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## Decision

**Matter of:** Air Borealis Limited Partnership

**File:** B-420637; B-420637.2

**Date:** June 29, 2022

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Tyler Evans, Esq., and Paul Rowley, Esq., Covington & Burling, LLP, for the protester. Colonel Frank Yoon, Major Alissa J. Schrider, Sandy Caruco, Esq., and Kevin P. Stiens, Esq., Department of the Air Force, for the agency. Kenneth Kilgour, 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 the agency's technical evaluation is denied where the evaluation was reasonable and consistent with the terms of the solicitation.

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### DECISION

Air Borealis Limited Partnership, of Newfoundland and Labrador, Canada, protests the award of a contract to Kenn Borek Air Ltd. (KBA), of Calgary, Canada, under request for proposals (RFP) No. FA4890-22-R-0007, issued by the Department of the Air Force for fixed-wing aircraft services in Canada.<sup>1</sup> The protester challenges the agency's evaluation of technical proposals.

We deny the protest.

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<sup>1</sup> The Defense Federal Acquisition Regulation Supplement (DFARS) provides that "award [of] individual contracts covering purchases from suppliers located in Canada" be made to the Canadian Commercial Corporation (CCC). DFARS 225.870-4. The CCC acts as the prime contractor and subcontracts 100 percent of the contract to Canadian firms. See DFARS 225.870-3. To indicate acceptance of offers by individual Canadian companies, the CCC issues a letter supporting the Canadian offer that contains certain information. *Id.*

## BACKGROUND

The solicitation seeks to combine two contracts to provide fixed-wing aircraft services to transport cargo between five zones of the North Warning System in support of an early-warning radar system that provides airspace surveillance across North America's polar region. Agency Report (AR), Tab 4, Conformed RFP (RFP), Performance Work Statement (PWS) at 1-6. Air Borealis is the incumbent contractor for zone 5; KBA is the incumbent contractor for the other four zones.<sup>2</sup> Protest at 12. Award would be made to the offeror whose proposal represented the best value to the Air Force as determined by a tradeoff considering two factors--technical capability/risk and price.<sup>3</sup> *Id.* at 14-17. The technical capability/risk factor contained four subfactors: fixed-wing capacity and distance requirements; managing utilization across the zones; operations; and plans. *Id.* at 14. The first two subfactors--fixed-wing capacity and distance requirements, and managing utilization across the zones--were the most important subfactors and would receive separate technical and risk ratings.<sup>4</sup> *Id.* at 14-15. The two remaining subfactors--operations and plans--would be evaluated as acceptable or unacceptable and would not be considered in the best-value tradeoff analysis. *Id.* at 14. An unacceptable rating on one or more subfactors would render a proposal ineligible for award. *Id.* The RFP advised offerors that, "[i]f an offeror's proposal demonstrates a material failure to meet a Government requirement, this is a deficiency in the offeror's proposal resulting in a Red/Unacceptable rating and the proposal is not awardable."<sup>5</sup> *Id.* at 14.

The four subfactors contained various aspects. As relevant to this protest, the plans subfactor contained three aspects; the second aspect was a transition plan. *Id.* at 16. Under the transition plan, proposals were to "demonstrate[ ] a comprehensive approach that describes, in detail, how the Contractor will be on-station and able to accomplish missions the first day of the performance period." *Id.*

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<sup>2</sup> The five zones, stretching from west to east across Canada, are: (1) Inuvik; (2) Cambridge Bay; (3) Hall Beach; (4) Iqaluit; and (5) Goose Bay. RFP at 35-36.

<sup>3</sup> The Air Force also established one proposal prerequisite for award--instrument flight rules capability. Under this prerequisite, the Air Force would evaluate proposals as acceptable or unacceptable, and a proposal rated unacceptable would be ineligible for award. RFP at 13.

<sup>4</sup> The technical portion of these two factors would be evaluated as outstanding, good, acceptable, marginal, or unacceptable; possible risk ratings were low risk, moderate risk, high risk, or unacceptable risk. *Id.* at 15, 17.

<sup>5</sup> The RFP defined an unacceptable proposal as one that "does not meet requirements of the solicitation and, thus, contains one or more deficiencies and is not awardable." *Id.* at 15.

Air Borealis and KBA submitted the only two proposals. See AR, Tab 12, Source Selection Evaluation Board (SSEB) Report at 8. The Air Force evaluated Air Borealis's proposal as unacceptable under the transition plan aspect of the plans subfactor, with an overall subfactor rating of unacceptable.<sup>6</sup> *Id.* at 14-15. The agency found that the protester's proposal "did not meet the evaluation criteria in the 'Transition Plan' aspect by not directly addressing how [Air Borealis] would be able to base assets outside of zone 5." *Id.* at 14. The agency noted that, while "[s]everal references were made to hangers and services being made available once the contract was awarded," Air Borealis's proposal provided "no specific information" regarding "when and how [the hangers and services] would be obtained." *Id.* Moreover, the Air Force found that the protester's proposed phase-in plan "does not contain specific information on how the bidder plans to populate zones with aircraft, personnel and the support equipment required to execute the Logistic Support Site (LSS) basing concept." *Id.* at 15. The Air Force determined that "[t]he transition plan as described would not meet the requirements in a timely manner to accomplish the mission at contract start date." *Id.* at 14-15. The agency concluded that the protester's "proposal does not meet requirements and is unawardable for this subfactor" and thus ineligible for award. *Id.* at 15.

Under the transition plan aspect of the plans subfactor, the Air Force found that KBA's "proposal shows a clear understanding of the requirement and demonstrates an adequate approach to ensuring mission accomplishment." *Id.* at 22. The agency determined that KBA "is able to position an aircraft and crew in zone 5 to support operations should the subcontractor not be able to support which is a minor weakness." *Id.*; see AR, Tab 9, KBA Technical Proposal at 6 (stating that, in the event KBA is unable to subcontract the zone 5 requirement, it will service that requirement itself using KBA aircraft located in zone 4). The agency evaluated KBA's proposal as acceptable under the transition plan aspect and under the plans subfactor overall. AR, Tab 12, SSEB Report at 21-22. The Air Force evaluated KBA's proposal as acceptable under all four subfactors of the technical capability factor. *Id.* at 27.

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<sup>6</sup> The Air Force also evaluated Air Borealis's proposal as unacceptable overall under the operations subfactor. *Id.* at 13. Air Borealis challenged the reasonableness of this unacceptable rating. Protest at 9-12; Comments and Supp. Protest at 7-9; Comments on Supp. AR at 2-6. (Air Borealis also challenged other aspects of the agency's evaluation of the offerors' proposals.) As discussed below, we find that the agency reasonably found Air Borealis's proposal unacceptable under the plans subfactor and thus technically unacceptable and ineligible for award. As a result, we need not address the protester's other challenges to the evaluation of its own proposal as the protester would remain ineligible for award as a result of the agency assigning a rating of unacceptable to Air Borealis's proposal under the plans subfactor. *Facility Servs. Mgmt., Inc., B-418526 et al.*, May 20, 2020, 2020 CPD ¶ 180 at 7. In addition, while we do not address all of the protester's arguments pertaining to other aspects of the evaluation, we have considered them all and find either that they lack merit or that the protester is not an interested party to pursue them.

Because KBA's proposal was the only one evaluated as acceptable, the source selection authority recommended award to KBA at a total evaluated price of \$20,856,175. AR, Tab 13, Source Selection Decision Document at 7. This protest followed.

## DISCUSSION

Air Borealis asserts that in evaluating its proposal as unacceptable under the transition plan aspect of the plans subfactor, the agency disparately evaluated proposals. Comments on Supp. AR at 6. The protester contends that the agency's "disparate treatment of proposals confirms that the Air Force relied on [KBA]'s incumbency to accept [the awardee's] representation that it would be able to complete transition-in activities even though [KBA] did not provide any detail about whether or how it would use existing resources to satisfy transition-in requirements." *Id.* at 7. In contrast, Air Borealis argues, "the Air Force ended up demanding more certainty from Air Borealis about lease and equipment arrangements even though [KBA]'s proposal contained truly vague statements about potentially working with a subcontractor in Zone 5," *id.*, the one zone in which KBA was not the incumbent. The agency contends that it reasonably evaluated Air Borealis's proposal as unacceptable under the transition plan aspect of the plans subfactor. Supp. Contracting Officer's Statement (COS) at 8.

When reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. *Primary Care Solutions, Inc.*, B-418799.3, 418799.4, Sept. 8, 2021, 2021 CPD ¶ 314 at 4. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. *Id.* An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Id.* Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. *Id.* at 6.

As the protester notes, "Air Borealis[']s proposal] received a deficiency and [u]nacceptable rating under Subfactor D [plans] for not providing 'specific information on how the bidder plans to populate zones with aircraft, personnel and the support equipment' as well as its access to hangar space [ ] outside of Zone 5." Comments and Supp. Protest at 11, *quoting* AR, Tab 12, SSEB Report at 16. In response, Air Borealis initially claims that its proposal "specifically identified four facility locations" and explains "that permanent facilities are available." Comments and Supp. Protest at 11, *quoting* AR, Tab 7, Air Borealis Technical Proposal at 13. The Air Force contends that "it is not clear from the proposal whether these 'available', 'permanent' facilities already belong to Air Borealis, or whether these are the facilities for which Air Borealis intends to enter into a future contract, for which no information was provided." Supp. COS at 8. The protester did not clarify the ownership or availability of these locations. See Comments on Supp. AR. While it asserts that it has a "network of key aircraft part suppliers" and a

substantial inventory of aircraft parts, Air Borealis does not refute the agency's finding that the protester's proposal does not provide specific information on how it plans to populate the zones with aircraft, personnel, and the support equipment, as well as secure warehouse space outside of zone 5. See Comments and Supp. Protest at 11. Given the record here, we have no basis to question the agency's evaluation of the protester's proposal.

Air Borealis next argues that the agency's evaluation was unequal, arguing that KBA's proposal relied on the awardee's status as the incumbent and "barely addressed its plans for satisfying Zone 5 phase-in requirements." *Id.* (As noted above, the agency assessed KBA's proposal a weakness for its coverage plans for zone 5. AR, Tab 12, SSEB Report at 22). The agency notes that, as the incumbent in four of the five zones, KBA's proposal stated that the awardee could "respond to this requirement with use of existing aircraft, facilities and personnel and will be positioned at LSSI [Logistics Support Site Inuvik] and ready to respond to each 4 month annual requirement, the first being June 2022." Supp. COS at 6, *quoting* AR, Tab 9, KBA Technical Proposal at 18. The Air Force further notes that "[e]ach [of KBA's] year-round basing location[s] is equipped with aircraft, qualified flight crew, hangar and maintenance facilities, and maintenance engineering staff." Supp. COS at 2, *quoting* AR, Tab 9, KBA Technical Proposal at 14. Thus, the Air Force contends, KBA's "proposal was clear that it already has all the necessary equipment, personnel, and facilities to accomplish missions the first day of the performance period." Supp. COS at 2, *citing* AR, Tab 9, KBA Technical Proposal at 14-19.

Here, the agency reasonably credited KBA's proposal with the awardee's existing facilities that KBA has utilized in contract performance as the incumbent in four of the five zones. An agency may consider the fact that an offeror is using "many of the same facilities used by the incumbent" and, in so doing, may evaluate more favorably a proposed transition plan that relies on an offeror's existing facilities under the incumbent contract over a proposed plan that lacks such facilities. *TFab Mfg., LLC*, B-406698, Aug. 3, 2012, 2013 CPD ¶ 129 at 6 n.7.

Moreover, as discussed above, KBA's proposal did address satisfying the zone 5 phase-in requirement from its zone 4 base, where the awardee has a "[y]ear-round base of operations--facilities include hangar and maintenance, crew-housing, parts inventory, shipping, and ground support equipment." AR, Tab 9, KBA Technical Proposal at 6. In addition, KBA's proposal stated that the awardee would base one additional aircraft, with personnel, in zone 4 to support the zone 5 operations. *Id.* at 19.

KBA proposed to utilize locations from which it has supported four out of the five zones, while the protester asserted that it had "identified" locations that are "available." The proposals thus contained meaningful differences with respect to their transition plans. Air Borealis has not shown that the difference in ratings did not stem from those proposal differences. Consequently, this allegation is denied. Because we find no merit to the allegation that the agency disparately evaluated proposals, we also have no basis

to question the reasonableness of the agency's evaluation of the protester's proposal as technically unacceptable.

The protest is denied.

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General Counsel