



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Aerosol Monitoring & Analysis, Inc.

File: B-296197

Date: June 30, 2005

David S. Cohen, Esq., Catherine K. Kroll, Esq., John J. O'Brien, Esq., and Rowena E. Laxa, Esq., Cohen Mohr LLP, for the protester.

Janet N. Repka, Esq., and Andrew Bramnick, Esq., Department of Defense, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency improperly evaluated awardee's technical proposal is denied where the record shows that the agency reasonably gave awardee evaluation credit for past performance of companies and key personnel that were proposed to perform the contract services.

DECISION

Aerosol Monitoring & Analysis, Inc. (AMA) protests the award of a contract to Industrial Hygiene & Training, LLC (IH&T) under request for proposals (RFP) No. HQ0095-04-R-0050, issued by the Department of Defense (DoD), for industrial hygiene, safety, and environmental services. AMA argues that DoD's evaluation of the awardee's past performance was unreasonable.

We deny the protest.

The RFP, issued as a total small business set-aside, contemplated the award of a fixed-price, indefinite-quantity, indefinite-delivery contract for a base period with 4 option years. RFP at 122. The contractor will be responsible for providing comprehensive industrial hygiene, safety and environmental services at the Pentagon and other DoD controlled spaces. Award was to be made to the offeror whose proposal represented the best value to the government, considering price and technical quality. The RFP stated that proposals would be evaluated in two areas: technical and price, with the technical area being the most important consideration but price would be a significant factor. The technical area was comprised of three evaluation factors in descending order of importance: (1) past performance,

(2) technical approach (contains two subfactors), and (3) management approach. RFP at 103, 125. The RFP also established that price would be evaluated for completeness, realism, and reasonableness. *Id.* at 126-7.

With regard to the past performance factor, each offeror was to provide information regarding its performance of at least five contracts similar in size and complexity to the solicited services that were completed within the past 5 years. To evaluate past performance, the agency stated its intent to obtain information from the past performance references identified in each proposal, with the agency considering the quality and relevance of the offeror’s past experience. RFP at 123, 125.

The agency received several proposals and, after evaluating them and affording firms an opportunity to make oral presentations, assigned the following adjectival ratings to the proposals submitted by AMA and IH&T (the only proposals relevant here)¹:

	IH&T	AMA
Past Performance/Risk	Average/significant confidence	[deleted]
Technical Approach/Risk	Average/significant confidence	[deleted]
Management Approach/Risk	Average/significant confidence	[deleted]
Overall Technical	Average/significant confidence	[deleted]
Ranking	2	3
Evaluated Price	[deleted]	[deleted]

AR exh. 8, Proposal Analysis Report, and exh. 7, Technical Evaluation Committee (TEC) Report. Based on these evaluation results, the source selection authority determined that IH&T’s proposal reflected the best value to the government and made award to that firm. AR exh. 10, Source Selection Decision. AMA filed this protest following a debriefing provided by the agency.²

The protester challenges the agency’s evaluation of IH&T’s proposal as “average/significant confidence” under the past performance evaluation factor on the basis that IH&T is a newly formed entity with limited experience, arguing that it was

¹ The technical factors were evaluated on an adjectival basis—exceptional (greatly exceeds requirements), above average (exceeds all requirements), average (meets all requirements), marginal (may meet requirements), or unacceptable (fails to meet requirements). Risk was assessed under each factor as either high confidence (no doubt exists), significant confidence (little doubt exists), confidence (can successfully perform with some government oversight), little confidence (substantial doubt exists), or no confidence (extreme doubt exists). Agency Report (AR) exh. 5, Source Selection Plan, at 15.

² After the protest was filed, DoD determined that, based on the urgent and compelling need for the services, continued performance of the contract was in the best interest of the government. AR exh. 18, Justification to Continue Performance.

unreasonable for IH&T to have received a rating other than neutral. As support, AMA states that IH&T was established less than 2 weeks prior to the issuance of the RFP; therefore, the firm had no past performance history to evaluate much less sufficient past performance that would entitle IH&T to an “average/significant confidence” rating. Protest at 5.

The predicate to Aerosol’s arguments is its view that the agency improperly considered the past performance history of IH&T’s employees and/or corporate partners. We disagree. Generally, an agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm’s proposal demonstrates that the resources of the parent or affiliated company will affect the performance of the offeror. Universal Bldg. Maint., Inc., B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 6; Phillips Nat’l, Inc., B-253875, Nov. 1, 1993, 93-2 CPD ¶ 252 at 6 (rejecting protester’s argument that only the “actual awardee” was entitled to list prior contract for purpose of past performance). The relevant consideration is whether the resources of the parent or affiliated company—its workforce, management, facilities or other resources—will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. NAHB Research Ctr., Inc., B-278876.2, May 4, 1998, 98-1 CPD ¶ 150 at 4-5.

Here, the record shows that the agency recognized that IH&T had no experience of its own but the evaluators considered the past performance history of the awardee’s three partners—M.A. Cecil & Associates, Inc. (Cecil), Comar Associates, Inc. (Comar), and All American Environmental Services, Inc.(All American). AR exh. 6, TEC Rating Sheets, Questionnaires, and Notes. In this regard, IH&T’s proposal stated that it

is a Limited Liability Corporation (LLC) that was created to combine the experience, abilities and strength of three companies that have long histories of providing industrial hygiene, safety and environmental services to the Department of Defense. For more than twenty years, the Partners of IH&T provided these services as independent companies, often in joint ventures with each other. Recently, the Presidents of each company combined forces, incorporating the staff and resources of each company to form IH&T, LLC to provide the manpower, expertise and strength that will be required for engagements of this size and scope. While the corporate structure and name reflect the creation of a new entity, the managing partners and staff are the same highly qualified professionals who have provided industrial hygiene, safety and environmental services . . .

AR exh. 4, IH&T’s Proposal, at 3-1.

IH&T's proposal provided elsewhere that the "organizational structure of IH&T allows [the firm] to have a senior partner dedicated to each area of task responsibility for this program." *Id.* In addition, IH&T's proposal specifically indicated that all of its past performance contracts are "multi-year contracts awarded to the companies owned by the three partners of IH&T." AR exh. 4, IH&T's Proposal, at 1-5. The consideration of the three partners' past performance here was consistent with the Federal Acquisition Regulation (FAR), which specifically permits agencies "to take into account past performance information regarding predecessor companies, [or] key personnel, who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement." FAR § 15.305(a)(2)(iii).

In addition, the fact that IH&T has no past performance history of its own need not have resulted in a lower past performance and higher risk rating, as contended by AMA. As noted above, the awardee's proposal unequivocally provides that each of the three partners, as well as their personnel and resources, would be involved in the performance of the contract. Thus, the proposal did provide a basis for the agency to consider the experience of the firm's three partners--Cecil, Comar, and All American--in evaluating the past performance of IH&T. Battelle Mem'l Inst., B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 22. Moreover, the record makes clear that Cecil, Comar, and All American each have a long history of performing industrial hygiene, safety, and environmental services, and AMA does not question these companies' record of successful past performance in this regard, which the agency, based on references received by the evaluators, evaluated as consistently positive. Accordingly, on the basis of the record here, we find no basis to question the agency's evaluation of IH&T's proposal under the past performance evaluation factor.³

The protest is denied.⁴

Anthony H. Gamboa
General Counsel

³ AMA also objects that its proposal was misevaluated under the technical approach evaluation factor with respect to emergency food sanitation inspection services. Protest at 6. In the agency's report, DoD addressed this issue in full; however, AMA did not substantively respond to the agency's position in its comments on the report. We deem this allegation to have been abandoned. Goode Constr., Inc., B-288655 et al., Oct. 19, 2001, 2001 CPD ¶ 186 at 4.

⁴ After receiving the agency's report, AMA raised a supplemental basis for protest, arguing that IH&T failed to comply with the Limitation on Subcontracting clause in the solicitation. Our Office will address this issue in a separate decision.