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## Decision

**Matter of:** Aerospace Training Systems Partners, LLC

**File:** B-419668; B-419668.2

**Date:** June 22, 2021

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John M. Manfredonia, Esq., Manfredonia Law Offices, LLC, for the protester.  
Jerome S. Gabig, Esq., Wilmer & Lee, PA, for Trideum Corporation, the intervenor.  
Arthur M. Boley, Esq., Debra J. Talley, Esq., and Wade L. Brown, Esq., Department of the Army, for the agency.  
Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging an agency's technical evaluation is denied where, notwithstanding an apparent error, the protester fails to establish competitive prejudice.

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### DECISION

Aerospace Training Systems Partners, LLC (ATSP), a small business of Oklahoma City, Oklahoma, protests the award of a contract to Trideum Corporation (Trideum), a small business of Huntsville, Alabama, under request for proposals (RFP) No. W56HZV-20-R-L850, issued by the Department of the Army, U. S. Army Materiel Command (Army), for modeling and simulation (M&S) services in support of the Army's Modeling and Simulation Office. The protester argues that the award to Trideum was improper because the agency's evaluation of proposals was unreasonable and failed to follow the evaluation criteria.

We deny the protest.

### BACKGROUND

The Army's Modeling and Simulation Office (AMSO) provides training for military officers and Army civilians in M&S practices. Agency Report (AR), Tab 16, RFP at 18. On October 15, 2020, the agency issued the solicitation as a small business set-aside under Federal Acquisition Regulation (FAR) parts 12 and 15 to provide AMSO support services including knowledge management, M&S policy and strategy analysis, and instruction for army and civilian personnel. *Id.* at 1, 29-30. The awardee will provide, among other things, certified instructors and subject matter experts. *Id.* at 30.

The solicitation contemplates the award of a single fixed-price contract with a 1-year base period and four 1-year option periods.<sup>1</sup> RFP at 29. The RFP provides for award on a best-value tradeoff basis, considering three evaluation factors: technical,<sup>2</sup> past performance,<sup>3</sup> and price. *Id.* at 96. The technical factor consists of two subfactors, the staffing plan and the academic support plan. *Id.* at 98-99. For purposes of award, the technical factor is significantly more important than past performance, which is more important than price. *Id.* at 98. The RFP notified offerors that the proposal representing the best value may not be the one with the lowest price. *Id.* at 96.

Two offerors, ATSP and Trideum, submitted proposals by the closing date. AR, Tab 15, Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 2. The agency performed a compliance review and evaluated the proposals. *Id.* at 3. After reviewing the evaluations, the source selection authority (SSA) determined that discussions were not necessary. *Id.*; AR, Tab 49, Source Selection Decision Document (SSDD) at 1.

The Source Selection Evaluation Board (SSEB) evaluated the proposals as follows:

	<b>ATSP</b>	<b>Trideum</b>
<b>Technical</b>	Marginal	Good
<b>Past Performance</b>	Limited Confidence	Substantial Confidence
<b>Price</b>	\$21,579,100	\$27,892,909

*Id.* at 5.

The SSA independently reviewed the SSEB evaluations and conducted a comparative analysis of the proposals. *Id.* at 14. The SSA determined that Trideum’s proposal was superior to ATSP’s proposal and represented the best value to the government. *Id.* at 1, 14. The SSA concluded that there was a “meaningful distinction between the two

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<sup>1</sup> The RFP was amended twice; neither amendment is relevant to the issues in this protest. AR, Tabs 36-37.

<sup>2</sup> The technical evaluation adjectival ratings were: outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 46, ATSP Technical Evaluation at 1-3. The adjectival ratings also assessed the risk of unsuccessful performance. *Id.* at 3.

<sup>3</sup> The agency assigned proposals one of the following ratings under the past performance factor: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. AR, Tab 47, ATSP Past Performance Evaluation at 4-5. In performing the past performance evaluation, evaluators assessed the recency and relevance of the offeror’s prior contract efforts. *Id.* at 5.

proposals,” which warranted paying a price premium of 29 percent for Trideum’s higher-rated proposal. *Id.* at 14. On February 12, 2021, the agency notified the protester that Trideum was awarded the contract. AR, Tab 52, Notice of Unsuccessful Offeror at 1. This protest followed.

## DISCUSSION

The protester challenges the agency’s evaluation as unreasonable and contrary to the stated evaluation criteria. The protester also challenges the best-value determination and award decision. For the reasons discussed below, we find no basis on which to sustain the protest.<sup>4</sup>

### Interested Party

As a preliminary matter, we note that the intervenor sought dismissal of the protest on the basis that the protester was not an interested party to challenge the agency’s evaluation because it submitted a “nonresponsive” proposal.<sup>5</sup> Intervenor’s Second Req. for Dismissal at 3-4. The protester is a joint venture composed of two firms, C2 Technologies, Inc. and AVT Simulation, Inc. AR, Tab 41, ATSP Past Performance Proposal at 1, 10. The intervenor argues that pursuant to FAR section 4.102, the protester’s proposal is unacceptable because the offer is not signed by both participants in the joint venture and there is no evidence that the individual who signed the offer has the authority to bind the joint venture. Intervenor’s Second Req. for Dismissal at 3.

In essence, the intervenor argues that even if the protester were to prevail on its challenge to the agency’s evaluation, the protester would not be eligible for award because its proposal is unacceptable. The protester responds that FAR section 4.102 is inapplicable to offers and only applies to contracts.<sup>6</sup> Comments & Supp. Protest at 29-30 (citing *IBI Sec. Serv., Inc.*, B-215732, July 26, 1984, 84-2 CPD ¶ 118 at 1). The protester further argues that, in any event, its offer was signed by an individual with authority to bind the joint venture. *Id.* at 30.

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<sup>4</sup> While our decision does not discuss every argument raised by the protester, we have considered all the allegations. To the extent a protest ground is not discussed herein, it was found to be without merit.

<sup>5</sup> We note that the concept of responsiveness applies to acquisitions conducted under the sealed bidding procedures of FAR part 14. It does not apply to acquisitions conducted by competitive negotiation under FAR part 15. See *e.g.*, *Carlson Wagonlit Travel*, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 1 n.1 (“Where a proposal submitted under a negotiated procurement fails to meet a material requirement of the RFP, it is unacceptable, not nonresponsive.”).

<sup>6</sup> Although permitted an opportunity to respond to the intervenor’s request for dismissal, the agency declined to do so.

Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2.

In this instance, we find that the protester is an interested party. Section 4.102(d) of the FAR states that a contract with the government "shall be signed by each participant in the joint venture." As we observed in *IBI Security Service, Inc.*, however, an offer is not a contract, and it is unclear whether FAR section 4.102 is intended to apply to offers in response to a solicitation. *IBI Sec. Serv., Inc.*, *supra*. Moreover, in response to the request for dismissal here, the protester furnished evidence (in the form of a declaration) that its offer was signed by an individual with authority to bind the joint venture. Comments & Supp. Protest attach. 2 at 1. Under the circumstances here, we cannot conclude that the protester lacks standing as an interested party and we deny the request for dismissal.

#### Past Performance

The protester challenges the agency's past performance evaluation and argues the agency improperly assigned a rating of limited confidence to its proposal. Protest at 23-25. The protester argues the evaluators unreasonably disregarded one of its past performance references because the proposal's narrative misidentified the contract number. *Id.* at 23. The protester also argues the agency should have considered the error to be clerical since the technical proposal and past performance questionnaire (PPQ) both referenced the correct contract number. *Id.* at 24-25. Finally, the protester argues that the agency should have asked it to clarify the confusion, or should have contacted the government official who completed the PPQ. *Id.* at 25. In response, the Army contends that the protester was responsible for submitting a well-written proposal and that the information supplied in the proposal did not meet the RFP's definition of a contract. COS/MOL at 23-26. Based on our review, we find the agency's evaluation reasonable and consistent with the solicitation.

Our Office will review an agency's evaluation of past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, as determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. *Tele-Communication Sys., Inc.*, B-413265, B-413265.2, Sept. 21, 2016, 2016 CPD ¶ 266 at 7; *American Env'tl. Servs., Inc.*, B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 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, by itself, does not demonstrate that those

judgments are unreasonable. *Cape Env'tl. Mgmt., Inc.*, B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8.

For the past performance evaluation here, the solicitation instructed offerors to identify two contracts deemed relevant and performed within three years of the date the RFP was issued.<sup>7</sup> RFP at 88. The solicitation defined a contract as “a written instrument that requires the performance of a distinct effort and demonstrates the distinct effort was actually performed.” *Id.* The RFP advised offerors that they were responsible for demonstrating they had actually performed the distinct effort identified in their proposals. *Id.*

In the instructions to offerors, the solicitation advised that the agency would “not assume the offeror possesses any capability, understanding, or commitment not specified in its proposal,” and that the government would not “assume the duty to search for data to cure problems it finds in proposals.” *Id.* at 84. Under the past performance evaluation criteria, the solicitation reiterated that the government did not have a duty to cure problems in proposals and reminded offerors of their “burden to provide thorough and complete past performance information.” *Id.* at 88. The RFP informed offerors that failing to provide past performance information as instructed might result in an assessment that the offeror does not have a record of the required past performance. *Id.*

When the agency evaluated the protester’s past performance, it found that one of the contracts identified did not meet the definition of a contract as set forth in the RFP. AR, Tab 47, Past Performance Evaluation at 6-7. Here, the protester identified two contracts to establish its past performance, the first was the eSchool of Graduate Professional Military Education (GPME) (contract No. OPM1912C0022, O0023). AR, Tab 41, ATSP Past Performance Proposal at 3-5. The SSEB concluded that the Performance Work Statement (PWS) provided in support of the GPME effort did not reference the identified contract; instead, it referenced task order request (TOR) No. GS10F17LPQ0009. AR, Tab 47, Past Performance Evaluation at 6. The completed PPQ submitted for the GPME contract also incorrectly cited TOR No. GS10F17LPQ0009. *Id.* Consequently, the agency concluded it could not ascertain whether there was a relationship between the GPME contract, and the submitted PWS and PPQ. *Id.* Based on this determination, the agency did not evaluate the GPME effort for recency and relevancy. *Id.*

As a result, the agency found only one of the two contracts identified to be recent and somewhat relevant. The agency concluded that there was a low expectation that the protester would be able to successfully perform the required effort and assigned the protester a limited confidence rating for past performance. *Id.* at 11.

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<sup>7</sup> With respect to joint ventures, the solicitation indicated that the government would consider past contracts from each participant in the joint venture, as well as any work previously performed by the joint venture itself. RFP at 90.

In our view, the record here supports the agency's evaluation. The protester's proposal contained conflicting information. The proposal referenced a contract number for the GPME contract, but the supporting documentation, the PWS and the PPQ, referenced a solicitation number that did not correspond to that contract number. An agency does not have a duty to search for correct information when the offeror fails to include it in its proposal. *Sam Facility Mgmt., Inc.*, B-292237, July 22, 2003, 2003 CPD ¶ 147 at 5. Because the agency was unable to confirm a relationship between the contract number cited in the proposal narrative and the supporting documentation, we think the decision not to consider the protester's first past performance reference was reasonable.<sup>8</sup> Accordingly, we deny this protest ground.

### Technical Evaluation

The protester raises several challenges to the evaluation of technical proposals. Specifically, the protester contends that the agency's assignment of weaknesses and significant weaknesses to its proposal was based on an unreasonable reading of the proposal, was contrary to the evaluation criteria, and unfairly favored the incumbent contractor. The protester also argues that the strengths assigned to Trideum's proposal are based on unstated evaluation criteria. The agency responds that its evaluation was reasonable and consistent with the evaluation criteria.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. See *SDS Int'l, Inc.*, B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 5. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *MVM, Inc.*, B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Id.* at 5.

As explained below, we agree with the protester regarding one of its challenges to the agency's evaluation (pertaining to the assignment of a significant weakness), but otherwise find that the evaluation was reasonable. We further find, however, that the lone evaluation error did not result in competitive prejudice to the protester. As a result, we have no basis upon which to sustain the protest.

For example, the protester contends that the agency unreasonably assigned a significant weakness to its proposal because the proposal did not identify an individual

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<sup>8</sup> We also note that even if the agency had been able to discern a relationship between the GPME contract and TOR No. GS10F17LPQ0009, a task order request does not meet the RFP's definition of a contract. A task order request is a solicitation and does not establish that a distinct effort was actually performed. See COS/MOL at 24; RFP at 88.

for the key position of project manager and did not include a plan for hiring a project manager. Protest at 17. The protester argues that the RFP only required offerors to provide their process for recruiting, vetting, and staffing personnel, and did not require offerors to identify a proposed project manager or the individual's qualifications. *Id.* at 18. Therefore, the protester asserts, the agency's significant weakness is improperly based on unstated evaluation criteria. *Id.*

Our Office has long recognized that, as a general matter, it is an offeror's responsibility to submit an adequately written proposal with sufficient information for the agency to evaluate and determine compliance with the solicitation's requirements. *PEAKE*, B-417744, Oct. 11, 2019, 2019 CPD ¶ 359 at 4. An offeror that does not affirmatively demonstrate the merits of its proposal risks rejection of its proposal or risks that its proposal will be evaluated unfavorably where it fails to do so. *PAE Aviation & Tech. Servs., LLC*, B-417639, Sept. 11, 2019, 2019 CPD ¶ 317 at 6. An agency is under no obligation to reach favorable conclusions regarding the merits of a proposal or the compliance of the proposal with a solicitation's requirements where the information supporting such conclusions is "not readily apparent." *DATEX, Inc.*, B-270268.2, Apr. 15, 1996, 96 1 CPD ¶ 240 at 6. Nor is an agency required to "deduce[]" that a proposal meets certain requirements where the proposal lacks the level of detail the RFP requires. *SOS Interpreting, Ltd.*, B-287505, June 12, 2001, 2001 CPD ¶ 104 at 11-12.

The RFP advised that the government would evaluate an offeror's staffing plan for the specified key personnel to include the "proposed process and plan to recruit, vet, and staff personnel who meet or exceed the minimum qualifications . . . (required training, experience, and security clearances will be evaluated)." RFP at 98. In responding to the protester's allegation that the significant weakness was based on unstated evaluation criteria, the agency maintains the protester only provided a general description of the project manager role and did not explain how it would ensure that the project manager would meet the required qualifications. COS/MOL at 15-16. Furthermore, while the agency agrees that offerors were not required to identify a proposed project manager in their proposals, the agency contends it did not assign the significant weakness because the protester failed to name a project manager in its proposal. *Id.* at 16. Rather, the agency argues, the proposal warranted a significant weakness because the proposal lacks sufficient detail about hiring the project manager. *Id.*

Based on our review of the record, we conclude that the agency's evaluation was reasonable. The protester's proposal only presents a general description of its processes for staffing the project, including the project manager position. Nothing in the proposal identifies the specific qualifications for this key position or references a

particular strategy for meeting this requirement. See AR, Tab 40, ATSP Technical Proposal § 1.3.<sup>9</sup> We therefore find no basis upon which to sustain this protest ground.

As mentioned above, while we find that the agency's evaluation was generally reasonable, we agree with the protester that in one instance, the agency erred. The agency assigned a significant weakness to the protester's technical proposal for failing to demonstrate an understanding of the Army Learning Model (ALM) and its relationship to the Experiential Learning Model (ELM). The protester contends that the RFP does not require offerors to explain the relationship between the two learning models. Protest at 21-22.

Agencies are required to evaluate proposals based solely on the factors identified in the solicitation, and must adequately document the bases for their evaluation conclusions. *Intercon Assocs., Inc.*, B-298282, B-298282.2, Aug. 10, 2006, 2006 CPD ¶ 121 at 5. While agencies properly may apply evaluation considerations that are not expressly outlined in the RFP if those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated and unstated criteria. *Raytheon Co.*, B-404998, July 25, 2011, 2011 CPD ¶ 232 at 15-16. An agency may not give importance to specific factors, subfactors, or criteria beyond that which would reasonably be expected by offerors. *Lloyd H. Kessler, Inc.*, B-284693, May 24, 2000, 2000 CPD ¶ 96 at 3.

Here, the solicitation explains that the government will evaluate the offeror's academic support plan to determine whether the offeror has the capability to support and maintain the Army Modeling and Simulation School (AMSS) academic programs. RFP at 98-99. This consists of providing instructors who are certified ELM facilitators, and who apply ALM and ELM in their instruction. RFP at 37, 39, 43.

The protester submitted an academic support plan explaining its capability to support AMSS. The proposal detailed the protester's approach to maintaining academic accreditation standards, developing academic standards, and supporting online learning management systems. AR, Tab 40, ATSP Technical Proposal § 1.6. The agency determined, however, that the protester was unable to articulate its understanding of ALM and its relationship to ELM and assigned the protester's proposal a significant weakness. AR, Tab 46, ATSP Technical Evaluation at 6, 9.

As noted above, the protester argues that demonstrating an understanding of the relationship between the two learning models was an unstated evaluation criterion because it was not set forth in the solicitation, and because it was not reasonably encompassed within the requirement to demonstrate capability to support AMSS academic programs.

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<sup>9</sup> In contrast, the protester provides a detailed description of its proposed transition manager--not a key personnel position--that identifies his experience transitioning other programs. *Id.* at 1.3.3.



The agency contends that its assessment of the significant weakness was reasonable because “[t]hese two learning models and their relationship to each other must be thoroughly understood by the contractor responsible for instruction under the contract,” which is reasonably related to or encompassed by the solicitation’s evaluation factor. COS/MOL at 21. With regard to ALM, the agency points to United States Army Training and Doctrine Command (TRADOC) Regulation 350-70, which is referenced in the RFP, and which specifically mentions the “Army Learning Model (ALM) strategic guidance for training and education.”<sup>10</sup> COS/MOL at 20-21; AR, Tab 39, TRADOC Regulation 350-70 at 1. The agency explains that the evaluation criteria clearly state the agency’s intent to evaluate an offeror’s capability to support the AMSS academic programs pursuant to TRADOC Regulation 350 series training publications. In the agency’s view, understanding this learning model and its connection to ELM is imperative to understanding Army institutional learning. COS/MOL at 20-21.

While the agency concedes that the TRADOC Regulation 350-70 contains no reference to ELM, it asserts that the ELM is commonly used throughout educational institutions. *Id.* at 21. In addition, the agency contends that ALM is the framework used to modify the extensively used ELM to fit into the agency’s training domain. *Id.* The agency argues a discussion of both models and their relationship to one another is necessary to demonstrate capability to support the AMSS. *Id.*

We disagree and find that the agency applied unstated evaluation criteria in assessing the significant weakness here. Although the evaluation criteria mention that an offeror must show it is able to support AMSS by supplying instructors who apply ALM and ELM in training, we do not think the solicitation reasonably advised offerors of the agency’s view that offerors were required to specifically discuss the relationship between the two learning models. Furthermore, the solicitation does not reference ELM, except as an instructor qualification, and it is unclear how identifying an instructor qualification would inform offerors they would be evaluated on their discussion of the relationship between these two learning models. We conclude there is no nexus between the solicitation’s stated evaluation criteria and the criteria the evaluators used to assign the protester a significant weakness, and therefore, the agency’s evaluation here was unreasonable.

Notwithstanding our concern with the significant weakness assessed to the protester’s proposal, as discussed above, we find that this lone error is insufficient to demonstrate a reasonable possibility that the protester was competitively prejudiced. Competitive prejudice is an essential element of any viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency’s actions arguably were improper. *Interfor US, Inc.*, B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7. Here, the record fails to show that correcting for

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<sup>10</sup> TRADOC Regulation 350-70 applies to all Army Training and Educational Proponent organizations, such as Army Centers of Excellence Army schools, Army institutes, and Army colleges that produce, implement, and/or evaluate learning. AR, Tab 39, TRADOC Regulation 350-70 at 1.

the error addressed above would substantially improve the protester's possibility of receiving the award.

In this regard, the agency assigned the protester's technical proposal two strengths, five weaknesses and three significant weakness, which resulted in a marginal rating. AR, Tab 49, SSDD at 5-6. The agency also assigned the protester a limited confidence rating for its past performance. *Id.* at 5. Trideum's proposal, on the other hand, was assigned four strengths and two weaknesses, which resulted in a good rating, and Trideum's past performance was rated as substantial confidence. *Id.* at 5-6. The agency conducted a tradeoff analysis and determined that Trideum's higher-rated proposal was more advantageous for the government such that it warranted paying a price premium for the high expectation that Trideum will successfully perform the contract. *Id.* at 14.

Although it appears that correcting the error could have resulted in the elimination of one of the three significant weaknesses from the protester's proposal, we conclude it is unlikely the changes would materially impact the protester's competitive position. The agency determined there was a meaningful distinction between the proposals and even though Trideum's price was 29 percent higher than the protester's price, the non-price factors were significantly more important than price. *Id.* It is not apparent that one less significant weakness would materially change the agency's tradeoff analysis. As a result, we find no basis on which to sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel