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Decision

Matter of: Leading Edge Aviation Services, Inc.

File: B-419427

Date: February 25, 2021

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DIGEST

Protest alleging that agency miscalculated proposals and made an unreasonable source selection decision is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Leading Edge Aviation Services, Inc., a small business of Missoula, Montana, protests the award of a contract to Bighorn Airways, Inc., of Sheridan, Wyoming, under request for proposals (RFP) No. 140D8020R0010 issued by the Department of the Interior for smokejumper flight services for the Bureau of Land Management. The protester alleges that the agency erred in evaluating proposals and in its best-value tradeoff decision.

We deny the protest.

BACKGROUND

On August 18, 2020, the agency issued the RFP seeking smokejumper flight services using fixed-wing aircraft to support the agency's firefighting mission during the annual fire season. Contracting Officer's Statement (COS) at 1. The RFP contemplated the award of a single indefinite-delivery, indefinite-quantity contract for a base year and four 1-year option periods. Agency Report (AR), exh. 3, Tab 1, RFP at 4. The solicitation provided that award would be made on the basis of a best-value tradeoff between four evaluation factors: (1) technical capability; (2) organizational safety; (3) past performance; and (4) price. *Id.* at 63. The RFP also noted that all non-price factors were approximately equal in importance, but, when combined, were significantly more important than price. *Id.*

Relevant to this protest, the solicitation provided that proposed aircraft must meet certain minimum technical requirements. RFP at 63. Of the aircraft meeting the minimum requirements, the agency would evaluate an aircraft's technical capability by considering: the number of insured passenger seats; published flight manual airspeeds; payload amounts; and any other beneficial enhancements made to the aircraft, such as enhanced internal cargo volume with the ability to rapidly be reconfigured. *Id.* The solicitation provided "the greater an aircraft's capability, the better the rating it will receive." *Id.*

Concerning organizational safety, the solicitation provided that the agency would evaluate any aircraft accidents and Federal Aviation Administration (FAA) violations. The RFP also noted that a more favorable rating would be assigned for offerors with an accident rate less than the agency 5-year average, few to no FAA violations, and that addressed all the components of the RFP's safety management system questionnaire. RFP at 52, 63. The RFP also noted that offerors providing an accident prevention action plan, or evidence of actions taken to prevent future accidents, may receive a more favorable evaluation. *Id.* at 63.

The agency received two proposals,¹ one from the protester and one from Bighorn Airways. COS at 1. The agency evaluated the proposals² as follows:

	Leading Edge	Bighorn Airways
TECHNICAL CAPABILITY	Satisfactory	Very Good
ORGANIZATIONAL SAFETY	Very Good	Exceptional
PAST PERFORMANCE		
Relevance	Highly Relevant	Highly Relevant
Confidence	Satisfactory Confidence	Substantial Confidence
PRICE	\$4,365,000	\$5,735,310

AR, exh. 14, Tab 2, Award Summary at 10.

While Bighorn's price was higher than Leading Edge's price, the agency concluded that Bighorn represented the best value to the government because Bighorn was superior under all non-price factors. *Id.* at 10-11. The agency made award to Bighorn on

¹ The protester proposed two different aircraft in the alternative for this requirement, and the agency evaluated them separately. Memorandum of Law (MOL) at 4 n.2. Both were De Havilland DHC-6-300 "Twin Otter" aircraft with similar capabilities, and both received the same technical capability ratings. *Id.*

² The agency rated technical capability and organizational safety on the following scale: exceptional, very good, satisfactory, or unsatisfactory. AR, exh. 14, Tab 2, Award Summary at 2. The agency rated past performance confidence on the following scale: substantial confidence, satisfactory confidence, neutral confidence, or unsatisfactory confidence. *Id.* at 7

November 6, 2020. MOL at 2. The protester requested and received a debriefing on November 13, and this protest followed. *Id.*

DISCUSSION

The protester challenges the agency's evaluation in several respects. Specifically, the protester alleges that the agency erred in its evaluation of: (1) various technical features of the aircraft offered by the protester and the awardee, (2) the protester's safety management system, and (3) the protester's past performance. Protest at 4-5. Additionally, the protester alleges that the agency erred in the conduct of its best-value tradeoff. *Id.* at 6. We address these arguments in turn.

Technical Capability

With respect to the agency's technical capability evaluation, the protester alleges the agency failed to consider the various ways the protester's aircraft are superior to the aircraft proposed by the awardee. *Id.* at 4-5. For example, the protester contends that its Twin Otter aircraft are better suited to smokejumper missions than the awardee's Dornier aircraft, because the Twin Otter is more tolerant of high temperatures and is "famously reliable." *Id.* Additionally, the protester argues that the awardee does not yet have a fully outfitted aircraft, while the protester's aircraft are "ready to go." Comments at 3.

When 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. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. A protester's disagreement, without more, does not form the basis for us to conclude that an evaluation was unreasonable. See *DynCorp International, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 7-8.

As a preliminary matter, we note that the protester advanced several untimely arguments in its comments on the agency's report, highlighting additional technical differences between the proposed airplanes. See Comments at 1-3. For example, the protester argues in its comments, for the first time, that the awardee does not typically operate its aircraft at their published airspeeds,³ that the protester's Twin Otter aircraft have superior capabilities for short take-off and landing, and that the Twin Otter aircraft

³ In this regard, we note the solicitation specifically provided that the agency would evaluate "published" airspeeds, not typical operating airspeeds. RFP at 63. To the extent the protester is arguing that the agency should not have considered published airspeeds in evaluating aircraft, this argument is also an untimely challenge to the terms of the solicitation. 4 C.F.R. § 21.2(a)

have larger windows, providing better visibility. *Id.* The protester, however, knew, or should have known, the facts underlying these protest grounds prior to the time it filed its initial protest. That is to say, the protester learned the identity of the awardee and the specific model of aircraft the awardee proposed in its debriefing, and there is no reason these arguments could not have been presented earlier. See AR, exh. 16, Debriefing Letter.

Our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *CapRock Gov't Sols., Inc., et al.*, B-402490, B-402490.2, et al., May 11, 2010, 2010 CPD ¶ 124 at 24; *University Research Co., LLC*, B-294358.8 et al., Apr. 6, 2006, 2006 CPD ¶ 66 at 16. Our Office will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. *Alfa Consult S.A.*, B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 3. Accordingly, because the protester could have advanced these arguments in its initial protest, but chose not to do so, these arguments are dismissed as untimely.

Turning to the protester's remaining technical arguments, we conclude that they are without merit. First, while the protester alleges that its aircraft is more reliable than the awardee's aircraft, the protester provides no meaningful evidence in support of its view and, more significantly, does not explain in what way reliability relates to the solicitation's evaluation criteria. See Protest at 4-5. Specifically, the solicitation provided that the agency would distinguish aircraft based on the number of insured passenger seats, published flight manual airspeeds, payload amounts, and any other beneficial enhancements made to the aircraft by the offeror. RFP at 63. Notably, the protester does not argue that its aircraft are clearly superior with respect to any of these specific criteria, but instead focuses primarily on issues related to ongoing maintenance and reliability. Comments at 2-3.

Significantly, the protester appears to concede that the awardee's aircraft has a higher published airspeed and a higher payload capacity. See Comments at 2; Protest at 4. While the protester alleges that the Dornier aircraft's actual payload capacity is reduced when flying in high temperature environments, the protester has provided no evidence supporting its claim, nor has the protester explained whether the purported reduction in payload would actually neutralize the awardee's advantage in this regard. See Protest at 4. In short, the protester has provided no basis to conclude that the agency's evaluation was unreasonable or inconsistent with the solicitation with respect to the technical capabilities of the proposed aircraft.

Additionally, while the protester alleges that the awardee does not currently possess the Dornier aircraft it proposed, the solicitation specifically contemplated that offerors could propose based on aircraft not currently available to them. RFP at 63. In this regard, the solicitation provided that offerors who proposed planes they are currently operating "may receive a more favorable rating," and, by contrast, the agency would assess the proposed timelines of any offeror who did not currently possess a suitable aircraft. *Id.*

In this case, contrary to the protester's suggestion that the agency did not consider this point, the agency evaluators directly addressed it: the protester's proposal received a strength for proposing aircraft that the protester is currently operating, and the awardee's proposal was assigned a weakness because it was not currently operating the plane it proposed. AR, exh. 14, Tab 1, Source Selection Evaluation Board (SSEB) Final Report at 2, 10.

While the protester may disagree with the weight the agency evaluators gave to this aspect of its evaluation, we see no basis to conclude that the agency's evaluation of technical capability was unreasonable or inconsistent with the solicitation. In short, the protester simply disagrees with the agency's judgment of the respective technical merits of the two proposals, and the challenge is without merit.

Organizational Safety

Concerning organizational safety, the protester argues that it has an exemplary safety record, has never had an aircraft accident, and proposed a new "cutting edge" safety management system (SMS). Protest at 5. The protester argues that the agency did not give the protester sufficient credit for its safety record. *Id.*

In response, the agency argues that, in general, it correctly evaluated the protester's safety record, but concedes that the evaluation included a minor error. MOL at 5-7. Specifically, the agency notes that it erroneously gave the protester partial credit for SMS questions 19 through 23 because the agency incorrectly concluded that the protester hadn't provided supporting evidence for those questions. *Id.* However, the agency contends that its evaluation was otherwise consistent with the protester's proposal and the solicitation requirements. *Id.*

The agency maintains that the protester was not prejudiced by this error because the protester would have received the same organizational safety rating even had the protester received full credit for those questions. *Id.* In this vein, the agency contends that, the protester's organizational safety was rated as very good based on independent ratings in several different areas of their SMS submission. MOL at 6-7. The agency contends that removing the error would not affect most of those areas, and would only raise the protester's rating to the "middle" of the range for a very good rating. *Id.*

Accordingly, the agency contends that the removal of the error would not have been sufficient to raise the protester's rating from very good to exceptional, and therefore the protester was not competitively prejudiced by the error. *Id.* In response, the protester contends that, given its spotless accident record, the removal of this error should shift its rating to exceptional. Comments at 3.

Preliminarily, contrary to the protester's suggestion that the agency failed to consider its safety record, the record reflects that the agency acknowledged the protester's strong safety record and assigned the protester's proposal a strength on that basis. AR, exh. 14, Tab 1, SSEB Final Report at 11. Moreover, while the agency erred in giving

the protester only partial credit for questions 19 through 23, competitive prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. See, e.g., *American Cybernetic Corp.*, B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 2-3.

Here, the contemporaneous record supports the agency's characterization of its evaluation. The SMS questionnaire included more than 30 questions across 9 functional areas, and the protester's rating of very good was predicated on the evaluators' ratings across all nine of those areas. AR, exh. 14, Tab 1, SSEB Final Report at 11; RFP at 52-56. For example, the agency's evaluation of several significant functional areas--such as safety risk management and emergency response--were unrelated to questions 19 through 23, and would not logically be affected by the removal of the agency's error. MOL at 6; AR, exh. 14, Tab 1, SSEB Final Report at 11. Given the evaluators' contemporaneous conclusion that the protester's SMS response should be rated very good based on numerous areas, most of which are unaffected by the error, we see no basis to question the agency's claim that the error would not have affected Leading Edge's rating.

On the record before us, we do not believe that this error had a meaningful effect on the outcome of the agency's evaluation, and therefore the protester was not prejudiced by the error. As the agency's evaluation was otherwise reasonable, there is no basis to sustain the protest on this ground.

Past Performance

In its initial protest, the protester argues that the agency erred by failing to consider its most recent contractor performance assessment reports (CPARs). Protest at 5. In response, the agency notes that it considered all relevant CPARs, and that the protester's recent CPARs contained significant negative past performance information. MOL at 8-9.

Specifically, the agency contends that recent Leading Edge's CPARs for smokejumper work noted several issues with Leading Edge's performance on those efforts. First, the evaluators noted that the protester, on more than one occasion, submitted inaccurate or late invoices. AR, exh. 14, Tab 1, SSEB Final Report at 12. Second, and more significantly, the agency noted that, on more than one effort, Leading Edge's pilots were unfamiliar with the smokejumper mission and required additional training before being able to perform. COS at 6 (*citing* AR, exh. 13, Tabs 1, 2).

Finally, on a recent effort, one of Leading Edge's pilots had their agency pilot card revoked in response to the pilot's decision to perform a cargo run into rising terrain, which the agency concluded compromised the safety of the crew. *Id.* Because that pilot was no longer authorized to fly, and the protester had no alternative pilot, the aircraft was not available for 52 days leaving the agency "in a bind" during a busy fire

season. *Id.* The author of that CPAR stated that they would not recommend Leading Edge for similar requirements in the future. *Id.*

In response, the protester argues that the agency's decision to "ground" the pilot in 2018 was based on an erroneous evaluation of the situation, and that the pilot had performed appropriately at all times and should not have been grounded. Comments at 4-5. The protester additionally notes that, while it did not have a backup pilot, very few organizations have qualified back up pilots due to a pilot shortage. *Id.* Accordingly, the protester argues that the 52-day unavailability was, in effect, the agency's fault due to its erroneous decision to ground the pilot. *Id.*

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. *Metropolitan Interpreters & Translators, Inc.*, B-415080.7, B-415080.8, May 14, 2019, 2019 CPD ¶ 181 at 10; see also *SIMMEC Training Sols.*, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. In addition, the relative merit of an offeror's past performance information is generally within the broad discretion of the contracting agency. See *Paragon Tech. Group, Inc.*, B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. *FN Mfg., LLC*, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7. Further, while an agency may properly consider past corrective actions, an agency is not required to ignore instances of negative past performance. *Dehler Mfg. Co., Inc.*, B-416819, B-416189.2, Dec. 19, 2018, 2019 CPD ¶ 45 at 4 (citing *The Bionetics Corp.*, B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7-8).

As part of the CPAR process the protester was provided with an opportunity to respond to the marginal ratings that it now disputes, and the protester's CPAR response advanced substantially the same arguments that it advances in this protest. See, e.g., AR, exh. 13, Tab 1, 2018 CPAR at 3-4. In this regard, the relevant CPAR reflects that the protester's objections were reviewed by a supervisory official, and that supervisory review confirmed the agency's initial marginal rating. *Id.* at 5. Significantly, we note that, while the protester disputes the chain of events leading up to the grounding of its pilot, the protester's pleadings do not contest other aspects of the marginal rating narratives, such as the fact that, on more than one effort, the protester's pilots were inexperienced and needed additional training to perform the mission. See *Id.* at 3-4; Comments at 4-5. Accordingly, even if the protester were correct that the agency erred in grounding its pilot, the CPARs would still contain significant negative past performance information.

While the protester continues to disagree with the agency's decision to assign it several marginal ratings, disagreement with the agency's judgement is not sufficient. The record reflects that the agency appropriately considered the negative past performance information in context alongside other positive past performance information, and ultimately assigned the protester a past performance rating of satisfactory confidence

despite the significant negative past performance information discussed above. AR, exh. 14, Tab 1, SSEB Final Report at 12. On the record before us, we see no basis to conclude that the agency's assignment of a satisfactory confidence rating was unreasonable.

Best Value

Finally, the protester contends that the agency erred in its best-value tradeoff decision because the protester's proposal represented the best value to the government. Protest at 6. The protester argues that the agency's evaluation was flawed, and that, in any case, the awardee's price was more than 20 percent higher than the protester's price, and the differences between the proposals do not justify such a large price premium. Comments at 5.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. *Client Network Servs., Inc.*, B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 9. When reviewing an agency's source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *The SI Organization, Inc.*, B-410496, B-410496.2, Jan. 7, 2015, 2015 CPD ¶ 29 at 14.

As discussed above, with the exception of a minor error, we do not believe the agency's evaluation was meaningfully flawed. Moreover, in selecting a higher-priced proposal, an source selection authority's decision must be supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and must explain why the proposal's technical superiority warrants paying a price premium. *J.R. Conkey & Assocs., Inc. dba Solar Power Integrators*, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 9. However, a protester's argument that the cost premium is simply too large is not sufficient to establish that the tradeoff was unreasonable. See *General Servs. Eng'g, Inc.*, B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44 at 11 (tradeoff reasonable where agency determined that technical superiority of awardee's proposal was sufficient to offset 125 percent higher cost).

Here, the agency noted that the solicitation provided that the non-price factors collectively were significantly more important than price, and that, while the awardee's price was higher than the protester's price, the awardee was also higher rated on all non-price factors. AR, exh. 14, Tab 2, Award Summary at 10-11. Specifically, the agency discussed the ways in which the awardee's aircraft was technically superior to the protester's aircraft, and noted that the protester had experienced performance issues on prior contracts. *Id.* at 6, 10-11. The agency concluded that it was willing to pay more for an offeror with greater technical capability and a proven record of

successful performance. *Id.* In short, the agency reasonably explained why the higher-priced proposal was, in fact, superior. *J.R. Conkey & Assocs., Inc. dba Solar Power Integrators, supra.*

The protest is denied.

Thomas H. Armstrong
General Counsel