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Decision

Matter of: Sabreliner Corporation

File: B-290515; B-290515.2; B-290515.3

Date: August 21, 2002

Kenneth B. Weckstein, Esq., Raymond R. Fioravanti, Esq., and Tammy Hopkins, Esq., Epstein Becker & Green, for the protester.

Christopher R. Yukins, Esq., Leigh A. Bradley, Esq., and Kristen E. Ittig, Esq., Holland & Knight, for Canadian Commercial Corporation/Orenda Aerospace Corporation, the intervenor.

Clarence D. Long, III, Esq., Department of the Air Force, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's evaluation of the protester's and awardee's past performance is unobjectionable where the evaluation was reasonably based and consistent with the evaluation criteria set forth in the solicitation and applicable statutes and regulations.
 2. The integrity of the protest process does not permit a protester to argue that the agency improperly interpreted the solicitation and governing regulations as allowing the successful contractor to purchase materials for use in the contract directly from the government where the protester was informed of, shared, and benefited from that interpretation during the procurement process.
 3. Agency's determination that the awardee's proposal was acceptable cannot be considered reasonable where the contemporaneous record does not evidence that the agency meaningfully evaluated a relevant and apparently significant section of the awardee's technical proposal, and the agency, in defending the protest, states that its intent is to enter into post-award negotiations with the awardee regarding the protested aspects of the awardee's technical approach that should have been evaluated during the procurement process.
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DECISION

Sabreliner Corporation protests the award of a contract to Canadian Commercial Corporation/Orenda Aerospace Corporation under request for proposals (RFP)

No. F34601-02-R-53859, issued by the Department of the Air Force, for the repair and overhaul of J85 engines and their components.¹

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

The RFP provided for the award of a fixed-price, indefinite-quantity contract for a base period of 3 years with four 1-year options. The RFP stated that award would be made to the offeror whose proposal represented the best value to the government, based upon the following evaluation factors: technical, past performance, and price. RFP § M-002(a). The RFP provided that technical proposals would be evaluated only for technical acceptability, and that the technical evaluation factor was comprised of four subfactors—transition, management, personnel, and participation of small disadvantaged business. RFP § M-002(c). The RFP also stated that “[a]n unacceptable subfactor assessment will result in an overall technical unacceptable rating.” RFP § M-002(g). The RFP added that, in selecting a proposal for award, “[t]radeoffs [would] only be made between price and past performance,” with past performance being considered significantly more important than price. RFP § M-002(b).

With regard to the transition subfactor to the technical evaluation factor, the RFP requested that proposals include “a comprehensive plan” detailing how the contractor proposed to meet the requirement that, within the first 24 months of contract performance, the successful contractor “transition from GFM [government furnished materials] to CFM [contractor furnished materials].” RFP § M-002(c); see RFP § L.3.2. The RFP added that this transition phase was “not to exceed 24 months.” RFP, app. A, Technical Requirements Document (TRD) § 3.1.1. Offerors were advised elsewhere that they were “allowed to transition prior to the 24-month deadline.”² Intervenor’s Submission (May 30, 2002), exh. 3, Agency Clarifications to RFP (Feb. 5, 2002), response 3.

¹ Although issued by the Air Force, the contract awarded under the RFP is for the J85 overhaul and repair program for the Air Force, Navy, National Aeronautics and Space Administration, and foreign military sales customers. Agency Report (AR) at 1.

² The transition from performing the contract using GFM to performing the contract using CFM had been emphasized by the agency during an industry day/pre-solicitation conference, and was the subject of a number of clarifications issued by the agency during the solicitation process. For example, the record reflects that during the industry day the agency stressed that it was “looking for ideas from industry on the most effective way to accomplish this transition.” AR, Tab 4, Industry Day Briefings (Nov. 15-16, 2001).

The RFP included a price schedule that included, for each period of the contemplated contract (base, 1st option, 2nd option, etc.), exhibit line items (ELIN) that set forth the engine or other item to be repaired, overhauled, or modified, and a best estimated quantity for each engine or item. RFP, exhs. A-E. The RFP also included an estimate for “over and above” work, not included in ELINs, of 38,371 labor hours in the base period and 8,194 hours in each of the option periods. Offerors were instructed to complete the schedule by inserting unit prices for the ELINs, and a fixed-hourly rate for the “over and above” work for the base and option periods of the contract.

The RFP informed offerors that their price proposals would be evaluated by adding the ELIN prices provided for the base and option periods, and the product of the estimated hours and labor rates for the “over and above” work. The RFP added here that “to normalize proposals to account for use of CFM within the first 2 years, the Government will add GFM costs at the ELIN level for all months prior to the contractor conversion to CFM.” RFP § M-002(e).

The agency received proposals from only Sabreliner (the incumbent contractor) and Orenda by the solicitation’s closing date. The proposals were evaluated, and the agency provided each offeror with written discussions through the issuance of evaluation notices (EN). AR, Tab 11, ENs. The offerors’ responses to the ENs were received and evaluated, and final revised proposals (FRP) were requested and received. Sabreliner’s and Orenda’s proposals were both evaluated as acceptable under each of the four technical evaluation subfactors, and both received “very good/significant confidence” ratings under the past performance factor.³ AR, Tab 11, Source Selection Decision, at 2-4.

With regard to price, Sabreliner’s prices (with the “over and above” prices included) for the base period and options periods 1 through 4 were, respectively, \$33,055,665, \$26,286,044, \$26,850,540, \$27,759,485, and \$28,882,861, for a total of \$142,834,595. Orenda’s prices (with the “over and above” prices included) for the base period and options periods 1 through 4 were, respectively, \$39,916,114, \$18,469,784, \$18,615,683, \$21,530,470, and \$24,496,209, for a total of \$123,028,261. AR, Tab 11, Price Competition Memorandum, at 5.

Sabreliner proposed to use GFM for the first 24 months of the contract, and because of this and in accordance with the terms of the solicitation, see RFP M-002(e), the agency added \$23.6 million (approximately \$1 million per month) to Sabreliner’s

³ The following adjectival ratings were used in the evaluation of the offerors’ past performance as set forth in their proposals: exceptional/high confidence, very good/significant confidence, satisfactory/confidence, neutral/unknown confidence, marginal/little confidence, unsatisfactory/no confidence. AR, Tab 11, Performance Risk Assessment Group (PRAG) Final Report § 1.2.3; see RFP § M-002(f).

price for evaluation purposes in order to account for the 24 months of costs to the agency of providing the GFM; accordingly, for evaluation purposes, Sabreliner's price totaled \$166,434,595. Similarly, because Orenda proposed to use GFM for only the first 6 months of the contract, the agency added \$5,899,998 (proportionately the same as the adjustment to Sabreliner's price) to Orenda's price for evaluation purposes in order to account for the 6 months of costs to the agency of the GFM; accordingly, for evaluation purposes, Orenda's price totaled \$128,928,259. AR, Tab 11, Price Competition Memorandum, at 10.

In making its source selection determination, the agency first noted that both Orenda's and Sabreliner's proposals had received the same ratings under the technical evaluation subfactors and past performance factor. Turning to price, the agency noted that Orenda's price, without the adjustment for the materials costs associated with the offerors' different GFM-to-CFM transition periods, was \$19,806,399, or 16 percent, lower than Sabreliner's price. The agency added that after the application of the adjustment for materials costs associated with the offerors' GFM-to-CFM transition periods, the price advantage associated with an award to Orenda grew to \$37,506,401 (or approximately 29 percent). Given that the proposals received the same technical and past performance evaluation ratings, and the significantly lower price of Orenda's proposal, the agency selected Orenda's proposal for award as representing the best value to the government. AR, Tab 11, Source Selection Decision. After requesting and receiving a debriefing, Sabreliner filed these protests.

Sabreliner first protests the agency's evaluation of both its and Orenda's proposal under the past performance factor. Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the contracting agency's discretion. TRW, Inc., B-282162, B-282162.2, June 9, 1999, 99-2 CPD ¶ 12 at 3.

Here, the RFP requested that offerors submit detailed information regarding their past performance. For example, offerors were requested to submit information regarding five to seven contracts that they had performed, and three to five contracts for each proposed subcontractor that will perform 25 percent or more of the work here. RFP § L.4.1. For each contract cited, offerors were permitted to submit up to five pages explaining, among other things, the relevance of the work performed under the cited contracts to the work contemplated by this RFP. RFP § L.4.3. The agency evaluated the information submitted by Sabreliner and Orenda, and issued ENs to each of the offerors regarding certain of the information submitted. AR, Tab 11, PRAG Final Report §§ 2.1.5, 2.2.5.

The agency concluded, after evaluating all of the information submitted, that Sabreliner's past performance indicated that the firm had successfully performed a number of contracts that "exhibited a high degree of relevancy to the proposed effort." The agency noted, however, that Sabreliner's past contracts differed from that to be awarded here in that they were performed using GFM, rather than requiring a transition from GFM to CFM and the subsequent performance of the contract using CFM. The agency considered this in its overall assessment that Sabreliner and its proposed subcontractor had "relevant, strong current and past performance in most areas identified in the solicitation," and rating of Sabreliner under the past performance factor as "very good/significant confidence." AR, Tab 11, PRAG Final Report § 2.2.6.

With regard to Orenda, the agency noted that its past and current performance included, among other things, a "contract for the Canadian Air Force with a scope of work greater than the proposed effort on a more complex engine." In assessing the relevance of Orenda's successful performance of this contract to the RFP here, the agency noted that the overhaul and repair work was being performed using "100% CFM." AR, Tab 11, PRAG Final Report §§ 2.1.1. The agency also found, however, that one of Orenda's proposed subcontractors lacked certain experience relevant to the RFP here, and that this introduced "some doubt of successful contract performance." The agency balanced the proposed subcontractor's lack of certain relevant experience with Orenda's "relevant, strong current and past performance in all areas identified in the solicitation," and evaluated Orenda under the past performance factor as "very good/significant [confidence]." *Id.* at § 2.1.6.

Sabreliner argues that the agency erred in performing its evaluation because Sabreliner has experience through performing contracts using GFM that is relevant to the tasks that Sabreliner would have to perform under this RFP when it transitioned to performing the contract using CFM. Sabreliner thus concludes that the agency's concern that it had not performed a contract similar in size and scope using CFM is misplaced. The protester also argues that the agency should have further downgraded Orenda's proposal under the past performance factor, given Orenda's proposed subcontractor's lack of certain relevant experience.

In our view, Sabreliner's protest here consists of nothing more than its mere disagreement with the agency's judgment. In this regard, we cannot find unreasonable the agency's evaluation of Sabreliner's proposal under the past performance factor as very good/significant confidence when Sabreliner lacked direct experience performing a contract requiring a GFM-to-CFM transition and subsequent performance using CFM as will be required here. Nor can we find unreasonable the agency's evaluation of Orenda's past performance as set forth in its proposal as very good/significant confidence, notwithstanding its proposed subcontractor's lack of certain relevant experience, given that Orenda was found to have "relevant, strong current and past performance in all areas identified in the

solicitation” (as opposed to “most areas” for Sabreliner), including the performance of a contract using CFM.⁴

Sabreliner next protests that the agency should have evaluated Orenda’s proposal as unacceptable under the transition subfactor to the technical evaluation factor. As mentioned previously, Orenda’s proposal included a transition plan that provided, among other things, for the transition from performing the contract using GFM to performing the contract using CFM after the first 6-month period. Sabreliner points out that Orenda’s proposed approach to transitioning to CFM after the first 6 months of the contract includes the purchase by Orenda of the materials required to accomplish this transition directly from the Air Force and the Defense Logistics Agency (DLA). AR, Tab 18, Orenda’s FRP, at 39. Sabreliner argues that the agency’s acceptance of Orenda’s proposal was improper because nothing in the solicitation, or in any regulation or statute, authorizes a firm to purchase such property directly from a government supply source, such as, and including, DLA. Instead, the protester contends that such property must be disposed “through competitive bid procedures, and contract with the highest bidder.” Protest (May 14, 2002) at 8. Sabreliner also contends that “[u]nder the terms of the Solicitation, the DLA is not identified as a source for CFM,” and argues that it was unaware, to its competitive disadvantage, that such an arrangement was possible. Supplemental Protest (July 1, 2002) at 3; Protester’s Comments (July 3, 2002) at 19.

We need not address the propriety of the agency’s permitting Orenda to purchase materials from the government for use as CFM (which DLA and the Air Force contend is proper) because Sabreliner was afforded the benefit of submitting its proposal based on obtaining CFM from the government in the same manner to which it now objects, and therefore cannot claim to have been prejudiced by the agency’s actions. That is, as explained below, Sabreliner was aware that the successful contractor would be able to purchase materials directly from the government, and that such materials would be considered CFM when used in performing the contract. Indeed, the record suggests that Sabreliner’s proposal included just such an approach to accomplishing the solicitation’s requirements.

Sabreliner’s initial proposal provided that Sabreliner would complete the transition from GFM to CFM within 24 months, and that “Sabreliner’s plan for transitioning from GFM to CFM 24 months into the contract contains no reliance or assumptions regarding post-transition availability of residual GFM to satisfy CFM requirements.” Sabreliner explained here that its view was based upon, among other things, a clause

⁴ Sabreliner’s contention that the agency failed to conduct meaningful discussions with it because the agency did not inform Sabreliner during discussions of its view that Sabreliner had less than optimal past performance, given that it lacked CFM experience, is similarly without merit because this did not constitute a finding of adverse past performance, but rather was a relatively minor concern.

in the solicitation interpreted by Sabreliner as providing that residual GFM “would be ‘surplus material,’” and its use was thus not permissible. AR, Tab 5, Sabreliner’s Initial Proposal, vol. 1, at 9. Sabreliner noted in its proposal that “[w]hile it does not seem reasonable or logical that material provided by the Government as GFM is not suitable for use as CFM, the fact remains that this residual GFM seems to fit the definition of ‘Government surplus material’ and would require a specific, overt action by the Government to permit its use as CFM.” *Id.* at 10. Sabreliner’s initial proposal thus concluded that “Sabreliner has decided to place no reliance on GFM availability to satisfy CFM requirements.” *Id.* at 9.

During discussions, the agency provided Sabreliner with a written EN referencing the above-quoted sections of Sabreliner’s initial proposal, and informing Sabreliner that “[t]his issue was reviewed by legal and it was determined that under the circumstances of GFM[-]to[-]CFM transition that residual GFM at the end of the 24[-]month period will not be considered surplus and will be available for contractor purchase at cost.” AR, Tab 11, EN-B-T-002 to Sabreliner.

Sabreliner responded to the EN by stating that it “appreciates and acknowledges the Government’s legal review and favorable determination on the contractor’s right to purchase residual GFM at cost at the end of the 24 month transition period and to not be impacted by the ‘surplus material’ restrictions.” The protester added here that it would “incorporate any expected costs savings” in its FRP. AR, Tab 11, Sabreliner Response to EN-B-T-002. In this regard, the record reflects that Sabreliner reduced its proposed price for the 3-year base period of the contract, which covers the not-to-exceed 24-month transition period from GFM to CFM and the remaining performance using only CFM, from \$43,093,599 to \$33,055,665. AR, Tab 11, Price Competition Memorandum, at 5.

As the foregoing demonstrates, Sabreliner was informed and clearly understood that the successful contractor would be able to purchase directly from the government at cost any residual GFM, that is, materials that remained in the government’s possession after the successful contractor’s GFM-to-CFM transition.⁵ Additionally, Sabreliner’s understanding that it could purchase these materials at cost directly from the government after its GFM-to-CFM conversion, and use these materials as CFM, was reflected in its FRP, as evidenced by Sabreliner’s response to the agency’s EN (where it acknowledged its ability to purchase the materials directly from the government at cost and explained that the expected cost savings would be reflected in its FRP), and the \$10 million reduction in price for the base period set forth in

⁵ We also note that the Air Force specifically informed potential offerors through questions and answers posted prior to the proposal due date that “if items become DLA managed, then [they] become CFM.” Repair, Overhaul, and Modification of J85-GE-4/5/13/17/17A/21/100 Engines and MISTR J85: Questions and Answers Submitted by Contractors, No. 8(e) (<http://www.fedbizopps.gov>).

Sabreliner's FRP. Consequently, we conclude that Sabreliner cannot now be permitted to argue that Orenda's proposal should be rejected because Orenda proposed to purchase directly from the government at cost any materials remaining after Orenda's proposed GFM-to-CFM conversion, and to use the materials as CFM. The integrity of the protest process does not permit a protester to argue the unreasonableness of an agency's interpretation of the solicitation or governing regulations where the protester was informed of, shared, and benefited from that interpretation during the procurement. AAI Eng'g Support, Inc., B-257857, Nov. 16, 1994, 95-1 CPD ¶ 2 at 3-4; Picker Int'l, Inc., B-249699.3, Mar. 30, 1993, 93-1 CPD ¶ 275 at 7.

Sabreliner would distinguish its situation from Orenda's on the theory that, although it was informed that it could purchase directly from the government at cost any materials remaining "at the end of the 24 month transition period" and use the materials as CFM, Orenda was permitted to purchase and use the materials as CFM at the end of its 6-month transition period. Protest (May 4, 2002) at 8; Protester's Response to Agency's Request for Partial Dismissal (May 30, 2002) at 4.

Although Sabreliner is correct that the two approaches differ as to the duration of the transition period, this difference is, in our view, the result of the offerors' differing approaches to accomplishing the requirements of the RFP, rather than any improper action by the agency. That is, under either proposal, there is a transition period from GFM to CFM that is complete when the contractor, rather than using GFM, is performing the contract using materials it purchased from the government (until the supply is exhausted) and/or a commercial source. Nothing in the solicitation required that offerors propose a 24-month transition period. Rather, as mentioned previously, the solicitation clearly provided, and Sabreliner does not argue otherwise, that the transition period was "not to exceed 24 months" and could be shorter. RFP, app. A, TRD § 3.1.1; Intervenor's Submission (May 30, 2002), exh. 3, Agency Clarifications to RFP (Feb. 5, 2002), response 3.

In any event, the record does not evidence a reasonable possibility that Sabreliner was prejudiced by the agency's actions here. Both of the offerors explained in their proposals that they expected that the government's supply of materials would be depleted or consumed during the second year of contract performance, and as such, they intended to increasingly rely on a commercial source at that time. AR, Tab 5, Sabreliner's Proposal, vol. I, at 5; Tab 18, Orenda's Proposal, at 39. In fact, Orenda specifically informed the agency that any anticipated savings from its purchase of materials directly from DLA "applied . . . to the base period only." AR, Tab 11, EN-A-P-002, Orenda Response. Accordingly, any price advantage that Orenda could have obtained from transitioning from GFM to CFM after 6 months using materials purchased directly from the government, rather than 24 months as proposed by Sabreliner, would be reflected in only the 3-year base period of the contract. With this in mind, we note that for the base period of the contract, when Orenda, as argued by Sabreliner, enjoyed its improper competitive advantage due to the

agency's actions, its proposed price was 19 percent lower than Sabreliner's, after adjustment for GFM usage as required by the RFP. However, for the option periods of the contract, when this alleged improper advantage would not apply, the record reflects that Orenda's proposed price was 24 percent lower than Sabreliner's. In our view, the fact that the price advantage associated with Orenda's proposal was even more pronounced during the option periods is inconsistent with Sabreliner's claim that the agency's actions were prejudicial to it with regard to its price for the base period of the contract.⁶

In sum, we need not decide whether the agency's acceptance of Orenda's proposal, which provides for the purchase of materials directly from the government for use as CFM in performing this contract, was improper, where the record reflects that Sabreliner was aware that such an approach was considered permissible by the agency, appeared to adopt such an approach in its proposal, and was not prejudiced by the agency's allegedly improper actions.

Sabreliner next protests that the agency should have evaluated Orenda's proposal as "unacceptable" under the transition subfactor to the technical evaluation factor because the proposal's transition plan imposed terms and conditions upon both the Air Force and DLA that were neither contemplated by the solicitation nor appropriate. Protest (July 1, 2002) at 4-6; Protester's Comment (July 10, 2002) at 10-15. Specifically, Orenda's proposal included that following at its "Plan for GFM to CFM":

During the first six months following award of the contract we propose to operate using GFM. We ask that during this period the Air Force and Defense Logistics Agency (DLA) cancel all outstanding Purchase Requisitions for J85 unique, depot level material. The only exception will be for emergency procurements needed to support operations during the first year of the contract period.

⁶ Moreover, as the agency made clear during the procurement process, the materials available from the government would be sold to the contractor "at cost," and there is nothing in the record to suggest that the agency's adjustment to the offerors' price proposals of approximately \$1 million per month for each month the offerors proposed to continue using GFM was in any way inflated above cost. In short, we fail to see, and Sabreliner has not explained, why a proposal's evaluated price would differ in any significant way, should the firm propose to purchase certain of the requisite materials from the government and use those materials as CFM, and thus include those costs in its proposal, or have the government provide the same materials as GFM without cost to the offeror with the offeror's proposed price being adjusted accordingly under the price evaluation scheme.

At the end of the initial six months, Orenda will purchase all the J85 unique, depot level material held by DLA/USAF. We will also enter into negotiations to assume responsibility for all of the outstanding DLA/USAF contracts for this material. This will relieve the Government of any charges related to termination for convenience and, at the same time assure a continuous supply of parts.

This material will be used to support production during the next six months of the contract period We estimate that the DLA material (with some exceptions) will be sufficient for the second six-month period (completing the first year of the contract period).

AR, Tab 18, Orenda's FRP, at 39.⁷ Sabreliner contends that "under Orenda's proposal, contractors and agencies that have authority to purchase J85 parts through DLA and who already have placed orders for parts will have their orders cancelled," and that "allowing Orenda to 'assume responsibility' over such contracts would constitute an illegal sole-source award." Supplemental Protest (July 1, 2002) at 4-5. Sabreliner contends here that Orenda's proposed approach, involving the assumption of other contracts also poses "a myriad of performance risks that [the Air Force] did not assess," and "represent[s] an additional price" regarding whatever costs may be associated with "renegotiating" all these contracts that the Air Force has not considered or evaluated. *Id.* Sabreliner also contends that Orenda's proposal essentially provides for a contract with the Air Force that requires the Air Force to "shift to Orenda responsibility over Air Force contracts . . . [and] to assume responsibility over DLA contracts," even though the Air Force "presumably is not even a party to the DLA contracts to which Orenda refers." Protester's Comments (July 10, 2002) at 11.

The Air Force responded to this aspect of Sabreliner's protest only by pointing out the difference between the "depot level material" that is the subject of Orenda's proposal and "common repair parts," and contending that because "[t]here is no 'arrangement' between the Air Force and Orenda or between the Air Force, DLA and Orenda whereby illegal contracts will be entered into by the parties," the protester's argument here is without merit. AR (July 5, 2002) at 2-3.

Because the agency's response did not indicate whether the agency had considered the above-quoted language in Orenda's proposal during the procurement process, the record did not reflect that any review of the language had been performed, and the agency report was, in our view, conclusory and did not adequately respond to the

⁷ In accordance with the terms of the RFP, Orenda's technical proposal (including the section that set forth the above-quoted language) was incorporated and made part of the contract awarded to Orenda under the RFP. RFP at 22; Agency Response to Interrogatories (July 12, 2002) at 5.

concerns raised by the protester, our Office requested additional information from the Air Force. In particular, we asked how the above-quoted language was interpreted by the Air Force during the procurement process and whether there were any communications between Orenda and the Air Force or DLA regarding the language.

The Air Force responded by explaining, without citation to anything in the record, that its “interpretation was that after award we would meet with all players to determine the quantity of assets available from DLA and the flow of these parts to Orenda, both as GFM and CFM.” The Air Force added that, in its view, “[w]hat Orenda submitted was a ‘plan’ for transition,” and that “[t]he plan is negotiable—the intent would not change but the process itself is negotiable.” Agency Response to Interrogatories (July 12, 2002) at 4. The agency also stated that to its knowledge there had been no communications between Orenda and DLA regarding Orenda’s proposed approach (which generally provided for DLA’s cancellation of all outstanding purchase requisitions for J85 unique, depot level material as well as the “assumption” of all DLA contracts for this material).⁸ The Air Force claimed that it “and all prospective offerors, including Orenda, had extensive exchanges regarding transition strategies” prior to the issuance of the solicitation, and that these exchanges had “continued through the formal solicitation process.” *Id.* at 5. The Air Force did not, however, cite or otherwise point to anything in the record that evidenced that the agency had either evaluated, addressed in discussions with Orenda, or otherwise considered, the above-quoted language in Orenda’s proposal.

In reviewing an agency’s evaluation of proposals, we examine the record to determine whether the agency acted reasonably and consistent with the evaluation factors as well as applicable statutes and regulation. Implicit in this is that the evaluation must be documented in sufficient detail to show that it was reasonable and bears a rational relationship to the announced evaluation factors. While we accord greater weight to the contemporaneous record in determining whether an evaluation was reasonable, post-protest explanations that are credible and consistent with the contemporaneous documentation will be considered in our review. *Satellite Servs., Inc.*, B-286508, B-286508.2, Jan. 18, 2001, 2001 CPD ¶ 30 at 7.

As noted above, the RFP requested that offerors submit a transition “plan that addresses specific approach and methodology for completing the . . . transition from GFM to CFM.” RFP at § L.3.2. The RFP further stated in this regard that proposals would “be evaluated on their approach and plan to complete the . . . transition from GFM to CFM,” and that “[a]s a minimum, [the transition] subfactor is met when the offeror[’]s approach demonstrates a comprehensive plan . . . meeting all CFM requirements, including forecasting, material sources, requisition processes, ordering schedule, and establishment of vendor contracts.” RFP § M-002(c).

⁸ DLA also has advised our Office that it is not aware of any such communications.

There is nothing in the contemporaneous record showing that the Air Force evaluated, or otherwise considered, whether the above-quoted language in Orenda's proposal rendered its transition plan unacceptable. Additionally, as the above discussion indicates, in responding to our Office's questions, the Air Force did not point to anything in the record evidencing any such consideration or evaluation. Accordingly, the record reflects that the Air Force failed to meaningfully evaluate a significant and potentially costly aspect of Orenda's transition plan, that is, Orenda's approach to "meeting all CFM requirements," including its proposed "material sources." While it may be that the above-quoted language in Orenda's proposal does not render its transition plan unacceptable or entail significant costs, we simply cannot conclude on this record that the agency's evaluation of Orenda's proposal under the transition subfactor to the technical factor was reasonably based or consistent with the transition evaluation subfactor set forth in the RFP. Matrix Int'l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 10 (agency's evaluation of two competing proposals as technically equal lacked a reasonable basis where the record does not contain adequate documentation or an explanation for the agency's conclusion).

Nor does the Air Force's response, that it will negotiate with Orenda after award regarding that firm's transition plan, satisfactorily address the concerns raised by the protester. In our view, it was improper to award a contract to a firm on the presumption that the offeror's plan for a potentially significant and costly aspect of the performance of the contract would be negotiated after award instead of during the procurement process. The RFP specifically provided for the evaluation of each offeror's "plan" to accomplishing the transition from GFM to CFM, and the agency simply failed to do this (even though the plan was incorporated as part of the contract).

To argue that the agency's failure to meaningfully evaluate a material part of Orenda's proposal is excusable on the basis that the plan's "process itself is negotiable" and will be considered and negotiated after award ignores the contracting by negotiation process set forth in part 15 of the FAR. That process generally provides that in negotiated acquisitions, an agency is to evaluate proposals in accordance with the evaluation factors set forth in the solicitation, document its evaluation of proposals, if appropriate negotiate with offerors through the conduct of discussions and allow offerors to revise their proposals, and select a proposal for award based upon the selection criteria set forth in the solicitation. FAR §§ 15.304-15.308. The negotiated acquisition process as described in the FAR and set forth in this RFP does not contemplate the selection of an inadequately evaluated proposal for award with the intent to negotiate the process by which the offeror will accomplish the agency's requirements at some later point in time. See Global Assocs. Ltd., B-271693, B-271693.2, Aug. 2, 1996, 96-2 CPD ¶ 100 at 5 (protest sustained where the awardee's proposal was at best unclear as to its compliance with a material requirement of the solicitation, and the agency's post-award

communications with the awardee to clarify the awardee's proposal in this regard constituted improper post-best and final offer discussions). Accordingly, we sustain Sabreliner's protest on the basis that the agency's evaluation of Orenda's proposal as acceptable under the transition subfactor to the technical evaluation factor was not reasonably based.⁹

The protest is sustained in part and denied in part.

We recommend that the agency evaluate Orenda's transition plan, and document this evaluation. If the agency determines as a result of this evaluation that discussions are necessary, it should reopen discussions with Orenda and Sabreliner, and request and evaluate new FRPs. If the agency concludes that Orenda is no longer in line for award, it should terminate the contract awarded to Orenda and award a contract to Sabreliner. We further recommend that the Air Force reimburse Sabreliner for the costs of filing and pursuing its protest, including reasonable attorney's fees, to the extent that those costs were incurred in connection with Sabreliner's assertion that the agency unreasonably evaluated Orenda's proposal as acceptable under the transition subfactor to the technical factor. Sabreliner's certified claim for costs, detailing the time spent and cost incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1) (2002).

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General Counsel

⁹ Sabreliner also challenges the price evaluation of Orenda's proposal, contending among other things that it was improper because it failed to consider the potential costs associated with above-quoted language in Orenda's proposal. We need not address this issue separately because we expect it to be encompassed in the agency's corrective action.