred with the green rating. The SSA also

⁶ The protesters raise numerous other collateral issues related to the issues addressed below. We have reviewed all of the arguments raised in the protests and find that none provides a basis to sustain any of the protests.

found that that “Intelsat had the best overall past performance,” because “Intelsat and its partners had the most Highly Relevant efforts (3) and the strongest overall performance levels.” AR, Vol. IB, Tab 19, Source Selection Decision, at 21. In contrast, the SSA noted that CapRock had one highly relevant and four relevant references, and ARTEL had two highly relevant and four relevant references. Id.

All three protesters argue that the agency’s evaluation of the relevance of the awardee’s past performance was unreasonable because Intelsat was the prime contractor for only one of the six references, and was not the prime contractor for any of the “highly relevant” references. In essence, the protesters’ contend that the agency could not have reasonably assigned ratings of highly relevant for past performance references where Intelsat was not the prime contractor; alternatively, the protesters contend that the agency should have discounted Intelsat’s highly relevant ratings with respect to references for which Intelsat was not the prime contractor.

The RFP, however, expressly advised offerors that “[t]he Past Performance evaluation will be based on the prime contractor’s past performance and the past performance of all significant subcontractors or teaming partners.” RFP attach. 5, ¶ 8. Nothing in the RFP indicated that DISA would reserve highly relevant ratings for those contracts performed by the offeror as a prime contractor, nor did the RFP indicate that the agency would treat past performance of the prime contractor as being more important than that of subcontractors or partners. Instead, as described above, the RFP set forth the criteria for evaluating the recency, quality, and relevance of past performance, and stated how these ratings would be used to develop the overall past performance rating.

The record shows that the agency credited both Intelsat and its partners for performance under the highly relevant contracts, and that these references were the basis for the green overall rating, as well as the agency’s judgment that Intelsat had the best overall past performance. AR, Vol. IB, Tab 19, Source Selection Decision, at 21. We think that these judgments were reasonable and consistent with the terms of the solicitation.

CapRock raises numerous additional objections to DISA’s evaluation of Intelsat’s record of performing contracts relevant to the technical approach subfactors. We find none of these arguments has merit. For example the protester argues that, because Intelsat submitted only one past performance reference where it was the prime contractor, the agency could not have reasonably determined that the awardee demonstrated that it had a satisfactory record of performance of the requirements under the “management approach” subfactor, as required by the past performance evaluation factor. See RFP attach. 5, ¶ 8.

The record shows, however, that the SSA found that Intelsat had demonstrated an adequate record of performance based on its record as a prime contractor under the Armed Forces Radio and Television Service (AFRTS) contract with DISA, as follows:

“Although there were few details describing Intelsat’s Management Approach, the scale and scope of the efforts presented and the very positive customer feedback indicate that sound management principles were in practice.” AR, Vol. IB, Tab 19, Source Selection Decision, at 15. In addition, the SSEB’s past performance consensus report addresses numerous areas of Intelsat’s management approach under the AFRTS contract, including cost control procedures, communications with customer end-users, and management of subcontractors. AR, Vol. IIB, Tab 4B, Intelsat Past Performance Consensus Report, at 12. The SSEB concluded that the awardee’s performance “contains elements that illustrate Intelsat’s ability to manage a satellite services contract.” Id.

CapRock also argues that Intelsat’s management experience should have received more scrutiny, given the reliance by Intelsat on its partners, and also notes that Intelsat’s experience as a prime contractor was under a contract that was rated by the agency as being relevant, rather highly relevant. We disagree. Nothing in RFP required an offeror to demonstrate management of subcontractors on a highly relevant contract in order to receive an overall rating of green. See RFP attach. 5, ¶ 7.

ARTEL argues that DISA’s evaluation of Intelsat’s past performance rating under the DISA contract for the Army Trojan worldwide satellite communications network, which was performed by Intelsat’s partner AGC, failed to explicitly address all four requirements that the RFP stated must be met in order to merit a highly relevant rating. Specifically, ARETEL complains that DISA did not consider whether the awardee’s performance record addressed “Providing LES services (e.g., receiving data from terminals and processing it for further transmission to the network).” See RFP attach. 5 ¶, 8.

In its evaluation of the Army Trojan contract, the SSEB noted the following regarding the performance of AGC, who was the prime contractor: “Providing LES services.” AR, Vol. IIB, Tab 4B, Intelsat Past Performance Consensus Report, at 18. ARTEL contends that this summary comment is insufficient to merit an overall rating of highly relevant. The record shows, however, that directly below this summary comment, the agency provided additional information concerning the third and fourth requirements (LES services and end-to-end series, respectively):

Example of performance in both Area 3&4 from . . . Intelsat proposal: AGC maintains a 24x7x365 presence at the two TROJAN Network Control Centers (TNCCs) to provide immediate response to communications degradations or outages. AGC owns, operates, and maintains two major hubs located at Fort Belvoir and Fort Bragg.

Id. To the extent that the protester argues that the record shows that the agency did not meaningfully evaluate Intelsat’s past performance, we think that the record does not support this argument.

Turning to the protesters' arguments concerning the evaluation of their own past performance, CapRock argues that one of its past performance references should have received a higher rating. The SSEB rated the protester's past performance as green based on ratings of one highly relevant reference, four relevant references, and one not relevant reference. AR, Vol. IB, Tab 14, SSEB Final Report, at 18. The SSA concurred with the green rating. AR, Vol. IB, Tab 19, Source Selection Decision, at 11.

CapRock contends that DISA should have rated its past performance under a contract for communications support with the Subsea 7 company as highly relevant, instead of relevant. As discussed above, a contract is highly relevant where it involved providing end-to-end satellite services for at least 25 terminals concurrently. RFP attach. 5, ¶ 8. The agency noted that under the Subsea 7 contract, CapRock provided services for [deleted] vessels, and did not demonstrate support for the minimum 25 terminals required for a highly relevant rating. AR, Vol. IIIB, CapRock Past Performance Consensus Report, at 16.

The protester nevertheless contends that the agency's evaluation was unreasonable because "[s]ome of the vessels had two terminals . . . [and] [t]he agency could have easily confirmed that during discussions." CapRock Supp. Comments at 29, n.6. CapRock implies, but does not specifically contend, that the Subsea 7 contract actually involved support for more than 25 terminals. In addition, the protester does not point to any information in its proposal that informed the agency that the [deleted] vessels listed in CapRock's past performance description had more than one terminal per vessel. In the face of the clear language in the RFP that a rating of highly relevant was reserved for contracts involving concurrent service to at least 25 terminals, we find no merit to this argument.

ARTEL also argues that it should have received higher ratings for its past performance references. The SSEB rated the protester's past performance as green based on two highly relevant, and four relevant ratings. AR, Vol. IB, Tab 14, SSEB Final Report, at 25. The SSA concurred with the SSAC's rating of green for the protester's past performance. AR, Vol. IB, Tab 19, Source Selection Decision, at 12. The protester contends that all of the references should have received highly relevant ratings.

ARTEL's six references consisted of the DISA satellite transmissions services-global (DSTS-G) ID/IQ contract, four task orders issued under the DSTS-G contract, and a contract with the National Atmospheric and Oceanic Administration (NOAA). DISA rated the ID/IQ contract and task order 139 under that contract as highly relevant. AR, Vol. IB, Tab 14, SSEB Consensus Report, at 25.

ARTEL primarily argues that task orders 336, 464, and 291 should have been rated as highly relevant because they were of similar value and relevance to task order 139,

which DISA viewed as highly relevant.⁷ The record shows, however, that the agency found that these task orders were not highly relevant based on considerations other than their value. For example, task orders 336 and 464 did not meet all four of the RFP criteria for a highly relevant contract, specifically regarding the requirement to provide commercial services on a worldwide basis. AR, Vol. IVB, Tab 4B, ARTEL Past Performance Consensus Report, at 8, 12. In fact, these two task orders did not meet the lesser requirement of providing multi-regional services, but nonetheless received a relevant rating because they met two of the other three requirements for a relevant rating. *Id.* Task order 291 did not meet the requirement to provide support for more than 25 terminals. *Id.* at 21. The protester does not challenge any of the agency's conclusions regarding the relevance of these task orders, and we therefore find no merit to this argument.⁸

CAPROCK'S REMAINING PROTEST ARGUMENTS

CapRock argues that DISA's evaluation of Intelsat's and CapRock's technical proposals was unreasonable under the space segment, end-to-end service, and management approach subfactors of the technical approach factor, and also argues that the agency's evaluation of the protester's proposed price was inconsistent with the terms of the RFP. CapRock also challenges DISA's award decision, which concluded that Intelsat's higher technical and past performance ratings merited award, notwithstanding CapRock's lower proposed price. For the reasons discussed below, we find no merit to these arguments.

As an initial matter, several of CapRock's arguments question whether the SSA could reasonably revise evaluation judgments made by lower-level evaluators. An SSA is required to exercise independent judgment in making a reasonable and adequately-documented source selection decision. Federal Acquisition Regulation (FAR) § 15.308. In exercising this judgment, an SSA has broad discretion in determining the manner and extent to which technical and cost evaluation results are used, is

⁷ Although ARTEL contends that it should have received highly relevant ratings for all of its past performance references, it did not address the agency's explanation of why it did not merit a higher rating regarding the NOAA contract. *See* AR at 86. We therefore deem this aspect of its argument to have been abandoned. Citrus College; KEI Pearson, Inc., B-293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

⁸ ARTEL also argues that the agency improperly concluded that an offeror could not receive a highly relevant rating for both an ID/IQ contract and a task order under that contract, citing the agency's statement, in its report responding to ARTEL's protest, that the protester was "attempting to receive credit twice for the same information." AR at 86. The record shows, however, that the agency in fact assigned highly relevant ratings to ARTEL for both the DSTS-G ID/IQ contract and one of the task orders under that contract. AR, Vol. IB, Tab 14, SSEB Final Report, at 25.

permitted to make an independent evaluation of offerors' proposals, and may disagree with or expand upon the findings of lower-level evaluators provided the basis for the evaluation is reasonable and documented in the contemporaneous record. KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13. As discussed below, we find no basis in this record to conclude that the SSA's revisions here were unreasonable.

Space Segment Subfactor

CapRock argues that DISA unreasonably evaluated strengths for Intelsat's proposal under the space segment subfactor, and improperly concluded that the awardee's proposal was superior to the protester's proposal. As discussed above, the space segment factor was the most important under the technical approach factor, and the SSA concluded that Intelsat's evaluated strengths were a key discriminator in favor of award.

The SSEB assessed two strengths in CapRock's proposal with respect to the requirements and objectives identified by the SOO for this subfactor: (1) frequency band portability, based on the protester's proposal to provide [deleted] for terminals as ships pass from the coverage of one satellite to another; and (2) growth strategy, based on the protester's proposal to provide [deleted] Ku-band beams in one region, [deleted] X-band spot beams, and bandwidth in excess of the SOO requirements. AR, Vol. IB, Tab 14, SSEB Final Report, at 14. The SSEB found one strength for Intelsat for coverage requirements, based on the ability to provide [deleted] Ku-band and X-band beams. Id. at 35-36.

In its review of the SSEB ratings, the SSAC noted that [deleted] beams⁹ provide a benefit to the government because they permit mitigation of "unintentional or intentional" electromagnetic interference (EMI) that might disrupt or degrade a satellite beam. AR, Vol. IB, Tab 17, SSAC Award Recommendation, at 2. An [deleted] beam would permit the Navy to "[deleted]." Id. at 3. The SSAC also noted that while both Intelsat and CapRock had strengths for providing [deleted] X-band beams, the proposals did not state that the beams were [deleted], as opposed to [deleted]. Id. at 2. The SSAC concluded that the sole basis to discriminate between Intelsat's and CapRock's proposal under the space segment subfactor was "Intelsat's [deleted] capability provided to the Navy for the two Ku-band beams." AR, Vol. IB, Tab 17, SSAC Award Recommendation, at 2.

The SSAC also identified a second strength in Intelsat's proposal that was not discussed by the SSEB. Specifically, the SSAC found a strength in the awardee's proposal for the frequency band portability based upon Intelsat's proposed use of "X-band satellites that operate exclusively in [right-hand circular polarization/left-

⁹ [Deleted]. AR, Vol. IB, Tab 19, Source Selection Decision, at 20.

hand circular polarization (RHCP/LHCP)] to allow the interchange of capacity to support submarines and/or [unit-level variant (ULV) terminals] and no configuration changes from region to region, simplifying operations.”¹⁰ AR, Vol. IB, Tab 13, SSAC Memorandum, at 4. With regard to this strength, DISA notes that submarine terminals operate only in RHCP/LHCP, whereas ULVs can operate in either RHCP/LHCP or LHCP/ RHCP. SAR at 16.

During the SSA’s review of both the SSEB and SSAC ratings, the SSA agreed with the SSAC that, while both offerors provided [deleted] X-band beams, Intelsat’s approach was superior based on its ability to provide [deleted] Ku-beams. AR, Vol. IB, Tab 19, Source Selection Decision, at 19-20. The SSA also agreed that Intelsat’s offer of X-band satellites that operate exclusively in RHCP/LHCP merited an additional strength. Id. at 19. The SSA found that this feature of the proposal offered “significant merit” because operating the satellites exclusively in RHCP/LHCP would avoid the need for manual above-deck changes to the ULVs as the ships pass from the coverage of one satellite to another. See AR, Vol. IB, Tab 19, Source Selection Decision, at 8; see also, Vol. IIB, Tab 20, Intelsat Revised Technical Proposal, at II-4. In sum, the SSA concluded that Intelsat’s two strengths were superior to CapRock’s two evaluated strengths.

CapRock argues that DISA mistakenly assigned Intelsat a strength for the ability to switch between satellite coverage without above-deck configuration changes because ULVs—which are manufactured by [deleted]—require manual above-deck configuration changes as a ship changes coverage from one type of bandwidth, i.e., Ku, C, or X-band, to another. In this regard, the protester contends that the changes to a ULV to receive transmissions from a different bandwidth requires approximately 30 minutes to complete. CapRock Comments at 23.

DISA responds that the selection decision refers to a strength for Intelsat’s use of a single type of circular polarization for its X-band beams and is not based upon the ability to change from X-band to another frequency band. See SAR at 17; see also AR, Vol. IB, Tab 19, Source Selection Decision, at 19. Thus, contrary to the protester’s argument, the agency concluded that Intelsat’s approach allows for support of ULVs and submarines from region to region without above-deck configuration changes with respect to X-band transmissions. The protester has not

¹⁰ These terms refer to right-hand and left-hand circular polarization conventions, which describe the phase of the electromagnetic beams. An X-band beam can be configured to have RH or LH circular polarization, and the term RHCP/LHCP refers to RH circular polarization for upload/transmission and LH circular polarization for download/receipt. SAR at 16.

shown that the agency's assessment of a strength for Intelsat's X-band satellite capacity is unreasonable.¹¹

End-to-End Service

Next, CapRock argues that DISA unreasonably evaluated Intelsat's proposal as green under the end-to-end service subfactor. The protester also contends that the agency should have given its proposal a higher rating and considered the strength to be more significant in the tradeoff decision.

The SOO contained three requirements for end-to-end service: (1) provision of contractor-furnished equipment (CFE); (2) installation and maintenance of CFE; and (3) a three-part requirement consisting of a "bit error rate (BER) of 1×10^{-8} and an operational availability (Ao) of 97% including response times and restoration procedures, with no more than 1.4 seconds delay or latency for each end-to-end service provided."¹² SOO ¶ 3.2.3.

¹¹ CapRock also contends that it provided the same approach frequency band portability, for which it should have received a similar evaluated strength. This argument is untimely raised. The protester's comments on the agency report and supplemental protest, which were timely filed within 10 days of receipt of the agency report, argued that DISA had incorrectly assigned a strength based on the assumption that Intelsat could provide for seamless switching between bands without above-deck configuration changes. See CapRock Comments at 22-24. DISA responded to this argument in its supplemental report, noting, as discussed above, that the protester misunderstood the basis for the evaluated strength. In its comments on the SAR, the protester for the first time argued that its proposal should have been viewed as having the same strength for frequency band portability with regard to exclusive operation in RHCP/LHCP. CapRock's Supp. Comments at 34-35. It was clear, however, from the agency's initial report that the agency had assessed the strength for Intelsat based solely on the advantages arising from providing X-band beams in RHCP/LHCP. See AR at 65, quoting AR, Vol. IB, Tab 14, Source Selection Decision, at 19. Because the argument that CapRock should have been viewed as equal to Intelsat under frequency band portability was not raised until more than 10 days from receipt of the agency report, we view this argument as untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2010).

¹² BER refers to the amount of data that is lost during transmission, relative to the overall amount of data. Id. ¶ 3.2.3; SAR at 11 n.2. Ao refers to the percentage of time an end-to-end connection is functioning over a 30-day period. SOO ¶ 3.2.3. The latency of a transmission refers to the amount of delay that occurs during an end-to-end transmission. Id.

The SSEB rated CapRock as green under this subfactor, based on the following strength: “The offeror meets the requirement for Ao and latency with significant margin. The designated Ao is [deleted], calculated and reported on a monthly basis. . . . The offeror calculated latency to be [deleted] seconds, significantly better than the 1.4 second SOO requirement.” AR, Vol. IB, Tab 14, SSEB Final Report, at 15. The agency also rated ARTEL as green, based on a strength for contractor furnished equipment (CFE), installation and maintenance, and another strength based on “[t]he offeror’s ability to significantly exceed the 1.4 second latency requirement” by providing a latency of 1.1 seconds. Id. at 21. The SSEB assessed no strengths for Intelsat’s proposal, and rated it as yellow for this subfactor.

The SSAC recommended raising Intelsat’s rating under this subfactor from yellow to green and recognizing a strength, because the awardee’s proposed latency rate also exceeded the SOO requirements. SAR at 13. The SSAC noted that Intelsat’s latency was 0.875 seconds, i.e. less than the maximum allowed 1.4 seconds, and that this level of performance “exceeded the requirement and was of benefit to the government.”¹³ AR, Vol. IB, Tab 13, SSAC Memorandum, at 5.

The SSA concurred with this revision to Intelsat’s evaluation and with the evaluations of CapRock and ARTEL. AR, Vol. IB, Tab 19, Source Selection Decision, at 5-6, 9. The SSA noted that although all three offerors exceeded the latency requirements, and that CapRock also exceeded the Ao requirements, “it is not clear to me just how much of an improvement to performance they represent.” Id. at 20. The SSA concluded that “[CapRock] and Artel have the strongest proposals under this subfactor, but these strengths are not as significant as the strengths that Intelsat offers under subfactor 1.1.” Id.

CapRock objects that DISA erred in finding only a single strength for its proposal under this subfactor, instead of two separate strengths: one for exceeding the Ao level, and another for exceeding the latency level. As discussed above, however, the SOO for end-to-end requirements set forth three requirements, the third of which identified performance standards for BER, Ao, and latency. SOO ¶ 3.2.3. Given the fact that the SOO identified these three standards as a single requirement, we think the agency could reasonably treat exceeding two of the standards as a single strength.

Next, the protester argues that Intelsat should not have been assessed a strength for exceeding the latency standard under this subfactor. The protester notes that the SSEB did not assign a strength for Intelsat in this regard, and that by adding a strength for Intelsat’s proposed latency, the SSA effectively negated CapRock’s assessed strength. The protester complains that the single strength assigned for

¹³ Intelsat’s offered an Ao of [deleted] percent, which the agency did not view to be a strength. See AR, Vol. IIB, Tab 4A, Intelsat Consensus Evaluation, at 10.

CapRock's offer to exceed the Ao and latency standards was treated as being equal to Intelsat's offer to exceed only the latency standard. Furthermore, the protester argues that the agency should have viewed CapRock's offer to be a major strength, in light of the fact that CapRock proposed an Ao of [deleted] percent that was significantly better than the SOO standard of 97 percent.

We find that the protester's disagreements with the agency's evaluation do not demonstrate that the agency's evaluation judgment was unreasonable. With regard to CapRock's argument that it should have received a major strength as opposed a strength, this is a matter within the agency's discretion. See Shumaker Trucking & Excavating Contractors, Inc., *supra*; VT Griffin Servs., Inc., *supra*. Moreover, the record shows that the agency in fact viewed CapRock's proposal as superior to Intelsat's under this subfactor. As discussed above, the SSA concluded that "[CapRock] and Artel have the strongest proposals under this subfactor." AR, Vol. IB, Tab 19, Source Selection Decision, at 20. Thus, contrary to CapRock's argument, we think that the agency recognized that the offerors' strengths were not equally weighted, and that CapRock's strength outweighed Intelsat's strength for this subfactor. Nonetheless, the SSA concluded that the advantage under this subfactor for Caprock's proposed Ao/BER did not provide as great a benefit to the government as Intelsat's strength for its [deleted] Ku-band beams under the space segment subfactor. *Id.* To the extent that the protester believes that it should have received even more favorable treatment, or that its advantage under this subfactor should have been more influential in the award decision, we think Caprock is seeking to replace its judgment for the SSA's exercise of discretion.

Management Approach Subfactor

Next, CapRock argues that DISA departed from the terms of the solicitation by placing undue emphasis on Intelsat's higher rating under the management approach subfactor, which was identified to be the least important of the six technical approach subfactors. In its evaluation of Intelsat's proposal for this subfactor, DISA found that both ARTEL and Intelsat had strengths under this subfactor based on "the thoroughness of the PWS and the detailed performance monitoring in the [quality assurance service plan]." AR, Vol. IB, Tab 19, Source Selection Decision, at 20.

CapRock neither disagrees with DISA's assessment of a strength for Intelsat's proposal nor disputes the agency's rating of Intelsat's proposal as green and CapRock's as yellow under the management approach subfactor. Instead, the protester argues that disproportionate weight was given to this subfactor in the source selection decision.

The record shows, however, that the SSA clearly understood that the management approach subfactor was the least important of the six subfactors. In this regard, the SSA noted the value of Intelsat's and ARTEL's well-written PWSes as follows:

Although subfactor 1.6 was the least important subfactor, the PWS is very important to successful performance at the required levels. Proposals go away once award is made, but the PWS lives on as a contractually binding document. So, to the extent that all requirements and the approach to meeting them is thoroughly detailed in the PWS, that is of significant benefit to the government, as the contractor will be held accountable to the performance documented in the PWS.

Id. at 20-21.

Nothing in the record supports the protester's argument that the agency placed disproportionate weight on this subfactor; in fact, the evaluation specifically states that management approach was the least important subfactor. Id. Instead, the record shows that the agency concluded that Intelsat's strengths under the space segment and management approach subfactors provided more value to the government than CapRock's strength under the end-to-end service subfactor. Id. In sum, this kind of tradeoff—made within the stated evaluation scheme—is a matter for the SSA's discretion.

Price Evaluation

CapRock contends that DISA evaluated its price proposal in a manner inconsistent with the terms of the RFP.

In its recommendation to the SSA, the SSAC stated that, although Intelsat's overall proposed price was 11 percent higher than CapRock's proposed price, Intelsat's price was "of better value to the government" in light of the differences between the offerors' proposed prices for CLIN 0223, operations support. AR, Tab 17, SSAC Award Recommendation, at 3. Specifically, the SSAC stated that CapRock's proposed fixed multi-year recurring costs were higher than Intelsat's fixed multi-year recurring costs, meaning that the government would pay a higher cost for operations support under CapRock's proposal, regardless of the amount of bandwidth it ordered under the indefinite-quantity CLINs. The SSAC viewed this as a "critical difference" between Intelsat's and CapRock's proposals that further justified award to Intelsat. Id. at 5.

CapRock argues that the RFP did not advise offerors that the agency would examine offerors' proposed CLIN pricing in this manner and contends that the SSAC's finding finding effectively neutralized the firm's price advantage vis-à-vis Intelsat.

The SSA, however, expressly disregarded the SSAC's conclusions regarding the protester's CLIN 0223 pricing, because, in her view, they were not consistent with the RFP's announced evaluation criteria. Specifically, the SSA stated that the

SSAC did some analysis of the differences between [CapRock] and Intelsat; however, I disregarded that information because the RFP did not indicate the price evaluation would look at individual CLIN prices and I did not consider the SSAC analysis in my decision.

AR, Tab 19, Source Selection Decision, at 18. Instead, the SSA based her selection decision upon the differences between the offerors' overall evaluated prices, stating that she did "not believe [that] the price difference of 11 [percent], or approximately \$37M, [between Intelsat's proposal and CapRock's lower-priced proposal] is so significantly high as to diminish the superior value of the Intelsat proposal." Id. at 23.

CapRock responds that, although the SSA explicitly stated that she disregarded the SSAC's evaluation regarding CLIN 0223, the SSA's independent exercise of judgment was "too late" because the SSAC's views had already "tainted the price evaluation." CapRock Supp. Comments at 22. The record does not support CapRock's contention in this regard. Here, the SSA performed an independent assessment of the relative merits of the firms' proposals and expressly stated in her contemporaneous selection decision that she gave no consideration to the SSAC's analysis with respect to CLIN 0223.

Tradeoff Decision

CapRock complains that the SSA in her selection decision unreasonably ignored CapRock's lower evaluated price in selecting Intelsat's proposal for award. In this regard, the protester notes that the RFP stated that "[t]he importance of price as an evaluation factor will increase with the degree of equality of the proposals in relation to the remaining evaluation factors." RFP attach. 5, ¶ 5.

Source selection officials are accorded broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria.¹⁴ American Constr. Co., B-401493.2, Oct. 16, 2009, 2009 CPD ¶ 214 at 7.

As discussed above, we find no merit to any of the protester's challenges to the agency's evaluation of the offerors' technical proposals, past performance, or price. To the extent that the protester argues that the agency made an unreasonable tradeoff between Intelsat's higher-priced and higher-technically-rated proposal and

¹⁴ In fact, the RFP advised offerors that "non-price/price trade-offs will be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistent with the established evaluation factors." RFP attach. 5, ¶ 5.

CapRock's lower-priced and lower-technically-rated proposal, we disagree. The selection decision clearly shows that, contrary to CapRock's arguments, the SSA viewed Intelsat's proposal as superior to CapRock's proposal with regard to technical approach, based on discriminators for [deleted] Ku-band beams under the space segment subfactor, a superior PWS under the management approach subfactor, and a greater number of highly-relevant past performance references. AR, Vol. IB, Tab 19, Source Selection Decision, at 22. The SSA expressly concluded that these discriminators for Intelsat merited the 11 percent price premium as compared to CapRock's proposal. Id. Although CapRock disagrees with this judgment, it has not shown it to be irrational or inconsistent with the solicitation criteria.

ARTEL'S REMAINING PROTEST ARGUMENTS

ARTEL argues that DISA's evaluation of the offerors' technical proposals was unreasonable under the space segment, end-to-end service, and shore segment subfactors of the technical approach factor. ARTEL also argues that Intelsat should have been disqualified from award based upon an organizational conflict of interest (OCI), and that the DISA's affirmative determination of responsibility did not focus on Intelsat, but upon the awardee's corporate parent. For the reasons discussed below, we find no merit to these arguments.

Space Segment Subfactor

ARTEL challenges the evaluation of its proposal under the space segment subfactor, for which ARTEL's proposal was assessed as yellow, and Intelsat's proposal as green. ARTEL contends that DISA treated ARTEL unequally by failing to recognize that its proposal offered similar strengths to that evaluated in Intelsat's proposal.

As discussed above, the SSA identified a strength in Intelsat's proposal under the frequency band portability criterion for offering "X-band satellite capacity that operates exclusively in RHCP/LHCP to allow the interchange of capacity to support submarines and/or ULVs with no configuration changes from region-to-region." Id. at 19. The SSA identified a second strength under the coverage criterion based on Intelsat's proposal to provide [deleted] X-band and Ku-band beams, with [deleted] the Ku-band beams. Id. The agency viewed the latter strength as a benefit to the government because, as discussed above with regard to CapRock's protest arguments, [deleted] beams allow the government to [deleted] that avoids or counters EMI. Id. at 20. The agency did not identify any strengths for ARTEL under this subfactor. Id. at 5.

With regard to frequency band portability, ARTEL argues that it should have received the same strength as Intelsat because ARTEL also proposed to support submarines and ULVs using X-band satellites that operated exclusively in RHCP/LHCP. The agency contends, however, and the protester does not dispute, that ARTEL's proposal did not explicitly offer to provide X-band satellites that operated exclusively in RHCP/LHCP. Instead, the protester argues that "ARTEL uses

the same satellites for X-band services that Intelsat uses,” and, therefore, the agency should have understood that the protester was also offering the same exclusive RHCP/LHCP services. ARTEL Comments at 11-12. In this regard, the protester contends that it is a “well known fact in the satellite communications industry that the [deleted] satellites, both of which ARTEL proposes to use for X-band services . . . operate exclusively in RHCP/LHCP.” Id. at 11.

DISA contends, and we agree, that the record does not support ARTEL’s arguments. First, the offerors’ proposals show that ARTEL proposed different satellites than Intelsat. ARTEL proposed five X-band satellites: [deleted]. AR, Vol. IVA, Tab 3A, ARTEL Revised Technical Proposal, at II-2, II-11. Intelsat also proposed five X-band satellites: Skynet 4C, Skynet 4F, Skynet 5A, Skynet 5B, and Skynet 5C. AR, Vol. IIB, Tab 2D, Intelsat Revised Technical Proposal, at II-3, II-6-II-7. Thus, the record shows that only [deleted] of the [deleted] satellites proposed by ARTEL were also proposed by Intelsat; ARTEL relied on two satellites not proposed by Intelsat, and Intelsat proposed [deleted] satellites not proposed by ARTEL. On this record, we find no merit to the protester’s argument that the agency should have understood that the offerors were proposing the same satellites, and thus should have understood that ARTEL would have provided the same exclusively RHCP/LHCP X-band services proposed by Intelsat.

Second, contrary to the protester’s argument, the [deleted] satellites do not operate exclusively in RHCP/LHCP, but can operate in either RHCP/LHCP or LHCP/RHCP.¹⁵ The protester concedes this point, but argues that [deleted] “can operate exclusively in RHCP/LHCP,” and therefore “the Government would have complete discretion to support ULVs in RHCP/LHCP exclusively (or not) through the [deleted] satellites.” ARTEL Comments on Agency Response to 1st GAO Questions, Apr. 15, 2010, at 2. In essence, ARTEL contends that the government could have instructed it to perform in the same manner as Intelsat, and should have assigned a strength to its proposal. We disagree. It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information that allows a meaningful review by the procuring agency. See T-C Transcription, Inc., B-401470.2, Feb. 16, 2010, 2010 CPD ¶ 50 at 4. In sum, the record does not support the protester’s argument that the agency should have understood that ARTEL was proposing the same approach as Intelsat, and was therefore entitled to receive the same evaluation strength.¹⁶

¹⁵ The protester provided a link to a website in support of its argument that the [deleted] satellites operate exclusively in RHCP/LHCP. See [deleted] website, available at: [deleted], and [deleted]. This website shows that these satellites can operate in either RHCP/LHCP or LHCP/RHCP.

¹⁶ ARTEL also argues that because it offered the same satellites as Intelsat, the protester should have also received a strength for offering [deleted] X-beams. As discussed above, the record does not support the protester’s argument that it proposed the same satellites as Intelsat. Moreover, the argument concerning

(continued...)

ARTEL also argues that DISA's assignment of a strength in Intelsat's proposal for [deleted] Ku-band beams was inconsistent with the solicitation and constituted an unstated evaluation criterion. In the alternative, ARTEL contends that its proposal should have been assessed a strength for offering higher-powered Ku-band beams.

As discussed above, the SSA identified a strength in Intelsat's proposal for its offer to provide [deleted] Ku-band beams that allowed the government to [deleted] the beams, and thereby avoid or mitigate EMI. AR, Vol. IB, Tab 19, Source Selection Decision, at 8, 20. The protester contends that the ability to avoid EMI through [deleted] beams should not have been regarded as a strength because the solicitation already required offerors to avoid or mitigate EMI through the use of a commercial satellite communications (COMSATCOM) software tool. The agency notes, however, that the SOO required offerors to utilize a COMSATCOM tool to identify, characterize and report interference events, but did not require offerors to avoid or mitigate EMI through the use of this tool. See SOO ¶ 3.3. On this record, we find not merit to the protester's argument.

The protester also contends that its proposal addresses EMI prevention and mitigation through a different method than providing [deleted] Ku-band beams, that is, by providing satellites "with sufficient power to mitigate or eliminate interference without the need to actually [deleted] the beams." ARTEL Comments at 13. The agency states, however, that ARTEL's proposal did not clearly describe a proposed approach to EMI prevention and mitigation using high-powered beams. From our review of the record, we agree with the agency that the citations provided by the protester do not illustrate that DISA should have understood that ARTEL's proposal provided such benefits.¹⁷ In this regard, the protester does not cite to any area of its proposal that explicitly states that higher-powered beams would address EMI issues.

(...continued)

[deleted] X-band beams, as opposed to the polarization of the beams as a strength for frequency portability, was first raised in the protester's comments on the SAR, more than 10 days after the agency provide its initial report on the protest. ARTEL Supp. Comments at 8 n.7; ARTEL's Comments on Agency's Responses to 1st GAO Questions, Apr. 15, 2010, at 5. The argument is therefore untimely. 4 C.F.R. § 21.2(a)(2).

¹⁷ For example, the protester cites table No. 1.1.4-1 in its proposal for the proposition that ARTEL's proposed Ku-band satellite coverage was sufficiently powerful to mitigate EMI in a manner equal to or better than the [deleted] spot beams offered by Intelsat. See ARTEL Comments at 13, 23. This table, however, relates to X-band coverage, not to Ku-band coverage, and this table does not discuss EMI prevention or mitigation.

ARTEL next argues that DISA's identification of a strength for Intelsat's [deleted] Ku-band beams was improper because, the protester contends, assigning a strength for [deleted] Ku-band beams is tantamount to an unstated requirement that all offerors provide this capability. Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated evaluation factors. AIA-Todini-Lotos, B-294337, Oct. 15, 2004, 2004 CPD ¶ 211 at 8. Here, the space subfactor advised offerors that they must provide "the commercial satellite resources needed to establish connectivity between the CBSP user terminal and the CBSP shore segment." RFP attach. 5, ¶ 7. The SOO also requires the contractor to provide coverage for users within designated geographic areas. SOO ¶ 3.2.1. We think that providing adequate connection and coverage was reasonably related to a proposal to avoid EMI, which could disrupt the connections or limit the available coverage. In sum, we find no merit to the protester's arguments.

End-to-end Service Subfactor

Next, ARTEL argues that it should have received a major strength, instead of merely a strength, under the end-to-end service subfactor. As discussed above, the agency identified strengths in ARTEL's proposal for its proposed installation and maintenance of CFE, and for its offer of a latency of [deleted] seconds under the BER and Ao standard. AR, Vol. IB, Tab 19, Source Selection Decision, at 20. The SSA did not assess a strength for ARTEL's proposed Ao of 98 percent based upon her judgment that she did not see a significant improvement in performance from ARTEL's lower latency and increased Ao. See id.

The protester contends that the agency should have awarded its proposal a major strength based on its offered Ao of [deleted] percent (that exceeded the SOO requirement of 97 percent) and latency. The protester, however, merely notes that its Ao and latency exceeded the solicitation requirements, and does not explain how the agency's judgment was unreasonable. We do not think that ARTEL's disagreement with the agency's evaluation provides a basis to sustain the protest.¹⁸

¹⁸ Additionally, the record shows that ARTEL's latency rate of [deleted] seconds was higher, i.e., less desirable, than CapRock's latency of [deleted] seconds and Intelsat's latency of [deleted] seconds. The record also shows that ARTEL's Ao of [deleted] percent was less than CapRock's Ao of [deleted] percent. In light of the fact that all three offerors received a strength for BER and Ao, we do not think the record demonstrates that, even if the agency were to assign a major strength to ARTEL's proposal, the protester's competitive standing would have improved.

Shore Segment Subfactor

Next, ARTEL argues that it should have been assessed a strength under the shore segment subfactor for exceeding the requirements of the SOO, and therefore its proposal should have received a green rather than yellow rating.

The SOO states a number of objectives for the shore segment, including that offerors support a number of geographically separated LESes and the connections between the LESes and the designated Navy PoP. SOO ¶ 3.2.2. The connection between an LES and a PoP is referred to as terrestrial connectivity, or backhaul. *Id.* Neither the SSEB nor the SSA found any strengths or weaknesses under ARTEL's proposal for the shore segment, and rated the proposal as yellow for this subfactor. AR, Vol. IB, Tab 14, SSEB Final Report, at 22; Tab 19, Source Selection Decision, at 6.

The protester argues that it should have been assigned strengths for proposing a LES backhaul capacity that exceeded the requirements of the SOO. In its report, DISA acknowledged that the protester proposed an LES backhaul capacity that exceeded the requirements of the SOO. *See* AR at 105. However, the agency contends that a higher backhaul capacity, alone, does not merit a strength unless it is matched with a higher space segment capacity. *Id.* at 105-06. In this regard, the agency contends that the backhaul capacity can only be utilized to the extent that the space segment—*i.e.*, the satellites—can accommodate a similarly-high level of data throughput. *Id.*; Agency Response to GAO 2d Questions, Apr. 22, 2010.

The protester responds that “[i]t should have been obvious to the Government that ARTEL was proposing additional capacity to meet the potential surge requirements with or without the excess space segment,” and that the data rate for the backhaul “will increase with excess space segment or by using the same space segment more efficiently using the techniques described in the ARTEL proposal.” ARTEL Comments at 15. The protester, however, does not cite to any area of its proposal that discusses such a benefit.

In the protester's comments on the agency's response to questions from our Office, the protester for the first time contends that it did, in fact, propose excess space segment capacity that could be utilized to address growth requirements. ARTEL Comments on Agency Response to 2d GAO Questions, Apr. 26, 2010, at 3-5. This argument, however, is distinct from the argument raised in its initial comments, which stated that a backhaul capacity that exceeded the SOO requirements should have been regarded as a strength, independent of its relationship to the space segment capacity. *See* ARTEL Comments at 25. Moreover, ARTEL's April 26 response argues, for the first time, that the agency's understanding of its proposed space segment capacity was flawed. ARTEL Comments on Agency Response to 2d GAO Questions, Apr. 26, 2010, at 4-5. To the extent that the protester now raises a different argument from the one it raised in its initial comments, we find the argument untimely. These contentions could have been raised in response to the initial agency report, which first discussed the agency's views that ARTEL's excess

LES backhaul was not a benefit in light of the perceived lack of a higher proposed space segment capacity. See AR at 105-06.

Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. University Research Co., LLC, B-294358.8 et al., Apr. 6, 2006, 2006 CPD ¶ 66 at 16. Because these arguments were not raised within 10 days of receipt of the agency report, they are untimely. 4 C.F.R. § 21.2(a)(2).

Finally, we think that, even if the protester had timely raised this argument, and even if the evaluation in this area was unreasonable, ARTEL was not prejudiced by this alleged error. In this regard, competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. TMM Investments, Ltd., B-402016, Dec. 23, 2009, 2009 CPD ¶ 263 at 4; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1681 (Fed. Cir. 1996).

As discussed above, we find no merit to ARTEL's challenges to the two most heavily-weighted evaluation subfactors (space segment and end-to-end service) and, as discussed below, we find no merit to the protester's argument regarding an alleged OCI in Intelsat's proposal, or its contention that DISA unreasonably evaluated the awardee's responsibility. Thus, with respect to the technical approach factor, Intelsat's proposal remains higher rated on the most important subfactor, this advantage outweighs ARTEL's strengths under the second subfactor, the offerors were equal under the fourth and fifth subfactors, and Intelsat was higher rated under management approach subfactor. In addition, Intelsat had a high rating under the past performance factor, and was lower priced by \$4 million. As noted above, the agency viewed Intelsat's advantages as compared to CapRock's proposal to merit a \$47.4 million premium. In this regard, even if ARTEL were to receive a green rating under the shore segment subfactor, CapRock would remain higher-rated under the first two evaluation factors compared to ARTEL, and offers a \$41.4 million lower price. In sum, we do not see how ARTEL could have been prejudiced here.

Organizational Conflict of Interest

ARTEL argues that the award to Intelsat was tainted by an OCI arising from the awardee's knowledge of the other offerors' costs for certain satellite resources. In this regard, ARTEL contends that Intelsat controls certain satellites that are necessary for performance of the CBSP contract requirements. The protester argues that, by virtue of controlling these satellites, Intelsat knew ARTEL's costs for their use, which created an unequal access to information OCI. The protester also argues that Intelsat did not negotiate fairly with ARTEL, and did not allow ARTEL to purchase services in a manner that the protester contends is consistent with industry

practice. We conclude that these allegations, even if true, would not constitute an OCI.

Contracting officials must avoid, neutralize or mitigate potential significant OCIs so as to prevent unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The situations in which OCIs arise, as addressed in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three categories: unequal access to information, biased ground rules, and impaired objectivity. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 11-12.

As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR §§ 9.505(b), 9.505-4; Maden Techs., B-298543.2, Oct. 30, 2006, 2006 CPD ¶ 167 at 8; see also McCarthy/Hunt, JV, B-402229.2, Feb. 16, 2010, 2010 CPD ¶ 68 at 5 (protest sustained where awardee's subcontract had access to nonpublic information through its performance of a government contract). As the FAR makes clear, the concern regarding this category of OCI is that a firm may gain a competitive advantage based on its possession of "[p]roprietary information that was obtained from a Government official without proper authorization," or "[s]ource selection information . . . that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract." FAR § 9.505(b).

Here, ARTEL does not allege that Intelsat obtained any nonpublic information through the performance of a government contract. Instead, the protester complains that the awardee had access to certain cost information arising from ARTEL's negotiations with Intelsat for the use of satellite resources that were under Intelsat's exclusive control. We conclude that these types of negotiations between competitors do not give rise to an OCI, within the meaning of FAR part 9.5.¹⁹

¹⁹ ARTEL also argues that Intelsat enjoyed unfair competitive advantages because the awardee did not allow ARTEL to purchase satellite services in a manner consistent with industry practice, and that Intelsat had exclusive control of certain satellite resources that it did not allow ARTEL to utilize. To the extent that the protester contends that Intelsat's use of these advantages in the procurement was unlawful, allegations concerning pricing practices of this nature are reserved for review by the Department of Justice as part of its enforcement of the antitrust laws and are not a matter for review by our Office. ESCO Marine, Inc., B-401438, Sept. 4, 2009, 2009 CPD ¶ 234 at 3 n.2.

Determination of Intelsat's Responsibility

Finally, ARTEL challenges DISA's determination that Intelsat was a financially responsible contractor because the contracting officer's (CO) review addressed Intelsat's corporate parent, Intelsat Ltd., rather than the awardee itself. The protester further argues that the CO did not reasonably evaluate Intelsat Ltd.'s financial health. We find no merit to these arguments.

As a general matter, our Office does not review an affirmative determination of responsibility by a CO. 4 C.F.R. § 21.5(c); Navistar Defense, LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 20. Contracts may only be awarded to responsible prospective contractors. FAR § 9.103(a). In making a responsibility determination, the CO must determine, among other things, that the contractor has "adequate financial resources to perform the contract, or the ability to obtain them." FAR § 9.104-1(a). We will consider a challenge to a CO's affirmative determination of responsibility only where it is alleged that definitive responsibility criteria in the solicitation were not met, or where the protester identifies evidence raising serious concerns that, in reaching the responsibility determination, the CO unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c); T.F. Boyle Transp., Inc., B-310708, B-310708.2, Jan. 29, 2008, 2008 CPD ¶ 52 at 5.

In our view, the record clearly shows that the CO understood that Intelsat is "an indirect, wholly-owned subsidiary of Intelsat Ltd." AR, Vol. IB, Tab 20, Financial Responsibility Determination, at 1. Nothing in the written determination supports ARTEL's view that the CO was confused as to the identity of the firm that would perform the contract. With regard to ARTEL's challenge to CO's evaluation of Intelsat Ltd.'s finances, and whether the review of the parent company constituted an adequate review of Intelsat's financial capability, we conclude that this argument does not present an exception to our rules barring consideration of challenges to an agency's affirmative determination of responsibility. In this regard, the protester merely disagrees with the agency's conclusions regarding the awardee's financial responsibility, and is therefore raising an issue we will not review. Navistar Defense, LLC; BAE Sys., Tactical Vehicle Sys. LP, supra.

SEGOVIA'S REMAINING PROTEST ARGUMENTS

Segovia challenges DISA's evaluation of its proposal under the space segment and management approach subfactors of the technical approach factor. Based on our review of the record, do not think that Segovia could have been prejudiced by these alleged errors, in light of its standing in the competition.²⁰ TMM Investments, Ltd., supra; Statistica, 102 F.3d at 1681.

²⁰ DISA requested that our Office dismiss Segovia's protest prior to its production of the agency report, arguing that the protester was not an interested party to challenge (continued...)

The SSA identified two weaknesses in Segovia’s proposal under the space segment subfactor. First, for the data throughput requirements, the agency found that although the protester provided a table detailing the proposed satellite bandwidth requirements, the proposal did not provide sufficient detail regarding how the bandwidth would be distributed by frequency band within each region. See AR, Vol. IB, Tab 19, Source Selection Decision, at 10.

The second weakness in its proposal was assessed because Segovia did not explain how its proposed baseline architecture would grow to support additional terminals. Id. In this regard, the SSEB found a weakness in Segovia’s proposal because it stated that it could provide support for up to [deleted] terminals—which was in excess of the 225 maximum terminals required by the solicitation. AR, Vol. IB, Tab 14, SSEB Final Report, at 42; SOO ¶ 3.2.1. The agency assessed a weakness associated with this level of terminal support because the proposal did not “propose any additional bandwidth or provide analysis to indicate how the proposed baseline architecture would grow to support the additional terminals,” and because the additional support represented “a significant increase from the objective requirement that would require a significant, if not, excessive increase in satellite resources that could result in excessive cost to the government.” AR, Vol. IB, Tab 14, SSEB Final Report, at 42.

The SSA also identified a deficiency in Segovia’s proposal under the management approach subfactor, based on “the offeror’s failure in the PWS to explicitly commit to meeting several SOO requirements.” AR, Vol. IB, Tab 19, Source Selection Decision, at 11.

Segovia challenges DISA’s evaluation and argues that the two weaknesses under the space segment subfactor should have been regarded as strengths. Based on our review of the record, we think that there was no likelihood of prejudice to Segovia based on these alleged errors.²¹ Specifically, even if we were to agree with the protester that the agency’s assessment of weaknesses was unreasonable, the

(...continued)

the award to Intelsat in light of its standing in the competition and the allegations raised. We denied the request, concluding that Segovia was an interested party to challenge the award because its proposal could have been in line for award if Segovia’s allegations concerning the evaluations of both its own proposal, and the awardee’s proposal, were meritorious.

²¹ Because we conclude that the protester’s arguments concerning the space segment subfactor do not demonstrate prejudice, we need not address the protester’s arguments concerning the management approach subfactor. In this regard, even if the deficiency were removed for this subfactor, it would not improve the protester’s standing in the competition vis-à-vis Intelsat.

protester provides no basis to conclude that these issues in fact represented strengths that would have improved its evaluation rating. As discussed above, the RFP stated that a “major strength . . . [a]dds a significant benefit to the Government by significantly exceeding one or more threshold requirements,” while a “strength represents a benefit to the Government for which the proposal goes beyond meeting threshold requirements.” RFP attach. 5, ¶ 7.

With regard to the agency’s evaluation of Segovia under data throughput requirements, the protester notes that the table provided in its proposal detailed all of the data required by the solicitation. See AR, Vol. VB, Tab 3A, Segovia Revised Technical Proposal, at II-14. However, even if we were to agree with Segovia that the agency unreasonably concluded that the table failed to provide all of the required data, the protester has not explained how this table demonstrated that Segovia’s proposal exceeded the requirements of the SOO. Thus, we find no basis to conclude that the agency erred in not assessing a strength, or major strength, here.

With regard to the requirements growth criterion, the protester argues that the agency improperly concluded that providing capacity for more than the maximum number of terminals should not be a weakness. Here also, however, the protester does not provide a basis to conclude that the agency should have viewed the protester’s proposal as offering a strength or major strength. The protester stated that it offered a scalable approach that could support up to [deleted] terminals at the center of a satellite beam at a given time. AR, Vol. V(B), Tab 3A, Segovia Revised Technical Proposal, at II-26-II-28. However, in light of the fact that the RFP stated that the maximum number of terminals to be supported will be 225, we do not see how the agency erred in not finding this feature of Segovia’s proposal to offer a strength. See SOO ¶ 3.2.1.

In sum, we think that even if these weaknesses were assessed in error, Segovia would be left with no strengths and no weaknesses under the space segment and management approach subfactors. See AR, Vol. IB, Tab 19, Source Selection Decision, at 10. Under the color ratings announced in the RFP, Segovia’s rating would be consistent with a yellow rating, *i.e.*, “no significant strengths” and “no significant weaknesses.” RFP attach. 5, ¶ 7. Although this would be an improvement from the orange rating assessed by the agency, a yellow rating would not improve Segovia’s standing in the competition sufficient to warrant sustaining the protest, given that the company proposed the highest price. Additionally, Segovia does not challenge its rating under the past performance evaluation factor.

In comparison, for the space segment subfactor, Intelsat received a green rating based on its strength in providing [deleted] satellite beams and its frequency band portability. AR, Vol. IB, Tab 19, Source Selection Decision, at 8, 19-20. In contrast, Segovia has a lower rating than Intelsat under the most important subfactor, a lower past performance rating, and a \$6.7 million higher price. On this record, we find no

basis to conclude that Segovia could have been prejudiced by the alleged technical evaluation errors.

The protests are denied.

Lynn H. Gibson
Acting General Counsel