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# Decision

**Matter of:** CSI Aviation, Inc.

**File:** B-415631; B-415631.3; B-415631.4

**Date:** February 7, 2018

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Eric J. Marcotte, Esq., Kelly E. Buroker, Esq., David M. Hernandez, Esq., and Tamara Droubi, Esq., Vedder Price, P.C., and Ross L. Crown, Esq., Lewis Roca Rothgerber Christie LLP, for the protester.

Robert K. Tompkins, Esq., Rodney M. Perry, Esq., David C. Kully, Esq., and Leila S. George-Wheeler, Esq., Holland & Knight, LLP, for the intervenor.

Cassandra Maximous, Esq., and Kasey Podzius, Esq., Department of Homeland Security, for the agency.

Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest that awardee's quotation misrepresented the awardee's relationships with proposed subcontractors is denied where the solicitation did not require commitment letters from subcontractors, the record does not clearly reflect a misrepresentation, and there is no indication that the evaluation relied on the alleged misrepresentation.
  2. Protest challenging the agency's evaluation of the protester's quotation is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
  3. Protest challenging the agency's evaluation of the awardee's corporate experience and past performance, and alleging unequal discussions, is denied where, notwithstanding apparent errors, the protester failed to demonstrate competitive prejudice because it does not demonstrate that, but for the apparent errors, it would have had a substantial possibility of receiving the award.
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## DECISION

CSI Aviation, Inc., of Albuquerque, New Mexico, protests the issuance of an order to Classic Air Charter, Inc. (CAC), of Huntington, New York, by the Department of Homeland Security, Immigration and Customs Enforcement (ICE), under request for quotations (RFQ) No. HSCECR-17-Q-00005, for air charter services. The protester

alleges that CAC's quotation contained material misrepresentations, that the agency's evaluation of quotations was unreasonable and disparate, and that discussions with the vendors were unequal.

We deny the protest.

## BACKGROUND

ICE issued the RFQ via the General Service Administration (GSA) e-Buy system on June 14, 2017, to all vendors on GSA travel solutions schedule contract 599, under special item number (SIN) category 599-4 "Air Charter Services--Owner Operated," and SIN 599-5 "Air Charter Services--Brokers." The RFQ anticipated the issuance of a single task order with a 1-year base period and four 1-year option periods, to provide air charter services to the ICE Air Operations Division, in support of ICE Enforcement and Removal Operations. The required air charter services include daily scheduled large aircraft (DSLAs) charter flights staged out of Miami, Florida (MIA), Alexandria, Louisiana (AEX), Brownsville, Texas (BRO), San Antonio, Texas (SAT), and Mesa, Arizona (IWA), as well as special high risk charter (SHRC) flights. The single task order is intended to replace five separate task orders--one for each DSLA hub airport--which are currently held by the protester, CSI.

The RFQ explained that the order would be issued on a best-value tradeoff basis considering three evaluation factors: technical capability, past performance, and price. Between the three factors, technical capability was significantly more important than past performance, and the two non-price factors, when combined, were significantly more important than price--although price was to become more important as non-price factor scores approached equality. Additionally, the RFQ provided that the technical capability factor consisted of three subfactors in descending order of importance: technical approach/quality assurance surveillance plan (QASP), corporate experience, and key personnel.

Under the technical approach/QASP subfactor, the vendors were to "specify in clear, understandable terms their technical approach and methodology for fulfilling the Government's requirements set forth in the [performance work statement (PWS)]." Agency Report (AR), Tab 5, RFQ Amendment 1, at 42. Additionally, with respect to the DSLA charter flights, the RFQ instructions required the vendors to provide documentation in various respects for their DSLA aircraft. Specifically, the RFQ provided as follows:

Offerors shall also include in their Technical Approach their capability to meet the exclusive use aircraft requirements contained in the PWS, including, at a minimum, the technical quotation shall supply/address all of the following for ten (10) DSLA aircraft:

1. Provide FAA certifications in accordance with 14 CFR Part 121 or Part 135;
2. Provide FAA registration number(s);
3. Identify aircraft owner;
4. Identify number of seats and configuration;
5. Identify aircraft make and model for each aircraft proposed;
6. Provide copies of required insurance and liability and hull insurance coverage;
7. Outline how the offeror will comply with the requirements of [Federal Aviation Regulations] 117.

Id., at 42-43.

Next, concerning the QASP, the vendors were required to “provide a draft QASP that specifies all work requiring surveillance, the methods of surveillance, sources of surveillance information, and the schedule for surveillance.” Id. at 43. The RFQ cautioned that the draft QASP “should explicitly provide a process for evaluating contractor performance and conformity with the requirements and shall incorporate the Delivery Performance Objectives in Section 11.0 of the PWS.” Id.

Under the corporate experience subfactor, the vendors were required to “provide a list describing their previous experience providing charter aircraft services,” as well as the following information:

- All certificate holders’ aviation safety records.
- All certificate holders’ compliance with Title 14 CFR Part 121 or 135.
- Number of years of corporate experience in providing large-scale, on-demand charter air services similar in size, scope, and complexity with this requirement.
- Number of years providing other relevant charter air services.
- Number of years of corporate experience supporting governmental and law enforcement agencies.

Id. The vendors’ descriptions were also required to indicate if the listed services were performed by the vendors’ key personnel and subcontractors.

Under the key personnel subfactor, the vendors were to provide the resume for their proposed project manager. The project manager was required to have a minimum of 5 years project management experience with “large, high risk, sensitive projects and division level management experience managing projects and staff of comparable scope to the effort assigned.” Id. at 43-44. The resume was also to address multiple additional items, including “Charter Aviation Operations Experience,” including “government charter aviation management.” Id. at 44.

With respect to the past performance evaluation factor, the RFQ required the vendors to provide “at least 2 and up to 5 past performance references that reflect recent relevant experience performed within the last 3 years.” Id. The RFQ also advised that the agency may use other information available to evaluate past performance. The past performance evaluation criteria provided that the government would only consider references evaluated as “relevant to this requirement in terms of size, scope, and complexity.” Id. at 46-47.

The agency received four quotations in response to the RFQ, including the quotations submitted by CSI and CAC. After a brief initial evaluation, the agency concluded that each quotation had omissions, typos, or unclear sections that rendered the quotations unacceptable, and that discussions with the vendors would be required. The agency sent a discussion letter to each vendor on July 21, 2017, giving them “the opportunity to address their deficiencies or weaknesses.” AR, Tab 31, Source Section Decision Document (SSDD), at 3. After the initial round of discussions was complete, the agency engaged in two further rounds of discussions, which largely focused on allowing offerors to resolve inconsistencies between their quotations and their GSA schedule contracts.

All four vendors submitted final revised quotations. After the final evaluation, the agency rated the quotations as follows:

|                          | <b>CSI</b>         | <b>CAC</b>          | <b>Offeror 3</b>    | <b>Offeror 4</b>    |
|--------------------------|--------------------|---------------------|---------------------|---------------------|
| Technical/QASP           | Good               | Outstanding         | Good                | Unacceptable        |
| Corporate Exp.           | Outstanding        | Acceptable          | Acceptable          | Marginal            |
| Key Personnel            | Acceptable         | Outstanding         | Outstanding         | Acceptable          |
| <b>Overall Technical</b> | <b>Good</b>        | <b>Good</b>         | <b>Good</b>         | <b>Unacceptable</b> |
| <b>Past Performance</b>  | <b>Substantial</b> | <b>Satisfactory</b> | <b>Satisfactory</b> | <b>Satisfactory</b> |
| <b>Price</b>             | <b>\$852.2 M</b>   | <b>\$646.0 M</b>    | <b>\$724.8 M</b>    | <b>\$925.8 M</b>    |

AR, Tab 31, SSDD, at 24-25, 30, 42.

In the SSDD, the source selection authority (SSA) reviewed the evaluation of the quotations including the various strengths and weaknesses assigned, and concluded that CSI was the highest-rated offeror under the non-price factors. However, in his best-value tradeoff summary, the SSA concluded that “CSI’s slightly higher ratings for the non-price factors do not support the price premium of over \$200 million higher than the lowest price offer,” and that CAC, not CSI, represented the best value to the government.<sup>1</sup> Id. at 42.

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<sup>1</sup> The agency apparently failed to retain the final underlying evaluation documents, and represented to our Office that the SSDD was the only final consensus evaluation document for the record. An agency which fails to adequately document its evaluation runs the risk that its determinations will be considered unsupported, and absent such support, our Office may be unable to determine whether the agency had a reasonable

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The SSA explained that CSI had a good technical rating and a substantial past performance rating, but that two other offerors also had a good technical rating, and that CSI's price premium was "too high for the government to justify only [a] somewhat higher rating in the past performance factor." Id. at 43. The SSA further explained that within the technical factor, "CAC demonstrated a higher capacity to meet the government's requirements as was demonstrated by two OUTSTANDING ratings for two sub-factors, one of which was the Technical Approach/QASP sub-factor, which was the most important." Id. Within that subfactor, the SSA further noted that

CAC had seven identified strengths for this sub-factor, including [DELETED]. Meanwhile, [offeror 3] had five identified strengths for sub-factor 1 and CSI had three identified strengths for sub-factor 1.

Id. The SSA also considered that while CSI had the best combined non-price rating (considering technical capability and past performance together), the RFQ provided that technical capability was significantly more important than Past Performance and that, within the technical capability factor, technical approach/QASP was the most important subfactor. In conclusion, the SSA determined that:

Considering these non-price factors, and specifically the strengths presented, in conjunction with the price proposals and the cost savings presented in CAC's quote, the government has determined that the best overall value for the government is presented in CAC's quote and CAC is selected for award.

Id.

The agency issued the order to CAC on October 19, 2017. On October 20, the agency advised the unsuccessful vendors that the order had been issued to CAC, and provided a brief explanation of the selection decision. CSI then filed this protest with our Office on October 30.

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(...continued)

basis for its determinations. Acepex Mgmt. Corp., B-283080, et. al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 5. As discussed below, the record here is insufficient to demonstrate that the agency had a reasonable basis to consider the corporate experience and past performance of CAC's subcontractors and their affiliates, or that the agency treated the vendors equally in discussions. While the agency claims that the underlying evaluation was reasonable and would show that the discussion of weaknesses in the quotations was equal, without documentation we have no basis to conclude that the agency did not err. Nevertheless, our review of the SSA's evaluation summary and tradeoff analysis as recorded in the SSDD provides sufficient contemporaneous documentation to conclude that CSI was not prejudiced by errors identified in its protest.

## DISCUSSION

CSI first alleges that CAC's quotation should have been technically unacceptable for failing to provide documentation for ten DSLA aircraft as required by the RFQ, or that CAC materially misrepresented its ability to provide its proposed DSLA aircraft. CSI also asserted in a supplemental protest that CAC's quotation includes a material misrepresentation concerning its intent to provide Boeing 737 aircraft as described in its quotation.

CSI next alleges that the agency conducted an unreasonable and disparate evaluation of its quotation under the technical capability/QASP and key personnel subfactors, and conducted an improper evaluation of CAC's corporate experience and past performance. Concerning the evaluation of CAC's quotation, CSI alleges that the agency improperly considered the corporate experience and past performance of CAC subcontractors that had no defined role in the performance of CAC's technical approach, and accepted corporate experience and past performance references from subsidiaries or affiliates of those subcontractors without consideration of their connection to CAC's quotation.

Finally, CSI alleges that the agency conducted unequal discussions by advising other vendors of weaknesses in their quotations, while not similarly advising CSI. Specifically, CSI asserts that two weaknesses evaluated in its initial quotation, under the technical approach/QASP subfactor and key personnel subfactor, were not raised in discussions, despite the inclusion of similar weaknesses in discussions with other vendors.<sup>2</sup>

As set forth in greater detail below, we see nothing in the record to support CSI's allegations that CAC's quotation contained material misrepresentations, or that the agency's evaluation of CSI's quotation was unreasonable or unequal. Concerning CAC's corporate experience and past performance, we agree with the protester that the agency's evaluation is not sufficiently documented to demonstrate that the SSA considered whether CAC's subcontractors, or their subcontractors' subsidiaries or affiliates, would be meaningfully involved in performance of the task order. Additionally,

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<sup>2</sup> CSI's initial protest also challenged the contracting officer's affirmative determination of responsibility, alleging that the contracting officer ignored or failed to consider information that would be expected to have a strong bearing on CAC's responsibility. We dismissed this ground of CSI's protest because, in the case of an order under a federal supply schedule (FSS) contract, the initial responsibility determination made by GSA in connection with the award of the underlying FSS contract satisfies the requirement for a responsibility determination regarding the vendor and there is no requirement that an ordering agency perform separate responsibility determinations when placing orders. Advanced Tech. Sys. Inc., B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151 at 4-6; see also FAR 8.405-8.406.

we agree with the protester that the agency's discussions were unequal, where the agency failed to discuss two weaknesses in CSI's quotation.

However, as explained in detail in our discussion below, despite the flaws in the agency's evaluation and in discussions, we cannot conclude that there is a reasonable possibility that CSI was prejudiced by the agency's errors. Competitive prejudice is an essential element of every viable protest. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. In this case, even without considering CAC's proposed subcontractors in the evaluation of corporate experience and past performance, and even if CSI was able to resolve the two weaknesses in its quotation, we cannot conclude that there is a likelihood that the SSA's best value decision--largely premised on strengths in CAC's technical approach/QASP and CAC's significant price advantage--would change.<sup>3</sup>

#### Material Misrepresentation

CSI initially alleged that CAC's quotation should have been rated technically unacceptable because it did not contain commitments from qualified air carriers to provide the proposed DSLA aircraft, and did not include required DSLA aircraft documentation. In support of its allegation, CSI asserts that, as the incumbent for this requirement, CSI had entered into exclusive teaming arrangements with three primary air carriers providing this service, and it was unlikely that CAC could have arranged with other air carriers for access to the necessary aircraft at a reasonable price.

On review of the agency report, CSI learned that CAC's quotation represented that CAC had "entered into initial agreements" with three air carriers for access to 24 proposed DSLA aircraft (10 aircraft to be dedicated exclusively to ICE and 14 standby aircraft available as replacements or to fulfill additional agency requirements), and had included required documentation. AR, Tab 9, CAC Quotation, at 11. CSI also learned that two of the three air carriers identified in CAC's quotation (which owned or were proposed to operate 17 of CAC's identified aircraft) were firms with which CSI had previously executed teaming agreements.

CSI subsequently asserted that, by virtue of its own exclusive teaming arrangements, CAC could not have had agreements with two of the three air carriers included in its

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<sup>3</sup> Our Office has reviewed all allegations presented in CSI's protest and supplemental protests, and we find no errors other than those identified in this decision, which we have concluded are insufficient to demonstrate prejudice. To the extent that allegations or elements of allegations in CSI's protests are not specifically discussed in this decision, we have concluded that they fail to identify errors in the agency's evaluation.

quotation, and as a consequence had no access to, or permission to include in its quotation, 17 of its 24 proposed DSLA aircraft.<sup>4</sup> Accordingly, CSI alleges that CAC's quotation materially misrepresented both that it had entered into "initial agreements" with the air carriers, and that it could provide the DSLA aircraft included in its quotation. CSI argues that without the agency's reliance on CAC's misrepresentations, CAC's quotation would not have been technically unacceptable.

Where a vendor's quotation represents that it will perform a task order in a manner materially different from the vendor's actual intent, an award based on such a quotation cannot stand, since both the vendor's representations, and the agency's reliance on such, have an adverse impact on the integrity of the procurement process. See FCI Fed., Inc., B-408558.7, B-408558.8, Aug. 5, 2015, 2015 CPD ¶ 245 at 7, citing Greenleaf Constr. Co., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 8-10. A misrepresentation is material where the agency relied upon it and it likely had a significant impact on the evaluation. Superlative Technologies, Inc., B-408941, Dec. 30, 2013, 2014 CPD ¶ 18 at 5. For a protester to prevail on a claim of material misrepresentation, the record must show that the information at issue is false. Vizada Inc., B-405251 et al., Oct. 5, 2011, 2011 CPD ¶ 235 at 9. Here, we find no evidence that CAC made a material misrepresentation in its quotation.

As an initial matter, despite the protester's insistence that the agency relied on CAC's representation that it had "entered into initial agreements" for access to its proposed aircraft, the RFQ did not require quotations to include written teaming agreements, subcontracting agreements, or other commitments of any kind concerning its proposed aircraft, and we see no evidence that any offeror was credited for such agreements under the technical approach/QASP subfactor. Rather, the RFQ required only that the offerors provide required documentation for the DSLA aircraft proposed and, to the extent that the agency awarded strengths in this area, the strengths concerned only the number of additional aircraft proposed (both CSI and CAC received a strength for exceeding the 10 DSLA aircraft requirement).

With respect to whether CAC misrepresented its intent to provide the DSLA aircraft that it proposed, we see no evidence in the record that this was the case. The record here includes correspondence between CAC and its proposed air carriers demonstrating that the air carriers voluntarily provided CAC with, for example, pricing information and required aircraft documentation for the purpose of responding to this RFQ. AR, Tab 37, Subcontractor Email at 1-2 (providing CAC with aircraft pricing per airport under the email subject line "ICE Support"); Tab 38, Subcontractor Email, at 1-2 (providing CAC with aircraft registration and airworthiness documentation "for the ICE bid"). While the record does not include comprehensive documentation of CAC's negotiations with its proposed air carriers, or any written "initial agreements," the correspondence in the record clearly shows that CAC engaged with its proposed air carriers during the

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<sup>4</sup> As explained further below, CSI also asserts that CAC misrepresented its intention to utilize the remaining seven proposed DSLA aircraft included in its quotation.



preparation of its quotation, and provides no basis on which to conclude that CAC misrepresented its intent to provide 10 of the 24 DSLA aircraft in its quotation for the agency's exclusive use, or to have the remainder available on a stand-by basis, in the event it prevailed in the competition. Id.

CSI next alleges that CAC's quotation also includes misrepresentations concerning CAC's use of Boeing 737 aircraft identified in CAC's technical approach and price quotation. CSI explains that during a size status challenge at the Small Business Administration (SBA), CAC represented with regard to one air carrier and several other subcontractors included in its quotation that it had "no intention to subcontract to these firms at this time." CSI Second Supplemental Protest, Attachment 3, SBA Size Status Decision, at 9. Based on this information, CSI alleges that CAC knew that it would not have sufficient Boeing 737 aircraft to perform consistent with its technical approach and price quotation, and intends to substitute less desirable aircraft during performance.

We see nothing in the record to suggest that CAC misrepresented its intention to utilize Boeing 737 aircraft consistent with its quotation. While CSI contends that CAC's other air carriers do not account for sufficient Boeing 737 aircraft to support CAC's proposed approach, the record shows that the combination of aircraft owned by the carriers and aircraft owned by third parties but to be operated by the proposed carriers does in fact account for a sufficient number of Boeing 737s. AR, Tab 9, CAC Quotation, at 11-13.

Further, we see nothing inconsistent between CAC's proposed approach and CAC's representation in the SBA size status proceeding that CAC did not intend to subcontract with certain firms included in its quotation at this time. In this regard, CAC's quotation included documentation for 24 total DSLA aircraft, but explained that "[o]f these aircraft ten will be dedicated exclusively to [ICE Air Operations] per the PWS," while the balance of the aircraft "will be available on a stand-by basis." AR, Tab 9, CAC Quotation, at 11. Here, two of CAC's proposed air carriers account for more than a sufficient number of aircraft to fulfill the PWS's exclusive use requirements. Thus, since CAC does not need to rely on the resources of the additional air carrier or on subcontracted air charter brokers that it represented it did not intend to utilize at this time, there is no inconsistency with the representations in CAC's quotation. As explained above, the RFQ and PWS did not require the vendors to provide subcontractor agreements or firm commitments in their quotations.

#### Evaluation of CSI's Quotation

CSI alleges that the agency conducted a flawed evaluation of its quotation and engaged in disparate treatment of the offerors. Specifically, CSI contends that a weakness assessed under the technical approach/QASP subfactor was unsupported and that the agency irrationally ignored its actual knowledge of CSI's project manager's incumbent performance in rating it acceptable with one weakness under the key personnel subfactor. CSI also contends that the evaluation was unequal where CAC's quotation received multiple strengths for its QASP, while CSI did not receive similar strengths for its similar QASP.

Where, as here, an agency issues an RFQ under FAR subpart 8.4 and conducts a competition, see FAR § 8.405-2, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. See RVJ Int'l, Inc., B-292161, B-292161.2, July 2, 2003, 2003 CPD ¶ 124 at 5. In reviewing an agency's technical evaluation of vendor submissions under an RFQ, we will not reevaluate the quotations; we will only consider whether the agency's evaluation was reasonable and in accord with the evaluation criteria listed in the solicitation and applicable procurement statutes and regulations. American Recycling Sys., Inc., B-292500, Aug. 18, 2003, 2003 CPD ¶ 143 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4. Based on our review of the record here, we see nothing unreasonable or unequal in the agency's evaluation of CSI's quotation under the technical factor.

First, we see nothing unreasonable or unsupported in the agency's assignment of a weakness to CSI's QASP for failure to "specify vendor safety reporting requirements or outline a plan for safety reporting as referenced in PWS Section 8.10." AR, Tab 31, SSDD, at 10. That PWS section requires, in relevant part, the contractor to provide "[q]uarterly operational summary Safety Reports" including data on total number of flights, flight hours per contract line item number, origin-destination information, and comprehensive details concerning any aircraft accident or incident. AR, Tab 5, RFQ Amendment 1, at 31-32.

CSI contends that the weakness was unreasonable and unsupported because its quotation committed to [DELETED] deliverable reports, and had thus acknowledged that it would compile its reports based on [DELETED], reflecting [DELETED] consistent with the vendor safety reporting requirements of the PWS. AR, Tab 6, CSI Quotation, at 17. Nonetheless, beyond a commitment to complete the required reports under PWS 8.10, the RFQ provided that the vendor's draft QASP "explicitly provide a process for evaluating contractor performance and conformity with the requirements and shall incorporate the Delivery Performance Objectives in Section 11.0 of the PWS."<sup>5</sup> AR, Tab 5, RFQ Amendment 1, at 43. Accordingly, where CSI's quotation did not specifically outline a plan for how it would accomplish accurate, complete on-time reporting (for example, by explaining how it intended to ensure timely receipt of performance data from its various subcontractor air carriers), we have no basis on which to question the assessment of a weakness against CSI's QASP.

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<sup>5</sup> Accurate reporting under PWS section 8.10 was one of the "Delivery Performance Objectives" in section 11.0 of the PWS. AR, Tab 5, RFQ Amendment 1, at 34. The RFQ evaluation criteria specifically included "[t]he degree to which the Offeror's QASP meet or exceed the Delivery Performance Objectives set forth in PWS Section 11.0." Id. at 46.

Second, we see nothing improper in the agency's evaluation of CSI's project manager under the key personnel subfactor. Under this subfactor, the agency concluded in part that the project manager's "resume lacks specific references to performing division level project management as required by the PWS, which required that the [project manager] have a minimum of 5 years project 'division level management experience managing projects and staff of comparable scope.'" AR, Tab 31, SSDD, at 12. The SSA explained that the resume addressed management tasks associated with a large government contract, but not actual management of the overall project, and concluded that the experience appeared task oriented. CSI explains that because its proposed project manager was currently performing the same role under an incumbent task order for this requirement, the agency must have been aware of the individual's strategic level management experience, and should have considered this institutional knowledge in its evaluation.

As a general matter, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8. An offeror's technical evaluation is dependent on the information furnished, and an offeror that fails to submit an adequately written proposal runs the risk of having its proposal downgraded. See Henry Schein, Inc., B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 7. Here, the record shows that CSI's quotation included only a sparse single page of resume information for its proposed project manager, which lacked any details concerning the individual's "division level management experience." See AR, Tab 6, CSI Quotation, at 41; Tab 5, RFQ Amendment 1, at 43. Accordingly, we conclude that the protester's challenge in this regard is without merit.

Third, we have reviewed the quotations and the evaluation results and find no support for CSI's allegations that the agency engaged in disparate treatment in the evaluation of the vendors' draft QASPs. In contrast, our review of the record indicates that differences between the contents of the quotations support the differing evaluation results. For example, with respect to a strength assigned to CAC for its "safety management program," comparison of the quotations demonstrates that CAC [DELETED]. See AR, Tab 9, CAC Quotation, at 29. While CSI's quotation also addressed [DELETED], we cannot conclude that the assignment of a strength to only CAC in this area was unreasonable, or reflects disparate treatment in the evaluation. See AR, Tab 6, CSI Quotation, at 15-16.

#### Evaluation of CAC's Corporate Experience and Past Performance

CSI alleges that the agency erred by considering corporate experience narratives and past performance references for subcontractors that did not have defined roles in CAC's quotation and, accordingly, will not meaningfully contribute to task order performance. CSI further contends that much of the corporate experience and past performance attributed to these subcontractors was actually attributable to subcontractor affiliates whose relationships and contributions were unexplained. According to CSI, without

reliance on these subcontractors' experience and past performance in the evaluation, CAC would have received a corporate experience rating of unacceptable, and a past performance rating of no confidence.

We agree with CSI that the agency erred in evaluating CAC's subcontractors' experience and past performance without considering whether the subcontractors would play a meaningful role in performance, or whether the claimed experience and past performance in fact related to the same entity, versus an affiliate. The record here shows that although CAC's quotation identified several subcontractors as "team members" in its executive summary, the quotation failed to define any assigned role for these subcontractors in the technical approach.<sup>6</sup> Additionally, the record confirms CSI's allegation that much of the subcontractor experience and past performance evaluated by the agency did not relate directly to the subcontractors, but concerned prior contracts of the subcontractor's affiliates.<sup>7</sup>

An agency may base the evaluation of corporate experience on the experience of subcontractors when the subcontractors are to do the work to which the experience is applicable, so long as the solicitation allows for the use of subcontractors and does not prohibit the consideration of a subcontractor's experience in the evaluation. Kellogg Brown & Root Servs., B-298694.7, June 22, 2007, 2007 CPD ¶ 124 at 12. Concerning whether the performance of subcontractor's affiliates should be attributed, the agency must consider not simply whether the two companies are affiliated, but the nature and extent of the relationship between the two--in particular, whether the workforce, management, facilities, or other resources of one may affect contract performance by the other. Strategic Resources Inc., B-287398, B-287398.2, June 18, 2001, 2001 CPD ¶ 131 at 7-8. In this regard, it is appropriate to consider an affiliate's performance record where it will be involved in the contract effort, Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 12, or where it shares management with the offeror. Morrison Knudsen Corp., B-280261, Sept. 9, 1998, 98-2 CPD ¶ 63 at 4-5. Here, despite it being clear on the face of CAC's quotation that the purported team members had no defined role in the task order and had not directly performed the prior contracts submitted for evaluation, there is nothing in the record to suggest that the agency considered whether the subcontractors or their affiliates would be involved in performance of the task order.

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<sup>6</sup> Further, we note during proceedings at the SBA, and in a declaration in connection with this protest, CAC acknowledged that certain identified "team members" were "not assigned any specific role on the team at present," but were part of CAC's "large network of aircraft operators." AR, Tab 49, CAC CEO Declaration, at 5-6.

<sup>7</sup> For example, CAC's quotation identified "Homeland Intelligence Technologies Aviation, Inc.," as its subcontractor providing flight security personnel, but provided past performance references concerning contracts completed by "Homeland Intelligence Technologies International, Inc." AR, Tab 9, CAC Quotation, at 9, 86-87.

However, we disagree with CSI that consideration of the subcontractors had a meaningful impact on CAC's evaluation results. Contrary to CSI's contention, we see little in the record to indicate that the subcontractors' performance was of importance in assigning CAC an acceptable rating under the corporate experience subfactor or a satisfactory rating under the past performance factor.

Specifically, with respect to corporate experience, the SSA described CAC's evaluation results as follows:

CAC's corporate experience includes 28 years of corporate charter air experience and 16 years of experience supporting government/law enforcement. The proposal executive summary stated that Classic Air Charter has been a GSA Schedule 559 contractor since 2012. Classic Air Charter currently supports government contracts for small and large aircraft, including the Department of National Defense Canada. Proposed subcontractors have supported multiple government agencies and DHS throughout the world. Their charter aviation summary outlined their collective experience supporting air charter services.

AR, Tab 31, SSDD, at 23. Notwithstanding CSI's arguments to the contrary, our review of the record demonstrates that the agency's evaluation of CAC's own corporate experience is accurate and reasonably supported by the quotation's explanation of experience attributable to CAC, CAC's project manager (key personnel), and a predecessor company that shares management with CAC.<sup>8</sup> Where the final evaluation merely notes the subcontractors' collective experience after specifically reviewing the experience directly attributable to CAC, we cannot conclude there is a likelihood that excluding the experience of those subcontractors would have resulted in an evaluation rating lower than the acceptable rating that CAC received.

Similarly, with respect to past performance, the record shows that CAC provided five past performance references--three of which related to CAC's own past performance providing air charters services. The agency also received six completed past performance questionnaires (PPQs)--three of which concerned CAC's past performance providing air charter services. The SSA concluded that CAC's first two PPQs showed all outstanding ratings, but were of limited relevance in scope and complexity. The SSA concluded that the third PPQ included a mix of outstanding, satisfactory, and neutral scores, but did not comment on the relevance of the underlying contract. The SSA next considered the three PPQs concerning subcontractors' past performance as a group, and concluded that the ratings were entirely outstanding except for one neutral, but

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<sup>8</sup> We note that the RFQ did not demand significant substantiation, but required only that "[o]fferors shall provide a list describing their previous experience." AR, Tab 5, RFQ Amendment 1, at 43.

again failed to comment on the relevance of the underlying contracts. In sum, the SSA concluded that:

Because of the relevance of CAC's past performance references, all PPQs were considered and support CAC's overall past performance score of Satisfactory Confidence (SATISFACTORY). CAC lacks past performance with organizing multiple flights daily and any type of law enforcement requirement. Based on [CAC's] recent/relevant performance record, the government has an expectation that the Offeror will successfully perform the required effort.

AR, Tab 31, SSDD at 29.

CSI argues that because of the limited relevance of CAC's own past performance, all PPQs--including subcontractors'--were required for the agency to reach a satisfactory rating. We disagree, and read the SSA's comments on "the relevance of CAC's past performance," in reference to the RFQ's caution that "[t]he Government will only take into consideration the experience and past performance assessments that can be considered relevant"--that is, as an acknowledgment that all references were of at least limited relevance and were suitable for evaluation. AR, Tab 5, RFQ Amendment 1, at 46.

Where CAC's own past performance included multiple PPQs that demonstrated outstanding ratings, though on contracts of limited relevance, we cannot conclude that there is a likelihood that reliance on CAC's own past performance would have resulted in a rating of less than satisfactory confidence. In this regard, we note that the RFQ required the vendors to provide "at least 2" past performance references, and that assignment of a satisfactory rating for a small number of limited relevance references showing high qualitative scores is consistent with the agency's overall past performance evaluation.<sup>9</sup> Id. at 44. Determining the relative merits of offerors' past performance

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<sup>9</sup> The record shows that assignment of a satisfactory rating for CAC's past performance (without subcontractors), is consistent with the agency's evaluations of the other vendors' past performance. For example, the SSA rated offeror 3 satisfactory on the basis of "some relevant past performance references" and "considering the PPQs that included high ratings but limited detail and relevance." AR, Tab 31, SSDD, at 27. The SSA also rated offer 4 satisfactory, despite failure to provide past performance references, based on two prime contractor PPQs with limited relevance due to limited information available, and one subcontractor PPQ for which relevance was not discussed. For comparison, we also note that despite its status as the incumbent for five task orders comprising the RFQ requirement, CSI provided only two past performance references and did not include the incumbent task orders. The agency received only one PPQ for CSI, which showed outstanding and good ratings but had limited relevance in terms of scope and complexity, and was described as "routine, not  
(continued...)

information is primarily a matter within the contracting agency's discretion. Hanley Indus., Inc., B-295318, Feb. 2, 2005, 2005 CPD ¶ 20 at 4; Gulf Group, Inc., B-287697, B-297697.2, July 24, 2001, 2001 CPD ¶ 135 at 4 (agency reasonably assigned offeror satisfactory past performance rating based on references that were evaluated positively in terms of quality, but were determined to be of limited relevance).

## Unequal Discussions

Where an agency conducts exchanges with vendors in a FAR subpart 8.4 procurement, those communications--like all other aspects of such a procurement--must be fair and equitable. USGC, Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 3. Our Office looks to the standards in FAR part 15, and the decisions interpreting that part, for guidance in determining whether exchanges with vendors under a FAR subpart 8.4 procurement were fair and equitable. Id. Under FAR part 15, although discussions with offerors must address deficiencies and significant weaknesses, the precise content of discussions is largely a matter of the contracting officer's judgment. FAR 15.306(d)(3); American States Utils. Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 6. However, procuring agencies are not permitted to engage in conduct that favors one offeror over another. FAR § 15.306(e)(1).

We agree with CSI that the agency engaged in unequal discussions by advising other vendors of weaknesses in their quotations without similarly advising CSI of two weaknesses in its own quotation--one under the technical approach/QASP subfactor and one under the key personnel subfactor. The agency acknowledges that it discussed weaknesses assessed against other vendors' quotations, but contends that it did not act unequally because it uniformly limited the scope of discussions to weaknesses that "unless corrected, would prevent an offeror from having a reasonable chance for award."<sup>10</sup> Second Supplemental AR, January 23, 2018, at 7. However, the agency also acknowledges that the RFQ did not provide for "degrees of strengths and weaknesses," and it did record significant weaknesses versus more minor weaknesses in its evaluation. Supplemental Agency Report at 27. Our review of the record

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(...continued)

difficult." Id. at 25. Nonetheless, in consideration of that single PPQ and CSI's prior performance for ICE--which received mostly satisfactory ratings in the past performance information retrieval system--the SSA assigned CSI a higher, substantial confidence rating.

<sup>10</sup> The agency suggests that this is the correct standard for our Office's review of the adequacy of discussions. The agency is correct that our Office has utilized this standard to analyze whether discussions have addressed at least deficiencies and significant weaknesses identified in proposals--that is, whether discussions were meaningful. See Dynamic Sys. Techs., Inc., B-253957, Sept. 13, 1993, 93-2 CPD ¶ 158 at 5; recon. denied, Dynamic Sys. Techs., Inc.--Recon., B-253957.2, Feb. 10, 1994, 94-1 CPD ¶ 96 at 3. The question of unequal discussions, however, concerns whether the conduct of discussions favored one offeror over another.

demonstrates substantial similarity between the weaknesses in CSI's quotation and the other weaknesses that the agency elected to discuss with other vendors. Where we see no basis to distinguish these weaknesses, we conclude that the agency's discussions were unequal.

The agency next argues that CSI was not prejudiced because, even if it had raised CSI's weaknesses in discussions and the weaknesses had been resolved, the removal of the weaknesses would not meaningfully improve CSI's evaluation, or affect the tradeoff decision. In this regard, CAC was rated outstanding for the technical approach/QASP subfactor, with seven strengths and no weaknesses, while CSI was rated good with three strengths and one weakness. Further, in the tradeoff analysis, the SSA specifically emphasized the value of four strengths in CAC's quotation, while CSI's weakness was not mentioned. In light of CAC's clear advantages under this subfactor, we cannot conclude that the resolution of CSI's weaknesses would have impacted the SSA's analysis.

Similarly, with respect to key personnel, the tradeoff analysis noted CAC's outstanding rating, but did not highlight CSI's acceptable rating or weakness as a particular disadvantage under the subfactor. While CSI alleges that by resolving its weakness it would also have warranted an outstanding rating, we see no likelihood that this is the case. Specifically, we note that CAC's outstanding rating was based on its proposed project manager's 40 years of experience in the aviation industry, with over 25 years of senior executive-level experience with multiple air charter services providers and 8 years of experience providing charter flights to the State Department and Department of Defense. AR, Tab 9, CAC Quotation, at 43-45. The SSA concluded that CAC's project manager "significantly exceeds" the key personnel requirements. AR, Tab 31, SSDD, at 24. In contrast, CSI's acceptable rating was based on its proposed project manager's approximately [DELETED] years total experience [DELETED] since initially joining CSI in [DELETED]. AR, Tab 6, CSI Quotation, at 41. The SSA concluded that CSI's project manager was acceptable with one strength for "over [DELETED] years of experience supporting ICE contracts," but also one weakness, because the agency could not determine the individual's experience in senior-level project management. AR, Tab 31, SSDD, at 12. Given the evident superiority of CAC's key personnel, we see no reasonable possibility that resolution of CSI's weakness would have improved CSI's subfactor rating, or meaningfully improved its competitive position in comparison to CAC.

## CONCLUSION

As discussed in detail above, we have reviewed the challenges and conclude that while the protester identified several errors in the agency's evaluation, the errors do not, individually or in combination, demonstrate a likelihood that CSI was competitively prejudiced. Specifically, the SSDD demonstrates that the SSA understood that CSI was the highest-rated vendor, with the highest rating under the past performance factor. Nonetheless, the SSA concluded that CAC's higher ratings under two of the three subfactors of the "significantly more important" technical capability factor--and



specifically its strengths under the technical capability/QASP subfactor--in connection with its significant price advantage, made CAC the best value to the government.

Where none of the errors identified meaningfully impact CSI's advantage under the past performance factor, CAC's advantages under the technical approach/QASP and key personnel subfactors, or CAC's significant price advantage, we do not think that the errors had an impact on the best value tradeoff here. We will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, supra.

The protest is denied.

Thomas H. Armstrong  
General Counsel