



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American CASA/National Air

File: B-271274; B-271274.3

Date: May 23, 1996

Gordon R. Long for the protester.

David E. Sandlin and Barry L. Barnes, for Flight International, Inc., the intervenor.
Col. Nicholas P. Retson and Lt. Col. David S. Franke, Department of the Army, for
the agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging technical evaluation on ground that agency confused different offerors' proposals during evaluation is denied where: (1) contracting officer reasonably explained administrative error which caused erroneous references to be included in the protester's award notification/debriefing letter; and (2) record shows that agency reasonably downgraded protester's proposal under the past experience subfactor.
2. Protest challenging agency's evaluation of awardee's proposal is dismissed where even if this protest ground were sustained, another offeror would be in line for award instead of the protester.

DECISION

American CASA/National Air protests the award of a contract to Flight International, Inc. under request for proposals (RFP) No. DCSAC-5285-0002, issued by the Department of the Army for the leasing of two cargo aircraft and the provision of related flight support services at the Military Freefall School (MFFS) located at Yuma Proving Ground, Arizona. American CASA contends that the agency improperly confused its technical proposal with another offeror's. American CASA also challenges several aspects of the agency's technical evaluation of the awardee's proposal.

We deny the protest in part and dismiss it in part.

The RFP was issued on November 28, 1995 and contemplated the award of a fixed-price requirements contract for a base year and 4 option years to the offeror whose

proposal represented the best value to the government. The RFP emphasized that technical merit was more important than price, and provided that proposals would be evaluated under the following three technical factors, which were listed in descending order of importance in the RFP: aircraft (with three ranked subfactors); organization and experience (with three ranked subfactors); and safety (with two ranked subfactors). The RFP incorporated Federal Acquisition Regulation § 52.215-16, Alternate II, which placed offerors on notice that the government intended to evaluate the proposals and award the contract without discussions with offerors.

By the January 12, 1996 closing date, 12 proposals were received. On January 18, the technical evaluation panel (TEP) completed its evaluation of the proposals. After reviewing the TEP's ranking, the contracting officer established a competitive range of the three highest-ranked proposals as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Evaluated Price</u>
Flight International Proposal No. 1	96	\$11,307,258
Flight International Proposal No. 2	94	6,885,070
Specialized Transport International	94	8,511,842

American CASA's proposal was ranked fourth, with a technical score of 80 and an evaluated price of \$8,327,200.

On February 23, the contracting officer--who acted as the source selection authority for this procurement--selected Flight International's Proposal No. 2 for contract award, as offering the best value to the government.¹ On February 28 and March 6, American CASA timely filed these protests.

Evaluation of Protester's Proposal

On February 23, the agency issued an award notification/debriefing letter to American CASA advising that "[y]our offers, alone and as a joint venture" had been excluded from the competitive range as a result of four technical deficiencies. Of

¹Although the Flight International Proposal No. 1 had a slightly higher technical score than Proposal No. 2, the contracting officer determined that the technical difference between the two proposals did not merit the price premium.

significance to this protest, the award/debriefing letter identified the fourth technical deficiency in American CASA's proposal as "[p]ast performance in similar projects was inadequate."

American CASA asserts that the Army evaluators must have confused American CASA's proposal with another offeror's proposal. Otherwise, American CASA asserts, the Army's award notification/debriefing letter would not have contained references to "offers" and "joint venture" since the protester submitted only one proposal in the name of a single enterprise. As additional evidence of this alleged confusion, American CASA maintains that the agency could not reasonably have determined its past performance to be deficient since it is "currently under contract with the United States Navy and ha[s] performed two (2) contracts for the United States Army to provide exactly the same type of work as requested under this solicitation." In this regard, the RFP identified "past experience and similar projects" as the second ranked subfactor under the organization and experience factor.

The contracting officer reports that her use of the term "offers" and the award notification/debriefing letter's reference to "joint venture" was the result of an inadvertent administrative error. The contracting officer states--and the record confirms--that several offerors submitted multiple proposals, and that several of the offerors were joint ventures. To facilitate preparation of each unsuccessful offeror's award notification/debriefing letter, the contracting officer states, she developed a standard letter on her word processor, which she then tailored to indicate the specific deficiencies of each unsuccessful offeror. The specific award notification/debriefing letter which was prepared prior to developing the American CASA letter was issued to an offeror that was a joint venture; then, when the American Casa letter was being prepared, the contracting officer inadvertently failed to delete the references to "offers" and "joint venture." In fact, because of this clerical error, the contracting officer reports--and the record confirms--that the "rest of the letters" sent to the unsuccessful offerors which were subsequently prepared (including American CASA's) contained the same erroneous references to "offers" and "joint venture." The contracting officer further states that after discovering the error, by facsimile dated February 26, she issued corrected award notification/debriefing letters to each of the offerors, including American CASA.

Notwithstanding the contracting officer's explanation--which we think is reasonable and is supported by the record--American CASA contends that the agency must have confused its proposal with another offeror's because, according to the protester, there is no way the agency reasonably could have found American CASA's proposal to be deficient in the past performance area. In essence, American CASA challenges the agency's evaluation of its proposal under this subfactor.

In reviewing whether a proposal was properly evaluated, our Office will not reevaluate the proposal, as the determination of whether a proposal meets the contracting agency's needs is a matter within the agency's discretion. We will examine the record to determine whether the evaluators' judgments were reasonable and consistent with the stated evaluation criteria. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171. Here, the record supports the agency's evaluation of the protester's proposal under the past performance subfactor.

The record shows that the following deficiencies resulted in a downgrading of the protester's proposal under the past performance subfactor. First, American CASA's prior experience consisted of only three contracts, all awarded fairly recently, including one that began in September 1995; in comparison, the other, higher-rated offerors had more extensive experience with similar contracts. Next, the TEP found that it was not clear that the three contracts had the same technical requirements as those required here. For example, the protester's proposal did not specify whether the referenced contracts involved static line parachute jumps or freefall jumps, the latter of which are used exclusively at MFFS. Additionally, the protester did not indicate whether the previously performed contracts included High Altitude/Low Opening or High Altitude/High Opening parachute jumps, both of which are part of the MFFS curriculum. Finally, for one of the prior referenced contracts, the protester had performed cargo drops as well as personnel drops, but in its proposal did not specify the percentage of each.

Although the agency's rationale for downgrading the protester's proposal under this subfactor was fully explained in the agency report on the protest, the protester did not rebut or otherwise respond to the agency's findings. Since the record supports, and the protester does not rebut, the agency's conclusion that the protester's proposal did not adequately demonstrate how its limited experience pertained to the MFFS requirements, we conclude that the agency reasonably downgraded the protester's proposal under the past experience subfactor.²

²American CASA also contends that the TEP was not qualified to perform the technical evaluation. The selection of individuals to serve as proposal evaluators is a matter within the discretion of the agency; accordingly, we will not review allegations concerning the qualifications of evaluators or composition of evaluation panels absent a showing of possible fraud, conflict of interest, or actual bias on the part of evaluation officials. Solid Waste Integrated Sys. Corp., B-258544, Jan. 17, 1995, 95-1 CPD ¶ 23. No such showing has been made here.

Evaluation of Awardee's Proposal

The protester raises several other arguments which challenge the agency's evaluation of the awardee's proposal. American CASA contends that the awardee's proposal should have been downgraded under several technical subfactors because of alleged noncompliance with various Federal Aviation Administration (FAA) licensing and certification requirements.³ We will not consider these arguments.

In this case, as noted above, the agency properly downgraded the protester's proposal under the past experience subfactor; American CASA challenged no other aspects of the agency's technical evaluation of its proposal. Accordingly, we have no basis to question its proposal's low technical score, or the agency's exclusion of its proposal from the competitive range. Thus, even if we were to sustain American CASA's protest of the agency's technical evaluation of the awardee's proposal, American CASA would not be in line for award. Another offeror--Specialized Transport International--would receive contract award since it is the third ranked offeror with a significantly higher technical score than American CASA, and was the only other offeror whose proposal was included in the competitive range. American CASA has not challenged the technical evaluation of Specialized Transport's proposal. Under these circumstances, American CASA is not an interested party to maintain its challenge to the technical evaluation of the awardee's proposal since even if its protest were sustained on this ground, it would not be in line for award. See 4 C.F.R. § 21.0(a) (1996); American Overseas Book Co., Inc., B-266297, Feb. 9, 1996, 96-1 CPD ¶ 60; Continental Tel. Co. of California, B-222458.2, Aug. 7, 1986, 86-2 CPD ¶ 167.

The protest is denied in part and dismissed in part.

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³Compliance with the FAA licensing and certification requirements--which is generally treated as a responsibility-type matter--was incorporated as a technical subfactor under the aircraft and safety factors of the RFP.