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# Decision

**Matter of:** Technica LLC

**File:** B-417177; B-417177.2; B-417177.3; B-417177.4; B-417177.5

**Date:** March 21, 2019

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Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging agency's evaluation of protester's past performance is denied where record shows that agency has a reasonable basis for eliminating from consideration past performance examples that the agency determined were not relevant.
  2. Protest allegations challenging various aspects of agency's technical evaluation of protester's proposal are dismissed where record shows that, even if the protester were correct, the alleged errors did not prejudice the protester.
  3. Protest allegations challenging agency's evaluation of awardee's proposal are dismissed because protester is not an interested party to maintain the allegations.
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## DECISION

Technica, LLC, of Charleston, South Carolina, protests the issuance of a task order to Aviation Security Management, LLC (ASM), of Dumfries, Virginia, under request for proposals (RFP) No. 70T05018R5NSPP176, issued by the Department of Homeland Security, Transportation Security Administration, for airport screening security services at Punta Gorda Airport in Punta Gorda, Florida. Technica argues that the agency misevaluated proposals and made an unreasonable source selection decision.

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

## BACKGROUND

The RFP contemplates the issuance, on a best-value tradeoff basis, of a fixed-price task order to provide airport security screening services for a base period of 1 year and four 1-year option periods. Firms were advised that proposals would be evaluated considering price and several non-price considerations. The evaluation factors were as follows: (1) cost efficiency (evaluated on a pass/fail basis as a threshold matter to determine whether an offeror's evaluated price was equal to or less than the agency's estimate of cost to the government); (2) transition and operational management approach; (3) program management and training approach; (4) past performance; and (5) price. RFP at 58. The RFP also advised that transition and operational management approach, and program management and training approach, were of equal importance, and more important than past performance; and factors 2 through 4 were collectively significantly more important than price.<sup>1</sup> Id.

In response to the RFP, the agency received three proposals, including those of the protester and awardee. The agency evaluated the proposals and, after determining that all three were acceptable under the cost efficiency factor, included them all in the competitive range. The agency engaged in discussions and solicited, obtained and evaluated final proposal revisions (FPR). After evaluating FPRs, the agency assigned the following ratings to the proposals:

	Cost Efficiency	Transition & Operational Management Approach	Program Management & Training Approach	Past Performance	Price
<b>ASM</b>	Acceptable	Outstanding	Good	Significant Confidence	\$27,004,543.55
<b>Technica</b>	Acceptable	Good	Acceptable	Satisfactory Confidence	\$28,155,522.28
<b>Offeror A</b>	Acceptable	Outstanding	Good	Satisfactory Confidence	\$27,687,649.00

Agency Report (AR), exh. 27, Tradeoff Recommendation Report, at 4. The record further shows that, in arriving at the adjectival ratings for factors 2 and 3 (transition and operational management approach, and program management and training approach), the agency assigned significant strengths, strengths, and weaknesses to the proposals as follows:<sup>2</sup>

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<sup>1</sup> The RFP advised that proposals would be assigned adjectival ratings of outstanding, good, acceptable, or unacceptable under the evaluation factors for transition and operational management approach, and program management and training approach. RFP at 59-60. The RFP further advised that past performance would be assigned adjectival ratings of high confidence, significant confidence, satisfactory confidence, unknown (neutral) confidence, little confidence, or no confidence. Id.

<sup>2</sup> The agency did not assign any significant weaknesses or deficiencies to any of the proposals.

	ASM		Technica		Offeror A	
Rating	Transition & Operational Management Approach	Program Management & Training Approach	Transition & Operational Management Approach	Program Management & Training Approach	Transition & Operational Management Approach	Program Management & Training Approach
Significant Strength	5	2	2	1	9	6
Strength	10	2	7	2	2	3
Weakness	0	0	0	1	0	0
Overall Factor Rating	Outstanding	Good	Good	Acceptable	Outstanding	Good

Id. at 12. Based on these evaluation results, the agency issued a task order to ASM, concluding that its proposal represented the best value to the government. After being advised of the agency’s selection decision, and requesting and receiving a debriefing, Technica filed the instant protest.<sup>3</sup>

## PROTEST

Technica raises various arguments in connection with its overall position that the agency misevaluated proposals under each of the non-price factors.<sup>4</sup> We have carefully considered all of Technica’s arguments and find none of them meritorious. We note at the outset that, in reviewing protests challenging an agency’s evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency’s evaluation was reasonable and consistent with the solicitation’s evaluation criteria, and applicable statutes and regulations. ManTech Advanced Sys., Int’l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3. On this record, we have no basis to object to the agency’s actions.

### Technica’s Past Performance Evaluation

Technica protests the agency’s evaluation of its past performance. The record shows that Technica submitted three past performance examples with its proposal. In performing its evaluation, the agency determined that only one of the three examples was relevant, and

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<sup>3</sup> The agency’s estimate for performance of the contract was \$27,863,138. RFP, Amend. No. 0007, at 60. All proposals submitted were below this amount. The awardee’s price was \$26,749,626. This requirement is being solicited under the agency’s Screening Partnership Program multiple-award, indefinite-delivery, indefinite-quantity contract. Because the task order at issue is valued at more than \$10 million, our Office has jurisdiction to consider the protest. 41 U.S.C. § 4106.

<sup>4</sup> Technica initially alleged that the agency misevaluated the awardee’s proposed labor rates. Technica subsequently withdrew that aspect of its protest.

based its evaluation on just that one past performance example.<sup>5</sup> Technica argues that the agency unreasonably found its two other past performance examples not relevant.

We have no basis to object to the agency's evaluation of Technica's past performance. An agency's evaluation of past performance--which includes its assessment of the relevance, scope, and significance of an offeror's past performance examples--is a matter largely within the discretion of the agency that we will not disturb unless that assessment is shown to be unreasonable or not consistent with the solicitation's past performance evaluation factor. Metropolitan Life Ins. Co., B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14.

Here, the RFP advised offerors that the agency intended to consider the relevance of a firm's past performance examples, and specifically advised that the agency would confine its past performance evaluation to consideration of examples that reflected a comparable level of size, scope, and complexity to the solicited requirements. RFP at 60. As noted, the services being solicited here are for performance of airport passenger and baggage security screening. The record shows that the two examples that the agency did not consider relevant had nothing to do with performing airport security screening services.

The first example required Technica to perform warehousing and distribution services for the Defense Logistics Agency. AR, exh. 21, Technica Past Performance Proposal, at 2-6. The agency determined that this contract, while arguably comparable in terms of dollar value and complexity, was not relevant to its evaluation of Technica's past performance because it did not involve any of the attributes of airport security screening services. AR, exh. 10, Past Performance Evaluation Report, at 7. The record also shows that Technica itself did not explain in its proposal how this example was relevant to the services being solicited beyond suggesting that both contracts require communication, and that communication would be a 'major part' of performing the solicited requirements. AR, exh. 21, Technica Past Performance Proposal, at 5-6. On this record, we have no basis to object to the agency's determination that this past performance example was not relevant.

The second example required Technica to provide operations, management and logistics support services at several Department of Homeland Security facilities. AR, exh. 21, Technica Past Performance Proposal, at 12-15. The agency determined that this contract was not relevant for two reasons, first that the size of the contract (in terms of the number of personnel involved) was not comparable; and second, that it did not involve performance of airport security screening services. AR, exh. 10, Past Performance Evaluation Report, at 9. Again, the record shows that Technica failed to describe how this contract was relevant beyond a claim that this contract required it to use a 'dynamic scheduling system' that could be (but was not proposed by Technica to be) used to perform the solicited requirement. AR, exh. 21, Technica Past Performance Proposal, at 14-15. We also have no basis to object to the agency's determination that this example also was not relevant.

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<sup>5</sup> Technica does not challenge the substance of the agency's evaluation of the one past performance example that was considered.

Technica suggests that the agency's failure to consider these contracts relevant evidences the application of an unstated evaluation consideration, namely, that the past performance examples had to involve airport security screening services. As noted, the past performance factor explicitly contemplated consideration of the scope of the past performance examples. We consider it axiomatic that an agency may reasonably find a past performance example not relevant where the scope of the contract did not involve performing any of the airport security screening services being solicited.

Technica also contends that the agency failed to engage in meaningful discussions because the agency never advised it that these past performance examples were not considered relevant. However, an agency's conclusion that a particular past performance example is not relevant does not rise to the level of a deficiency or significant weakness, nor does such a determination constitute adverse past performance information to which the protester has not had an opportunity to respond. Maywood Closure Co., LLC, B-408343 et al., Aug. 23, 2013, 2013 CPD ¶ 199 at 9 (agencies only required to discuss significant weaknesses, deficiencies, and adverse past performance information to which a party has not had an opportunity to respond). The agency thus was under no obligation to inform Technica during discussions that certain of its past performance examples were not considered relevant. In light of the foregoing discussion, we deny this aspect of Technica's protest.

#### Technica's Remaining Issues

Technica also raises several challenges the agency's evaluation of its proposal under the other non-price evaluation factors. The protester argues that the agency evaluated the proposals unequally, assigning significant strengths or strengths to the ASM and/or Offeror A proposals--but not to Technica's proposal--for features that essentially were identical in all three proposals. In each of these instances, Technica argues that its proposal also should have received a significant strength or strength.<sup>6</sup>

We dismiss these arguments because we conclude that there is no reasonable possibility of prejudice to Technica based on the errors alleged. Prejudice is an essential element of every viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even if the agency's actions arguably are improper. Olympus America, Inc., B-414944, Oct. 19, 2017, 2018 CPD ¶ 151 at 3-4.

Technical argues that the agency improperly failed to assign its proposal three significant strengths and two strengths under factor 2, transition and operational management approach.<sup>7</sup> Technica also argues that the agency improperly failed to assign its proposal a

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<sup>6</sup> Of note, Technica does not argue in any of these instances that the other two proposals should not have been assigned a significant strength or strength.

<sup>7</sup> According to Technica, the agency assigned ASM and Offeror A two significant strengths under factor 2, one for proposing a transition-in manager, and one for proposing dual-certified officers. Technica claims that it also should have been assigned two significant strengths for these features because it also proposed them. Additionally, Technica argues

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significant strength and a strength under factor 3, program management and training approach.<sup>8</sup>

Assuming for the sake of discussion that Technica is correct with respect to all of these assertions, the assignment of significant strengths and strengths would be as follows for all three proposals:

Rating	ASM		Technica		Offeror A	
	Transition & Operational Management Approach	Program Management & Training Approach	Transition & Operational Management Approach	Program Management & Training Approach	Transition & Operational Management Approach	Program Management & Training Approach
Significant Strength	5	2	5 (2)	2 (1)	9	6
Strength	10	2	9 (7)	3 (2)	2	3
Weakness	0	0	0	0 (1) <sup>9</sup>	0	0
Overall Factor Rating	Outstanding	Good	Outstanding (Good)	Good (Acceptable)	Outstanding	Good

Given this assignment of significant strengths and strengths, and in light of the fact that Technica is only claiming that its proposal should have been assigned significant strengths

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that the agency assigned Offeror A’s proposal a third significant strength under factor 2 for proposing to retain the incumbent workforce. Technica maintains that its proposal also should have been assigned a significant strength for this feature because it proposed to retain the incumbent workforce as well.

In addition to these significant strengths, Technica also notes that the agency assigned ASM’s proposal two strengths under factor 2, one for proposing a temporary office during contract transition, and one for proposing an interactive website for use in recruiting and retaining personnel. Technica maintains that it also should have received these same strengths because it proposed these features as well.

<sup>8</sup> According to Technica, the agency assigned Offeror A’s proposal a significant strength for proposing regularized meetings during contract performance. The protester maintains it also should have been assigned a strength for this same feature because it proposed regular meetings as well. In addition, Technica argues that the agency assigned both ASM’s and Offeror A’s proposal a strength under factor 3 for proposing dual-certified officers. The protester maintains its proposal also should have been assigned a strength for this feature.

<sup>9</sup> Technica also argues that the agency erred in assigning its proposal a weakness under factor 3 for failing to propose vetted security training instructors and assistant security training instructors. For purposes of discussion, and taking matters in a light most favorable to the protester, we have removed the weakness in considering whether Technica has been prejudiced by the evaluation errors alleged.

and strengths that essentially were identical to those assigned to the other two proposals, it follows that the Technica proposal would have been assigned, at best, an outstanding rating under factor 2, and a good rating under factor 3.

Such ratings would make the Technica proposal essentially equal to the proposal submitted by Offeror A under all three of the non-price factors (and technically inferior to ASM's proposal, which received a higher rating under factor 4, past performance), but the record shows that offeror A (and ASM) proposed lower prices compared to Technica. Under the circumstances, there is no basis for our Office to find that Technica was prejudiced by the evaluation errors Technica claims were made in the evaluation of its proposal. We therefore dismiss these contentions without further consideration.

Technica also raises various challenges to the agency's evaluation of the ASM proposal, maintaining that the agency assigned at least one strength erroneously; that, alternatively, ASM's proposal should have been found technically unacceptable based on ASM's proposed staffing; and that the agency misevaluated ASM's past performance. We dismiss these contentions because we conclude that Technica is not an interested party to maintain these allegations.

Our Bid Protest Regulations, 4 C.F.R. § § 21.0(a), 21.1(a) require that a protester be an "interested party," that is, an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract, or the failure to award a contract. Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 5.

The record shows that, even in light of Technica's challenges to the agency's evaluation of technical proposals discussed in detail above, Offeror A submitted a proposal that was at least technically equal to the proposal submitted by Technica. However, Offeror A proposed a lower price compared to the protester. It follows that, even if the protester were correct about the agency's evaluation of the ASM proposal, Offeror A, rather than Technica, would be in line for award, should ASM's proposal be eliminated from consideration. Under the circumstances, we conclude that Technica is not an interested party to raise any challenge to the evaluation of the ASM proposal. We therefore dismiss these aspects of Technica's protest without further consideration.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong  
General Counsel