U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Comptroller General
of the United States

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Decision

Matter of: Mainstream Engineering Corporation; Snowbird Environmental Systems Corporation

File: B-415524; B-415524.2; B-415524.3; B-415524.4

Date: January 16, 2018

Richard P. Rector, Esq., C. Bradford Jorgensen, Esq., and Eric P. Roberson, Esq., DLA Piper LLP-US, for Mainstream Engineering Corporation, a protester.
Barbara S. Kinosky, Esq., David R. Warner, Esq., Heather B. Mims, Esq., and Tyler J. Freiberger, Esq., for Snowbird Environmental Systems Corporation, a protester.
Wade L. Brown, Esq., and Fadette Berthold, Esq., Department of the Army, for the agency.
Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency made a flawed best-value tradeoff decision is denied where the record shows that the decision was reasonable and in accordance with the stated evaluation scheme.

2. Protest that the agency improperly failed to evaluate the awardee's alleged refusal to comply with limitations on subcontracting requirements is denied where the awardee's proposal, on its face, did not evidence that the awardee had not agreed to comply with the subcontracting limitation.

3. Protest that the agency failed to conduct a price realism evaluation, conducted misleading discussions with respect to price, and misevaluated the awardee's past performance is denied where the solicitation did not require a price realism evaluation, the agency was not required to conduct discussions with respect to price, and its evaluation of the awardee's past performance was reasonable and consistent with the stated evaluation criteria.

DECISION

Mainstream Engineering Corporation, of Rockledge, Florida, and Snowbird Environmental Systems Corporation, of Jacksonville, Florida, protest the award of a contract to TFab Defense Systems, LLC (TDS), of Madison, Alabama, by the

Department of the Army, U.S. Army Materiel Command (AMC), under request for proposals (RFP) No. W911QY-17-R-0020 for the manufacture of environmental control units (ECUs). Mainstream and Snowbird challenge the evaluation of the awardee's proposal under the price and non-price factors and the agency's best-value tradeoff decision.

We deny the protests.

BACKGROUND

The RFP, issued on March 30, 2017, sought proposals for the development and manufacture of Improved Environmental Control Units (IECUs) to replace existing legacy ECUs (which are air conditioners). Agency Report (AR), Tab 19a, Conformed RFP, at 2, 33. The acquisition was to be conducted as a total small business set-aside, and the solicitation contemplated the award of a single fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) contract with a five-year performance period consisting of one twelve-month low rate initial production phase, and a four-year full rate production phase. The minimum contract value was $400,000.00, with an expected maximum value of $110,000,000.00. Id.

The contract was to be awarded on a best-value tradeoff basis considering price, and the following non-price factors: technical/manufacturing capability, management, and past performance. Id. at 92. Technical/manufacturing capability was to be the most important factor, followed by price, which was more important than the two equally-weighted management and past performance evaluation factors. All non-price factors, when combined, were to be significantly more important than price. Id. Technical/ manufacturing capability and management were to be evaluated and assigned a "technical/risk" rating, and past performance was to be assessed for confidence.[1] Id. at 92-93.

Proposals were to be evaluated "to determine whether the offerors' methods and approach have adequately and completely considered, defined, and satisfied the requirements specified in the solicitation." Id. at 92. Both technical/manufacturing capability and management were to be evaluated for "adequacy of response and feasibility of approach with regard to their [capability] . . . to ensure the offeror can meet all the requirements of the solicitation." Id. The agency was to evaluate the "offeror[']s and subcontractor[']s past performance with government and industry . . . to assess the relative risks associated with the offeror[']s likelihood of success in meeting the

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[1] Proposals were to receive one of the following technical/risk ratings for the technical/manufacturing and management factors: blue/outstanding, purple/good, green/acceptable, yellow/marginal or red/unacceptable. Id. at 93. Past performance was to be evaluated using the following confidence ratings: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 95-96.

requirements stated in this solicitation." Id. at 93. The assigned past performance confidence rating was to be based on the relevancy and quality of submitted past performance. Id. at 94.

Price was to be evaluated for fairness, reasonableness, and price competitiveness. Id. Under the price factor, the RFP also instructed offerors that "[t]he government may determine that an offer is unacceptable if the prices are significantly unbalanced. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis techniques." Id. at 95. As relevant to the protest grounds alleged, the RFP included Federal Acquisition Regulation (FAR) clause 52.219-14, Limitations on Subcontracting (NOV 2011), which provides, in pertinent part that "[b]y submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract . . . the [Offeror/Contractor] shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials." Id. at 63.

Five proposals were received in response to the RFP, including those from Mainstream, Snowbird and TDS. AR, Tab 7, Source Selection Decision Document (SSDD), at 2. After an initial evaluation of proposals, the agency established a competitive range and entered into discussions with offerors. Final proposals were received and evaluated. The relevant proposals were evaluated as follows:

	TDS	**Mainstream**	**Snowbird**
Technical /Manufacturing Capability	Blue/Outstanding	Blue/Outstanding	Green/Acceptable
Management	Blue/Outstanding	Blue/Outstanding	Purple/Good
Past Performance Confidence	Substantial	Satisfactory	Satisfactory
Relevancy	Very Relevant	Relevant	Relevant
Quality	High	Acceptable	Acceptable
Price	$45,816,733	$44,004,635	$92,930,925

Id. at 19-20.

The source selection authority (SSA) conducted a tradeoff between proposals and determined that TDS would provide the best overall value to the government. Id. at 21. In doing so, the SSA concluded that payment of a price premium was warranted "in order to secure a superior manufacturing approach." Id. As part of his analysis, the SSA found:

> By choosing [TDS], the government reduces overall program risks with selecting a vendor that has demonstrated enhanced resources for the full performance of this contract such as a known and established manufacturing capability in the field of Environmental Control Units as

> compared to vendors with limited or no established manufacturing capability directly in that field. [TDS] has demonstrated . . . highly mature processes and their team of experienced personnel with relevant experience in the manufacture of vapor compression air conditioning systems and environmental control give the government confidence in the stated capabilities and overall management of the program to meet schedule deadlines.

Id. The SSA went on to discuss various aspects of TDS's proposal, such as the firm's "demonstrated highly relevant experience," noting that "[t]he other four offerors demonstrated merit and provided sound proposals[,] but possess less experience and maturity than [TDS]." Id. With respect to past performance, the SSA noted that TDS's past performance questionnaires "demonstrated a high level of quality and relevancy to the IECU[s] that puts them above the other offerors that achieved a substantial confidence rating." Id.

After award of the contract these protests followed.

DISCUSSION

Mainstream challenges the agency's best-value tradeoff decision and argues that the agency unreasonably failed to evaluate the awardee's apparent violation of the RFP's limitation on subcontracting. Snowbird challenges the agency's evaluation of the awardee's price and past performance and alleges that the agency engaged in misleading discussions. While we do not address all of the allegations raised by Mainstream and Snowbird in this decision, we have considered each of the allegations raised by the protesters and conclude they are without merit.

Issues Raised By Mainstream

Mainstream challenges various aspects of the agency's best-value tradeoff decision and the evaluation of TDS's proposal in one regard. With respect to the tradeoff decision, Mainstream argues that: the agency unreasonably concluded that it was presented with a "binary choice" between Mainstream's limited full-scale ECU experience and TDS's demonstrated full-scale ECU experience; the SSA unreasonably failed to recognize that TDS's manufacturing experience was mostly attributable to its subcontractor; and the best-value tradeoff decision was unreasonable because the SSA relied on "flawed input" from evaluators. See generally Mainstream Comments. Mainstream also argues that the agency unreasonably failed to evaluate TDS's apparent violation of the solicitation's limitation on subcontracting. Mainstream Supp. Protest at 9.[2]

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[2] In its initial protest Mainstream challenged the agency's evaluation of its own proposal and TDS's proposal under the technical/manufacturing capability and management factors. See Mainstream Protest at 11-23. However, in its comments on the agency (continued...)

Best-Value Tradeoff Decision

Mainstream first argues that the agency's award decision was flawed because it relied on an alleged "binary choice" between Mainstream's limited full-scale ECU experience and TDS's demonstrated full-scale ECU experience. Mainstream's Comments at 2. Specifically, the protester takes issue with language used by the agency in its memorandum of law (MOL), where the agency states, "[t]echnically, the decision was binary, either/or. The Source Selection Authority could value either demonstrated experience with the IECU, with limited full-scale production experience, or demonstrated experience with full-scale production, [but] with limited experience with the IECU program." MOL at 14. The protester asserts that the agency's "award decision relies on a flawed premise that is inconsistent with both reality and the Army's own evaluation findings." Mainstream's Comments at 3.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 2. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. We will not sustain a protest where the agency's evaluation is reasonable, and the protester's challenges amount to disagreement with the agency's considered technical judgments regarding the specific elements of an offeror's proposal. BNL, Inc., B-409450, B-409450.3, May 1, 2014, 2014 CPD ¶ 138 at 5. Here, we are provided no basis to question the agency's judgments.

As an initial matter, Mainstream takes issue with the agency's articulation of the award decision as a binary choice in the memorandum of law. Notwithstanding alternate arguments proffered by agency counsel, such contentions are not dispositive to the determination of the reasonableness of the agency's tradeoff decision, which is based on the entirety of the record, and most importantly, the SSDD that contains the agency's contemporaneous best-value tradeoff rationale. See Mainstream AR, Tab 7, SSDD. Moreover, while Mainstream raises some limited challenges to the tradeoff decision, its primary challenge is to the agency's alleged undue reliance on TDS's subcontractor's manufacturing experience as a discriminator between proposals.[3] We turn now to this

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report, Mainstream withdrew those challenges, instead focusing its protest on the agency's best-value tradeoff analysis. Mainstream's Comments at 2.

[3] For instance, Mainstream alleges that the agency failed to evaluate its commercial (i.e. non-military) ECU manufacturing experience in the same manner it did TDS's, and that the record does not support the conclusion that Mainstream's alleged lack of manufacturing experience will create performance risk. Mainstream's Comments at 3-5. We have reviewed these allegations and find neither provides a basis to sustain the
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allegation. Mainstream argues that the agency's award decision is flawed because the "SSA staked his decision on [TDS's] ECU manufacturing experience, apparently without realizing that 98% of that experience was attributable to a subcontractor that was proposed to perform just 48% of the contract work." Mainstream's Comments at 7. The protester asserts that the SSA based his decision on a "misleadingly vague description" of TDS's experience found in the "reports from his subordinates." Id. Thus, according to Mainstream, the SSA's decision was a result of a "flawed understanding of the real difference in ECU experience" between TDS and Mainstream. Id. Our review of the record does not cause us to question the agency's award decision.

The record shows that the SSA conducted a detailed tradeoff between proposals, ultimately concluding that TDS represented the best value to the government. Mainstream AR, Tab 7, SSDD, at 20-22. The record generally shows that the evaluators, including the SSA, discussed TDS's experience, processes, and capabilities in terms of the total offer, that is, taking into account both TDS's and its subcontractor's attributes; there is nothing in the record that would make such considerations unreasonable. As noted above, we will not sustain a protest where the agency's evaluation is reasonable, and the protester's challenges amount to disagreement with the agency's considered technical judgments regarding the specific elements of an offeror's proposal. BNL, Inc., B-409450, B-409450.3, May 1, 2014, 2014 CPD ¶ 138 at 5. The protester's argument is that the agency could not reasonably base its evaluation on the experience and capabilities of both TDS and its subcontractors, which is not supported by the record.

Mainstream relies on our Office's decision in Innovative Technology Systems, Inc., B-260074, May 24, 1995, 95-1 CPD ¶ 258 at 6-9, for the proposition that the agency was unreasonable in crediting TDS's subcontractor's manufacturing experience despite the subcontractor performing no more than 50 percent of the cost of the manufacturing work. Mainstream's Comments at 10-11. However, the protester misapplies Innovative Technology here. In Innovative Technology, we found reasonable the agency's determination that an offeror may not rely entirely on its subcontractor's experience when, given similar limitations on subcontractor performance as here, the offeror itself would be required to expend at least 50 percent of the labor costs under the contract for its own employees. Id. at 7-8.

Here, the question is whether it was reasonable for the agency to give due consideration to a subcontractor's manufacturing experience in its evaluation given the limitations on subcontracting stated in the solicitation. We conclude that the agency's evaluation was reasonable. In this regard, there is no limitation in the solicitation on the

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protest. Furthermore, as discussed next, the crux of Mainstream's challenge is the propriety of the agency's evaluation of TDS's manufacturing experience, which is clearly shown in the record to be the discriminator between proposals. See e.g. AR, Tab 7, SSDD, at 21 (discussing TDS's manufacturing capability as compared to other offerors).

weight to be given to an offeror's experience or capability as opposed to that of its proposed subcontractor. See generally, RFP at 91-96. Thus, the weight to be given to this aspect of TDS's proposal is governed simply by the test of reasonableness. See BNL, Inc., supra. Mainstream has not shown, and our review of the record does not indicate, that the agency's evaluation was unreasonable.

Limitations on Subcontracting

Next, Mainstream argues that the agency unreasonably failed to evaluate TDS's alleged violation of the solicitation's limitation on subcontracting. Mainstream's Supp. Protest at 9. Specifically, the protester argues, "[g]iven that [TDS's] proposal included compelling evidence of [TDS's] reliance on [its subcontractor] . . . the Army unreasonably failed to inquire into [TDS's] compliance with this material requirement [the solicitation's limitation on subcontracting]." Id. We disagree.

As a general matter, an agency's judgment as to whether an offeror will comply with the subcontracting limitation clause is a matter of responsibility, and the contractor's actual compliance is a matter of contract administration. Geiler/Schrudde & Zimmerman, B-412219 et al., Jan. 7, 2016, 2016 CPD ¶ 16 at 7. Neither issue is one that our Office generally reviews. See 4 C.F.R. § 21.5(a), (c). However, as our Office has consistently explained, where a proposal, on its face, should lead an agency to conclude that an offeror has not agreed to comply with the subcontracting limitation, the matter concerns the proposal's acceptability. Geiler/Schrudde & Zimmerman, supra, at 7-8. This is because the limitation on subcontracting is a material term of the solicitation, and a proposal that fails to conform to a material term or condition of a solicitation is unacceptable and may not form the basis for an award. Id. at 8.

Mainstream points to three specific aspects of TDS's proposal to support its argument that TDS's proposal indicated it would not comply with the limitation on subcontracting. First, the protester asserts that "[a]lthough ambiguous as to the specific tasks to be performed" by TDS and its subcontractor, the firm's proposal indicates that the subcontractor "will perform a dominant role with regard to manufacturing." Mainstream Supp. Comments at 9. Next, Mainstream alleges that TDS's proposal "inconsistently addresses the standard for assessing compliance with the limitation on subcontracting." Id. Finally, Mainstream contends that TDS's proposal, "although indicating in one place that [TDS] will perform 52% of the cost of manufacturing, in another place confirms that [TDS] will perform 52% of each 'functional area' required under the contract, including non-manufacturing tasks." Id.

While Mainstream points to these three features of TDS's proposal, none of these sections show, on their face, that the firm had not agreed to comply with the subcontracting limitation. Id. As stated, an agency's judgment as to whether an offeror will comply with the subcontracting limitation clause is a matter of responsibility, and the contractor's actual compliance is a matter of contract administration, both of which our Office will not review. Geiler/Schrudde & Zimmerman, supra.

Moreover, an offeror need not affirmatively demonstrate compliance with the subcontracting limitations in its proposal. Express Med. Transporters, Inc., B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 6. Rather, such compliance is presumed unless specifically negated by other language in the proposal. Id. While this language may be rebutted by other language in the proposal, it is the protester that bears the burden to affirmatively demonstrate that the awardee's proposal takes exception to the limitations on subcontracting. Id. Mere assumptions, inferences, and speculation are generally insufficient to demonstrate noncompliance. Id. at 7.

Here, TDS's description of the manufacturing process in its proposal, including a detailed explanation of the work to be performed by both itself and its subcontractors, does not show, on its face, that TDS has not agreed to comply with the subcontracting limitation. See generally, Mainstream AR, Tab 18a, TDS Technical Proposal; Tab 18b, TDS Management Proposal. In fact, a review of TDS's proposal does not reveal any explicit or unstated exception taken to the subcontracting limitations requirement. See id. Moreover, as acknowledged by the protester, TDS's proposal specifically indicates that it will perform 52 percent of the relevant work, thus evidencing intent to comply with the limitation on subcontracting. While, Mainstream is correct that TDS's proposal is inconsistent when discussing the standard for compliance, our review of the firm's proposal, including those sections highlighted by Mainstream, does not show that TDS has not agreed to comply with the limitation.

On this record, we find that nothing on the face of TDS's proposal would have reasonably led the agency to conclude that the awardee had taken exception to the limitation on subcontracting. Accordingly, where an offeror submits a proposal in response to an RFP that incorporates FAR clause 52.219-14, the offeror agrees to comply with the limitation, and, in the absence of any contradictory language, the agency may presume that the offeror agrees to comply with the subcontracting limitation. CR/ZWS LLC, B-414766, B-414766.2, Sept. 13, 2017, 2017 CPD ¶ 288 at 9. In this regard, we find Mainstream's argument to the contrary to be unavailing.

Issues Raised By Snowbird

Snowbird argues that the agency: failed to evaluate TDS's proposal for price realism; conducted misleading discussions; and improperly utilized an unstated evaluation criterion in evaluating TDS's past performance. Snowbird's Protest at 5-6; Snowbird's Comments at 2-3, 6-7. We have reviewed each of the allegations and find them to be without merit.

Price Realism

Snowbird challenges the agency's price evaluation, arguing that the agency "could not have ensured that prices were fair and reasonable as the Awardee's costs were so unreasonably low that it will not be able to perform at that price." Snowbird Protest at 5. Snowbird argues that the agency was required to perform a price realism evaluation. Id. at 6. Moreover, the protester argues that TDS's price should have put the government on notice that the firm's proposal posed a "high risk" and should have led the agency to question its ability to realistically perform. Id. Snowbird's challenge is without merit.

Where a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring an offeror's understanding of the requirements or to assess price risk in its proposal. IBM Corp., B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 10-11. In the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the RFP expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and the RFP states that a proposal can be rejected for offering low prices. Dyncorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Here, the RFP does not expressly call for the agency to perform a price realism evaluation. Therefore, the question is whether the RFP otherwise contemplated such an evaluation. We conclude that it did not.

To support its argument Snowbird cites to the following language in the RFP: "[t]he government may determine that an offer is unacceptable if the prices are significantly unbalanced. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is ***significantly over or understated*** as indicated by the application of cost or price analysis techniques." Snowbird Protest at 5, citing RFP at 95 (emphasis added by protester). The protester argues that "by the Agency's own evaluation criteria, it was required to assess whether certain Cost [sic] Line Item Number was not significantly understated." Id. Snowbird concludes that since TDS "proposed such a drastically low price, the Agency could not have reasonably conducted this evaluation." Id.

The language cited by Snowbird concerns unbalanced pricing, and not price realism. As we have explained, arguments that an agency did not perform an appropriate analysis to determine whether prices are too low, concern price realism. See e.g. SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. In contrast, unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated. See American Access, Inc., B-414137, B-414137.2, Feb. 28, 2017, 2017 CPD ¶ 78 at 5 (discussing unbalanced pricing as defined in FAR section 15.404-1). With respect to unbalanced pricing, the FAR requires that contracting officers analyze offers with separately-priced line items or subline items, to detect unbalancing. Id. citing FAR § 15.404-1(g)(2). The protester conflates these two distinct concepts.

Snowbird does not allege that despite an acceptable total evaluated price, specific contract line items proposed by TDS were significantly overstated or understated, as would be required to find unbalanced pricing. See id. Instead, Snowbird bases its argument solely on TDS' total evaluated price, which the protester alleges was "unreasonably low." As the protester does not contend that TDS's price was unbalanced, and the RFP did not contemplate a price realism evaluation, we conclude that this protest allegation is without merit.

Discussions

Next, Snowbird argued initially that the agency unreasonably excluded the firm from the competition, and that, "[a]t the very least, Snowbird should have been given the opportunity to engage in discussions with the Agency." Snowbird's Protest at 7. The agency produced a report responding to this allegation showing that the protester was not excluded from the competition, and that the agency did, in fact, engage in discussions with Snowbird. MOL at 1-2; see generally Snowbird AR, Tabs 13a-d, Discussions Documents. In its comments, presumably recognizing that the agency did engage in discussions, Snowbird now alleges that the agency conducted misleading discussions. Snowbird Comments at 6-7. In this regard, the protester argues that the agency misled it by not addressing its concerns with Snowbird's allegedly high pricing. Id. at 7. This allegation is without merit.

When an agency engages in discussions with an offeror, the discussions must be meaningful. In order to be meaningful, discussions must be sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving award. Powersolv, Inc., B-402534, B-402534.2, June 1, 2010, 2010 CPD ¶ 206 at 7. While the precise content of discussions is largely a matter of the contracting officer's judgment, such discussions must, at a minimum, address significant weaknesses, deficiencies and adverse past performance information to which the offeror has not yet had an opportunity to respond. FAR § 15.306(d)(3); American States Utilities Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5. These minimum requirements for discussions do not apply to circumstances where an offeror's price is significantly high or too high as a function of competitive standing. See Joint Logistics Managers, Inc., B-410465.2, B-410465.3, May 5, 2015, 2015 CPD ¶ 152 at 5 (noting that "a significantly higher price, or a price that is too high, is not a significant weakness or a deficiency as contemplated by the regulatory scheme delineating the rules for discussions").

With respect to issues related to price, our decisions have consistently concluded that the decision to inform an offeror that its price is too high during discussions is discretionary. See Hydraulics Int'l, Inc., B-284684, B-284684.2, May 24, 2000, 2000 CPD ¶ 149 at 12. In this regard, when discussions are conducted, we have explained that price need be discussed only if the price is found by the agency to be unreasonable. Id. Unless an offeror's proposed price is so high as to be unreasonable or unacceptable, an agency is not required to inform an offeror during discussions that its proposed price is high in comparison to a competitor's proposed price, even where price is the determinative factor for award. Peridot Solutions, LLC, B-408638, Nov. 6, 2013, 2013 CPD ¶ 260 at 3.

Our review of the record shows that the agency did not consider Snowbird's price to be unreasonably high or unacceptable. In this regard, the record shows that Snowbird's proposed price was 22 percent higher than the independent government cost estimate (IGCE) and higher than the average price of all offerors prior to discussions. After discussions, Snowbird's revised price was 19 percent higher than the IGCE and still higher than the average price of all offerors after final proposal revisions. Snowbird AR, Tab 16a, Price Analysis, at 3, 6; Tab 10a, Price Analysis Addendum, at 2. The record also shows that despite being higher than other offerors and the IGCE, the price evaluators still found Snowbird's final proposed price to be fair and reasonable. Snowbird AR, Tab 10a, Price Analysis Addendum, at 3. At no point does the record indicate that the agency found Snowbird's price to be unreasonably high, or that the agency otherwise excluded Snowbird from consideration for award due to its higher price. See generally, Snowbird AR, Tab 8, Source Selection Advisory Council (SSAC) Comparative Analysis; Tab 7, SSDD.

Since the record shows that Snowbird's price was not unreasonably high, we conclude that it was within the agency's discretion whether to inform the protester that its price was significantly higher than other offerors or the IGCE. That the agency did not do so does not support the conclusion that the discussions were misleading, as the protester alleges. Hydraulics Int'l, Inc., supra.

TDS's Past Performance Evaluation

Finally, Snowbird argues that the agency misevaluated TDS's past performance by using an unstated evaluation factor. Snowbird Supp. Protest at 2. In this regard, the protester argues that the agency "explicitly increased the Awardee's Past Performance rating due to the Awardee's Technical/Manufacturing Capability in contrast to the Solicitation evaluation criteria." Id. However, having resolved Snowbird's challenges to the agency's conduct of discussions and price evaluation, we question whether the protester is an interested party to challenge the evaluation of TDS's past performance.

An offeror is an interested party if it is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. J. Squared Inc., d/b/a University Loft Co., B-408388, Aug. 27, 2013, 2013 CPD ¶ 201 at 3; Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). A protester is not an interested party if it would not be next-in-line for award if we were to sustain its protest. Resource Title Agency, Inc., B-402484.2, May 18, 2010, 2010 CPD ¶ 118 at 9.

The record shows that Mainstream, and not Snowbird, is in a significantly better competitive position vis-à-vis TDS considering both price and non-price factors. See AR, Tab 7, SSDD, at 19-20. As discussed above, technical capability is the most important factor, followed by price, which was more important than the past performance evaluation factor. RFP at 92. The record shows that Mainstream received an outstanding rating for the technical capability factor whereas Snowbird received a rating of acceptable for the same factor. Id. Furthermore, with respect to the second most important factor, price, Snowbird's price of $92,930,925 was substantially higher than Mainstream's price of $44,004,635. Id. As the record shows that Mainstream is higher rated than Snowbird under the two most important evaluation factors, the record does not support that Snowbird has a sufficient direct economic interest in the award to challenge the evaluation of TDS, that is, it does not appear to be an interested party because Mainstream is a superior intervening party in this regard. See DMS International, B-409933, Sept. 9, 2014, 2014 CPD ¶ 278 (finding protester not interested party where not next-in-line for award in a best-value tradeoff procurement). In any event, the allegation is without merit.

Our Office examines an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' proposals are primarily matters within the contracting agency's discretion. Advanced Envtl. Solutions, Inc., B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. Our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

Snowbird argues that the agency improperly merged the technical/manufacturing capability factor and the past performance factor by increasing TDS's past performance rating due to its manufacturing capabilities. Snowbird Supp. Protest at 3. Specifically, the protester points to the following language used by the SSAC in its comparative analysis report, "[TDS] also is viewed as having a very mature manufacturing process that is reflected in [their] . . . substantial confidence rating." Id. citing Snowbird AR, Tab 8, SSAC Comparative Analysis, at 12-13. Snowbird concludes that, "the SSAC not only improperly considered [TDS's] manufacturing process in the Past Performance evaluation, but that credit directly resulted in the Awardee's rating. Applying the manufacturing process to the Past Performance rating is unsupported by the Solicitation." Id.

The full language cited by the protester, with context, is as follows:

> The importance of relevant experience both in scope and magnitude is the most significant discriminator that sets [TDS] apart from the other Offerors and is reflected in the overall rating for past performance. [TDS] also is viewed as having a very mature manufacturing process that is reflected in [their] substantial confidence rating. The other Offerors provide evidence that meet the requirements, but when compared to [TDS] lacked experience and mature operations. As such, [TDS] is viewed as having the least risk to the government due to their very relevant experience on multiple previous [Department of Defense] contracts involving similar technology.

Snowbird AR, Tab 8, SSAC Comparative Analysis, at 12-13.

Contrary to Snowbird's protestation, the challenged language in the SSAC report is wholly consistent with the stated past performance evaluation factor. Past performance was to evaluate the "offerors and subcontractors past performance with government and industry . . . to assess the relative risks associated with the offerors likelihood of success in meeting the requirements stated in this solicitation." RFP at 93. It is readily apparent from this language that the evaluators were assessing the maturity of TDS's manufacturing process as evidenced by its performance of multiple previous contracts. In other words, the evaluators were assessing TDS's likelihood of success in meeting the current requirements based on its prior performance on other contracts. This analysis is explicitly what was contemplated under the past performance factor. Therefore, Snowbird's protest that the agency used an unstated evaluation criterion is baseless.

Having resolved the protest allegations raised by Mainstream and Snowbird, and finding none have merit, we are provided no basis to question the agency's decision to award the disputed contract to TDS.

The protests are denied.

Thomas H. Armstrong
General Counsel