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## Decision

**Matter of:** Boreal Aviation Inc.

**File:** B-408189

**Date:** July 17, 2013

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Megan C. Connor, Esq., Jonathan T. Williams, Esq., and Grant D.P. Madden, Esq., PilieroMazza PLLC, for the protester.

Christopher C. Bouquet, Esq., The Law Office of Christopher C. Bouquet PLLC, for the intervenor.

Maj. K. L. Grace Moseley, Department of the Army, for the agency.

Cherie J. Owen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency reasonably assigned a higher past performance rating to awardee's proposal than to protester's proposal where agency considered all available past performance information, including the fact that awardee's proposal tied its past performance of various contracts to each of the requirements of the performance work statement and protester's past performance showed that it had received a rating of marginal in its performance of the incumbent contract.

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### DECISION

Boreal Aviation Inc., of Gwinn, Michigan, protests the award of a contract to LOGMET LLC, of Austin, Texas, under request for proposals (RFP) No. W9124R-13-R-0002, issued by the Department of the Army, Mission & Installation Contracting Command, for aviation support services for the proving ground in Yuma, Arizona. Boreal contends that the agency's evaluation of technical and past performance proposals was flawed.

The protest is denied.

The Army issued the solicitation as a small business set-aside on November 8, 2012, seeking a contractor to provide aviation support services at the Laguna Army Airfield at the Army's Yuma Proving Ground in Arizona. The aviation support services were to include ground and flight operations; aviation maintenance; airfield services; and aircraft servicing. The contract awarded under the solicitation was to

be fixed price with a 1-month phase-in period, 11-month base period, and four 1-year options. Agency Report (AR), Tab 5, RFP at 3-17.

The solicitation informed offerors that proposals would be evaluated considering the following three factors: mission capability (technical approach), past performance, and price. Id. at 33-34. The mission capability factor had three subfactors of equal importance: technical expertise (experience); personnel staffing, training, recruitment, and retention plan; transition plan; and quality control approach. The RFP stated that proposals would first be evaluated under the mission capability factor on a pass/fail basis. Those proposals determined to be acceptable under the mission capability factor would be evaluated under the past performance and price factors.

For past performance, the solicitation provided for the evaluation of the past performance of the offerors as well as their joint venture partners and major and critical subcontractors. RFP at 35. The solicitation stated that the past performance evaluation would assess several “areas of evaluation,” including, as relevant here, ability to obtain and retain a highly qualified workforce.<sup>1</sup> Id. at 34. The solicitation also advised offerors that the agency would consider past performance information in offerors’ proposals, as well as information obtained from other sources, such as the past performance information retrieval system (PPIRS) and past performance questionnaires.<sup>2</sup> The final award decision would be based on a trade-off between past performance and price. Id. at 32.

The agency received five proposals in response to the RFP. Both Boreal’s proposal and LOGMET’s proposal were determined to be acceptable under the mission capability factor. Under the past performance factor, the agency noted that the Boreal’s past performance proposal included five somewhat relevant contracts and one very relevant contract. AR, Tab 13, Boreal Past Performance Evaluation, at 1. The evaluators stated that five past performance questionnaires were returned for team Boreal, which contained ratings of marginal, satisfactory, very good, and exceptional. Id.

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<sup>1</sup> The solicitation provided that past performance proposals would be assigned a performance confidence rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. RFP at 35.

<sup>2</sup> A sample past performance questionnaire was included as an attachment to the solicitation. RFP, Attach. 2. The questionnaire indicated that offerors’ past performance would be rated under the following four areas: performance, managerial, personnel/experience, and contractual issues. Id. at 4-7. The questionnaire also provided a space for narrative summaries. Id. at 8.

Of the five questionnaires received, one reflected the agency's evaluation of Boreal's performance under the incumbent contract, which was considered very relevant. See AR, Tab 13B, Past Performance Questionnaires, at 1-8. Under the performance section on the questionnaire, Boreal was assigned 10 ratings of satisfactory and 4 ratings of very good. Id. at 4. Under the managerial section, Boreal received 8 ratings of satisfactory and 1 rating of marginal. The marginal rating was assigned for "ability to hire trained, qualified employees." Id. at 5. Under the area of personnel/experience, Boreal received 2 ratings of very good and 6 ratings of satisfactory. Id. at 6. Under the area of contractual issues, Boreal received 6 ratings of satisfactory. In summary, the past performance questionnaire evaluating Boreal's performance on the incumbent contract contained 6 ratings of very good, 30 ratings of satisfactory, and 1 rating of marginal. Under the narrative summary, the evaluator noted that Boreal "met all requirements in a satisfactory fashion." Id. at 8.

Of the remaining questionnaires, one was submitted by the Army regarding Boreal's performance on another contract, and it contained very few ratings. Out of 37 rating areas, 28 of them were evaluated as not applicable. Id. at 4-7. The remaining 9 ratings were very good. Two other past performance questionnaires were submitted by Boreal, rating the performance of East, Inc. and East O&M, LLC, firms that were proposed as subcontractors.<sup>3</sup> On these two questionnaires, Boreal assigned its subcontractors a majority of exceptional ratings, with several ratings of very good and no ratings lower than very good. Id. at 17-32. The final past performance questionnaire evaluated the performance of East O&M, LLC and was completed by the Air Force. This questionnaire contained a majority of very good ratings with several exceptional ratings and two satisfactory ratings. Id. at 36-39.

The agency also used the PPIRS to retrieve four relevant and somewhat relevant past performance references from the contractor performance assessment reporting system (CPARS). Id. These references contained ratings of marginal, satisfactory, very good, and exceptional, with the majority of the ratings being very good. The CPARS report for the incumbent contract rated Boreal as marginal in the area of filling vacant positions. AR, Tab 13A, CPARS Reports, at 1-3. The report also contained Boreal's response to the rating, which stated:

Start-up on any contract is a learning experience and we have learned a lot during this period and will continue to improve operations as we go forward. We thank all the contracting staff at [Yuma Proving Ground] and will continue to strive for excellence.

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<sup>3</sup> In its legal memorandum, the agency notes that, because Boreal prepared two of the five questionnaires in evaluating the performance of its subcontractors/teaming partners, "Boreal wrote 40% of its own questionnaires." AR at 37.

Id. at 3.

The agency also notes in its legal memorandum that two of the past performance evaluators had personal knowledge of Boreal's performance of the incumbent contract because one evaluator was the contracting officer's representative and another evaluator was the administering contract specialist on that contract. AR at 38. The agency argues that these two evaluators were aware of three contract discrepancy reports (CDRs) that documented unsatisfactory performance by Boreal under the incumbent contract. The first CDR cited numerous foreign object debris (FOD) violations.<sup>4</sup> AR, Tab 13C, Contract Discrepancy Reports, at 1. The second CDR cited a fifty-gallon fuel spill and noted that quality assurance/oversight "appears to be deficient." Id. at 2. The third CDR stated that aircraft were not being maintained at an operational rate of 80% in accordance with the requirements of the performance work statement. Id. at 4.

After considering all of the available past performance information, the agency assigned Boreal's proposal an overall past performance rating of satisfactory confidence, the second highest possible rating. AR, Tab 13, Boreal Past Performance Evaluation, at 1.

With regard to LOGMET's past performance, the agency noted that the firm's past performance proposal detailed twelve contracts, all of which were determined to be somewhat relevant in scope. AR, Tab 14, LOGMET Past Performance Evaluation, at 1. The agency noted that the firm's proposal explained how each past performance reference was relevant to the solicitation's requirements. Specifically, the proposal contained a section that specified how each reference was relevant to particular paragraphs of the performance work statement. See, e.g., AR, Tab 11, LOGMET Past Performance Proposal, at 11, 14, 18, 19, 23-24, 25, 27-28, 29-30, 32, 34-35, 36-37. The agency found that, when combined, these references demonstrated past performance in all areas of the PWS. AR, Tab 14, LOGMET Past Performance Evaluation, at 1. The evaluators noted that five past

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<sup>4</sup> The FAA explains FOD as follows:

FOD is any object, live or not, located in an inappropriate location in the airport environment that has the capacity to injure airport or air carrier personnel and damage aircraft.

The presence of FOD is a continuing concern at our nation's airports. FOD creates safety hazards and can ultimately impact safe operations by damaging aircraft.

Federal Aviation Administration website, available at [http://www.faa.gov/airports/airport\\_safety/fod/](http://www.faa.gov/airports/airport_safety/fod/).

performance questionnaires were returned for team LOGMET, which contained ratings of exceptional, very good, and satisfactory.

The agency also used the PPIRS to retrieve thirty-three past performance references from the CPARS. The ratings on these reports ranged from exceptional to satisfactory, but the majority of the ratings were exceptional, followed by very good. The least frequent rating was satisfactory. AR, Tab 14A, CPARS Reports for Team LOGMET, at 1-108.

After considering all of the available past performance information, the agency assigned LOGMET's proposal an overall past performance rating of substantial confidence. AR, Tab 14, LOGMET Past Performance Evaluation, at 1.

With regard to price, LOGMET's total evaluated price of \$16,888,521.15 was approximately \$3.5 million lower than Boreal's total evaluated price of \$20,444,541.65. Because LOGMET's proposal was both higher rated and lower priced than Boreal's proposal, the agency did not conduct a tradeoff analysis between the two. LOGMET's proposal was selected for award and this protest followed.

## DISCUSSION

Boreal challenges the agency's past performance evaluation. Specifically, the protester contends that its own past performance should have received a rating of substantial confidence, and the awardee's past performance should have received a lower rating.<sup>5</sup> Protest at 18. The protester notes that, "as the incumbent

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<sup>5</sup> Boreal also raised a number of other challenges to the agency's evaluation. While we do not address each one in this decision, we have considered all of them and find that none of them provides a basis to sustain the protest. For example, Boreal argued that because the awardee offered a price that was substantially lower than the price proposed by the protester, this must be an indication that the awardee's proposal was flawed in some way. Protest at 7-15. Specifically, Boreal speculated that the awardee's lower price might indicate some or all of the following flaws: that LOGMET was "buying-in," that the price was not realistic, that the firm did not fully understand the solicitation requirements, that it was offering inadequate staffing, that it did not comply with the wage determination, or that it was otherwise somehow technically unacceptable. Id.; Supp. Protest at 10-11. It is well established that, with respect to a fixed-price award, a protester's claim that an offeror submitted an unreasonably low price--or even that the price is below the cost of performance--is not a valid basis for protest. Brewer-Taylor Assoc., B-277845, Oct. 30, 1997, 97-2 CPD ¶ 124 at 4. An offeror, in its business judgment, properly may decide to submit a price that is extremely low. Id.; Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375 at 2. In another example, the protester  
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contractor performing this work for over two years, Boreal . . . may fairly claim to be the only offeror under the present procurement that has experience that is directly, entirely, and undeniably relevant and relatable to the work described by the PWS.” Protest at 18.

As a general matter, evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for that of the agency. Nuclear Production Partners LLC; Integrated Nuclear Production Solutions LLC, B-407948 et al., April 29, 2013, 2013 CPD ¶ 112 at 18. A protester's mere disagreement with such judgment does not provide a basis to sustain a protest. Palmetto GBA, LLC; CGS Administrators, LLC, B-407668 et al., Jan. 18, 2013, 2013 CPD ¶ 53 at 8.

As set forth above, the past performance evaluators considered the offerors' past performance proposals, as well as the information obtained from PPIRS and the responses to the past performance questionnaires. Although Boreal had very relevant past performance as a result of its work on the incumbent contract, the agency noted some issues with the firm's performance under this contract. Specifically, the firm received a rating of marginal in the area of filling vacant positions. Given that the solicitation here advised offerors that the past performance evaluation would consider, among other things, offerors' ability to obtain and retain a highly qualified workforce, Boreal's failure to satisfy this requirement on a recent, highly relevant contract is a fact that the agency reasonably considered when evaluating Boreal's past performance. Further, the overwhelming majority of ratings in the past performance questionnaire for this reference were satisfactory ratings. AR, Tab 13B, Past Performance Questionnaires, at 4-7. We find that the agency's evaluation of Boreal's past performance as satisfactory confidence was reasonable and supported by the past performance information in the record. Boreal's disagreement with the agency's evaluation does not provide a basis on which to sustain the protest.

Next, the protester argues that the awardee should not have received a past performance rating of substantial confidence. To support its challenge of LOGMET's past performance rating, the protester contends that it did an online search of NAICS code 488190 (the NAICS code assigned to this solicitation) and found limited past performance for LOGMET under that NAICS code. Therefore,

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contends that the agency's evaluation is not fully supported and documented in the agency report responding to the protest. As discussed above, the agency report here contains sufficient documentation to respond to the specific challenges raised in the protest.

the protester contends that the agency's evaluation of the awardee's past performance must be flawed. Protest at 16.

We find no merit in this claim. The solicitation provided that past performance would be evaluated based on the data provided in the offerors' proposals, as well as data obtained from other sources, such as the PPIRS, CPARS, and responses to past performance questionnaires. RFP at 34. In evaluating LOGMET's past performance, the agency followed the solicitation's instructions. It evaluated the awardee's past performance proposal, which demonstrated that, although LOGMET did not have one prior contract that demonstrated past performance in all of the requirements of the PWS, all of its prior references, when combined, did demonstrate past performance in each of the PWS requirements. The agency also considered each of the 33 CPARS reports that it obtained, as well as the references' past performance questionnaires, in accordance with the solicitation's terms. The protester has not shown that the agency's evaluation of LOGMET's past performance as substantial confidence was flawed or unreasonable. Boreal's mere disagreement with the agency's conclusions does not provide a basis for us to sustain the protest. We therefore deny this protest ground.

Finally, Boreal argues that the agency unreasonably concluded that LOGMET's technical proposal was acceptable based on two statements in the evaluation documents, which Boreal contends demonstrate the unacceptability of the proposal as a whole. Specifically, Boreal points to the evaluators' statement that "LOGMET details a generic plan to retain employees with generalizations for competitive salaries, benefits, or advancement opportunities," and the statement that there was a conflict between two different sections of the awardee's proposal with regard to the refuelers' schedules. Protester's Comments at 15-16. Boreal contends that because the evaluators found LOGMET's retention plan to be generic, and noted an ambiguity with regard to refuelers' schedules, LOGMET's proposal should have been determined to be technically unacceptable.

Boreal appears to overlook other statements in the same evaluation document praising other aspects of LOGMET's staffing plan and clearly indicating that it found the proposal to be acceptable under this evaluation factor. Specifically, the agency found that LOGMET's staffing and recruiting plan was "very detailed," that the firm's plans to retain qualified personnel provided an adequate understanding, that the proposal's demonstration of staffing and functional organization provided a "clear understanding of the workforce structure," and that the firm's personnel matrix provided "comprehensive details." AR, Tab 23, Excerpt from SSEB Report, at 2. Boreal has not demonstrated that the agency's determination that LOGMET's proposal was acceptable was unreasonable or inconsistent with procurement laws or regulations. Rather, the protester's argument in this regard amounts to mere

disagreement with the agency's evaluation.<sup>6</sup> In sum, we find that none of the protesters arguments provide a basis for sustaining the protest.<sup>7</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>6</sup> Further, the contracting officer notes that the agency also identified uncertainty in the protester's proposal. Specifically, the evaluators noted that Boreal's proposal stated that it would continue to support the use of overtime, as it had under the predecessor contract, despite the fact that the solicitation at issue here required that work schedules be adjusted to cover the hours of operation without the use of overtime. Contracting Officer's Statement at 5. However, although the agency determined that this portion of Boreal's proposal presented an uncertainty, the agency nevertheless determined that the protester's proposal was technically acceptable.

<sup>7</sup> In its initial protest, Boreal also argued that LOGMET's proposal should have been determined to be unacceptable because the firm would violate the limits on subcontracting by relying wholly on its subcontractors. Protest at 19-20. In its report, the agency addressed these allegations by providing the relevant portions of LOGMET's proposal, which demonstrated that LOGMET proposed to perform 55% of the work under the contract. AR, Tab 11D, LOGMET Proposal Volume II, at 1. In its comments on the agency report, Boreal failed to substantively respond to the agency's arguments in this regard. Therefore, this protest ground is deemed to have been abandoned. See Calnet, Inc., B-402558.2 et al., June 3, 2010, 2010 CPD ¶ 130 at 3. In any event, even if this protest ground was not abandoned, we find no merit to the claim.