



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: Lukos-VATC JV III, LLC

File: B-418427.9; B-418427.11

Date: December 22, 2020

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DIGEST

1. Protest that award was tainted by organizational conflicts of interest is denied where the record does not support allegations that the awardee participated in the drafting of the performance work statement or had access to non-public information that would have provided a competitive advantage.
2. Protest challenging an agency's evaluation of the protester's proposal and award decision is denied where the record reflects that the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Lukos VATC JV III, LLC (Lukos), a service-disabled veteran-owned small (SDVOSB) of Tampa, Florida, protests the award of a contract to F3EA, Inc., an SDVOSB of Savannah, Georgia, under request for proposals (RFP) No. W900KK-19-R-0078, issued by the Department of the Army, U.S. Army Materiel Command, for training support services. Lukos alleges that F3EA possesses organizational conflicts of interest (OCI) and challenges the agency's evaluation of proposals and award decision.

We deny the protest.

BACKGROUND

On October 30, 2018, the agency issued the solicitation as a set-aside for SDVOSBs pursuant to Federal Acquisition Regulation (FAR) part 15, Contracting by Negotiation. Agency Report (AR), Tab 3, RFP at 2, 58. The RFP contemplated the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract with an ordering ceiling of \$245,000,000. *Id.* at 2.

The RFP sought proposals for training support services in support of the Special Operations Forces Requirements Analysis, Prototyping, Training, Operations and Rehearsal (SOF RAPTOR) IV requirement. AR, Tab 4, Performance Work Statement (PWS) at 3. The SOF RAPTOR IV contract would provide special operations forces (SOF) training for counter terrorism, counter narco-terrorism, counter proliferation and unconventional warfare missions using a mix of live, virtual, and constructive simulation scenarios.¹ *Id.*

Award would be made on a best-value tradeoff basis, considering three evaluation factors, listed in descending order of importance, capability, past performance, and cost/price. RFP at 58-59. The capability factor consisted of three subfactors, listed in descending order of importance, program management, crisis response force (CRF), and core competencies. *Id.* at 59.

The program management subfactor required offerors to address four areas, including, as relevant here, exercise management, which required an offeror to demonstrate a thorough understanding of complex pre-exercise coordination and post-exercise activities. *Id.* In this regard, offerors were required to provide a realistic military training (RMT) packet and an after action review (AAR) for a previously executed exercise.² *Id.* The agency's evaluation of the RMT packet would include an assessment of coordination, approval, and risk management documents. *Id.* at 59. Evaluation of the AAR would include an assessment of performance-based feedback spanning every phase of the exercise and specificity of recommendations for improvements. *Id.*

The past performance factor required offerors to submit no more than nine recent and relevant government or commercial contracts.³ *Id.* at 50. For indefinite-delivery

¹ The SOF RAPTOR IV contract would be a new effort that continued training support currently provided by the SOF RAPTOR III contract. AR, Tab 4, PWS at 3.

² The RFP precluded classified files and required the RMT packet and AAR to be produced organically and unedited from time of original submission. RFP at 43, 47, 59.

³ Recent efforts were defined as contracts performed or awarded within three years of the date of issuance of the solicitation. RFP at 50. Relevant efforts were defined as services or efforts that were the same or similar to the effort required by the RFP in terms of complexity, dollar value, contract type, and use of key personnel. *Id.*

contracts, the RFP directed offerors to include task order, delivery order, or modification numbers, if necessary. *Id.* Additionally, the RFP required an offeror to provide a narrative of the contract and a description of the offeror's role, including an explanation of how the past performance effort relates to the offeror's ability to successfully perform the requirements of RAPTOR IV PWS and the PWSs for four sample task orders (STO).⁴ *Id.* at 51.

The agency would evaluate an offeror's past performance record and assign a relevancy rating--based on the similarity of scope, magnitude, and complexities to the requirement--and a confidence assessment based on the likelihood of success in performing the required effort.⁵ *Id.* at 62, 65. In evaluating past performance, the agency advised that past performance information would be obtained through a number of methods or sources, including, but not limited to, government assessments, an offeror's references, surveys or questionnaires, and government contracts and databases. *Id.* at 62. The RFP advised offerors that while the government may elect to consider data obtained from other sources, the burden of establishing confidence rests with the offeror. *Id.* at 63. Performance as a prime would receive a more favorable confidence rating than performance as a subcontractor. *Id.* at 62. Performance in executing relevant SOF requirements was evaluated with more confidence than non-SOF requirements, with additional emphasis on the relation to performing work similar to the STOs. *Id.* at 63.

The cost/price factor required offerors to submit pricing and cost breakdown workbooks from which total price would be evaluated. *Id.* at 52. The agency would evaluate price for reasonableness and cost for realism. *Id.* at 63-64.

By the December 14 due date, 10 offerors submitted proposals, including Lukos and F3EA. On January 15, 2020, the agency made award to F3EA. Joint Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 12. Five unsuccessful offerors subsequently protested the award with our Office. *Id.* at 12-13. On January 31,

⁴ The RFP required offerors to address four sample tasks critical to the adaptability and responsiveness necessary to execute SOF training requirements. RFP at 47. The offerors would address the sample tasks through four STO PWSs. *Id.* at 48-50. Three of the four STO PWSs were formed from a statement of work from the SOF RAPTOR III contract. AR, Tab 10, PWS STO CRF at 3; AR, Tab 11, PWS STO Unconventional Warfare Exercise at 3; AR, Tab 12, PWS STO Special Activities Exercise at 3.

⁵ As relevant here, an effort involving essentially the same scope, magnitude, and complexities as the solicitation would be rated very relevant, while an effort involving a similar scope, magnitude, and complexities would be rated relevant. RFP at 65. Additionally, based on the offeror's recent and relevant performance record, the agency would assign a rating of substantial confidence where it had a high expectation that the offeror would successfully perform the requirement, or a rating of satisfactory confidence where it had a reasonable expectation that the offeror would successfully perform the requirement. *Id.*

the agency notified our Office that it intended to take corrective action in response to the protests.⁶ *Id.* at 13. GAO subsequently dismissed these protests as academic. After completing its corrective action, final ratings were as follows:

	F3EA	Lukos
Capability	Outstanding	Good
Program Management	Outstanding	Good
	Outstanding	Acceptable
	Outstanding	Good
Past Performance	Very Relevant/ Substantial Confidence	Relevant/ Satisfactory Confidence
Cost/Price	\$4,347,814	\$4,727,661

AR, Tab 45, Source Selection Decision Document (SSDD) at 6.

The agency assigned Lukos's proposal a rating of good under the capability factor. AR, Tab 27, Lukos Capability Factor Proposal Evaluation Report (PER) at 2. The agency assessed a significant weakness under the program management subfactor based on multiple shortcomings identified in Lukos's AAR. *Id.* at 29. For example, the agency concluded that the AAR contained in Lukos's proposal did not demonstrate an acceptable understanding of post-exercise activities, including assessment summary, performance-based feedback and recommendations. *Id.* The agency also stated that although Lukos's proposal narrative described the exercise as addressing [DELETED], and other special activity tasks, the AAR did not include a detailed assessment of these areas. *Id.*; see AR, Tab 29, Lukos Capability Factor Proposal at 21. Additionally, the agency also found that the AAR lacked detail because it did not offer performance-based feedback at the level of execution and did not discuss or provide recommendations for any identified shortcomings. AR, Tab 27, Lukos Capability Factor PER at 29.

On August 31, the agency again made award to F3EA. The agency's reevaluation found that F3EA's proposal offered the highest technical rating and lowest price of the eligible offerors. AR, Tab 45, SSDD at 26. The source selection authority concluded

⁶ The agency stated that it would take corrective action by reevaluating proposals consistent with the solicitation, determining the impact of the reevaluations on the source selection decision, documenting its reevaluations and new best-value determination, and taking whatever additional steps it deemed appropriate. *Patriot Def. Grp., LLC*, B-418427, Feb. 5, 2020 (unpublished decision); *Black Talon Operational Eng'g Servs., LLC*, B-418427.2, Feb. 5, 2020 (unpublished decision); *ITility, LLC*, B-418427.3, Feb. 5, 2020 (unpublished decision); *Oak Grove Techs., LLC*, B-418427.4, Feb. 5, 2020 (unpublished decision); *Lukos-VATC JV III, LLC*, B-418427.5, Feb. 5, 2020 (unpublished decision).

that F3EA's proposal offered the best value based on a consideration of the proposals and the relative order of importance of the evaluation criteria. *Id.* After requesting and receiving a debriefing, Lukos timely protested to our Office.

DISCUSSION

The protester contends that F3EA suffers from an OCI that rendered the firm ineligible for award. Lukos also challenges the agency's evaluation of its proposal under each evaluation factor, F3EA's proposal under the past performance factor, and the award decision. In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. *Jam Corp.*, B-408775, Dec. 4, 2013, 2013 CPD ¶ 282 at 3. Having considered all of Lukos's arguments, we find no basis to question the source selection decision.⁷ We discuss several of Lukos's arguments below.

OCI Allegations

First, the protester argues generally that F3EA has either an unequal access to information OCI or a biased ground rules OCI that renders the awardee ineligible for award because F3EA allegedly wrote the PWS for the predecessor RAPTOR III contract. Protest at 34. In this regard, the protester asserts that the awardee's alleged creation of that solicitation's performance work statement puts F3EA in a position to favor its own products or capabilities under the current requirement and therefore creates an unfair competitive advantage. *Id.*

In response, the agency avers that the government prepared the PWSs under both the RAPTOR III and IV contracts. COS/MOL at 52; Supp. COS/MOL at 6. The agency also states that F3EA, as a member of the incumbent joint venture, was involved in helping to refine the customer's needs on task orders performed under the RAPTOR III contract, a single-award IDIQ. COS/MOL at 51. The agency further explains that although F3EA was involved in refining RAPTOR III task orders, it did not author those requirements, and the requirements here were purposefully and significantly changed when developing the RAPTOR IV requirements.⁸ *Id.* at 52.

The protester maintains that F3EA assisted with a work statement that was used for the RAPTOR IV contract. Comments and Supp. Protest at 30. Accordingly, the protester

⁷ The protester raised other collateral arguments. Although our decision does not specifically address each of the protester's arguments, we have carefully reviewed all of the arguments and find that none provides a basis on which to sustain the protest.

⁸ The agency explains that the RAPTOR IV scenarios were significantly modified in areas such as size, location, and associated value to ensure that the scenarios were different from the RAPTOR III requirements. COS/MOL at 51-52.

asserts that under the language of the FAR 9.505-2(b)--which provides that when a contractor assists in preparing a work statement to be used in competitively acquiring a system or services, the contractor should not supply the system or services, unless an exception applies--an OCI exists that should prevent F3EA from participating in the procurement. *Id.* The protester also contends that the agency's significant changes to the RAPTOR IV STOs do not mitigate the conflict. *Id.*

The FAR generally requires contracting officers to avoid, neutralize or mitigate potential significant conflicts of interest so as to prevent unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity.

FAR 9.504, 9.505; *Snell Enters., Inc.*, B-290113, B-290113.2, June 10, 2002, 2002 CPD ¶ 115 at 3. The situations in which OCIs arise, as addressed in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: biased ground rules, unequal access to non-public information, and impaired objectivity. Contracting officers must exercise "common sense, good judgment, and sound discretion" in assessing whether a potential conflict exists and in developing appropriate ways to resolve it; the primary responsibility for determining whether a conflict is likely to arise, and the resulting appropriate action, rests with the contracting agency.

FAR 9.505; *Science Applications Int'l Corp.*, B-293601.5, Sept. 21, 2004, 2004 CPD ¶ 201 at 4.

OCI determinations must be based on hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. *Integrated Concepts & Research Corp.*, B-309803, Oct. 15, 2007 CPD ¶ 117 at 6. The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *QinetiQ North America, Inc.*, B-405008, B-405008.2, July 27, 2011, 2011 CPD ¶ 154 at 8. Our Office reviews an agency's consideration of an OCI for reasonableness and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *Id.*

Lukos's protest arguments lack the hard facts required for our Office to sustain the protest. Although cast as an OCI argument, Lukos generally only contends that F3EA was the incumbent contractor, and thus, that F3EA had a competitive advantage in the competition here.⁹ Lukos did not provide any evidence that F3EA prepared the PWS for

⁹ With regard to F3EA's status as an incumbent contractor, we have consistently explained that the mere existence of a prior or current contractual relationship between a contracting agency and a firm does not create an unfair competitive advantage, and an agency is not required to compensate for every competitive advantage gleaned by a potential offeror's prior performance of a particular requirement. *Snell Enters., Inc.*, *supra*. For example, an incumbent contractor's acquired technical expertise and firsthand knowledge of the costs related to a requirement's complexity are not generally considered to constitute unfair advantages the procuring agency must eliminate. *Id.*

the RAPTOR IV procurement or set its ground rules, had unequal access to non-public information of the nature that gives rise to an OCI, or otherwise had impaired objectivity in its performance of the RAPTOR IV contract. In our view, we find unavailing Lukos's argument that F3EA's incumbent role assisting the agency in refining requirements under the RAPTOR III contract equates to preparing the PWS under the RAPTOR IV contract. Comments and Supp. Protest at 30. In this regard, the agency expressly represents, in its OCI Memorandum (Memo) documenting its OCI investigation and through declarations of agency staff, that F3EA did not write the PWSs for the task orders under the RAPTOR III contract and that the agency alone prepared the RAPTOR IV requirements. See AR, Tab 14, OCI Memo; Tab 42, Declaration of SOF Product Manager at 1; Tab 47, Declaration of SOF RAPTOR Assistant Program Manager at 1-2.

In any event, the agency's OCI Memo shows that the agency considered the implication of FAR 9.505-2 in determining whether an OCI existed. AR, Tab 14, OCI Memo at 5. In this regard, the agency concluded:

The implication of this section of the FAR is that the Contractor is actively creating the work statement in concert with the Government that will then be used for a competitive effort. The situation of the [RAPTOR] IV effort is that [F3EA] had no involvement in drafting the sample task orders, though they may have been involved in the [RAPTOR] III task orders which were used as the base requirement since they were the performing contractor on those orders.

Id.

In our view, the agency's determination to permit F3EA to compete for this contract--together with the absence of any evidence of preferential treatment or unfair action by the agency--reflects the agency's conclusion that F3EA has only the normally occurring advantage that any incumbent may possess. See *Northrop Grumman Tech. Servs., Inc.*, B-406523, June 22, 2012, 2012 CPD ¶ 197 at 17. Since the agency has reasonably determined that F3EA does not suffer from an OCI, and because Lukos's arguments lack hard facts, we find no reason to sustain the protest on the basis of either unequal access to information or biased ground rules OCIs. Accordingly, we deny this ground of protest.

Technical Evaluation of Lukos's Proposal

Next, the protester challenges various aspects of the agency's evaluation of its proposal under the capability factor. For example, the protester asserts that the agency's assessment of a significant weakness to its proposal under the program management subfactor and a weakness under the core competencies subfactor were in error, and that the agency should have rated Lukos's proposal higher under each of the three subfactors. Protest at 11-22. For the reasons discussed below, we find no basis to sustain this protest ground.

The protester contends that the agency's assessment of a significant weakness under the program management subfactor was unreasonable. Protest at 13. In this regard, the protester challenges the agency's conclusion that its AAR did not demonstrate an acceptable understanding of post-exercise activities. *Id.* Specifically, the protester asserts that its AAR complied with the RFP requirement to submit an unclassified, organically-produced, unedited RMT packet and AAR. *Id.* at 14. Lukos explains that the level of detail in the AAR was specified by the government client for whom the project was performed because the work was classified. *Id.* at 13-14. Thus, the protester essentially argues that in order to submit an unclassified, unedited AAR, the level of detail provided had to be more limited in order to avoid disclosure of classified information. *Id.* at 14.

In response to the protest, the agency explains that Lukos's proposal was assigned a significant weakness because the AAR the firm provided was inconsistent with the proposal narrative regarding the contents of the AAR and did not demonstrate an understanding of post-exercise activities. COS/MOL at 15-16. Additionally, the agency asserts that offerors were free to submit an AAR of their choosing, and to the extent Lukos chose an AAR that prevented it from fully disclosing details that demonstrated compliance with the solicitation's requirements, that decision does not reflect error on the part of the agency. *Id.* at 17, 20.

In a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals but we will review the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Artek Constr. Co.*, B-418657, B-418657.2, July 17, 2020, 2020 CPD ¶ 285 at 8. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *ACC Constr.-McKnight Joint Venture, LLC*, B-411073, Apr. 30, 2015, 2015 CPD ¶ 147 at 5. The protester's disagreement with the agency's conclusions, without more, does not show that the agency's conclusions were unreasonable. *RIVA Sols., Inc.*, B-418408, Mar. 31, 2020, 2020 CPD ¶ 133 at 4.

Based upon our review of the record, we conclude that the agency reasonably assessed a significant weakness to Lukos's proposal under the program management subfactor based on the agency's determination that Lukos's proposal failed to demonstrate an understanding of post-exercise activities, and instead, offered an exercise summary that lacked necessary detail.

The record demonstrates that the agency's evaluators were concerned that Lukos's proposal failed to offer details related to performance feedback at the level of execution, did not adequately discuss or make recommendations for improvement on identified shortcomings, and provided no detailed feedback on how special activity tasks identified in the work were executed. AR, Tab 27, Lukos Capability Factor PER at 29. As noted above, the RFP specified that the evaluation of the AAR would include at a minimum an assessment of the executive summary, performance-based feedback spanning every phase of the exercise, and recommendations for improvement. RFP at 59. In its

evaluation, the agency found that Lukos's proposal did not adequately respond to the solicitation's requirements, particularly with regard to special activities, assessment summary, performance-based feedback, and recommendations. *Id.* As we have recognized, it is an offeror's obligation to submit an adequately-written proposal for the agency to evaluate, and a proposal that fails to address the solicitation requirements may reasonably be downgraded for lacking sufficient detail. See *Undercover Training, LLC*, B-418170, Jan. 9, 2020, 2020 CPD ¶ 25 at 4-5. While, as noted above, the protester disagrees with the agency regarding the thoroughness of its response, it has not, in our view, demonstrated that the agency's findings were unreasonable.

Past Performance Evaluation

The protester asserts that the agency's evaluation of Lukos's and F3EA's proposals under the past performance factor was flawed. Lukos raises numerous challenges to the agency's evaluation of its proposal under the past performance factor. In this respect, the protester alleges that for multiple contracts, the agency ignored information identified in Lukos's proposal; the agency downgraded Lukos's rating because a past performance questionnaire (PPQ) reviewer was unfamiliar with the RAPTOR IV requirements; the evaluation of Contractor Performance Assessment Reporting System (CPARS) and PPQs overemphasized relevance and quantity rather than quality; and the evaluation overemphasized the congruity between STOs and RAPTOR IV requirements. Protest at 22-32. The protester also contends that F3EA's performance under the RAPTOR III contract was problematic. *Id.* at 32. While we do not discuss every argument or variation thereof, we have reviewed the protester's arguments and conclude that none provides a basis to sustain the protest. We discuss illustrative examples below.

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. *JAM Corp., supra* at 5. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. *Burchick Constr. Co., Inc.*, B-417310.3, Jan. 27, 2020, 2020 CPD ¶ 60 at 4.

The protester alleges that the agency ignored information in its proposal and refused to evaluate its past performance references because the offered references did not identify task order numbers. Protest at 23. In this regard, the protester asserts that the agency improperly made task order numbers an absolute requirement despite the RFP instructing offerors to provide task or delivery order numbers only "if necessary." *Id.* In the protester's view, it was not necessary to submit task order numbers as part of its past performance proposal because it was identifying multiple recent, relevant IDIQ contracts rather than individual task orders as references. *Id.*

The agency contests the protester's assertion that it did not evaluate all of Lukos's past performance references. COS/MOL at 30. In this regard, the agency explains that it evaluated Lukos's submissions, even if task order numbers were not provided, where the level of detail in the proposal permitted the government to search and locate the reference. *Id.* at 31-32. The agency further explains that its evaluation reasonably reflected instances where Lukos's proposal failed to provide enough information to determine recency and relevancy of a particular reference. *Id.* at 31.

For example, the agency cites to a reference in Lukos's proposal for an IDIQ contract that the protester identified as having final start and completion dates between June 2010 and January 2017.¹⁰ *Id.* at 33; AR, Tab 28, Lukos Past Performance Factor PER at 10. The agency states that its review of the IDIQ itself showed an ordering period from May 2010 to April 2015, which was outside the RFP's recency requirements. *Id.*; *Id.* Because the reference did not include a task order number that would allow the agency to verify recency, the agency explains that it searched the government Electronic Document Access (EDA) for task orders that fell within the recency period of the IDIQ. COS/MOL at 33; AR, Tab 44, Declaration of Contract Specialist at 1.

Based on this search, the agency states that while it found a task order that fell within the recency period, it did not appear that the EDA-discovered task order was the reference described in Lukos's proposal. COS/MOL at 33. Nevertheless, the agency evaluated the EDA-discovered task order and found it to be somewhat relevant. *Id.* In this respect, the agency found that although the work could have SOF (special operations forces) applications, the work "exists exclusively in the [research and development realm]," and rated the contract as somewhat relevant. *Id.* (citing AR, Tab 28, Lukos Past Performance Factor PER at 21). The agency also asserts that while it attempted, where it could, to find and consider data obtained from other sources in order to evaluate the protester's past performance references, Lukos, not the agency, had the burden of ensuring its proposal was clear and accurate. *Id.* at 33, 35.

Here, the RFP required an offeror to identify recent and relevant past performance references that would be evaluated for similarity of scope, magnitude, and complexities to the requirement and the likelihood of success in performing the required effort. RFP at 62, 65. For IDIQ references, the RFP instructed offerors to identify task or delivery order numbers if necessary. *Id.* at 50. Additionally, the RFP advised offerors that while the government may elect to consider data obtained from other sources, the burden of establishing confidence rests with the offeror. *Id.* at 63.

We find the agency's past performance evaluation to be reasonable. The protester's allegation that the agency viewed task order numbers as an absolute requirement that precluded evaluation of references is not supported by the record. Instead, the record

¹⁰ This contract was for Lukos's performance as a subcontractor supporting the U.S. Special Command Global Battlestaff and Support Program IDIQ (GBSP IDIQ). AR, Tab 28, Lukos Past Performance Factor Performance Evaluation Report (PER) at 10.

shows that the agency reviewed and verified the recency and relevancy of Lukos's past performance proposal as part of its evaluation. In this respect, where the agency did not have sufficient information to verify recency and relevancy or to identify the offered reference, it conducted a search in EDA to find the information that the protester might be offering. AR, Tab 44, Declaration of Contract Specialist at 1.

For example, where the protester offered the GBSP IDIQ contract, which fell outside the recency period, the agency searched EDA in an attempt to locate a task order that fell within the recency period. *Id.* The agency found and evaluated a task order identified in EDA that fell within the recency period. *Id.* The agency rated this reference as somewhat relevant. AR, Tab 28, Lukos Past Performance Factor PER at 10. As another example, where the protester also referenced an IDIQ contract without task order numbers, the agency was able to use the proposal narrative to find three task orders, two of which had associated CPARS reports.¹¹ *Id.* at 4. The agency rated this reference as very relevant. *Id.* at 9. As a result, we find no merit to the protester's argument that the agency's evaluation ignored information identified in its proposal if a task order number was not provided.

The protester also contends that the awardee's past performance should have been rated lower based on two incidents that occurred during performance of the RAPTOR III contract that allegedly demonstrate F3EA's inability to operate and manage training scenarios similar to the requirements here. Protest at 32. In this regard, the protester cites to news articles regarding a November 2018 military training event in Ogden, Utah, in which F3EA allegedly failed to provide notice to city officials and residents that an Army Special Forces training would be occurring. *Id.* at 33. The protester also cites to an article regarding a training event for the "Green Berets" of A Company, 1st Battalion, 5th Special Forces Group, in which F3EA allegedly failed to specify proper use of force parameters between role players and members of the training. *Id.* at 33-34.

In response, the agency explains that it was aware of and considered the two events identified by Lukos. COS/MOL at 47. The agency further explains that the contracting officer conducted an investigation into both incidents, rather than relying solely on media reports. *Id.* at 48. Relying on these investigations, the agency concluded that F3EA was not at fault in either incident. *Id.* at 48-50.

For the Ogden event, the contracting officer determined that the Product Manager for the contract concluded that F3EA fulfilled its contractual obligations to notify officials and that the government customer commended F3EA's performance. AR, Tab 41, Declaration of Contracting Officer at 1; Tab 42, PM Declaration SOF Product Manager at 1. For the Green Berets event, the contracting officer, acting in his role as the RAPTOR III contractor officer, found no indication that F3EA either caused the skirmish, or failed to establish safety measures during the exercise. AR, Tab 41, Declaration of

¹¹ This contract was for Lukos's performance as a prime contractor supporting the Special Operations Command Wide Mission Support Group B multiple award IDIQ. *Id.* at 9.

Contracting Officer at 1. Thus, the agency found--based on its investigation into each incident, the government customer's satisfaction with F3EA's performance, and the opinions of the product manager and contracting officer--that F3EA was not at fault, and concluded that neither incident had a negative bearing on F3EA's ability to perform the requirement here. COS/MOL at 49-50.

On the facts before us, we find no basis to sustain the protest. Regarding the Ogden event, the record shows the contracting officer's investigation revealed that the government was onsite throughout the execution of the exercise and concluded that F3EA properly notified city officials and residents of the exercise. AR, Tab 41, Declaration of Contracting Officer at 1; AR, Tab 42, Declaration of SOF Product Manager at 1. The contracting officer also learned that the government customer recognized F3EA for "going above and beyond during this incident." AR, Tab 41, Declaration of Contracting Officer at 1.

With respect to the Green Beret event, the record shows that a role player in the exercise was assaulted by a member of the exercise through no fault of F3EA's. *Id.* In this regard, the contracting officer represented that a timeline of events showed that prior to the injury, F3EA performed the required safety briefing and provided a code word that would stop the simulated events in the exercise due to a real world incident. *Id.* Here, too, the contracting officer asserts that the government customer did not find F3EA's performance to be deficient. *Id.* Accordingly, the contracting officer determined that it was unnecessary to consider these incidents in F3EA's past performance evaluation. *Id.* On these facts, we find no merit to Lukos's arguments.

Best-Value Tradeoff Determination

Finally, the protester contends the agency's award decision was flawed because of evaluation errors and the agency's improper adjustments of Lukos's total evaluated price.¹² Protest at 36. The crux of the protester's argument is that the agency erred in making upward adjustments to its price--totaling \$67,500--that resulted in a total evaluated price of \$4,727,661. Protest at 36. The protester asserts that if the agency had properly evaluated price, Lukos's total evaluated price should have been only \$4,660,161. *Id.*; Comments and Supp. Protest at 34.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will

¹² To the extent the protester also asserts that the Army's evaluation was flawed because the debriefing mistakenly identified deficiencies under the capability factor, such arguments provide no basis to sustain the protest. See, e.g., Protest at 14, 35-36. As our Office has consistently stated, errors or misstatements in a debriefing are procedural matters that do not affect the validity of an otherwise reasonable award. *Hallmark Capital Grp., LLC, B-408661.3 et al.*, Mar. 31, 2014 CPD ¶ 115 at 4 n.4.

not sustain the protest, even if deficiencies in the procurement are found. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 12-13.

We do not think an assumption of prejudice is warranted here. As discussed above, we find the agency's evaluation of Lukos's proposal under the technical and past performance factors unobjectionable. Additionally, the protester did not challenge the agency's evaluation of F3EA's technical proposal. Moreover, Lukos failed to offer a basis for the agency to negatively evaluate F3EA's past performance.

With regard to cost/price, the protester has alleged a discrete error that would not materially change the parties' competitive position. Even if we accepted the protester's assertion that its total evaluated price should be only \$4,660,161 (instead of \$4,727,661), Lukos's price would still be higher than F3EA's by approximately \$380,000. In this regard, even if we were to accept Lukos's arguments regarding its price, F3EA's proposal would remain higher-rated and lower-priced, as it was when the agency selected F3EA's proposal as the best value. Thus, we cannot conclude that Lukos has established that it would have had a substantial chance of receiving award here. Accordingly, we find that Lukos has failed to establish that it was competitively prejudiced by the alleged errors in the agency's evaluation of price. *DynCorp Int'l LLC*, *supra* at 13 (prejudice not found where protester's allegations would not materially change the parties' competitive position).

The protest is denied.

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General Counsel