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Decision

Matter of: American Fuel Cell & Coated Fabrics Company

File: B-420551; B-420551.2

Date: June 2, 2022

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DIGEST

1. Protest challenging an agency's past performance evaluation is denied where the agency's evaluation is reasonable and consistent with the stated evaluation factors.

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

DECISION

American Fuel Cell & Coated Fabrics Company (Amfuel), a small business of Magnolia, Arkansas, protests the award of contracts to Meggitt (Rockmart), Inc., a large business of Rockmart, Georgia, and Floats & Fuel Cells, Inc. (FFC), a small business of Memphis, Tennessee, under request for proposals (RFP) No. SPRWA1-21-R-0009, issued by the Defense Logistics Agency (DLA). The RFP seeks the manufacture of fuel bladder tanks for C-130 aircraft. The protester argues that the agency's past performance evaluation was unreasonable. Amfuel also argues that the awards to Meggitt and FFC were improper because neither awardee submitted an eligible proposal.

We deny the protest.

BACKGROUND

Issued on June 22, 2021, under the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, and in accordance with FAR subpart 16.5, the RFP contemplated award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts for an ordering

period up to five years if all option periods are exercised. Agency Report (AR), Tab 1, RFP at 3.¹ As originally issued, the RFP required the delivery of 10 fuel bladders per month beginning 180 days after the contractor received the funded delivery order. *Id.* at 108. The RFP advised that DLA might award up to three contracts and only offers from approved sources would be eligible for award. *Id.* at 3.

The RFP provided for award to the responsible offerors whose proposals conform to all required terms and conditions, include all required representations and certifications, meet all requirements set forth in the RFP, and provide the best value to the government. AR, Tab 3, RFP amends. at 18. The RFP instructed offerors to submit a cover letter detailing any exceptions to the terms and conditions of the solicitation and explaining the offeror's rationale for the exceptions. RFP at 71. Offerors were cautioned that any noncompliance with the terms and conditions of the RFP might cause their proposals to be determined unacceptable and therefore ineligible for award. *Id.*

As relevant here, the solicitation also provided that the agency would use a tradeoff analysis to determine the best value, considering past performance and price, with past performance significantly more important than price.² AR, Tab 3, RFP amends. at 18. For the price factor, the RFP required offerors to fill out an attached price matrix, which included the delivery schedule. RFP at 73.

Under past performance, the RFP provided for evaluation of the recency, relevance, and quality of the offeror's past performance, based on information provided in the offeror's proposal and independently obtained from other sources. AR, Tab 3, RFP amends. at 19-20. The RFP instructed offerors to submit up to three past performance references for work performed within the past five years. RFP at 71. DLA would evaluate the relevance of each reference by comparing the scope, magnitude, and complexity of the effort to the requirements of this solicitation.³ AR, Tab 3, RFP amends. at 19-20.

The RFP advised that the government would "evaluate the offeror's demonstrated record of contract compliance in supplying products that meet users' needs, including cost and schedule" and consider the context of the information submitted and "general

¹ Citations to the record are to the pages of the Adobe PDF documents produced in the agency report.

² The evaluation criteria also included a small business participation factor, for which proposals needed a rating of acceptable to be considered in the best-value tradeoff analysis. AR, Tab 3, RFP amends. at 18. DLA rated all three offerors acceptable under the small business participation factor. AR, Tab 5, Source Selection Decision Document (SSDD) at 2.

³ Relevancy ratings were as follows: very relevant, relevant, somewhat relevant, and not relevant. AR, Tab 3, RFP amends. at 19-20.

trends in the contractor’s performance.” *Id.* at 19. The RFP further advised that the agency would consider adverse past performance and provide offerors with an opportunity to respond to the adverse past performance, if the opportunity was not previously provided. *Id.* In particular, the agency will examine recent contracts to ensure corrective measures have been taken and “will consider issues including but not limited to the number and severity of the problems, the appropriateness and/or effectiveness of any corrective actions taken (not just planned or promised), and the overall work record.” *Id.* Based on the recency, relevance, and quality of past performance assessments, the agency would assign a past performance confidence assessment rating.⁴ *Id.*

Three firms, Amfuel, FFC, and Meggitt, submitted proposals by the closing date set for receipt of proposals. AR, Tab 5, SSDD at 23. FFC and Meggitt took exception to the agency’s delivery schedule, and Amfuel and FFC did not submit complete proposals. Supplemental Contracting Officer’s Statement and Memorandum of Law (Supp. COS/MOL) at 2. The agency subsequently amended the solicitation, revising the number of fuel bladders to be delivered each month from 10 to 3, changing the time period for delivery from 180 days after receipt of order (ARO) to 8 months ARO, and extending the deadline for receipt of proposals, among other things. *Id.*; AR, Tab 3, RFP amends. at 3-15.

Thereafter, all three offerors submitted revised price matrices and complete proposals by the extended deadline. The agency engaged in discussions with the offerors, wherein the agency issued evaluation notices (EN) and received offerors’ responses; the agency then requested final proposal revisions (FPRs). COS/MOL at 7-14. Only Amfuel submitted FPRs. AR, Tab 5, SSDD at 24.

As relevant here, the source selection evaluation board (SSEB) evaluated the proposals as follows:

| | AMFUEL | FFC | MEGGITT |
|-------------------------------------------|--------------------|-------------------------|------------------------|
| Completed RFP | Complete | Complete | Complete |
| Past Performance Confidence Rating | Limited Confidence | Satisfactory Confidence | Substantial Confidence |
| Price | \$50.75 million | \$31.19 million | \$27.47 million |

AR, Tab 5, SSDD at 2. The source selection authority (SSA) concluded that Meggitt’s proposal was the best value to the government because of its past performance assessment rating of substantial confidence and lowest evaluated price. *Id.* at 2-3. The SSA also concluded that FFC’s proposal represented the best value to the government.

⁴ Past performance confidence assessment ratings were as follows: substantial confidence; satisfactory confidence; neutral confidence; limited confidence; and no confidence. *Id.* at 20.

Id. at 3. The SSA found that FFC's confidence rating of satisfactory was primarily due to the smaller magnitude of FFC's past performance references and that FFC's slightly higher price provided a second supplier at a "relatively small premium," which would reduce the risks associated with a single supplier. *Id.* The SSA concluded that the protester's proposal did not represent one of the best-value proposals due to Amfuel's "poor, on-time delivery performance under the most recent DLA contract" and significantly higher price. *Id.*

DLA notified the protester that it was not selected for award and that the agency had awarded contracts to Meggitt and FFC. After receiving a debriefing, Amfuel timely filed an agency-level protest. AR, Tab 21, Amfuel Agency-Level Protest at 2. After its agency-level protest was denied, Amfuel filed this protest.

DISCUSSION

The protester argues that the agency unreasonably evaluated its past performance. Protest at 11-14. The protester also argues that the agency should have rejected both awardees' proposals as ineligible for award. Comments & Supp. Protest at 2-14. In particular, the protester contends that Meggitt's proposal took exception to the delivery schedule set forth in the solicitation and that FFC was not in compliance with Defense Federal Acquisition Regulation Supplement (DFARS) provision 252.204-7019 and clause 252.204-7020.⁵ *Id.* For the reasons discussed below, we find no basis on which to sustain the protest.⁶

Past Performance

Amfuel challenges the agency's past performance evaluation and argues the agency improperly assigned its proposal a rating of limited confidence.⁷ Protest at 11-14. Specifically, the protester contends that DLA failed to consider corrective action taken to improve its performance as required by the RFP, ignored past performance information that was "too close at hand," and improperly penalized the protester for bilateral contract modifications and a termination for convenience. *Id.* The agency responds that its evaluation was reasonable and the protester's complaints simply amount to

⁵ Amfuel also alleged that the agency failed to evaluate offerors for unbalanced pricing; however, upon receipt of the agency report, the protester withdrew this protest ground. Comment & Supp. Protest at 22.

⁶ 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.

⁷ The RFP defined a limited confidence assessment as the government's "low expectation that the offeror will successfully perform the required effort." AR, Tab 3, RFP amends. at 20.

disagreement with the agency's decision-making. COS/MOL at 23-26; Supp. COS/MOL at 7-8.

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.

Based on our review of the record, we find the agency's evaluation reasonable and consistent with the evaluation criteria. Here, the solicitation advised offerors that the agency would "assess the confidence in the offeror's ability to successfully accomplish the proposed effort based on the offeror's demonstrated present and past work record" under the past performance factor. AR, Tab 3, RFP amends. at 19. The RFP also advised offerors that the agency would consider an offeror's adverse performance and any corrective measures implemented. *Id.* Furthermore, the RFP warned offerors that "[p]rompt corrective action in isolated instances may not outweigh overall negative trends." *Id.*

During discussions, the agency issued a number of evaluation notices to the protester. As relevant here, in evaluation notice EN-PP-A-1, the agency noted that the protester only submitted two references when the RFP allowed up to three and suggested that "[a] third contract might improve the evaluation team's ability to rate your past performance." AR, Tab 8, Evaluation Notice EN-PP-A-1 at 1. DLA also issued evaluation notice EN-PP-A-2 in which the agency assessed Amfuel's proposal a weakness and afforded the firm an opportunity to address its ratings of marginal from its contractor performance assessment report (CPAR) for performance of its schedule on orders placed during calendar years 2017-2018 and 2019-2020. AR, Tab 9, Evaluation Notice EN-PP-A-2 at 1.

In response to the evaluation notices, the protester submitted a third reference. AR, Tab 8, Evaluation Notice EN-PP-A-1 at 2. The protester also addressed the adverse past performance information by explaining that Amfuel's current owners purchased Amfuel assets out of bankruptcy at the end of 2019 and since then, the firm has improved its "processes to maintain on time deliveries." AR, Tab 9, Evaluation Notice EN-PP-A-2 at 2. The protester added that the current owners have invested significantly to upgrade equipment essential to manufacturing processes in the facility, which will aid future performance. *Id.*

At the conclusion of discussions, the agency requested FPRs from the protester. In its FPR request, the agency advised the protester that its past performance of delivery orders remained a “significant concern” even after reviewing the protester’s response to EN-PP-A-2, and noting that “Amfuel’s get-well process has been ongoing since 2019, with no evidence of an improvement in delivery.” AR, Tab 12, Request for FPRs at 1. As a result, the protester submitted FPRs that supplemented its earlier response to EN-PP-A-2 and asserted that recent capital and human resources investments have increased production, improved manufacturing processes, and increased quality in the facility. AR, Tab 14, Amfuel FPR at 1. Specifically, the protester asserted that it “is currently performing 100% [on time deliveries] of all of its DLA contracts” and that it intends to provide continual quality and operational improvement. *Id.*

Upon completion of its past performance evaluation, the agency assigned the protester’s proposal a limited confidence rating. AR, Tab 5, SSDD at 26-28. The agency found that all three references were recent and considered two references to be relevant, while one reference was very relevant. *Id.* at 28-29. Even though Amfuel was producing the same fuel bladder specified here, the agency explained that the magnitude of effort for two references was not essentially the same as the required maximum quantities for this procurement, and therefore, the agency assessed these references as relevant instead of very relevant. *Id.*

The agency concluded that although there were no issues with the quality of the products, “due to Amfuel’s past difficulty with delivering the total number of assets at the negotiated price and delivery schedule for current and past orders, the [g]overnment has a [l]imited expectation that Amfuel is able to successfully perform the required effort.” *Id.* at 29. In this regard, the agency noted that the CPARs entered for Amfuel showed that Amfuel had not met all the requirements for the current delivery schedule for four product lines--47 percent of the items were delivered on time, 47 percent were delivered late, and 6 percent were not delivered. *Id.* at 28. The agency also considered past performance information for orders placed after the CPARs ratings in 2018 and 2020, which showed four delivery orders for fuel bladders were modified multiple times to extend delivery schedules and that DLA eventually executed partial terminations for convenience of the government for four orders because Amfuel was unable to deliver the fuel bladders at the contract price. *Id.* Additionally, the agency determined that Amfuel’s FPRs did not provide specific information about its “100% [on time deliveries] of all of its DLA . . . contracts” that would allow the agency to evaluate Amfuel’s efforts. *Id.* As a final point, the agency remarked that “[w]hile Amfuel highlighted significant actions to be implemented for performance improvements (*i.e.* capital investments)[,] they provided no time-phasing or specific correlation of those actions/improvements for correction of past delinquencies on contracts for the same items.” *Id.*

As noted above, we find that the record supports the agency’s assessment of the protester’s past performance as limited confidence. The RFP warned that corrective action would be considered but that it might not be sufficient to overcome negative trends. Through evaluation notices and its request for FPRs, DLA informed the protester that it had significant concerns about the protester’s ability to deliver products

on time. In response, Amfuel explained that the current owners had rescued the firm from bankruptcy and made general statements about the investments in the company that have occurred since 2019. More importantly, Amfuel failed to show a specific correlation between its proposed corrective measures and its past delinquencies, and Amfuel failed to provide references that supported its claims of 100 percent on time delivery. In sum, the record demonstrates that the agency reasonably considered Amfuel's corrective measures in its past performance evaluation.

We are also unpersuaded that the agency failed to consider past performance information that was "too close at hand." In this connection, the protester argues that the agency failed to credit it for current, relevant past performance, of which the agency was directly aware. Protest at 12-14. Specifically, Amfuel maintains that the agency knew Amfuel recently delivered an emergency order for six fuel bladders for which the agency had a "dire need." *Id.* at 12-13. Amfuel further contends that the DLA-Aviation, Director of Procurement Operations had promised to favorably evaluate Amfuel on the emergency delivery (by noting that it would "go a long way when considering past performance"), and that the agency's disregard of the delivery was contrary to this promise. Protest at 13 (citing Protest exh. B, DLA Aviation Emergency Request for Fuel Cells (March 2021) at 8).⁸

The agency responds that it considered the emergency order during the evaluation; the agency points out, however, that DLA was in dire need of the fuel bladders due to Amfuel's inability to complete delivery orders on time, if at all. COS/MOL at 25-26. In this regard, the contracting officer examined documentation regarding Amfuel's delivery status on the emergency fuel bladder order, which showed that Amfuel had requested a cost increase, DLA had denied the increase, and Amfuel had agreed to no cost terminations for the remainder of the fuel bladders. *Id.* at 26.

We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on the offeror's past performance when it is "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. *West Sound Servs. Grp., LLC*, B-406583.4, B-406583.5, July 9, 2014, 2014 CPD ¶ 208 at 12 (citing *International Bus. Sys., Inc.*, B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5). Here, it is clear from the record that the agency considered Amfuel's emergency order fulfillment in its past performance evaluation.

The record is also clear that DLA did not promise to consider Amfuel favorably if it fulfilled the emergency order. Rather, the director agreed there was a dire need for six fuel bladders, but that the agency's "true need is all 8 [items] due in April 2021 . . . at the original contract price." Protest exh. B, DLA Emergency Request at 7. The director went on to say:

⁸ Protest exh. B, DLA Aviation Emergency Request for Fuel Cells (March 2021) will hereinafter be referred to as "Protest exh. B, DLA Emergency Request."

DLA has been patiently working with Amfuel trying to help you all as much as we can. [The government] has extended 17 fuel [bladder] deliveries and [it] has/is processing several orders at no cost terminations. I think delivering these 8 [fuel bladders] would go a long way when considering past performance for future contracts whether it's for the [Air Force] or any other government agency.[⁹]

Id. at 8. Moreover, the director sent this email to Amfuel to confirm the delivery of six fuel bladders after weeks of unanswered emails from other DLA personnel who tried to confirm that Amfuel would deliver the fuel bladders in accordance with the contract. *Id.* at 8-12. Amfuel's contention that the director's email above promises to consider Amfuel's emergency order favorably is overly optimistic; we have no basis to object to the agency's evaluation.

To the extent that the protester also argues the agency improperly penalized the protester for bilateral contract modifications and a termination for convenience, we disagree. The protester contends that the agency voluntarily agreed to extend delivery dates and execute a "no fault" termination for convenience, and therefore, it is unreasonable for the agency to negatively assess Amfuel for the modifications and the termination. Protest at 13-14. In support of its argument, the protester cites our decisions in *SST Supply & Serv. Team GmbH*, B-409873, Sept. 2, 2014, 2014 CPD ¶ 251 and *Si-Nor, Inc.*, B-292748.2 *et al.*, Jan. 7, 2004, 2004 CPD ¶ 10, in both of which we found an agency's decision not to draw negative inferences from awardees' terminations for convenience was reasonable. *Id.* at 14.

Our decisions assessing whether agencies reasonably considered terminations for convenience in past performance evaluations are based on fact specific inquiries. See *SST Supply & Serv. Team GmbH*, *supra* at 4-5 (agency reasonably decided not to draw negative inferences from termination for convenience that occurred outside of the timeframe designated by the RFP for consideration of past performance information); *Si-Nor, Inc.*, *supra* at 15-16 (agency failure to draw negative inference from termination for convenience was reasonable where the initial default termination had been disputed by the awardee and ultimately "settled in a more favorable light"); *KELO, Inc.*, B-284601.2, June 7, 2000, 2000 CPD ¶ 110 at 5 (agency reasonably relied on underlying basis for no-cost termination for convenience as evidence of marginal past performance).

Given that Amfuel's termination for convenience is within the RFP's timeframe for past performance information, and the underlying basis for termination was the protester's inability to deliver fuel bladders on time and at the agreed upon price, the termination for convenience is directly related to Amfuel's ability to perform the requirements of this solicitation. On this record, we find that the agency did not act unreasonably in considering bilateral modifications and the termination for convenience in its evaluation of Amfuel's past performance record. Accordingly, we deny this protest ground.

⁹ DLA purchases fuel bladders for the Air Force. RFP at 3.

Meggitt Evaluation

The protester also alleges that Meggitt's proposal failed to comply with the solicitation's delivery schedule and should have been rejected. Comments & Supp. Protest at 2-12. In response, the agency explains that the contracting officer reasonably determined Meggitt's proposal complied with the RFP based on Meggitt's timely submission of a signed copy of amendment 0002 and revised price matrix, and Meggitt's response to the agency's evaluation notice. Supp. COS/MOL at 2-4.

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 6. 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 noted previously, the initial RFP required offerors to deliver 10 fuel bladders each month beginning 180 days (or approximately 6 months) ARO. RFP at 8-14, 108. Meggitt's initial proposal offered a different delivery schedule; Meggitt stated that its standard lead time was 34 weeks (or approximately 8 months) after receipt of order and that it could deliver a maximum of 8 fuel bladders per month. AR, Tab 15, Meggitt Proposal (Part 1) at 2; AR, Tab 15, Meggitt Proposal (Part 2), Initial Price Matrix, Delivery Schedule (Production) tab at Cells E7-E12. In its proposal cover letter Meggitt also noted, "[l]ead times do vary from standard based on current factory load. [Purchase Orders] will be acknowledged and delivery dates confirmed at the time of order placement." AR, Tab 15, Meggitt Proposal (Part 1) at 2. Because two of the three offerors proposed alternative delivery schedules, the contracting officer amended the solicitation, including the delivery schedule, and extended the deadline for receipt of proposals. Supp. COS/MOL at 2.

Pursuant to amendment 0002, the RFP required offerors to deliver three fuel bladders each month beginning eight months ARO. AR, Tab 3, RFP amends. at 4, 14. Meggitt signed amendment 0002 and submitted an updated price matrix that complied with the amended delivery terms. Supp. COS/MOL at 2. Specifically, Meggitt proposed to deliver three to eight fuel bladders starting eight months ARO. AR, Tab 15, Meggitt Proposal (Part 3), Updated Price Matrix, Delivery Schedule (Production) tab at Cells E7-E12.

The agency explains that even though Meggitt's response to amendment 0002 complied with the updated delivery schedule, the contracting officer issued evaluation notice EN-RFP-M-2a to ensure any ambiguity about lead time in the original proposal cover letter was resolved. Supp. COS/MOL at 3. The evaluation notice notified Meggitt

that its proposal had received a deficiency because its cover letter qualified delivery based on “factory load” at the time of order and asked Meggitt whether it “could accept removal of this qualifier.” AR, Tab 15, Meggitt Proposal (Part 1), EN-RFP-M-2 at 134. In response to the evaluation notice, Meggitt did not commit to the firm delivery schedule, stating that “Meggitt has to leave open the ability to a firm schedule or committed date for an IDIQ. We don’t know the quantity or when if any at all we could receive an order leaving it impossible to commit to the unknown.” AR, Tab 15, Meggitt Proposal (Part 1) at 135.

Consequently, the contracting officer returned EN-RFP-M-2a to Meggitt with the agency’s reply that the signed amendment 0002 and updated price matrix contradict the factory load qualifier. AR, Tab 15, Meggitt Proposal (Part 1), EN-RFP-M-2a at 139. The contracting officer asked Meggitt to confirm that delivery based on the factory load qualifier was no longer valid and advised Meggitt that any deviation from the terms of the solicitation, such as the factory load qualifier, would render Meggitt’s proposal unacceptable. *Id.* Meggitt responded to the evaluation notice, agreeing to “remove that delivery is based on factory load at time of order placement in order to comply on this competitive bid” and asserting “[p]er [a]mendment 0002 the minimum of 3 each fuel tanks per part number after 8 months lead time is very achievable based on our current evaluation.” AR, Tab 15, Meggitt Proposal (Part 1) at 140. In its evaluation, the SSEB concluded that Meggitt’s proposal was compliant with the terms of the solicitation following its responses to EN-RFP-M-2a. AR, Tab 5, SSDD at 24-25.

Amfuel argues Meggitt’s responses to EN-RFP-M-2a indicated that it would not comply with the solicitation’s delivery schedule, and that the agency should have rejected Meggitt’s proposal as unacceptable because Meggitt did not submit a revised proposal that implemented its response to the evaluation notice. Comments & Supp. Protest at 9-10. In this regard, Amfuel contends that DLA’s request for FPRs advised Meggitt that FPRs should reflect its intended offer including any “changes based on any discussions held” and that any unchanged part of Meggitt’s previous proposal would remain valid. *Id.* at 9. Therefore, the protester argues, Meggitt’s responses to the evaluation notice made during discussions were not incorporated into Meggitt’s proposal and the factory load delivery qualifier remained in Meggitt’s proposal. *Id.* at 9-10. In support of its argument, Amfuel cites our decision in *Vectronix, Inc.*, B-407330, Dec. 19, 2012, 2013 CPD ¶ 13, where we found that the agency reasonably rejected the protester’s proposal as unacceptable when its final proposal revision did not include changes to its technical approach detailed in its response to discussions that were required to make its proposal acceptable. *Id.* at 10.

In contrast to *Vectronix*, Meggitt’s proposal indicated that it would meet the updated delivery schedule; the pricing matrix included the solicitation terms. Although the original cover letter was not removed from Meggitt’s proposal, it was not unreasonable for the agency to consider Meggitt’s response to the evaluation notice as sufficient to resolve any ambiguity between the cover letter and signed proposal. On this record, we find no basis to conclude that the contracting officer unreasonably determined that Meggitt’s proposal complied with the RFP.

FFC Evaluation

Next, Amfuel argues that DLA should have rejected FFC's proposal because it was not in compliance with DFARS provision 252.204-7019 and clause 252.204-7020, which require offerors to have a current National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171 DOD assessment.¹⁰ Comments & Supp. Protest at 12-14. In this context, the protester asserts that DLA directed FFC to remedy its noncompliance and submit documentation of compliance, which the protester contends FFC failed to do. *Id.*

The RFP included DFARS provision 252.204-7019, Notice of NIST SP 800-171 DOD Assessment Requirements, and clause 252.204-7020, NIST SP 800-171 DOD Assessment Requirements. RFP at 28, 62-64. In accordance with DFARS provision 252.204-7019, for an offeror to be considered for award, it must have a current--not more than three years old--NIST SP 800-171 assessment and the offeror must verify that summary level scores from the assessment are posted in the Supplier Performance Risk System (SPRS). DFARS provision 252.204-7019(b) & (c)(1).¹¹ The DOD assessment requirements are set forth in DFARS clause 252.204-7020, which describes basic, medium, and high assessments. A basic assessment is self-generated and results in a confidence level of "low" because the summary level score is self-generated.¹² DFARS 252.204-7020.

During the SSEB's evaluation, the agency discovered that no records for FFC existed in SPRS. AR, Tab 5, SSEB at 29. The contracting officer assigned a deficiency to FFC's proposal and during discussions issued EN-RFP-F-2 to FFC, which noted that it was not in compliance with DFARS provision 252.204-7019 and DFARS clause 252.204-7020 and directed FFC to resolve its non-compliance and submit documentation of compliance. AR, Tab 16, FFC Proposal (Part 1), EN-RFP-F-2 at 302. Responding to EN-RFP-F-2, FFC's vice president emailed the SSEB chairperson, stating "I plan to gain access tomorrow and complete the assessment." AR, Tab 16, FFC Proposal (Part 1) at 303. FFC's vice president also informed the agency that FFC's contact information had been provided to the Procurement Integrated Enterprise Environment (PIEE), which is required before a firm can gain access to SPRS to perform or upload a basic assessment, and that FFC's access was pending. *Id.* at 304.

¹⁰ Organizations whose systems process, transmit, or store Department of Defense (DOD) controlled unclassified information (CUI) are expected to have systems compliant with NIST SP 800-171, which "recommends 110 security requirements for protecting the confidentiality of CUI." Protecting Controlled Unclassified Information Systems, GAO-22-105259 at 21 (May 2022).

¹¹ The provision at DFARS 252.204-7019(c)(2) provides that if an offeror does not have summary level scores posted in SPRS, the offeror may conduct and submit a basic assessment to webptsmh@navy.mil for posting to SPRS.

¹² Medium and high assessments are not relevant to this protest.

Thereafter, the agency verified that FFC had a NIST SP 800-171 assessment in SPRS on September 3, 2021. Supp. COS/MOL at 4-5. The SSEB considered FFC compliant and noted in the evaluation report that “[a]ll offerors [were] considered compliant to terms and conditions of the RFP after responses to the [e]valuation [n]otices.” AR, Tab 5, SSDD at 25.

Amfuel asserts that FFC’s response to EN-RFP-F-2 is not sufficient to show compliance with DFARS provision 252.204-7019 and DFARS clause 252.204-7020, and the agency should have rejected FFC’s proposal. Comments & Supp. Protest at 13-14. In this regard, the protester contends that to comply with the DFARS, an offeror must be registered in SPRS and have its NIST SP 800-171 DOD assessment summary level scores in SPRS. *Id.* at 13. The protester argues further that FFC’s response to EN-RFP-F-2 does not demonstrate that this has been done and that there is nothing in the record that demonstrates FFC has performed a basic assessment which has been uploaded to SPRS. *Id.*

The agency responds that DLA inadvertently failed to include FFC’s NIST SP 800-171 assessment verification in the agency report and that the verification was “provided by the [c]ontracting [o]fficer as part of the contract file.” Supp. COS/MOL at 4. DLA supplemented the agency report with a screenshot of the SPRS website and contends that “[t]he SPRS website indicates that as of September 3, 2021, FFC had completed a [b]asic [a]ssessment.” *Id.* at 4-5; Supp. COS/MOL, Exh. A. The agency maintains that the DFARS permits a contractor to perform a basic assessment if its current summary level scores have not been posted to SPRS and FFC was in compliance with the solicitation. Supp. COS/MOL at 5. The agency also asserts that the SSEB report documented FFC’s compliance. *Id.*

Here, based upon our review of the documentation provided to us by the agency, we have no basis to conclude that FFC was in compliance with DFARS provision 252.204-7019, DFARS clause 252.204-7020, or the solicitation. While we do not disagree with the agency that the DFARS permits a contractor to perform a basic assessment, which as defined by the clause is a contractor’s self-assessment, if its current summary level scores have not been posted to SPRS; we note that DFARS clause 252.204-7020 also requires that a basic assessment must include summary level scores. FFC’s response to EN-RFP-F-2, including the vice president’s email, shows neither that a basic assessment that meets the requirements of DFARS clause 252.204-7020 has been completed, nor that one was entered into SPRS. At best, FFC’s response to EN-RFP-F-2 indicates an intent to comply and there is no further documentation showing that a basic assessment was completed.

Moreover, the screenshot of the SPRS website that DLA produced fails to demonstrate that FFC conducted a NIST SP 800-171 basic assessment that meets the requirements of DFARS clause 252.204-7020. The provision at DFARS 252.204-7019 permits an offeror to submit, via encrypted email, a basic assessment for posting to SPRS and DFARS clause 252.204-7020 requires the basic assessment to include summary level

scores among other things. DFARS clause 252.204-7020(d)(1)(i)(E). Generally, the email must include:

(A) Version of NIST SP 800-171 against which the assessment was conducted.

(B) Organization conducting the assessment (e.g., Contractor self-assessment).

(C) For each system security plan (security requirement 3.12.4) supporting the performance of a [DOD] contract—

(1) All industry Commercial and Government Entity (CAGE) code(s) associated with the information system(s) addressed by the system security plan; and

(2) A brief description of the system security plan architecture, if more than one plan exists.

(D) Date the assessment was completed.

(E) Summary level score (e.g., 95 out of 110, NOT the individual value for each requirement).

(F) Date that all requirements are expected to be implemented (i.e., a score of 110 is expected to be achieved) based on information gathered from associated plan(s) of action developed in accordance with NIST SP 800-171.

DFARS clause 252.204-7020(d)(1)(i). SPRS arranges this information into an easily understandable table. The screenshot that DLA provided for FFC includes very little of the required information. Specifically, the SPRS screenshot for FFC, shows FFC's name, cage code number, that it is a NIST SP 800-171 assessment, and that it is a basic assessment. Supp. COS/MOL, Exh. A. Notably absent from the SPRS screenshot are the summary level score, the date the assessment was completed, and the date that all requirements are expected to be implemented. Rather, the table cells for this missing information are marked with "N/A." *Id.* The SPRS table also includes a column for when the assessment was last updated; here, the cell for FFC also is marked with "N/A." The screenshot that DLA produced does not convey summary level scores or all of the information required by DFARS clause 252.204-7020 in a basic assessment.

Merely documenting a basic assessment was performed, without identifying the content of the basic assessment such as the summary level scores, is insufficient to rebut the protester's allegations and show FFC was in compliance with DFARS clause 252.204-7020. Given the information missing from the screenshot of the SPRS

website, especially the summary level scores, we cannot find it was reasonable for the agency to conclude that this screenshot showed FFC was in compliance with DFARS provision 252.204-7019 and DFARS clause 252.204-7020.

While we will not substitute our judgment for that of the agency, we will question an agency's conclusions where they are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5. Here, the record fails to demonstrate that FFC completed the required NIST SP 800-171 assessment. We therefore find that the agency unreasonably determined FFC was in compliance with DFARS provision 252.204-7019, DFARS clause 252.204-7020, or the solicitation.

Competitive Prejudice

Notwithstanding our concern about the agency's evaluation of FFC, as discussed above, we find that this concern does not provide a basis to sustain Amfuel's protest due to the absence of competitive prejudice. Competitive prejudice is an essential element of any viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *Environmental Chem. Corp.*, B-416166.3 *et. al.*, June 12, 2019, 2019 CPD ¶ 217 at 14. Here, the record fails to demonstrate a substantial possibility that even if DLA did not make an award to FFC, the agency would make an award to the protester.

In this regard, Amfuel proposed the highest price, which was 84.73 percent more than Meggitt and 62.73 percent more than FFC. AR, Tab 5, SSDD at 3, 34. The agency also assessed Amfuel with a limited confidence rating for past performance. *Id.* at 3. Moreover, the RFP did not require the agency to award more than one contract or instruct the agency when to make more than one award. The record shows that the SSA elected to make an additional award to FFC because the agency could reduce the risk associated with a single supplier at a "relatively small premium."¹³ *Id.* at 3. The same is not true of Amfuel; its price is significantly--*i.e.*, 84.73 percent--higher than Meggitt's. Given the disparity in prices, we cannot conclude that if the agency had eliminated FFC from the competition, the agency would have awarded a second contract to Amfuel to reduce the risk associated with a single supplier. As a result, we find no basis on which to sustain the protest.

In summary, based on this record, we conclude the agency reasonably evaluated Amfuel's past performance and awarded contracts to Meggitt and FFC. To the extent

¹³ FFC's proposed price was approximately \$3.72 million more than Meggitt's price. See AR, Tab 5, SSDD at 2.

the agency erred in finding FFC in compliance with the solicitation and DOD acquisition regulations, this error did not result in competitive prejudice to Amfuel.

The protest is denied.

Edda Emmanuelli Perez
General Counsel