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Decision

Matter of: Inter-Con Security Systems, Inc.

File: B-403538.8; B-403538.9

Date: January 10, 2012

Neil H. O'Donnell, Esq., Allan J. Joseph, Esq., Aaron P. Silberman, Esq., Thomas D. Blanford, Esq., Walter S. Chen, Esq., Lauren B. Kramer, Esq., and Dennis J. Callahan, Esq., Rogers Joseph O'Donnell, PLC, for the protester.
Terrence M. O'Connor, Esq., Seth C. Berenzweig, Esq., John W. Polk, Esq., Stephanie D. Wilson, Esq., and Kathryn M. Lipp, Esq., Berenzweig Leonard, LLP, for Akal Security, Inc., the intervenor.
C. Joseph Carroll, Esq., United States Marshals Service, for the agency.
Cherie J. Owen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals and the best value source selection is denied, where the record reflects that the evaluation and source selection were reasonable and consistent with the terms of the solicitation.

DECISION

Inter-Con Security Systems, Inc. protests the United States Marshals Service's award of eleven separate contracts to Akal Security, Inc. to provide court security officers (CSO) for federal judicial circuits 1-3 and 5-12 under request for proposals (RFP) No. DJMS-10-R-0022.

We deny the protest.

The Judicial Security Division of the Marshals Service is responsible for ensuring the safety of all federal courts and court employees in the United States and its territories against unauthorized, illegal, and potentially life-threatening activities. Agency Report (AR), Tab 14, Source Selection Plan, at 2. As part of this responsibility, the Marshals Service, through the RFP here, sought proposals to provide CSOs for 12 federal judicial circuits. The CSOs were to provide services such as entrance control (including operating security screening equipment); roving patrol; stationary post assignments; escort services for judges, court personnel,

jurors, or other designated individuals; parking and pedestrian control; and maintaining law and order. AR, Tab 2, RFP amend. 1, at C-6 to C-8.

The CSOs were to meet certain minimum qualification, performance, and training standards set forth in the RFP. AR, Tab 2, RFP amend. 1, at C-17 to C-39. Among these, CSOs have to possess at least three years of verifiable prior experience as a certified law enforcement officer, or its military equivalent, with general arrest authority,¹ id. at C-18, undergo a background investigation, id. at C-17, and undergo at least eight hours of training annually that was developed and conducted by the offeror, id. at C-25. The RFP also contained weapons proficiency standards that require contractors to test each CSO annually.² Id. at C-38 to C-39. In addition, CSOs have to undergo medical examinations as part of the overall clearance process, and they must be physically fit to meet all physical and performance requirements of the contract. Id. at C-25, C-35.

The solicitation contemplated award of separate contracts for each of the 12 federal judicial circuits for a 12-month base period, with four 12-month option periods. AR, Tab 9, RFP amend. 9, at 2. The total value of the procurement for all circuits is \$1.7 billion. Agency Report (AR), Tab 37a, Source Selection Recommendation Memorandum (SSRM), at 2. The RFP informed offerors that evaluation would be conducted on a best value basis, considering the following factors: technical ability to perform the statement of work, contract management, past performance, and price. AR, Tab 2, RFP amend. 1, at M-1. The solicitation further stated that technical merit was considered to be more important than price, but not significantly so. AR, Tab 2, RFP amend. 1, at M-1.

The RFP informed offerors that the non-price factors were worth a possible 100 points in the evaluation. AR, Tab 4, RFP amend. 4, at 3. In this regard, the technical factor was worth 65 points and had four subfactors: general understanding of the statement of work (SOW) (20 points), ability to recruit and furnish qualified applicants (15 points), ability to maintain required CSO standards (15 points), and develop and conduct annual training and weapons proficiency (15 points). Id. The contract management factor was worth a total of 15 points and had two subfactors: qualifications of key personnel (5 points), and corporate experience (10 points). The past performance factor was worth 20 points. Id.

The RFP also provided that the total evaluated price would be the determining factor for award among proposals that were considered substantially technically equal. That is, where the agency determined that the technical capabilities of each offeror were not significantly different among competing proposals, then the proposal with

¹ The CSOs are deputized by the Marshals Service. AR, Tab 2, RFP amend. 1, at C-10.

² New hires were required to be tested and certified prior to beginning duty.

the lowest evaluated price would be selected for award. Id. If the agency determined that there were significant technical differences among competing proposals for each circuit, then a more expensive proposal could be selected for award, if the agency determined that the value of the selected proposal was worth the price differential. Id.

In response to the RFP, the agency received 26 proposals, including from Akal and Inter-Con. AR, Tab 37a, SSRM, at 2. Both offerors proposed for all 12 federal judicial circuits.³ Id. at 12.

The technical evaluation board (TEB) met to evaluate proposals under the technical and contract management evaluation factors, and the chief of the agency's Office of Security Contracts conducted an evaluation of the offerors' past performance. As a result of these evaluations, the following point scores were assigned to the proposals submitted by Akal and Inter-Con:

		Akal	Inter-Con
Technical			
	General understanding of the SOW (20 points)	20	16
	Ability to recruit and furnish qualified applicants (15 points)	12	12
	Ability to maintain required CSO standards (15 points)	12	9
	Develop and conduct annual training and weapons proficiency (15 points)	12	9
Contract Management			
	Qualifications of key personnel (5 points)	5	5
	Corporate experience (10 points)	8	10
Past Performance		15.5	16.7
Total		84.5	77.7

AR, Tab 37b, Revised Final TEB Report, at 3; AR, Tab 37d, Past Performance Comparative Assessment, at 1.

³ Each offeror submitted one proposal for all circuits, with separate pricing for each circuit. In all protested circuits except the 8th, Inter-Con's proposals offered a price advantage ranging from 0.14 percent to 2.25 percent. AR, Tab 37a, SSRM, at 12. For the 8th Circuit, Akal's proposal offered a price advantage of 0.08 percent. Id.

In a detailed evaluation report, the TEB discussed in detail the basis for its evaluation scores, identifying strengths and weaknesses in each offeror's approach under the technical and contract management factors and subfactors. The TEB chair then performed a comparative analysis of proposals, again noting discriminating strengths and weakness of each proposal. Based on this analysis, the TEB chair concluded that Akal's proposal was "technically substantially better" than Inter-Con's proposal. AR, Tab 37c, Comparative Analysis of Technical Proposals, at 2. In support of this conclusion, the TEB chair explained that Akal's proposal contained several "unmatched strengths" and "added value items" that were not contained in Inter-Con's proposal and which provided a significant benefit to the government. E.g., id. at 2-4.

For example, the TEB chair determined that Akal demonstrated a slightly better understanding of the SOW, and its proposal included no-cost value added items in the areas of [deleted] and [deleted] that did not appear in Inter-Con's proposal. For example, Akal proposed to: [deleted];⁴ [deleted]. Id. at 3-4. As a result, the TEB chair concluded that Akal's proposal was "substantially better" than Inter-Con's under the ability to maintain required CSO standards, and develop and conduct annual training and weapons proficiency subfactors.⁵

In evaluating past performance, the agency solicited past performance evaluations from judicial security inspectors in all circuits. The agency received 68 evaluations of Akal for the eight circuits in which it was the incumbent, and 9 evaluations of Inter-Con for the two circuits in which it was the incumbent. AR, Tab 37d, Comparative Assessment of Past Performance. The agency evaluator averaged these ratings to come up with the score assigned to each proposal under the past performance factor.⁶ The agency also sought information from the past performance information retrieval systems (PPIRS) electronic database to determine that there

⁴ In contrast, Inter-Con offered to [deleted]. AR, Tab 37b, Revised Final TEB Report, at 15.

⁵ The TEB chair found Akal's and Inter-Con's proposals to be "substantially equal" under the ability to recruit and furnish qualified applicants, qualifications of key personnel, and corporate experience subfactors. AR, Tab 37c, Comparative Analysis of Technical Proposals, at 3, 5.

⁶ Before averaging the scores, the agency evaluator changed the rating scores given by the references when the scores were inconsistent with the narrative response provided by the reference. AR, Tab 26, Memorandum to File re: Past Performance Supplemental, at 1. The agency evaluator also upwardly adjusted several of the offerors' lower past performance scores after giving the firms an opportunity to address the adverse scores and reviewing their responses. See, e.g., AR, Tab 21e, Akal Past Performance Surveys, at 4; AR, Tab 21e, Akal Past Performance Surveys, at 4; AR, Tab 23a, Inter-Con Past Performance Surveys, at 2.

were no “grossly negative past performance issues,” and also considered offerors’ responses to adverse past performance. Id. at 1. Based on all of this information, the agency evaluator prepared a comparative assessment of the offerors’ past performance for the SSA to use in making the source selection decision. AR, Tab 37d, Comparative Assessment of Past Performance.

The past performance comparative assessment stated that Akal’s average past performance rating was 15.5 points out of a possible 20, and Inter-Con’s average rating was 16.7. Id. at 1. The agency evaluator noted that Inter-Con benefited by high ratings from references external to the Marshals Service, but that Akal received more favorable internal reference ratings. The assessment recognized that, because the number of internal (Marshals Service) past performance ratings for Akal greatly exceeded the number of responses received for Inter-Con, Akal received more negative and positive comments than did Inter-Con. However, the agency evaluator also recognized that both firms received excellent ratings for overall customer service, with some scoring inconsistencies for specific survey questions. Based on his consideration of all of the available information, the agency evaluator concluded that the past performance of Akal and Inter-Con was substantially equal. Id. at 1.

The contracting officer took the various analyses that had been performed and prepared an eighteen-page SSRM for the source selection authority’s (SSA) consideration. This SSRM provided the SSA with a comparative assessment of proposals under the technical, contract management, past performance, and price factors; and included the contracting officer’s source selection recommendation.⁷ AR, Tab 37a, SSRM. The SSRM recommended award to Akal based on the contracting officer’s conclusion that Akal’s proposals offered “substantial technical superiority and very small price differences” in Circuits 1, 2, 3, 5, 6, 7, 9, 10, 11, and 12, and “technical superiority and [a] lower price” in Circuit 8. AR, Tab 37a, SSRM, at 18.

The SSA considered all of the documents and information presented to him, and also consulted with the TEB to probe its conclusions. AR, Tab 38, Source Selection Decision, at 1. Based on this, the SSA concurred with the proposed awards to Akal. In support of this determination, the SSA identified four “value added” items that distinguished Akal’s proposal from the other offerors’ proposals: [deleted]⁸ and

⁷ Attached to the SSRM were the TEB’s final revised report, a comparative analysis of proposals prepared by the TEB chair, a comparative assessment of past performance, and a summary chart of the various analyses. AR, Tabs 37b-37e.

⁸ As part of his analysis, the SSA conducted a conference call with the members of the TEB. The SSA’s selection decision documents that, during the call, one of the members of the TEB (who is a Deputy U.S. Marshal, a professional law enforcement officer, and a firearms instructor) stated that Akal’s offer of [deleted] would provide a technical and tactical benefit. The Marshal’s professional opinion was that the
(continued...)

[deleted]. Id. at 1-2. The SSA stated that, in his opinion, the [deleted], by itself, would justify the slightly higher price of Akal's proposal. Id. at 2-3. The SSA concluded that this benefit was "a crucial, potentially life-saving enhancement that even if it were the only technical advantage of Akal's proposal over Inter-Con, it would justify the award of the contracts to Akal," despite the small price premium associated with that firm's proposal. Id. at 3-4.

The agency made award to Akal and this protest followed.

DISCUSSION

Inter-Con challenges various aspects of the agency's technical, past performance, and price evaluation, and alleges that the agency's source selection decision was unreasonable.

As a general matter, the evaluation of proposals is a matter within the agency's discretion. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. In reviewing protests challenging an agency's evaluation and source selection, our Office will not reevaluate proposals; rather, we will examine the record to determine only whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 7. Our Office affords particular deference to the technical expertise of agency personnel regarding judgments that involve matters of human life and safety. PEMCO World Air Servs., B-284240.3 et al., Mar. 27, 2000, 2000 CPD ¶ 71 at 7. A protester's mere disagreement with the agency's judgments does not render the evaluation unreasonable. SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 6.

As a part of our consideration of Inter-Con's protest, we have reviewed the pleadings, the evaluation materials, and the proposals submitted by Inter-Con and Akal. While we do not discuss each of the protester's numerous arguments, we have considered them all and find them to be without merit. We address a few of these arguments below.

(...continued)

[deleted] would [deleted]. AR, Tab 38, Source Selection Decision, at 3. Therefore, the Marshal stated that this benefit would enhance the security of the judiciary, the court family, the public, and the CSOs themselves. Id.

Technical Evaluation

Inter-Con protests the evaluation of its proposal under each of the technical subfactors. Among other things, Inter-Con challenges the SSA's determination that Akal's proposal was superior for providing [deleted]; [deleted]; [deleted]; and [deleted]. Inter-Con also contends that the agency did not meaningfully evaluate the most heavily-weighted technical subfactor (general understanding of the SOW), and failed to consider past performance in evaluating offerors' technical approaches. After reviewing the record, we find that Inter-Con's disagreement with the agency's technical evaluation, including each of the discriminating strengths that the agency assigned to Akal's proposal, does not afford a basis to sustain this protest.

For example, Inter-Con challenges the agency's assignment of a strength to Akal's proposal (under the technical subfactor for developing and conducting annual training and weapons proficiency) for offering to provide [deleted]. Inter-Con contends that the RFP permitted only two hours of weapons training and required that testing be conducted annually; therefore, Akal's proposal to provide [deleted] should have been downgraded for failing to comply with the solicitation's terms. Comments at 8-15. The protester also argues that the agency erred when it failed to credit Inter-Con's proposal with a strength for proposing to provide [deleted]. Id. at 15-18.

Based on our review of the record, we agree with the agency that Akal's proposal exceeded the solicitation's stated requirements by offering [deleted] instead of [deleted]. Although the protester claims that it thought the training requirements were a limit, not a minimum, the only RFP provisions that appear to support the protester's position relate to billing for training, and the agency reasonably concluded that Akal's proposal did not violate the limitations on billing.⁹ Consistent with the best value nature of this RFP, the agency reasonably credited Akal's proposal with a strength for exceeding the solicitation's stated requirements.¹⁰ The

⁹ The protester argues that Akal's proposal of additional training violates the RFP's statement that offerors could bill for only two hours of weapons qualification and training. However, we note that Akal's proposal offered the option of providing the [deleted]. AR, Tab 15, Akal's proposal, at 1-63. Further, the TEB Chair stated that the agency read Akal's offer to [deleted] to mean that [deleted]. Declaration of TEB Chair, at ¶ 5.

¹⁰ In another example, Inter-Con also contends that the agency unreasonably failed to award its proposal a strength for proposing to provide [deleted], in contrast to Akal's proposal, which provides for [deleted]. Comments at 23. Inter-Con submitted a sworn statement of a consultant stating that, in his opinion, [deleted] is superior and should have been considered a strength. Comments, Consultant Decl., at 2-3. We have considered the consultant's opinion, along with the entirety of the record, (continued...)

record also reflects that the SSA reasonably evaluated Inter-Con's training approach and determined that Akal's approach was superior.¹¹ AR, Tab 38, Source Selection Decision, at 3.

In another example, Inter-Con argues that the agency improperly considered Akal's proposed [deleted] as a strength (under the technical subfactor for developing and conducting annual training and weapons proficiency), arguing that this should have been considered under the contract management subfactor for qualifications of key personnel. Since the technical subfactor was weighted more heavily than the contract management subfactor (15 points versus 5 points), the protester contends that, to the extent that the [deleted] represented a strength at all, which Inter-Con disputes, it should not have had much impact on the evaluation as a whole because it should have been considered a strength under the least important subfactor. Comments at 20-21.

In the source selection decision, the SSA stated that Akal's proposal to [deleted] at no cost to the agency was a value added item that represented a strength under the technical subfactor because [deleted]. AR, Tab 37a, SSRM, at 7. Although the solicitation did not specifically require offerors to provide [deleted], it did impose technical requirements regarding CSO training, see AR, Tab 2, RFP at C-24, and we find that the [deleted] was reasonably considered as being logically related to Akal's approach to CSO training.¹² See Supp. AR at 5-6. As such, we find that the agency properly considered [deleted], and assessed Akal's proposal a strength for its approach, under the technical subfactor for developing and conducting annual training and weapons proficiency.

In yet another example, the protester argues that Akal's proposal to provide [deleted] should not have been considered a strength under the ability to maintain required CSO standards subfactor of the technical factor. The protester contends that Akal's proposed approach is nothing more than agreeing to provide the necessary staffing to comply with the solicitation's requirements to provide two physicians to complete CSO medical examinations within 21 days. Id. at 27. We disagree.

(...continued)

and find no basis to second guess the agency's determination that Akal's proposal was technically superior to Inter-Con's proposal.

¹¹ As noted above, the agency found that Inter-Con's proposed additional training was only for [deleted], which offers a more limited benefit to the government than Akal's proposal to provide [deleted]. AR, Tab 38, Source Selection Decision, at 3.

¹² An agency may consider matters that are reasonably and logically related to, or encompassed within, the stated factors. See, e.g., ORI Servs. Corp., B-261225, July 28, 1995, 95-2 CPD ¶ 55 at 2-3; Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229 at 4.

The solicitation required that the offeror designate two licensed physicians for each city in a given district where CSOs are assigned. AR, Tab 2, RFP amend. 1, at C-27. These physicians would perform medical examinations of CSOs, including new applicants. *Id.* at C-27 to C-29. For new applicants, the examination would need to be timely completed so that a new CSO application package could be sent to the agency within 21 days. *Id.* at C-13. Akal proposed to provide [deleted]. AR, Tab 38, Source Selection Decision, at 2.

In his source selection decision, the SSA found that Akal's approach of [deleted] was beneficial to the agency, because it provides a way to [deleted]. *Id.* at 2. We find the SSA's findings and conclusions in this regard to be reasonable and supported by the record. Inter-Con's disagreement with this conclusion does not provide a basis for sustaining the protest.

By way of another example, Inter-Con contends that the TEB did not meaningfully evaluate proposals under the technical subfactor for general understanding of the statement of work. Comments at 37-42. Inter-Con notes that the source selection plan contained only two general bullets for evaluating this subfactor, while the plan contained six to eight bullets for evaluating other subfactors. As a result of this lack of guidance, Inter-Con contends, the TEB performed only a superficial review of this subfactor, which resulted in an unreasonable evaluation. Comments at 37-38.

The agency argues, and we agree, that the agency's evaluation of the general understanding subfactor was reasonable. Specifically, the TEB report reflects the fact that the TEB found that Akal's proposal demonstrated an "extremely strong understanding and knowledge of the SOW," and evidenced a "very comprehensive understanding of the security and screening posts." AR, Tab 37b, Revised Final TEB Report, at 7. The fact that the source selection plan contained fewer bullets of guidance for evaluating this technical subfactor does not establish a violation of procurement law or regulation. Simply put, the protester's arguments provide no basis for sustaining the protest.¹³ See Globecom Sys., Inc., B-405303.2, B-405303.3, Oct. 31, 2011, 2011 CPD ¶ 243 at 10.

¹³ The protester also contends that the SSA disregarded the general understanding of the SOW subfactor when making the source selection decision. However, the record shows that the agency reasonably determined that Inter-Con's and Akal's proposals were substantially equal under this subfactor. Accordingly, in the SSA's source selection decision, the SSA properly focused on the subfactors where proposals were not equal. See Smiths Detection, Inc.; Am. Science & Eng'g, Inc., B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 16 (a source selection authority, in making a tradeoff analysis, may ultimately focus on a particular discriminator, even if it is not the most heavily weighted factor).

Finally, Inter-Con argues that the TEB was required to consider the firms' past performance in evaluating their technical approaches. Protest at 31-41, 60-62. The protester contends that, because the source selection plan stated that a rating of excellent should be assigned to proposals that offer "proven approaches," technical evaluators were required to consider firms' past performance in determining whether the firm had successfully implemented that approach in the past. Protest at 34. For example, under the technical subfactor for ability to maintain required CSO standards, Inter-Con contends that the agency's assignment of a rating of very good to Akal's proposal was unreasonable because, if the technical evaluators had evaluated the past performance survey responses, they would have realized that Akal has had trouble in the past maintaining CSO standards, which requires a conclusion that Akal's approaches under that evaluation subfactor are not "proven." Protest at 60.

The agency argues, and we agree, that the RFP permitted, but did not require, the agency to consider past performance references in evaluating technical proposals. In this regard, RFP stated only that the technical evaluation "may" be augmented by information gathered from past performance references. See AR, Tab 2, RFP amend. 1, at M-3. Given this discretionary language, we conclude that the agency did not err in evaluating Akal's proposal under the technical subfactors without regard to the results of the past performance surveys. See Martin Elecs., Inc.; AMTEC Corp., B-404197 et al., Jan. 19, 2011, 2011 CPD ¶ 25 at 13-14.

Past Performance

Inter-Con raises several challenges to the agency's evaluation of past performance. Among other things, the protester argues that the evaluation scale used by the agency was improper, the evaluation of Akal's past performance was unreasonable, and the SSA's consideration of past performance was flawed. Comments at 54-71.

With regard to the evaluation scale, the protester complains that the agency assigned points to past performance in a manner that minimized the differences between offerors. Comments at 66-67; Protest at 89-94. Although the scale used by the agency was published in the RFP,¹⁴ Inter-Con contends that the use of this scale was improper because it was only for use by past performance references when completing survey responses, and not for use by the agency in evaluating offerors' past performance. Comments at 67. We find no merit to the protester's arguments.

¹⁴ The RFP informed offerors that past performance surveys would request that references rate past performance using the following point scores: 0 points--unsatisfactory; 1 point--poor; 2 points--fair; 3 points--good; 4 points--excellent; 5 points--outstanding. AR, Tab 2, RFP amend. 1, attach. 1(F), at 1.

Section L of the RFP informed offerors that they would be evaluated on the criteria set forth in the past performance survey form. AR, Tab 2, RFP amend. 1, at L-12. Offerors were on notice, at the time of issuance of the RFP, that the rating scale in the past performance surveys would be used, to at least some extent, to evaluate past performance. It is unclear how the protester believes that the rating scale was acceptable for use by the past performance references as an accurate portrayal of their views of the firms' past performance, but when used by the agency, the same scale resulted in a skewed representation of the same information. The agency's use of the scale identified in the RFP was reasonable. This protest ground is denied.

Inter-Con also challenges the agency's evaluation of Akal's past performance on several grounds, and argues that it was unreasonable for the agency to find both offerors's past performance to be "substantially equal." Among other arguments, the protester complains that the agency evaluator failed to perform a "qualitative review" of past performance survey responses, did not make the SSA aware of (or misled the SSA concerning) problems with Akal's past performance, and did not provide the SSA with a proper comparative assessment of past performance. Based on these and other arguments, the protester complains that the SSA's consideration of past performance in making the best value determination was unreasonable. Comments at 54-65, 68-71. We find no merit in these challenges.

The record confirms that a thorough and detailed qualitative review and comparative assessment of past performance was performed and provided to the SSA, and this assessment provided the SSA with a reasonably accurate portrayal of each offeror's past performance. AR, Tab 37d, Comparative Assessment of Past Performance, at 1. In this regard, the comparative analysis reflects the evaluator's review and analysis of past performance survey results, the offerors' responses to adverse ratings, and information from the PPIRS electronic database. See id.

The comparative assessment stated that Akal's average past performance rating was 15.5 points out of a possible 20 points, and Inter-Con's average rating was 16.7 points. The assessment also stated that, because the number of internal (Marshals Service) past performance ratings for Akal greatly exceeded the number of responses received for Inter-Con, Akal received more negative and positive comments than did Inter-Con. The comparative assessment informed the SSA that Akal was both praised and criticized by different judicial security inspectors when scoring the same questions. Id.

The comparative assessment also noted that one of Inter-Con's two external references rated Inter-Con as outstanding, the highest possible rating. However, since the offerors' internal references were considered to be the most relevant, the comparative assessment also considered those references as a group, finding that Akal averaged 15.5, while Inter-Con averaged 15.2 when looking solely at internal references. Based on all of this, the comparative assessment concluded that the past performance of Akal and Inter-Con was substantially equal. Id. at 1.

Based on the entire record before us, we find that the SSA was sufficiently apprised of the offerors' past performance. We further find that, although the SSA did not specifically discuss past performance in his source selection decision, he acted reasonably in relying on the evaluator's conclusion (which is reasonable and supported by the record) that Akal's and Inter-Con's past performance were substantially equal. See Pan Am World Serv., Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446 at 22. The protester's arguments that the SSA did not properly consider past performance in making his best value decision, or that such consideration should have resulted in a different outcome, are unpersuasive. We have considered all of the protester's arguments, and none of them provide a basis to sustain this protest.

Price Evaluation

The protester contends that the SSA effectively disregarded price as an evaluation factor in making his source selection decision. Comments at 44-53. The protester's assertion is mainly based on a statement in the contracting officer's SSRM:

There is no way to ascribe a dollar value to the unmatched advantages of the Akal proposal compared to the Inter-Con proposal, but it is relevant to note that in five of the ten contested circuits, the difference is less than one percent, in four circuits the difference is between one and two percent, and the largest difference [is] 2.25 [percent]. Additionally, it is my understanding that price for the CSO program is largely driven by Collective Bargaining Agreements that are not fully negotiated for the later years thus even further lessening confidence in a price based decision.

AR, Tab 37a, SSRM, at 13-14; see Comments at 45. Inter-Con argues that in evaluating price, the agency should have focused on the price difference in only the discretionary portion of the price that was not set by collective bargaining agreements that were incorporated into the RFP. Comments at 46, 48-53. Inter-Con argues that it had a [deleted] percent price advantage in the discretionary portion of the prices, which the agency unreasonably disregarded in making its award decision. Id. at 48.

The RFP here informed offerors that for award purposes, the agency would evaluate each circuit and the offerors' overall prices for the base period and its option periods. AR, Tab 2, RFP amend. 1, at M-2. The protester's argument that the agency should have disregarded the solicitation's language and instead considered only the discretionary portion of the prices flies in the face of the clear requirements of the RFP. This protest ground is denied.

Best Value Tradeoff Decision

Inter-Con argues that the best value tradeoff decision is flawed because the SSA relied on a “variety of mistakes in the underlying evaluation,” many of which are discussed above in this decision. Supp. Comments at 53-54. As discussed above, the protester’s numerous protest arguments are without merit and do not establish that the evaluation was unreasonable or inconsistent with the solicitation.

The record here confirms that the SSA performed a comprehensive analysis in reaching his best value decision. The SSA received and reviewed a lengthy and detailed SSRM prepared by the contracting officer which contained a comparative analysis of the technical proposals, a summary of the past performance comparative analysis, a price comparison, and source selection recommendations. AR, Tab 37a, SSRM. The SSA also received and reviewed the TEB’s final revised report, a comparative analysis of the technical proposals prepared by the TEB chair, a comparative assessment of past performance, and a chart summarizing the comparative analysis of technical proposals.¹⁵ AR, Tabs 37b-37e.

The record shows that, consistent with the evaluation criteria, the SSA fully considered technical discriminators, as well as the price differences between the two proposals, and reasonably determined that the technical superiority of Akal’s

¹⁵ Given the detail of the agency’s evaluation documents and the comparative assessment of the proposals presented to and reviewed by the SSA, we cannot agree with the protester that by adopting the board’s findings and the contracting officer’s recommendations, the SSA failed to exercise his independent judgment in the source selection. The SSA here reasonably exercised his judgment based on his review of the agency evaluators’ findings and recommendations. See Foresight Science & Tech., Inc. B-297910.2, B-297910.3, Nov. 30, 2006, 2006 CPD ¶ 187 at 6 n.8.

proposal was worth the price premiums that ranged from 0.14 percent to 2.25 percent in each circuit. AR, Tab 38, Source Selection Decision, at 4. We find that the SSA's tradeoff decision was reasonable.¹⁶

The protest is denied.

Lynn H. Gibson
General Counsel

¹⁶ Inter-Con's protest included a copy of a poem that the protester's counsel states was anonymously mailed to him, and which the protester contends constitutes evidence of impropriety. The SSA submitted a signed declaration stating that the first time he ever saw the poem was after the current protest was filed; he is not the author of the poem, nor does he know who the author is; the poem does not accurately represent his role in the procurement process or his independent assessment of proposals; his independent assessment and the basis for his award decisions are contained in the source selection decision memorandum; and he stands "firmly and resolutely behind" his source selection. AR, Tab 39, Declaration of Source Selection Authority, Oct. 24, 2011 at 1-2. Further, the agency states that a copy of this correspondence has been referred to the agency's Office of Inspection and the Department of Justice's Office of Inspector General for appropriate action. AR at 22 n.2. The anonymous poem does not provide a basis for sustaining the protest.