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Decision

Matter of: Chapman Freeborn Airchartering, Inc.

File: B-421683.3

Date: November 30, 2023

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DIGEST

1. Protest alleging that the agency unreasonably eliminated the protester's quotation from the competition for failing to have all necessary items on its Federal Supply Schedule contract is denied where the agency's actions were reasonable and in accordance with the solicitation.
2. Protest alleging that the agency's elimination of the protester's quotation from the competition was the result of unequal treatment is denied where the protester fails to demonstrate that the differences in the evaluation did not stem from differences between the vendors' quotations, or that the protester was prejudiced by the agency's actions.

DECISION

Chapman Freeborn Airchartering, Inc., of Fort Lauderdale, Florida, protests the rejection of its quotation under request for quotations (RFQ) No. 70CDCR23Q00000004, issued by the Department of Homeland Security, United States Immigration and Customs Enforcement, for air charter aircraft services. The protester contends that the agency's rejection of its quotation was unreasonable and based upon unequal treatment.

We deny the protest.

BACKGROUND

The procurement at issue is to provide reliable, safe, and secure mass air transportation for noncitizens in federal custody, and to carry out orders for the required departure of detainees as ordered in removal proceedings. Contracting Officer's Statement (COS) at 1. The agency issued the RFQ on January 23, 2023, in order to establish a single blanket purchase agreement (BPA) for air charter services including aircraft, pilots and crews, guards, nurses, and all personnel, materials, services and other items necessary to provide reliable, safe, and secure mass air transportation of noncitizens in federal custody. *Id.* at 9; Agency Report (AR), Tab 2, RFQ at 2; AR, Tab 4, RFQ attach. 2, Statement of Work (SOW) at 4.

Broadly speaking, the RFQ contemplates two categories of air charter services to be provided. The first category is daily scheduled large aircraft (DSLAs), which entails the provision of aircraft based in Alexandria, Louisiana; Harlingen, Texas; San Antonio, Texas; Miami, Florida; or Mesa, Arizona, with daily scheduled flights to various destinations. SOW at 3. The second category is special high-risk charter (SHRC), which encompasses flights between the continental United States and locations outside the continental United States for removals that are unable to be served by a DSLA charter flight. *Id.* at 4.

The agency issued the RFQ, using the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, to holders of multiple award schedule contracts under special item numbers (SIN) 481211B (Air Charter Services--Brokers) and 481211O (Air Charter Services--Owner Operated).¹ COS at 1; RFQ at 2. The RFQ anticipates the establishment of a single BPA with a 1-year base ordering period and four 1-year option periods. RFQ at 3. Orders will be placed on a fixed-price and time-and-materials basis. *Id.*

The RFQ contemplates a two-phase, advisory down-select procurement process. *Id.* The first phase consists of three factors: acceptability review; corporate experience; and aircraft availability and commitment. *Id.* at 10-11. Following the evaluation of phase one submissions, the agency will issue advisory notifications encouraging the vendors that submitted the most highly rated quotations to participate in phase two. *Id.* at 4. The second phase consists of four factors: technical capability; betterment; past performance; and price. *Id.* at 11-13.

As relevant here, the RFQ instructs vendors as follows with respect to the acceptability review under phase one:

Contractors shall submit the following documents for the [g]overnment to review as part of an acceptability review and verification:

¹ The Federal Supply Schedule program is also known as the General Services Administration (GSA) schedules program or the multiple-award schedule program. See FAR 8.402(a).

1. An adequate accounting system[;]
2. [Federal Aviation Administration (FAA)] certification(s)[;]
3. Airworthiness [c]ertificates[;]
4. FAA operations specifications documentation[;] and
5. GSA contractor certification . . . with a full copy of the GSA Schedule(s)[.]

Id. at 10. The RFQ advises vendors that “[quotations] that do not pass the acceptability review will not be evaluated for the remaining phases/parts or factors.” *Id.* It further advises that during the phase one evaluation, the agency will “evaluate to ensure the contractor has submitted all requirements for the [a]cceptability [r]eview.” *Id.* at 14. Only the adequate accounting system and GSA contractor certification requirements are relevant here.

With respect to the acceptability review’s requirement for an adequate accounting system, the RFQ’s instructions state that vendors “shall provide proof of their company’s adequate accounting system[,]” and that a vendor “must have an adequate accounting system to be eligible for award.” *Id.* at 6. To be adequate, the vendor’s “accounting system must have the ability to substantiate invoices by evidence of actual payment for fuel expenses identified to the benefitting contract.” *Id.*

The RFQ’s instructions regarding the GSA contractor certification under the acceptability review require vendors to “verify whether ALL of the required items stated in RFQ Attachment 5 (Pricing Spreadsheet) are included on the contractor’s current GSA Schedule.” *Id.* at 7. The RFQ directs vendors to map the BPA line items to their GSA schedule contract line items, stating further that “[a]ll items must be on the [c]ontractor’s GSA Schedule,” and that “no open market items will be accepted.” *Id.*

Also relevant here, the RFQ provides the following instructions regarding phase one’s aircraft availability and commitment factor:

The contractor shall provide a narrative that contains sufficient information for the Government to evaluate their aircraft availability and commitment as it aligns to the requirements of the SOW. The narrative shall contain a list of the aircraft, identified by the make/model, teaming partner provider, and tail [number], that the [c]ontractor has available to perform this requirement, as well as the aircraft owner and tail number. Any aircraft not owned by the [c]ontractor must be supported by a letter of commitment.

Id. at 11. The RFQ’s instructions further provide that vendors “must submit letters of commitment(s) for each proposed aircraft provider[,]” and that “[t]he intended use of such letters is to support [g]overnment validation of the aircraft provider’s participation, to include which aircraft they will make available to the contractor.” *Id.* at 6. The RFQ also identifies specific information required to be in each letter of commitment “to be

deemed conforming.” *Id.* at 6-7. The RFQ states that the agency will evaluate aircraft availability as demonstrated by letters of commitment from air partners, as it aligns to the requirements of the SOW, assigning a rating of high, some, or low confidence that the vendor has sufficient aircraft commitments available to support the requirement. *Id.* at 15.

The agency received nine timely quotations in response to the RFQ, including from the protester. COS at 9. Following evaluation of phase one submissions, issuance of advisory notices, and subsequent evaluation of phase two submissions, the agency concluded that the protester’s quotation represented the best value and established a BPA with the protester. *Id.* That source selection decision thereafter was the subject of two protests previously filed with our Office. *Id.* In response to those protests, the agency notified our Office of its intention to take corrective action, and we consequently dismissed the protests as academic. See *Classic Air Charter, Inc.*, B-421683, June 21, 2023 (unpublished decision); *CSI Aviation, Inc.*, B-421683.2, June 21, 2023 (unpublished decision).

As part of its corrective action, the agency reviewed all quotations against the criteria set forth in the RFQ’s acceptability review provisions, as the agency concluded that it had failed to conduct and document an adequate acceptability review. COS at 10; AR, Tab 46, Corrective Action Memo at 2. In reviewing the protester’s GSA contractor certification, the agency found that the protester’s GSA schedule contract did not include a line item for a 300-passenger aircraft, which was a requirement of the RFQ for SHRC aircraft. COS at 10; AR, Tab 48, Acceptability Review at 5. In the absence of that line item or a teaming agreement with another GSA contract holder that had such an aircraft available under its GSA contract, the agency concluded that the protester was ineligible to compete for the requirement and notified the protester that its quotation had been excluded. COS at 10; AR, Tab 49, Letter to Chapman Freeborn. This protest followed.

DISCUSSION

The protester contends that the exclusion of its quotation from the competition was improper for several reasons. First, the protester argues that the RFQ did not impose a minimum requirement for a 300-passenger aircraft for SHRC missions. Alternatively, the protester argues that even if the RFQ did impose such a requirement, the chartering of a 300-passenger aircraft was within the scope of the protester’s GSA schedule contract. The protester further contends that the agency unequally evaluated quotations, as other vendors’ quotations were similarly ineligible for award but were permitted to remain in the competition. On our review of the record, we discern no basis on which to sustain the protest.²

² The protester also raises various collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest.

Requirement for a 300-Passenger Aircraft

The protester first contends that the RFQ does not impose a minimum acceptability requirement that a vendor have a 300-passenger aircraft on its GSA schedule. Protest at 12-16. The protester primarily points to section 3.1 of the SOW, which states that “[l]arge [a]ircraft SHRC missions must be capable of transporting 148 to 300 passengers at a range of at least 4,000 [nautical miles].” *Id.* at 13; see also SOW at 10. The protester argues that, by using the term “missions,” the SOW does not require that all passengers must be on a single aircraft. Protest at 13. Rather, it simply characterizes large aircraft SHRC missions as requiring transportation of 148 to 300 passengers. *Id.* The protester further points to other SOW provisions that characterize large SHRC aircraft as those with the capability of seating at least 148 passengers. *Id.* at 14-15. The protester argues that the RFQ therefore permitted vendors to quote a variety of large aircraft with at least a 148-passenger capacity and did not set a minimum requirement for a 300-passenger aircraft. *Id.*

The agency responds that the RFQ does, in fact, require the provision of a 300-passenger aircraft. The agency points out that section 3.1 of the SOW contemplates both large aircraft SHRC missions and small aircraft SHRC missions, with the former requiring transportation of 148 to 300 passengers, and the latter requiring transportation of up to 14 passengers, thus establishing large aircraft SHRC missions as a category requiring a range of aircraft capacity. Memorandum of Law (MOL) at 16. The agency next points out that section 3.2 of the SOW, which discusses the pricing of SHRC missions, states that such missions “will have [four] fixed price flight hour wet-lease rates based on aircraft with no less than: 300 seats, 200 seats, 148 seats, [or] 14 seats.” *Id.*; see also SOW at 10. Accordingly, while large aircraft SHRC missions require the transportation of anywhere from 148 to 300 passengers, the agency argues that the RFQ establishes a requirement for aircraft with capacities of 148, 200, and 300 passengers within that category. MOL at 16.

When a dispute arises as to the meaning of solicitation language, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions in the solicitation. See, e.g., *Level 3 Commc’ns LLC*, B-412854 *et al.*, June 21, 2016, 2016 CPD ¶ 171 at 7. Here, the protester fails to advance a reasonable interpretation of the solicitation requirements.

While section 3.1 of the SOW refers to large aircraft SHRC missions and discusses capacity in terms of a range from 148 to 300 passengers, that language does not preclude a requirement for a 300-passenger aircraft. Rather, it contemplates a category of requirements--large aircraft SHRC missions, as distinguished from small aircraft SHRC missions--that encompasses a range of aircraft sizes including 300-passenger aircraft. Furthermore, giving effect to all provisions of the RFQ requires that section 3.1 be read in conjunction with section 3.2, which sets forth requirements for 14-, 148-, 200-, and 300-passenger aircraft. Thus, the SOW establishes that the selected vendor will be required to provide a 300-passenger aircraft in connection with SHRC missions.

Additionally, and more saliently, the RFQ's acceptability review provisions establish this requirement as a threshold acceptability matter. As discussed above, the agency determined that the protester's quotation was ineligible for award as a result of the acceptability review, specifically with respect to the protester's GSA contractor certification. As stated in the RFQ, vendors were required to "verify whether ALL of the required items stated in RFQ Attachment 5 (Pricing Spreadsheet) are included on the contractor's current GSA Schedule." RFQ at 7. The referenced pricing spreadsheet separates pricing for SHRC flight hours into four aircraft types based on "minimum number of passengers[.]" AR, Tab 7, RFQ attach. 5, Pricing Spreadsheet. Those four types correspond to minimums of 14, 148, 200, and 300 passengers. *Id.* Thus, the RFQ's acceptability review provisions require a vendor's GSA contractor certification to verify that the vendor's GSA schedule includes a 300-passenger aircraft, among other requirements.

As stated in the RFQ, quotations that did not pass the acceptability review would not be evaluated further. See RFQ at 10. Accordingly, in light of the forgoing discussion, the acceptability review provisions of the RFQ establish a minimum acceptability requirement that a vendor have a 300-passenger aircraft on its GSA schedule. We therefore deny this ground of protest.³

GSA Schedule Scope

Next, the protester contends that, even if the RFQ imposed a minimum acceptability requirement for a 300-passenger aircraft, the chartering of such an aircraft is within the scope of the protester's GSA schedule contract. Protest at 16-19; Comments at 4-8.

³ The protester alternatively argues that the RFQ was latently ambiguous regarding a 300-passenger aircraft requirement. See Protest at 20-21; Comments at 14-17. This argument rests in part on the notion that imposing such a minimum requirement would be "absurd" because the pricing attachment estimates only 250 annual flight hours for a 300-passenger aircraft out of 31,000 total annual estimated flight hours, and historical data provided in the RFQ for the past 5 years show average numbers of passengers transported by mission as being below even the 148-passenger threshold. Protest at 21; Comments at 15-16.

As we have noted, however, in FSS buys, as in other procurements, a contracting agency has the discretion to determine its needs and the best method to accommodate them. *Trigent Sols., Inc.*, B-419801, Aug. 6, 2021, 2021 CPD ¶ 279 at 4. Moreover, it appears that the protester shared the agency's understanding of the RFQ's requirements, as its quotation included a 380-seat aircraft to be provided by a subcontractor to "meet the minimum seat requirement of 148 to 300 seats[.]" See AR, Tab 18, Chapman Freeborn List of Available Aircraft at 2. In any event, because we conclude that the protester has not advanced a reasonable interpretation of the RFQ, we deny the allegation that the RFQ was latently ambiguous on this point. See, e.g., *Level 3 Commc'ns*, *supra* at 8 ("A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations.").

Citing decisions in which our Office has examined whether goods and services to be provided fell within the scope of GSA schedule contracts, the protester argues that the chartering of a 300-passenger aircraft falls within the scope of SIN 481211B, which is included in the protester's GSA schedule contract and contemplates the provision of "a full range of broker charter services[.]" Comments at 4-6. The protester further cites the description of work in its GSA schedule contract, which describes the provision of "passenger air charter service and related passenger services . . . for various types of domestic and international travel." *Id.* at 6. The protester contends that, notwithstanding that its GSA schedule contract does not contain a line item for the chartering of an aircraft with a capacity of at least 300 passengers, the chartering of such an aircraft is within the scope of those general provisions, and therefore within the scope of the protester's GSA schedule contract. *Id.* at 7.

The agency points to the RFQ's provisions regarding the GSA contractor certification, which require that "[a]ll items must be on the [c]ontractor's GSA [s]chedule," and state that "no open market items will be accepted." MOL at 14; see also RFQ at 7. As the agency notes, the protester concedes that its GSA schedule contract did not include a line item for an aircraft with a 300-passenger capacity at the time of quotation submission. MOL at 14 (citing Protest at 18). The protester's quotation included a 380-passenger aircraft, to be provided by a subcontractor that does not have a GSA schedule contract. *Id.* at 12-13. The agency argues that, under our decisions examining the scope of GSA schedule contracts, this constituted the inclusion of an open market item, not an item within the scope of the protester's GSA schedule contract. *Id.* at 14-15.

Our review is guided by the principle that an agency may not use schedule contracting procedures to purchase items that are not listed on a vendor's schedule contract. *Gartner, Inc.*, B-419190, B-419190.2, Dec. 14, 2020, 2020 CPD ¶ 401 at 6. When a concern arises that a vendor is offering services outside the scope of its schedule contract, the relevant inquiry is whether the services offered are actually included on the vendor's contract, as reasonably interpreted. *Id.* In this regard, our Office will consider whether the function being sought under a particular solicitation is the same as the function covered under a vendor's schedule contract. *Id.*

The protester's argument is, in essence, that because the general scope of its GSA schedule contract is for air chartering services, the chartering of a 300-passenger aircraft is within the scope of that contract, despite the fact that the protester's schedule contract does not include a line item for the chartering of an aircraft of that size.⁴ The protester contends that our decisions in *Tri-Starr Management Services, Inc.*, B-408827.2, Jan. 15, 2015, 2015 CPD ¶ 43; *Advantaged Solutions, Inc.*, B-418790, B-418790.2, Aug. 31, 2020, 2020 CPD ¶ 307; and *Red River Computer Company, B-414183.8 et al.*, Dec. 22, 2017, 2018 CPD ¶ 7 support this argument. See Protest

⁴ Per the protester's GSA contractor certification, the largest aircraft specifically included on its GSA schedule has a capacity of 190 to 240 seats. See AR, Tab 15, Chapman Freeborn GSA Contractor Certification, FSS Price List at 4.

at 16; Comments at 4-5. In each of those decisions, however, we concluded that the services being procured were not open market items because they were within the scope of particular line items on the GSA schedule contracts at issue, not because they fell within the broader, general scopes of those schedule contracts.

The solicitation in *Tri-Starr Management* was for mail manifesting services for seven types of shipment/delivery services. *Tri-Starr Mgmt.*, *supra* at 7. The protester alleged that the awardee's GSA schedule contract did not include manifesting services for two types of services: parcel select and UPS deliveries. *Id.* at 7-8. After a consultation with GSA, the agency determined that those services were within the scope of particular line items on the awardee's schedule contract. *Id.* at 8-9. Specifically, GSA advised that the parcel select services were the same requirements as the priority mail line item on the awardee's schedule contract. *Id.* at 8. GSA further advised that UPS deliveries were encompassed within a line item for miscellaneous support for parcels requiring extra processing costs. *Id.* at 9. Based on this record, our Office concluded that "the functions for which [the awardee] provided pricing [were] the same as, and/or reasonably subsumed within, the functions provided under [the awardee's] schedule contract[.]" and that the agency therefore reasonably determined that the services being procured were within the scope of the awardee's schedule contract. *Id.*

The analysis in *Advantaged Solutions* was similar. There, the protester alleged that the awardee was ineligible for award because its GSA schedule contract did not include particular brand name information technology (IT) professional services. *Advantaged Sols.*, *supra* at 5. We noted that, while the awardee's schedule contract did not include specific labor categories for those brand name IT professional services, the schedule contract did include labor categories that encompassed the services to be provided. *Id.* at 6. While we did examine the broader scope of the schedule contract's SINs, we did so in order to establish the scope of the professional services authorized to be provided by labor categories--*i.e.*, line items--on the awardee's schedule contract under those SINs. *Id.* at 7. We concluded that the "labor categories contained on [the awardee's] FSS contract," considered within the context of the "generic IT services descriptions" set forth in the contract's SINs, supported the agency's conclusion that the services were within the scope of the awardee's schedule contract. *Id.* Thus, as in *Tri-Starr Management*, the dispositive fact was that the services to be provided fell within the scope of specific line items on the awardee's GSA schedule contract, not that they were within the broader scope of that schedule contract.

Finally, the protesters in *Red River Computer* alleged that the awardee had included cloud computing systems in its quotation that were not on the awardee's GSA schedule contract. *Red River Computer*, *supra* at 7. The agency determined that the awardee's schedule contract included relevant line items that were not specific to a particular cloud service provider, and that the awardee therefore could offer the required cloud computing services through those line items. *Id.* at 8. Our Office found that the agency's conclusion was reasonable, noting that the awardee's schedule contract "provide[d] generic product names and descriptions of cloud computer services" that enabled the awardee "to match the agency's solicited requirements." *Id.* at 9. We

therefore concluded that “the core function of the cloud services being quoted [fell] within the scope of the line items offered on [the awardee’s] schedule.” *Id.*

In all three of the protests discussed above, we concluded that the services to be provided were within the scope of the awardees’ GSA schedule contracts because they were within the scope of particular line items on those schedule contracts. Thus, they do not support the protester’s argument that the chartering of a 300-passenger aircraft is within the scope of its GSA schedule contract because the general scope of that schedule contract is for air chartering services. Rather, they make clear that, when considering whether the function being sought under a particular solicitation is the same as the function covered under a vendor’s schedule contract, we look to the functions covered by the particular line items under the vendor’s schedule contract.⁵

In view of that standard, there is no basis on which to sustain this ground of protest. The protester’s schedule contract--which contains line items for the chartering of aircraft ranging from 4 to 240 seats, see AR, Tab 15, Chapman Freeborn GSA Contractor Certification at 5-6--does not contain a line item for an aircraft with a 300-passenger capacity. Nor is a 300-passenger aircraft subsumed within any of the line items on the protester’s schedule contract.⁶ Accordingly, the chartering of a 300-passenger aircraft is not within the scope of the protester’s GSA schedule contract. The agency therefore reasonably concluded that the protester’s quotation did not satisfy the requirements of the acceptability review.

Unequal Treatment

Lastly, the protester argues that the agency unequally evaluated quotations, contending that quotations submitted by other vendors were similarly ineligible for award but permitted to remain in the competition. Protest at 22-37. The agency responds that it

⁵ These decisions also make clear that this is a fact-dependent inquiry, and that in appropriate circumstances, such as those in *Advantaged Solutions*, our Office may look to SIN descriptions to delineate the scope of schedule contract line items.

⁶ While we discuss the majority of the protester’s unequal treatment arguments below, we note here that one of those arguments also fails in light of this principle. Specifically, the protester alleges that the agency disparately evaluated quotations because another vendor’s schedule contract includes an aircraft with a listed capacity of 270 to 300 passengers, which the agency concluded “could accommodate [the 300-passenger aircraft] requirement” in finding that the quotation satisfied the acceptability review. Comments at 19; see *also* AR, Tab 47, GSA Schedule Scope Mapping at 3. The protester contends that this aircraft “does not unequivocally satisfy [the agency’s] purported 300-passenger minimum requirement.” Comments at 19. A 300-passenger aircraft, however, is subsumed within the line item for an aircraft with a capacity of 270 to 300 passengers. Thus, it was reasonable for the agency to conclude that the requirement to have a 300-passenger aircraft on the vendor’s schedule contract was satisfied.

treated all vendors equally; the protester's quotation was found ineligible for award on the basis of the threshold acceptability matter of the protester's GSA schedule contract, while the errors alleged by the protester with respect to the evaluation of other quotations go to different evaluation criteria. MOL at 20-23. For the reasons discussed below, the protester's allegations of unequal treatment do not provide a basis to sustain the protest.

In conducting procurements, agencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing vendors. *Cellco P'ship dba Verizon Wireless*, B-418155.4, B-418155.5, Nov. 5, 2020, 2020 CPD ¶ 364 at 10. It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation's requirements and evaluation criteria. *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 6. 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 vendors' quotations. *Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8; *CSRA, LLC*, B-417635 *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 9.

The protester first alleges that the agency unequally evaluated quotations by permitting another vendor's quotation to remain eligible for award despite not demonstrating the availability of large, *i.e.*, 148- to 300-passenger, aircraft for SHRC requirements. Protest at 23-26; Comments at 22-25. The protester contends that the vendor failed to submit a letter of commitment for the subcontractor that is to provide such aircraft, and furthermore that the subcontractor was unavailable because it was exclusively committed to another vendor. Protest at 23-26; Comments at 22-25.

As discussed above, the agency eliminated the protester's quotation from the competition on the basis of the acceptability review, which encompassed five aspects. While one aspect of that review entailed confirming that vendors had the necessary aircraft on their GSA schedule contracts, it did not entail a review of whether vendors had commitments to provide the necessary aircraft. Rather, the RFQ makes clear that the agency will evaluate such commitments under the aircraft availability and commitment factor. See RFQ at 11. Evaluation under that factor, unlike the acceptability review, will result in the assignment of an adjectival rating, not a threshold determination of eligibility. See *id.* at 15. Thus, to whatever extent another vendor failed to provide a letter of commitment, the RFQ does not require elimination of that quotation from the competition in the same way as required by the acceptability review provisions that led to the elimination of the protester's quotation.⁷ The protester

⁷ While the RFQ does not contemplate review of letters of commitment as part of the acceptability review, the protester contends that the agency did, in fact, review those letters as part of the acceptability review. See Comments at 23. The documentation of the agency's acceptability review does state that the agency "reviewed letters of commitment for each proposed aircraft provider[.]" AR, Tab 48, Acceptability Review
(continued...)

therefore has not demonstrated that the agency unequally evaluated quotations in this manner.

Next, the protester contends that the agency unequally permitted another vendor's quotation to remain in the competition because that quotation did not meet minimum requirements to provide the agency with exclusive use of 12 DSLA aircraft capable of transporting a minimum of 148 passengers. Protest at 29-33; Comments at 27-30. Again, however, the RFQ distinguishes between the requirement that vendors have the necessary aircraft on their GSA schedules and the availability of aircraft. The former is part of the threshold acceptability review, pursuant to which the agency eliminated the protester's quotation from the competition. The latter is encompassed within the aircraft availability and commitment factor, as it relates to the provision of aircraft meeting SOW requirements, including the requirement to provide exclusive use of DSLA aircraft. See SOW at 5 ("Contractor shall provide no fewer than 12 DSLA aircraft for exclusive availability and use under this contract for flights every day (Monday-Friday), 52 weeks per year."); RFQ at 15 (stating that the agency will evaluate aircraft availability "as it aligns to the requirements of the SOW"). Accordingly, this allegation also does not demonstrate unequal treatment.

The protester further alleges that the agency unequally permitted another vendor's quotation to remain in the competition because it did not include fixed prices and did not comply with the RFQ's terms regarding transition pricing. Protest at 33-36; Comments at 30-32. Similar to the previous two arguments, however, the RFQ does not include price among the matters to be considered as part of the acceptability review. To whatever extent the other vendor's quotation failed to comply with the RFQ's requirements regarding pricing, that is not something the agency is to consider as part of the acceptability review. This allegation therefore also does not demonstrate that the agency unequally evaluated quotations.

Finally, the protester argues that the agency unequally evaluated quotations by permitting another vendor's quotation to remain in the competition despite failing to demonstrate that the vendor has an adequate accounting system. Protest at 26-29; Comments at 25-27. The record of the agency's acceptability review confirms that, with respect to that vendor's quotation, the agency concluded that "[t]he information provided does not demonstrate that the contractor's accounting system has the ability to substantiate invoices by evidence of actual payment for fuel expenses identified to the benefitting contract." AR, Tab 48, Acceptability Review at 2. The protester argues that the RFQ requires the demonstration of an adequate accounting system in order to be eligible for award, and that the agency therefore unequally treated quotations by permitting the vendor's quotation to remain eligible for award while excluding the protester's quotation. Comments at 25-26.

at 3. Nevertheless, the RFQ did not include evaluation of letters of commitment as part of the threshold acceptability review, and therefore did not require elimination of a quotation on the basis of letters of commitment.

Unlike the other allegations of unequal treatment, this allegation is based on the evaluation of a matter--an adequate accounting system--that is within the scope of the acceptability review. See RFQ at 10. As discussed above, the RFQ states that “[quotations] that do not pass the acceptability review will not be evaluated for the remaining phases/parts or factors.” *Id.* Thus, the RFQ requires rejection of a quotation that fails to demonstrate an adequate accounting system.⁸ To the extent that the agency relaxed this solicitation requirement for another vendor, however, we conclude that the protester has not demonstrated that it was competitively prejudiced.

Our decisions provide that, where an agency arguably may have waived or relaxed a solicitation requirement, a protester still must show that it was prejudiced by the agency’s actions. *FedResults, Inc.*, B-414641, Aug. 8, 2017, 2017 CPD ¶ 271 at 10. Competitive prejudice from such a waiver exists only where the requirement was not similarly waived for the protester, or where the protester would be able to alter its quotation to its competitive advantage if given the opportunity to respond to the relaxed term. *Louis Berger Power, LLC*, B-416059, May 24, 2018, 2018 CPD ¶ 196.

Here, while an adequate accounting system and GSA contractor certification both were part of the acceptability review, they nevertheless were separate requirements within that review with distinct instructions and requirements. See RFQ at 6-7. The agency excluded the protester’s quotation from the competition on the basis of its failure to include in its quotation a GSA contractor certification reflecting a line item for a 300-passenger aircraft, not the failure to demonstrate an adequate accounting system. In this regard, the protester has not alleged that the agency did not similarly waive the requirement to demonstrate an adequate accounting system for the protester. Furthermore, the agency found that the protester’s quotation demonstrated an adequate accounting system. See AR, Tab 48, Acceptability Review at 2. Thus, to whatever extent the agency might have relaxed⁹ the requirement that a quotation demonstrate an adequate accounting system, the protester cannot demonstrate that it would have been

⁸ The agency argues that “the RFQ allowed [agency] evaluators discretion as to whether [failure to demonstrate an adequate accounting system] would lead to ineligibility.” MOL at 22. As discussed above, however, the RFQ does not provide for such discretion, stating that quotations that do not pass the acceptability review--including the demonstration of an adequate accounting system--will not be further evaluated.

⁹ Given our resolution of this protest allegation, we need not and do not resolve whether the agency, in fact, relaxed or waived the requirement for an adequate accounting system.

able to alter its quotation to its competitive advantage if given the opportunity to respond to the allegedly relaxed term.¹⁰ Accordingly, we deny this ground of protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

¹⁰ We further note that the protester has not alleged that, if the agency had not eliminated the protester's quotation from the competition in accordance with the RFQ's acceptability review provisions, the protester could have altered its quotation to meet the minimum requirement to have a 300-passenger aircraft on its GSA schedule.