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Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** Coastal Defense, Inc.

**File:** B-413890

**Date:** December 19, 2016

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Richard B. O’Keeffe, Jr., Esq., and Gary S. Ward, Esq., Wiley Rein LLP, for the protester.

Col. C. Taylor Smith, and Erika L. Whelan Retta, Esq., Department of the Air Force, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that the agency unreasonably evaluated protester’s proposal and unreasonably declined to enter into discussions with offerors is denied where the record shows that the evaluation was reasonable and in accordance with the stated evaluation criteria and the agency’s decision not to enter into discussions was properly within its broad discretion.

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### DECISION

Coastal Defense, Inc. (CDI), of Mill Hall, Pennsylvania, protests the award of a contract to Blue Air Training, LLC, of Las Vegas, Nevada, by the Department of the Air Force under request for proposals (RFP) No. FA4861-16-R-B002 for flight training services. CDI challenges the agency’s evaluation of its own proposal and the agency’s decision not to conduct discussions.

We deny the protest.

### BACKGROUND

The RFP, issued on June 14, 2016, sought proposals to operate and maintain tactically-relevant aircraft for Close Air Support sorties in support of training for the 6th Combat Training Squadron and the Joint Terminal Attack Control Contract Close Air Support Training (JTAC CCAS Training) Program located at Nellis Air Force Base (AFB), Nevada. RFP Performance Work Statement (PWS) at ¶ 1.1.1. One contract was to be awarded on a best-value basis considering technical,

performance confidence and price factors. RFP at 57. The technical factor was to be evaluated on an acceptable/unacceptable basis considering three subfactors: contract implementation plan, safety plan and aircraft plan. Id. Past performance was to be evaluated on the basis of recency, relevancy and performance quality, and proposals were to be assigned a confidence rating ranging from no confidence to substantial confidence. Id. at 61-62. If the lowest-priced, technically acceptable offer received a substantial confidence rating, it was to be the best-value offeror without further consideration of any other offers. Id. at 62. If the lowest-priced, technically acceptable offeror did not receive a substantial confidence rating, the agency was to conduct a tradeoff, considering past performance to be approximately equal to price. Id. at 57, 62.

Under the contract implementation plan subfactor, the agency was to evaluate “the offeror’s plan to implement the requirements of the [PWS]. This subfactor is met when the offerors present a sound and realistic proposal to achieve all requirements within the [PWS].” Id. at 58. Among other evaluation elements emphasized in the subfactor, offerors were to clearly show the capability to provide JTAC Training Flights, clearly demonstrate how in-person pre-briefs and debriefs will take place, and describe how the contractor will meet the government’s requirement if aircraft are taken out of service for safety, maintenance, damage repair, or any other reason. Id. Additionally, a question and answer document states, in relevant part, “[t]he Contractor will be required to determine what airfield they will conduct their flight operations from. No Government airfield will be provided to the Contractor to use for their flight operations.” AR, exh. 12, Question and Answer Document, at 3.

As relevant here, section M of the RFP instructed offerors, “[t]he Government intends to make award without discussions.... However, the Government reserves the right to conduct discussions if the SSA determines discussions to be necessary. For the purposes of making the award decision without discussions, all proposals that are rated technically Unacceptable on any subfactor will be unawardable.” Id. at 57. As relevant to the conduct of discussions, section L of the RFP states:

The Government intends to award without discussions and make an award based on initial proposals; however in [sic] inadequate competition exists based upon unacceptable technical proposals, discussions or negotiations may be held and result in a Final Proposal Revision (FPR). If it is determined to be in the best interest of the Government to hold discussions, the Government will make a Competitive Range determination, evaluation notices may be issued to Offerors in the competitive range, responses will be requested from applicable Offerors, and discussions will be opened.

Id. at 52.

The agency received three proposals, including those from CDI and Blue Air. Agency Report (AR), exh. 4, Source Selection Evaluation Board (SSEB) Report, at 4. After conducting a technical evaluation, the SSEB found CDI's proposal to be technically unacceptable based on an unacceptable rating under the contract implementation plan subfactor.

The technical evaluation team (TET) found that CDI's proposal was ambiguous and often restated the evaluation criteria and language of the PWS without describing how it would meet the requirements. Id. at 10. The TET also found that it could not assess from what airfield CDI would base, operate and maintain its aircraft and, as a result, was not able to clearly assess CDI's capability to provide training flights or how in-person pre-briefs and debriefs would take place, both requirements of the PWS. Id. Finally, the TET determined that it was not able to assess how CDI would meet the proposed schedule with the number of aircraft proposed or whether CDI planned to utilize government airfields--which was not permitted by the terms of the solicitation--based on landing fees at government airfields in the protester's proposal. Id. at 11-12. The TET concluded that while CDI might be capable of performing this requirement its proposal did not offer a clear plan that would meet the government's requirements. Id. at 12.

The source selection authority (SSA) agreed with the TET's determination that CDI's proposal was technically unacceptable, stating his rationale as follows:

The inability to identify what airfield [CDI] would primarily fly from and the failure to demonstrate how they would fulfill the requirements of the PWS along with the proposed schedule that was attached to the PWS led the [TET] to rate [CDI's] technical proposal as unacceptable. [CDI] said that for this requirement they would provide two aircraft and use the third as a reserve aircraft if one of the two primary aircraft became un-airworthy. They failed to describe how those two aircraft would provide full coverage for the two [operating positions] required as part of the contract. Furthermore, by not stating what airfield [CDI] would operate from, the Government was unable to determine if the two aircraft proposed would present a realistic plan to meet the customer's requirement.

AR, exh. 18, Source Selection Decision Document (SSDD), at 2. With respect to discussions, the SSA noted, "[B]ecause of their inability to provide a comprehensive plan, [CDI]'s pricing may not be as low as initially quoted. The Government reasoned that if it opened up discussions, many Evaluation Notices would be needed in order to bring [CDI] to an acceptable level which would have brought a higher priced proposal." Id. After evaluating the remaining technically acceptable proposals, the SSA found that Blue Air's proposal represented the best value to the government and made award to the firm. This protest followed CDI's debriefing.

## DISCUSSION

CDI argues that the agency unreasonably evaluated its proposal under the technical factors in two respects, and under the past performance factor. CDI also argues that the agency's decision not to enter into discussions was unreasonable given the terms of the solicitation. We have considered each of CDI's arguments and are provided no basis to question either the agency's evaluation or its decision not to hold discussions with offerors.

### Evaluation of CDI's Proposal

CDI first challenges the agency's evaluation of its proposal under the technical factor. The protester takes issue with two comments allegedly made at the firm's debriefing by the chairman of the SSEB, namely, that CDI had not provided a detailed schedule for training flights or details regarding its process for obtaining permits for the handling and storage of munitions required for the training flights. Protest at 12-13. CDI argues that these alleged weaknesses represented a divergence from the evaluation criteria, calling for information above that which was required by the solicitation. Id. at 11. The protester also challenges the agency's determination that the firm failed to adequately describe how it would satisfy the debriefing requirements during training missions. Id. at 12. We have reviewed each of these allegations and find no basis to sustain the protest.<sup>1</sup>

The evaluation of an offeror's proposal is a matter within the agency's discretion. Kellogg Brown & Root Servs., Inc., B-400614.3, Feb. 10, 2009, 2009 CPD ¶ 50 at 4. 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. Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 7.

The agency responds that CDI left several pieces of critical information out of its proposal that was necessary to determine whether it was technically acceptable. Legal Memorandum at 6. In particular, the agency emphasizes that CDI "left out the means of conducting flight training and how it would hold debriefings. Notably CDI also failed to state which airfield would serve as its home base or a location where debriefings would be held." Id. This information, the agency asserts, was necessary to confirm the feasibility of CDI's proposed operations and costs. Id. The agency also highlights that CDI's protest does not challenge the assessment

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<sup>1</sup> While CDI also challenges the evaluation of its past performance, arguing that the evaluation should have resulted in a substantial, instead of satisfactory rating, since we conclude that the agency reasonably found CDI's proposal to be unacceptable under the technical factor, we need not address this allegation further. Id. at 14-16.

that it failed to identify the airfield from which it would base, operate and maintain its aircraft, and the evaluation issues stemming from that finding, instead focusing its arguments on alleged comments made by the SSEB chair during the firm's debriefing. Id. at 9-10.

First, we are provided no basis to question the agency's evaluation based on the alleged statements made by the SSEB chair during the debriefing. A debriefing is a procedural matter, and we are more concerned with the evaluation itself. See DGC Int'l, B-410364.3, Apr. 22, 2015, 2015 CPD ¶ 136 at 5. The TET's evaluation and the basis for the SSA's decision to find CDI unacceptable are clearly stated in the record and do not comport with the alleged statements by the SSEB chair with which CDI takes issue. Moreover, with respect to the actual evaluation finding—that CDI's proposal failed to delineate the airfield from which it would base, operate and maintain its aircraft—we conclude that CDI's challenge in this regard, only raised in its comments in response to the agency report, is untimely. See, e.g., Lanmark Tech., Inc., B-410214.3, Mar. 20, 2015, 2015 CPD ¶ 139 at 5 n.2 (piecemeal presentation of protest grounds, raised for the first time in comments, are untimely).

In any event, this untimely allegation is not supported by the record. CDI argues that the details sought by the agency were not required because "an offeror's airfield could be sited in Antarctica and, as long as it took off at the appropriate time, it could be on station when required." Comments at 12. Moreover, CDI argues that the specifications were performance-based and, "[i]n such an acquisition, contractual requirements are structured around the results to be achieved as opposed to the manner by which the work is to be performed. . . . As such, the Air Force's demand for this 'crucial' bit of information was inconsistent with the central organizing principle of the requirement which focuses on results and leaves the details of how those results are to be achieved to the contractor." Id. at 13.

Despite CDI's arguments to the contrary, the solicitation reasonably required such information. The RFP informed offerors that the agency was to evaluate the proposed plan to implement the requirements of the PWS and present a sound and realistic proposal to achieve all requirements within the PWS, including to clearly show the capability to provide JTAC Training Flights and demonstrate how in-person pre-briefs and debriefs will take place. Id. The RFP also informed offerors that no government airfield would be provided to use for flight operations, and specifically detailed the various government-owned airfields that were not to be used. AR, exh. 12, Question and Answer Document, at 3.

Under the RFP's evaluation scheme, and utilizing the protester's scenario, even if CDI were to operate from Antarctica, it was required to describe that plan in its proposal for the agency to evaluate. Its failure to do so provides reasonable support for the agency's conclusion that the protester's proposal was technically unacceptable. Likewise, with respect to the assessment that CDI's proposal did not clearly describe how the firm would meet the RFP's debriefing requirements or how

it would meet the RFP's requirements if one of its proposed aircraft were to become un-airworthy, a finding that CDI does not even challenge. A review of CDI's proposal shows that the proposal focuses on how the firm has conducted debriefings in the past and specifically the contents of those debriefings. The proposal does not clearly demonstrate how in-person pre-briefs and debriefs will take place, as was required by the RFP's terms, nor does it address the requirement of how it will meet the government's requirement if aircraft are taken out of service. AR, exh. 13, CDI's Proposal, at 13-14; RFP at 58. Our review of the record provides no basis to question the agency's determination that CDI's proposal was technically unacceptable.

## Discussions

CDI also argues that the agency's decision not to enter into discussions with offerors was unreasonable given the terms of the solicitation. In this regard, the protester argues that while the agency had discretion about whether to conduct discussions, it had an affirmative obligation, based on the specific language of the solicitation, to evaluate whether inadequate competition exists based upon unacceptable technical proposals, an evaluation which the protester asserts the agency did not do. Protester's Comments at 3.

A contracting officer's discretion in deciding not to hold discussions is quite broad. Trace Sys., Inc., B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 5. There are no statutory or regulatory criteria specifying when an agency should or should not initiate discussions, and there is no requirement that an agency document its decision not to initiate discussions.<sup>2</sup> Id. As a result, an agency's decision not to initiate discussions is a matter we generally will not review. Booz Allen Hamilton, Inc., B-405993, B-405993.2, Jan. 19, 2012, 2012 CPD ¶ 30 at 13.

CDI recognizes that our Office will generally not review an agency's decision whether to conduct discussions, but argues that the language in section L of the RFP that states if "inadequate competition exists based upon unacceptable technical proposals, discussions or negotiations may be held" required the SSA to make a specific determination whether adequate competition existed. We disagree.

Section M of the RFP states that the government intends to make award without discussions. RFP at 57. It also instructed offerors that the government reserves the right to conduct discussions if the SSA determines discussions to be necessary.

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<sup>2</sup> While we recently discussed the impact of Defense Federal Acquisition Regulation Supplement guidance on conducting discussions where the procurement is valued above \$100 million, the award amount here of \$4,464,684 makes such guidance inapplicable. See Science Applications Int'l Corp., B-413501, B-413501.2, Nov. 9, 2016, 2016 CPD ¶ 328 at 9-11.

Id. The RFP also incorporates by reference Federal Acquisition Regulation (FAR) clause 52.215-1, Instructions to Offerors--Competitive Acquisition (JAN 2004), which states, in pertinent part, “[t]he Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR § 15.306(a)). Therefore, the offeror’s initial proposal should contain the offeror’s best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary.” Id. at 9; see also FAR clause 52.215-1(f)(4).

While CDI relies on the language found in section L of the RFP, requirements provided in section L are not the same as evaluation criteria provided in section M, which establishes the evaluation criteria. Rather than establishing minimum evaluation standards, the instructions of section L generally provide guidance to assist offerors in preparing and organizing proposals. See All Phase Envtl., Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 4; JW Assocs., Inc., B-275209.3, July 22, 1997, 97-2 CPD ¶ 27 at 3-4. While CDI argues that section L required the agency to evaluate the adequacy of competition in deciding whether to conduct discussions, the language in the solicitation’s evaluation criteria and FAR clause 52.215-1 put CDI on notice that the agency would conduct discussions only if determined to be necessary. As has been stated in prior decisions of our Office, an agency’s decision not to initiate discussion is a matter that we generally will not review, and we decline to do so here.<sup>3</sup> Booz Allen Hamilton, Inc., supra, at 13.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>3</sup> The contracting officer responds that since there were two technically acceptable proposals, the agency determined there was adequate competition. He states that because there is no requirement that the agency document its decision, it did not do so. Contracting Officer’s Supp. Statement at 4. We are provided no basis to find the agency’s actions unreasonable. Moreover, we are provided no basis to question the agency’s stated rationale for not entering into discussions, specifically, “[t]he Government reasoned that if it opened up discussions, many Evaluation Notices would be needed in order to bring [CDI] to an acceptable level which would have brought a higher priced proposal.” AR, exh. 18, SSDD, at 2. Such a decision does not violate the terms of the solicitation, and properly rests within the broad discretion of the agency to conduct the procurement.