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**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** CAE USA, Inc.

**File:** B-404625

**Date:** March 16, 2011

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Joseph P. Hornyak, Esq., Gregory R. Hallmark, Esq., and Megan M. Jeschke, Esq., Holland & Knight LLP, for the protester.

W. Jay DeVecchio, Esq., Daniel E. Chudd, Esq., Ethan E. Marsh, Esq., and Leslie V. Pope, Esq., Jenner & Block LLP, for L-3 Communications Link Simulation and Training, an intervenor.

Col. Mark S. Teskey, Christopher S. Cole, Esq., and John M. Taffany, Esq., Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the evaluation of the protester's past performance and selection of a higher-priced proposal for award is denied, where the record shows that the evaluation and source selection decision were reasonable and in accordance with the solicitation's evaluation criteria.

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### DECISION

CAE USA, Inc. (CAE), of Tampa, Florida, protests the award of a contract to L-3 Communications, Link Simulation and Training Division (L-3), of Arlington, Texas, under request for proposals (RFP) No. FA8621-10-R-6260, issued by the Department of the Air Force for training support for the C-17 aircraft. CAE argues that the Air Force failed to reasonably evaluate its past performance and improperly selected an offeror with a higher-priced proposal for award.

We deny the protest.

### BACKGROUND

This acquisition merges the sustainment components of the Air Force's aircrew training system (ATS) and maintenance training system (MTS) into a single training system for the C-17 aircraft. The single training system will provide ground-based training capability for aircrew and maintenance training using state of the art

simulators. The RFP here required the selected contractor to provide ATS and MTS sustainment and training support, including instruction, change management, and logistics support, at 10 United States Air Force bases and the Royal Australian Air Force, with the addition of 2 additional sites in the future. RFP amend. 11, § L, at 1-2; Agency Report (AR), Tab 23, Proposal Analysis Report, at 5.

The RFP was issued on December 11, 2009, and contemplated the award of a fixed-price indefinite-delivery/indefinite-quantity contract for a 5-year base period with an option to extend the contract for two additional 1-year terms. The RFP provided that award would be made to the offeror whose proposal represented the best value to the government using a technically acceptable, performance/price tradeoff procedure. RFP amend. 8, § M, at 1. That is, proposals first would be evaluated for technical acceptability, and then a tradeoff between past performance and price would be conducted. Id. Past performance was more important than cost or price in the evaluation. Id.

The RFP identified, under the technical acceptability factor, the following subfactors: program management, instruction/training, contractor logistics support, training system support center, and change management. Id. at 3-7. With respect to the price factor, the RFP stated that proposed prices would be evaluated for price reasonableness. Id. at 9.

With respect to the past performance evaluation, the RFP stated that the agency would rate each proposal with a performance confidence assessment rating, which would reflect the agency's confidence in the offeror's probability of successfully performing the contract as proposed. The solicitation advised that the evaluation of past performance would be based on information provided by the offeror in its proposal, as well as information contained in the Contractor Performance Assessment Reporting System (CPARS), and data obtained by the government from other sources. RFP amend. 8, § M, at 7-8.

The performance confidence assessment rating was to be based on the agency's review of both the relevancy and quality of the offeror's recent and past performance,<sup>1</sup> focusing on performance that was relevant to the technical acceptability subfactors and cost/price. That is, each past performance contract was to be given a relevancy and quality rating for each of the technical acceptability subfactors and cost/price factor, and these ratings were to result in an overall

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<sup>1</sup> Recent performance was defined as contracts that were active or completed in the 3 years preceding the date of the solicitation. RFP amend. 8, § M, at 7.

confidence rating for the proposal.<sup>2</sup> RFP amend. 8, § M, at 7-8; see AR, Tab 29, CAE First Round Discussions, at 65. The RFP stated that, in determining relevance, consideration would be given to the performance of efforts involving training systems that were “similar or greater in scope, magnitude and complexity” to the effort described in the RFP. In this regard, more recent and relevant past performance efforts were to have a greater impact on the performance confidence assessment ratings than less recent or relevant efforts. RFP amend. 8, § M, at 7-8.

The RFP advised that if the lowest-price, technically acceptable offer received a performance confidence assessment rating of substantial confidence, then that offeror would receive the award. Id. at 7. If the lowest-priced, technically acceptable offer did not receive a performance confidence assessment rating of substantial, then the RFP contemplated that the agency would perform a tradeoff between past performance and price to make a best value determination. Id.

Four proposals were received in response to the RFP, including proposals from CAE and L-3. Three of the four proposals were included in the competitive range. CAE proposed to subcontract particular portions of the contract to [DELETED]. CAE submitted past performance information on five contracts for itself (three where the firm performed as a prime contractor, and two where the firm performed as a subcontractor), five contracts for [DELETED], and three contracts for [DELETED].

Past performance was evaluated by a performance confidence assessment group (PCAG). The PCAG determined that the relevant contracts identified by CAE did not demonstrate a good representation of the company as a prime contractor on efforts of similar magnitude. As a result, the PCAG reviewed five additional contracts with relevance to training systems where CAE was the prime contractor. In addition, the PCAG considered information obtained from CPARS, as well as questionnaires and interviews with government program managers, the administrative contracting officer, procurement contracting officers, and contractors. AR, Tab 23, Proposal Analysis Report, at 94-95. Based on this information, the PCAG assessed relevancy and quality ratings for each of the identified past performance contracts under each of the technical acceptability subfactors and cost/price factor, and used these ratings to assess an overall performance confidence assessment rating for CAE’s proposal of satisfactory confidence. Id. at 104.

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<sup>2</sup> Possible performance confidence assessment ratings were substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. Possible quality ratings were exceptional, good, satisfactory, marginal, unsatisfactory, and neutral. (The evaluation record, however, reflects that the agency used the rating very good instead of good. AR, Tab 29, CAE First Round Discussions, at 61.) Possible relevancy ratings were very relevant, relevant, somewhat relevant, and not relevant. RFP § J, attach. 21, § M Rating Definitions.

During two rounds of discussions, the agency twice provided CAE with detailed analysis of the agency's past performance evaluation in the form of briefing slides and evaluation charts. The evaluation charts provided to CAE identified each of the contracts for CAE and its major subcontractors that the PCAG evaluated, including the five additional contracts not identified by CAE in its proposal.<sup>3</sup> The charts also included the relevancy and quality ratings assigned to each contract under each of the technical acceptability subfactors and cost/price factor, the performance confidence assessment ratings assigned to those subfactors and factor, and the resulting performance confidence assessment rating for the overall proposal. The charts show that a number of the contracts were determined to be only somewhat relevant or not relevant to the technical acceptability factors. AR, Tab 29, CAE First Round Discussions, at 65; Tab 30, CAE Second Round Discussions, at 21.

Narrative information accompanying the charts informed CAE that its proposal received an overall performance confidence assessment rating of satisfactory confidence. CAE was further advised that this overall satisfactory confidence rating was based on the proposal's receipt of only satisfactory confidence ratings for three of the five technical acceptability factors<sup>4</sup> and an unknown confidence rating for the cost/price factor. CAE also was informed that, although the firm proposed to perform [DELETED] percent of the effort here as the prime contractor, the agency was unable to find evidence that CAE had performed as a prime on efforts of similar magnitude. AR, Tab 29, CAE First Round Discussions, at 64-66; Tab 30, CAE Second Round Discussions, at 20-22.

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<sup>3</sup> CAE was also advised that the agency considered 30 CPARS, 7 questionnaires, and 9 interviews. AR, Tab 29, CAE First Round Discussions, at 64.

<sup>4</sup> The three technical acceptability subfactors where CAE's proposal received a satisfactory rating were program management, contractor logistics support, and change management. CAE's proposal received substantial confidence ratings for instruction/training and training system support centers. AR, Tab 29, CAE First Round Discussions, at 65.

In response to discussions, CAE did not challenge any of the evaluation ratings (other than to question the unknown confidence rating for cost/price), or make any revisions in its final proposal submission to address the agency's concerns.<sup>5</sup>

At the conclusion of discussions, CAE's and L-3's proposals were both found to be technically acceptable. As noted above, CAE's proposal received a rating of satisfactory confidence for past performance, and the firm proposed the lowest price of \$206 million. L-3's proposal received a rating of substantial confidence for past performance, and the firm proposed the second-lowest price of \$223 million. The source selection authority (SSA) reviewed the evaluation results and, because the lowest-priced offer did not receive a substantial confidence rating, he performed a past performance/price tradeoff. AR, Tab 24, Source Selection Decision, at 1-2.

The SSA noted that CAE's satisfactory confidence rating was due to the fact that many of its contracts were only somewhat relevant, CAE's experience as a subcontractor was on contracts of a smaller magnitude than required here, and the firm had only limited experience as a prime contractor in the relevant areas. In contrast, L-3's substantial confidence rating was based on the firm's successful performance as a prime contractor on very similar efforts to the RFP here. The SSA determined that L-3's superior past performance was worth the additional \$17 million, and he selected L-3 for award. *Id.* After receiving a debriefing, CAE filed this protest with our Office.

## DISCUSSION

CAE challenges various aspects of the agency's past performance evaluation, and alleges that the performance/price tradeoff and award determination was unreasonable.

The evaluation of past performance, including the agency's determination of the relevance and scope of an offeror's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation's evaluation criteria. National Beef Packing Co.,

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<sup>5</sup> In its comments on the agency report, CAE maintains that it did not believe it was entitled to respond to the agency's concerns since the contracting officer informed CAE that the past performance evaluation was complete and that no further information would be solicited or accepted regarding past performance. CAE's Comments at 18. The contracting officer denies saying that no further past performance information would be accepted. Agency Supplemental Report at 9. In any event, the agency, by letter dated August 31, 2010, requested a final proposal revision from the protester that reiterated the protester's past performance evaluation results, and this letter did not limit the areas to be revised. AR, Tab 30, CAE Second Round Discussions, at 1-7.

B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4; Command Enters., Inc., B-293754, June 7, 2004, 2004 CPD ¶ 166 at 4. A protester's mere disagreement with the agency's evaluation conclusions does not establish that an evaluation was unreasonable. Command Enters., Inc., *supra*.

CAE's protest predominantly attacks the agency's relevancy determinations of the firm's past performance. For example, CAE complains that the agency discounted CAE's subcontractor performance which led to lower relevancy ratings, considered contracts that were not identified by CAE in its proposal and then found some of them to be only somewhat relevant, and made other errors in evaluating relevant past performance. CAE then complains that these erroneous relevancy determinations were the determining factor for award. Based upon our review of the record, we find that each of CAE's challenges lack merit. Although we do not address each and every protest argument, we discuss several of them below.

For example, CAE contends that the agency unreasonably discounted two of its contacts because CAE performed the work as a subcontractor, and that the agency further distorted the evaluation results by considering five less relevant contracts where CAE was the prime contractor even though CAE did not identify these contracts in its proposal.<sup>6</sup> Protest at 2. However, the record shows that the agency reasonably evaluated CAE's past performance in light of the role it was proposed to perform here. For example, since CAE proposed to perform [DELETED] percent of the effort here as the prime contractor overseeing all facets of the training system, CAE's subcontractor performance was properly found to receive less than the maximum relevancy rating for program management.<sup>7</sup> Furthermore, as noted by the agency, CAE's subcontractor performance was on contracts of smaller scope, magnitude, and complexity than the effort here. To the extent the protester now disputes the agency's findings as to the relevancy of these contracts, we are

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<sup>6</sup> CAE also contends that the agency gave L-3 credit for work it did not perform, simply because it was a prime contractor. CAE Comments at 2. In support, it cites a single relevancy rating for a single contract under only one of five technical acceptability subfactors. *Id.* at 14. Even if CAE were correct that this aspect of the evaluation was flawed, the protester has not shown that a lowering of the relevancy rating in this one area would have had any impact on the evaluation. That is, the protester has not shown that it was prejudiced by the alleged error. *See Armorworks Enters., LLC*, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. To the extent that CAE challenges the evaluation of other aspects of L-3's past performance, we find the evaluation reasonable.

<sup>7</sup> CAE's subcontracts were rated relevant and somewhat relevant for program management, instead of the maximum rating of very relevant.

unpersuaded by its arguments, especially given that CAE failed to dispute any of the agency's relevancy findings during discussions.<sup>8</sup>

In addition, we find no error to the agency's consideration of additional contracts, not listed in CAE's proposal, where CAE was the prime contractor. Since the RFP announced that the agency would consider past performance information other than that provided in an offeror's proposal, and these additional contracts were somewhat relevant to the evaluation, we find this aspect of the evaluation unobjectionable.

CAE argues that it was unreasonable for the agency to rate its Air Education and Training Command Air Force Security Assistance Training (AETC AFSAT) contract as not relevant for contractor logistic support.<sup>9</sup> It also complains that the agency improperly considered CPARS reports for this contract, and failed to conduct discussions to resolved a conflict between the CPARS reports and CAE's proposal. According to CAE, its work on this contract is relevant to contractor logistics support. CAE's Comments at 16-18.

The record shows that, although CAE's proposal represented that the firm had performed contractor logistics support under this contract, the last four CPARS reports stated that no such work was performed. AR, Tab 6, Subtab 1, CPARS for AETC AFSAT Contract (stating "N/A" for logistics support); Contracting Officer's Statement at 32 (CPARS stated contractor logistics support was "not applicable" for AETC AFSAT contract). The protester was advised during discussions that this contract was rated not relevant for contractor logistics support, and it failed to

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<sup>8</sup> For example, CAE's contends that the agency erroneously considered overall contract value as a measure of magnitude, rather than the yearly value (which CAE calculates by dividing the overall contract value by the contract's duration). CAE Comments at 14-16. However, the RFP did not require the analysis CAE desires, and the protester has not convincingly shown that the agency's analysis was unreasonable.

<sup>9</sup> Contract logistic support was one of the technical acceptability subfactors for which past performance was evaluated.

dispute the evaluation findings.<sup>10</sup> Given CAE's silence on the matter, we find reasonable the agency's reliance on the CPARS reports as credible evidence that the contract was not relevant to the evaluation of contractor logistics support. CAE's disagreement with the agency's conclusion now is insufficient to show that the evaluation was unreasonable. See Command Enters., Inc., supra.

CAE also argues that the agency's past performance evaluation "completely ignore[d]" the program management experience of one of CAE's proposed subcontractors, [DELETED].<sup>11</sup> CAE contends that [DELETED]'s "very high ratings" in this area should have resulted in CAE receiving a higher performance confidence assessment rating in this area. Protest at 18; CAE Comments at 20-21.

As recognized by the agency, CAE did not propose to use any subcontractors in the program management role; rather, that role was reserved to CAE. AR, Tab 23, Proposal Analysis Report, at 98. [DELETED]'s role was limited to performing [DELETED] percent of the overall work, which included [DELETED], and managing and operating [DELETED] of the 11 sites where work was to be performed. Id. at 95; Protest at 8. Given [DELETED]'s limited role in managing sites, which the agency reasonably distinguished from the overall program management duties for the

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<sup>10</sup> CAE does not contend that it was unaware of the CPARS reports, only that it was unaware that the agency had considered them here. See Statement of CAE's Director of Training, at 1. CAE was provided an opportunity to comment on the CPARS findings when the reports were issued, responded positively to the CPARS reports, and did not challenge any of the findings. AR, Tab 6, Subtab 1, CPARS for AETC AFSAT Contract. Furthermore, CAE was informed by the RFP that the agency would consider CPARS information in the evaluation. RFP amend. 8, at 9. CAE was further advised during discussions that the agency found the AETC AFSAT contract to be not relevant to contractor logistics support, and CAE did not contest these findings. Based on this record, we find no merit to CAE's allegation that it was entitled to discussions to reconcile the CPARS findings with the firm's proposal representations. See Federal Acquisition Regulation (FAR) § 15.306(d)(3).

<sup>11</sup> Program management was one of the technical acceptability subfactors for which past performance was evaluated.



contract, we find the agency's decision not to give weight to [DELETED]'s past performance in program management to be unobjectionable.<sup>12</sup>

In sum, based on our review of the record and considering all of the protester's arguments, we find the agency's evaluation of past performance, including the relevancy determinations, to be reasonable and consistent with the RFP.

Finally, the protester alleges that, even if the agency's relevancy determinations were reasonable, there is "very little difference between the two offerors in terms of past performance" and, therefore, it was unreasonable for the agency to pay a \$17 million premium for such a "marginal difference" in past performance. Protest at 20-21.

As discussed above, the agency reasonably assigned CAE's proposal a performance confidence assessment rating of satisfactory confidence, and L-3's proposal a rating of substantial confidence. This was based on the fact that L-3 had performed as a prime contractor on significant contracts that were similar or greater in scope, magnitude and complexity to the requirements here. On the other hand, CAE's past contracts did not reflect past performance that was similar or greater in scope, magnitude and complexity to the requirements. Although CAE and its subcontractors had relevant past performance, the agency recognized that CAE proposed to perform the majority of the effort here as the prime contractor and the firm had limited prime contractor past performance in relevant areas. All in all, CAE's past performance did not warrant a higher than satisfactory confidence rating. AR, Tab 24, Source Selection Decision, at 1-2.

Here, the RFP stated that past performance was more important than cost or price in the evaluation, and the agency's evaluation was consistent with the RFP. In this regard, the agency reasonably concluded that L-3, with its substantial confidence

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<sup>12</sup> In describing the "measure of merit" for program management, the RFP refers to the performance of all government requirements described in the performance work statement, not just managing and operating sites. In fact, site managers are identified as only one of multiple parts of an acceptable management structure contemplated by the RFP. RFP amend. 8, § M, at 3. Nevertheless, even if the agency should have given [DELETED]'s site management experience some weight in the evaluation of program management experience, there is no reasonable possibility that consideration of the firm's experience would have altered CAE's performance confidence assessment rating in the evaluation. That is, based on the RFP's language, [DELETED]'s limited site management role, and CAE's lack of program management experience as a prime contractor in relevant areas, we cannot see how CAE would have received higher than the satisfactory confidence rating it received for program management. In other words, we cannot find that CAE was prejudiced, even if the agency erred in its evaluation of [DELETED]'s experience. See Armorworks Enters., LLC, supra.

rating, particularly as a successful prime contractor on very similar efforts, was worth the additional price premium. Although CAE disagrees with this assessment, it has not shown the tradeoff analysis to be unreasonable or inconsistent with the evaluation scheme.

The protest is denied.

Lynn H. Gibson  
General Counsel