



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: Sherrick Aerospace

File: B-310359.2

Date: January 10, 2008

Gary L. Rigney, Esq., Gary L. Rigney Law Office, for the protester.
Michael A. Hordell, Esq., Sean P. Bamford, Esq., and Heather Kilgore Weiner, Esq.,
Pepper Hamilton LLP for Sierra Lobo, Inc., an intervenor.
Brian E. Toland, Esq., and Bruce D. Ensor, Esq. Department of the Army, for the
agency.
Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging evaluation of offerors' proposals is denied where the record supports the reasonableness of the agency's evaluations and source selection decision.
 2. Agency's consideration of past performance in its assessment of proposals under a business management evaluation subfactor did not result in prejudice where the record shows that the balance of agency's award rationale still favored the awardee.
 3. Protest challenging evaluation of awardee's past performance is denied where agency reasonably considered the past performance of the awardee's proposed subcontractor.
-

DECISION

Sherrick Aerospace protests the award of a contract to Sierra Lobo, Inc. under request for proposals (RFP) No. W31P4Q-06-R-006, issued by the Department of the Army, Army Material Command, for test planning, evaluation and documentation. The protester argues that the agency improperly evaluated offerors' technical proposals and past performance.

We deny the protest.

BACKGROUND

The RFP sought test planning and evaluation support services for missile systems, subsystems and components at the United States Army Developmental Test Command, Redstone Arsenal, Alabama, including test plans and procedures development, acquisition program documentation, detailed planning, design, and assessment, and other support activities. Offerors were required to propose labor, materials, transportation, and incidental support for the solicitation requirements. The solicitation anticipated award of a cost plus fixed-fee, indefinite-delivery/ indefinite-quantity contract, with a 1-year base term, and four 1-year options. The competition was restricted to participants in the Small Business Administration's 8(a) program for small, disadvantaged businesses.

Offerors were advised that they would be evaluated on the following evaluation factors: business management, technical, past performance risk, and cost. Offerors were to be evaluated under the business management evaluation factor on the basis of charts to be discussed during oral presentations, based on nine subfactors.¹ RFP § M-2.2.c(1). For the technical evaluation factor, offerors were to be evaluated on the basis of a whitepaper responding to a sample task for test planning and evaluation of air-to-ground missiles, based on eight subfactors.² *Id.* § M-2.2.c(2). Offerors' proposed costs were to be evaluated to determine a most probable cost (MPC) to the government.

The RFP stated that award would be made to the responsible offeror whose proposal provided the "best value" to the government. The RFP stated that the business management and technical evaluation factors were of equal importance, and were more important than past performance and cost combined. *Id.* § M-2.2.a.

¹ The business management subfactors are as follows: (1) process for assigning workload, (2) process to minimize costs, (3) proposed personnel, (4) organizational structure, (5) recruitment/retention, (6) labor/materiel tracking, (7) contacts with defense and testing community, (8) strategic plan analysis, (9) process to ensure safe working environment. Subfactors 1-3 were of equal importance; subfactors 4-6 were of equal importance, though less important than the first three subfactors; subfactors 7-9 were of equal importance, but were less important than the first six. RFP § M-2.2.c(1).

² The technical subfactors are as follows: (1) environmental tests, (2) resources for test plan document, (3) electronic document management, (4) allocation of test missiles tests, (5) sequence of tests, (6) test methodology, (7) document generation process, (8) test schedule planning. Subfactors 1-3 were of equal importance; subfactors 4-7 were of equal importance, though less important than the first three subfactors; subfactor 8 was of the least importance. RFP § M-2.2.c(2).

The agency received nine proposals by the January 9, 2007, due date. The agency convened a technical evaluation committee (TEC), cost area team (CAT), and past performance evaluation group (PPEG) to evaluate offerors' proposals. Each of these evaluation teams produced reports which were referenced and incorporated into the Army's final selection decision, which was approved by the source selection authority (SSA). The agency's final evaluation ratings for Sherrick's and Sierra Lobo's proposals was as follows:

	SHERRICK	SIERRA LOBO
BUSINESS MANAGEMENT FACTOR	EXCELLENT	EXCELLENT
1. Process for assigning workload	Excellent	Excellent
2. Process to minimize costs	Excellent	Excellent
3. Proposed personnel	Excellent	Excellent
4. Organizational structure	Good	Good
5. Recruitment/retention	Excellent	Excellent
6. Labor/materiel tracking	Excellent	Excellent
7. Contacts with defense/testing community	Excellent	Excellent
8. Strategic plan analysis	Good	Good
9. Process to ensure safe working environment	Good	Good
TECHNICAL FACTOR	EXCELLENT	EXCELLENT
1. Environmental tests	Excellent	Excellent
2. Resources for test plan document	Excellent	Good
3. Electronic document management	Excellent	Excellent
4. Allocation of test missiles for each test	Good	Excellent
5. Sequence of tests	Good	Excellent
6. Test methodology	Excellent	Excellent
7. Document generation process	Excellent	Excellent
8. Test schedule planning	Excellent	Excellent
PAST PERFORMANCE	Low Risk	Low Risk
PROPOSED COST	[deleted]	[deleted]
MOST PROBABLE COST	\$46,340,977	\$46,183,811

Agency Report (AR), Tab E, Source Selection Decision (SSD), at 53-60.³

³ The agency used an evaluation scheme of excellent, good, satisfactory, and unacceptable for the business management and technical evaluation factors; past
(continued...)

The selection decision identified Sherrick's and Sierra Lobo's proposals as excellent overall, and as the most competitive, and compared the two proposals in a final tradeoff determination. First, with regard to the past performance evaluation factor, the Army concluded that although both offerors had low past performance risk, Sierra Lobo's proposal "shows substantially more relevant performance history as a prime contractor for major Testing and Evaluation . . . cost-reimbursement contracts than the Sherrick proposal." Id. at 53.

Next, the Army determined that while very close, Sierra Lobo's proposal was superior to Sherrick's under the business management and technical evaluation factors. The selection decision noted that, although the offerors' had various strengths and weaknesses under the business management and technical evaluation factors, a "[p]roper analysis to determine which proposal offers the best value to the government cannot end at merely counting the number of adjectival ratings relating to major and minor advantages." Id. at 54. The Army discussed each offeror's strengths and weaknesses under the factors, but concluded that there was no basis to clearly distinguish between their proposals, aside from a single, overall discriminator. Specifically, the Army concluded that Sierra Lobo's "more relevant performance history as a prime contractor" gave a higher degree of confidence that the company could successfully perform the contract. Id. The selection decision further found that because "past experience can be an indicator of both performance risk and proposal risk, it would appear that [Sierra Lobo is] the more experienced offeror of the two as a firm experienced with the business management issues implicit with large government testing and evaluation contracts." Id.

The Army selected Sierra Lobo's proposal for award, based on the following rationale:

Sierra Lobo has demonstrated an overall superior proposal under the Business Management and Technical area. In addition, the past performance of Sierra Lobo acting as a prime contractor with significant T&E government contracts is more advantageous to the government. The [most probable cost] calculations also favors Sierra Lobo, even though the cost difference is small. Based upon a totality of the relative strengths and weaknesses of the proposals, Sierra Lobo therefore offers the best value to the government.

Id. at 60.

(...continued)

performance was evaluated on the basis of risk, with ratings of high, moderate, low, or unknown risk.

The agency advised Sherrick of the award determination on September 7, 2007. Sherrick requested a debriefing, which was scheduled for September 19. On September 17, Sherrick filed a protest with our Office. On September 18, Sherrick requested that the Army's debriefing be delayed until September 25. On September 21, the Army requested that we dismiss the protest as premature because the protest was filed prior to Sherrick's required debriefing.⁴ In this regard, our Bid Protest Regulations state that where, as here, a debriefing is required, "the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held." Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2007). We dismissed the protest on September 25. The agency provided a debriefing to Sherrick on September 25. On October 3, Sherrick filed this protest.

DISCUSSION

As a general matter, Sherrick raises numerous challenges to the Army's evaluation of proposals based on a comparison of the number of strengths and weaknesses identified in each offeror's proposal, rather than the agency's determination regarding the relative importance or weight of those strengths and weaknesses.⁵ For example, as discussed further below, Sherrick argues that while the Army evaluated both offerors as each having three "major strengths" under the process for assigning workload subfactor of the business management evaluation factor, the agency

⁴ A debriefing is required if the competition was conducted under Federal Acquisition Regulation (FAR) part 15. The FAR provides that "[a]n offeror, upon its written request received by the agency within 3 days after the date [of notification of contract award] shall be debriefed and furnished the basis for the selection decision and contract award." FAR § 15.506(a)(1).

⁵ Sherrick also argues that the evaluation record is incomplete because the Army did not retain copies of the worksheets produced by individual evaluators. In order for us to review an agency's evaluation of proposals, an agency must have adequate documentation to support its judgment. Northeast MEP Servs., Inc., B-285963.5 et al., Jan. 5, 2001, 2001 CPD ¶ 28 at 7. While an agency is not required to retain every document or worksheet generated during its evaluation of proposals, the agency's evaluation must be sufficiently documented to allow review of the merits of a protest. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. Here, the Army explains that the reports of the three evaluation teams represent the consensus judgments of the individual evaluations, and that the SSA relied upon these reports in her selection decision. Furthermore, the selection decision discusses the consensus reports in detail and fully explains the rationale for selecting Sierra Lobo's proposal for award. On this record, we conclude that the agency has provided an adequate record to allow our Office's review of the procurement and the protester's challenges.

focused on a single discriminator as the “only advantage” presented by either proposal. Protester’s Comments on the AR at 4.

To the extent that Sherrick argues that the selection decision did not accurately tally the number of strengths and weakness for each proposal, or that the selection decision focuses on specific discriminators between the proposals instead of their evaluation ratings, these arguments are unavailing. The evaluation of proposals and the assignment of adjectival ratings should generally not be based upon a simple count of strengths and weaknesses, but upon a qualitative assessment of the proposals consistent with the evaluation scheme. See Smiths Detection, Inc., B-298838, B-298838.2, Dec. 22, 2006, 2007 CPD ¶ 5 at 5-6. Moreover, it is well established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision-making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. Where an agency reasonably considers the underlying bases for the ratings, including advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation, the protesters’ disagreement over the actual adjectival or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. See id.; National Steel & Shipbuilding Co., B-281142, B-281142.2, Jan. 4, 1999, 99-2 CPD ¶ 95 at 15.

The record here shows that the agency had a rational basis for its evaluations and source selection determination. Although our decision does not address every challenge raised by Sherrick regarding the number of strengths and weaknesses or adjectival ratings assigned to each offeror’s proposal, we have reviewed all of the issues raised and find that none has merit.

Past Performance Evaluation

Sherrick argues that the Army’s evaluation of Sierra Lobo’s past performance was unreasonable. First, the protester argues that Sierra Lobo’s proposal did not demonstrate experience with military testing contracts, and therefore Sierra Lobo’s proposal should not have been rated as superior to Sherrick’s under this evaluation factor. Sherrick also argues that the agency improperly considered the past performance record of Sierra Lobo’s proposed subcontractor, Amtec Corp., in its evaluation of Sierra Lobo’s proposal.⁶

The RFP, however, did not require offerors to demonstrate specific military testing experience. Instead, the RFP stated the Army would evaluate the “past performance of the offerors and their proposed major subcontractors as it relates to the probability of successfully performing the solicitation requirements.” RFP § M-2.3.c.

⁶ Amtec was the incumbent on the predecessor contract.

The agency's evaluation, therefore, required an exercise of judgment as to whether an offerors' past performance was relevant to the solicitation's requirements.

Here, the Army determined that Sierra Lobo had relevant experience with missile tests based on the company's contracts with NASA for engineering support and testing services. AR, Tab Q, Sierra Lobo Past Performance Evaluation, at 3-4. Further, the agency determined that Sierra Lobo's primary subcontractor, Amtec, had relevant past performance based on Amtec's contracts with the Army for test evaluation and support of missile and aviation systems at the Redstone Arsenal. *Id.* at 5-6. The protester provides no basis to challenge the reasonableness of the agency's determination that the past performance cited in Sierra Lobo's proposal for itself and its subcontractor were relevant to the solicitation requirements.

To the extent that the protester argues that the agency could not consider Amtec's past performance in its evaluation of Sierra Lobo's proposal, we disagree. The RFP here clearly contemplated consideration of a subcontractor's past performance; in fact, offerors were expressly required to submit past performance information for any proposed subcontractor performing more than 25% of the contract requirements. RFP § L-25.c.1.1(3). Our Office has recognized that agencies are permitted to consider a proposed subcontractor's past performance, absent a specific solicitation provision prohibiting the consideration of such information. *AC Techs., Inc.*, B-293013, B-293013.2, Jan. 14, 2004, 2004 CPD ¶ 26 at 3. Furthermore, the FAR states that agencies' past performance evaluations "should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition." FAR § 15.305(a)(2)(iii); see also *Singleton Enters.*, B-298576, Oct. 30, 2006, 2006 CPD ¶ 157 at 3-4 (concluding that the agency had incorrectly assumed that a solicitation that was silent as to the consideration of proposed subcontractors' past performance prohibited such consideration). On this record, we find no merit to the protester's arguments.

Next, Sherrick argues that Sierra Lobo should have received a lower past performance rating because it did not submit information demonstrating past performance under statement of work (SOW) task 3.17.2, displays and exhibits. The Army's evaluation of Sierra Lobo's record showed that "[a]ll tasks were performed except for one (1) task." AR, Tab Q, Sierra Lobo Past Performance Evaluation, at 1. The RFP, however, did not state that offerors were required to demonstrate past performance with regard to each area of the SOW. The record here shows that the agency considered the fact that Sierra Lobo did not demonstrate past performance under this SOW task, but nonetheless determined that Sierra Lobo's proposal was superior to Sherrick's based on the discriminator discussed above. On this record, the protester's disagreement with the Army's judgment provides no basis to sustain the protest.

Business Management and Technical Evaluation

The protester argues that the agency unreasonably concluded that Sierra Lobo's proposal was superior to Sherrick's under several subfactors of the business management evaluation and technical evaluation factors. As discussed above, the Army evaluated the offerors under the separate evaluation factors (which were of equal importance), but ultimately considered the proposals under a combined evaluation of both factors, and the agency favored Sierra Lobo's proposal because of its proven past performance and experience. We agree with the protester that the Army improperly considered offerors' past performance in evaluating their proposals under the business management factor; however, as discussed below, the record shows that Sherrick was not prejudiced by this evaluation. Overall, we conclude that the Army's evaluation provides no basis to sustain the protest.

First, Sherrick contends that the Army's evaluation under the subfactor titled "process for assigning workload," under the business management factor, was inconsistent with the stated evaluation criteria because the agency considered Sierra Lobo's past performance in its evaluation. The selection decision noted that both offerors were rated as "excellent" under this subfactor, but concluded that "the only advantage as to either offeror under this subfactor is the fact that Sierra Lobo actually has successfully performed as a prime contractor for numerous Test and Evaluation contracts." AR, Tab E, SSD, at 55.

The protester correctly notes that the RFP contained separate evaluation factors for offerors' past performance records, and for offerors business management and technical proposals. In this regard, the solicitation did not state that offeror's past performance records would be considered in the evaluation of the business management and technical proposals.

Solicitations must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation. FAR § 15.304. Thus, to the extent that the agency considered past performance in the evaluation of the offerors' proposals under the business management evaluation factor, this was a deviation from the stated evaluation criteria. *See, e.g., GlassLock, Inc.*, B-299931, B-299931.2, Oct. 10, 2007, 2007 CPD ¶ 216 at 5-6 (sustaining protest where agency improperly considered offerors' past performance in evaluation of technical factors that did not contemplate consideration of such information). We do not believe, however, that Sherrick was prejudiced by the agency's evaluation. In this regard, our Office will not sustain a protest absent a showing of competitive prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving award. *McDonald-Bradley*, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; *see also, Statistica, Inc. v. Christopher*, 102 F.3d 1577, 1681 (Fed. Cir. 1996).

Here, the agency's rationale that Sierra Lobo's experience and past performance record rendered its proposal superior under the process for assigning workload

subfactor was the same as the agency's overall rationale for concluding that Sierra Lobo's proposal was superior to Sherrick's under the business management and technical evaluation factors. Thus, although the protester's argument focuses on the consideration of past performance regarding a single subfactor, the record shows that the performance confidence issue was also the only discriminator between the offerors' proposals under the business management and technical evaluation factors. As a result, correction of the apparent double-counting of Sierra Lobo's past performance advantage under the business management and technical evaluation factors would mean that the Army's evaluation drew no distinctions between the offerors' proposals under those factors. As discussed above, however, the agency concluded that Sierra Lobo's proposal was superior under the past performance evaluation factor, and had a lower-evaluated most probable cost--thus the remaining discriminator in the selection decision still favored Sierra Lobo. On this record, we think that there is no possibility that the agency's evaluation prejudiced Sherrick.

With regard to Sherrick's remaining challenges to the evaluation of the offerors' proposals under the business management and technical evaluation factors, we find that none has merit. Thus, consistent with our discussion above, the protester's argument regarding the consideration of past performance under the business management and technical evaluation factors provides no basis to disturb the agency's overall award decision. We discuss the balance of Sherrick's primary challenges below.⁷

Sherrick contends that, as a general matter, the Army unreasonably considered the role of Amtec in its evaluation of Sierra Lobo's proposal under the business management evaluation factor. The protester contends that while the RFP stated that the performance risk evaluation would be based on the "past performance of the offerors and their proposed major subcontractors," the proposal risk evaluation would consider "an offerors' proposed approach in meeting the requirements of the solicitation." RFP § M-2.3.c. Sherrick contends that the difference between these two provisions means that the Army could not consider the experience of Amtec in evaluating Sierra Lobo's proposal because Sierra Lobo, and not Amtec, was the "offeror." We disagree. The RFP stated that offerors' proposals would be evaluated based on their proposed approach to the solicitation requirements and the sample task. To the extent that the protester argues that the agency was required to omit any consideration of the role that subcontractors would play in offerors' proposed performance of the contract, as detailed in their proposals, such an argument clearly lacks merit.

⁷ Sherrick has raised numerous collateral challenges including, as discussed above, disagreements with the agency's tally of the number of strengths and weaknesses for each proposal, and the assignment of adjectival ratings. We have reviewed all of these challenges and find that none has merit.

Next, Sherrick argues that the Army's evaluation of proposals under the subfactor titled "proposed personnel," under the business management factor, improperly credited Sierra Lobo with the experience of its proposed contract manager. Sherrick alleges that this individual not employed by Sierra Lobo at the time it submitted its proposal, but was instead an employee of Ametc. The RFP, however, did not state that offerors were required to have current employment agreements or commitments with proposed key personnel at the time proposals were submitted. In the absence of such a provision, the agency was not required, as Sherrick suggests, to downgrade or reject Sierra Lobo's proposal.

Additionally, the protester alleges that the proposed contract manager was an employee of Amtec, and that it was improper to credit Sierra Lobo with the experience of one of its subcontractor's employees. This argument, however, is merely an extension of Sherrick's argument that an agency is generally prohibited from considering the experience of a subcontractor in the evaluation of a proposal. For the same reasons discussed above, we conclude that this argument lacks merit.

Next, the protester contends that the agency unreasonably criticized Sherrick's approach under the subfactor titled "allocation of test missiles," under the technical evaluation factor. The RFP required offerors to detail in their whitepaper proposals how they would approach a sample testing requirement. The RFP advised offerors that they would be allocated 18 missiles to perform the hypothetical test, and were instructed to "[s]pecify the quantity of missiles allocated for each test under the sample task and provide your rationale for those quantities." RFP § L-25.B.d.4.

In its whitepaper, Sherrick proposed to test 12 of the 18 available missiles, keeping 6 in reserve to use as spares or for additional testing. AR, Tab J, Sherrick Proposal, Vol. 1, at 8. The Army determined that Sherrick's proposal was "good" under this subfactor, based on its proposed launcher configuration, as well as presented a "minor advantage" for its approach to grouping the missiles into distinct temperature paths. AR, Tab E, SSD, at 36. The Army also concluded, however, that Sherrick's proposal had a "minor disadvantage, due to its proposal to only utilize 12 of the 18 missiles," because this approach "could reduce the assessed confidence of the results and would not take full advantage of the ability to lower risk to the Government/Customer on this sample task." *Id.* at 59. Sherrick argues that the increased confidence that the testing of additional missiles would provide was not worth the additional cost of such an approach and also that the benefit of a reserve outweighed the increased level of confidence from testing all missiles.

We think the Army's criticism of Sherrick's approach was reasonable in light of the RFP's requirement that offerors justify their rationale for the number of missiles allocated for the sample test. Although the Army found that Sherrick's proposal had a minor advantage for certain elements of its approach to the allocation of missiles, the proposal also had a minor disadvantage based on Sherrick's decision to utilize only 12 missiles for testing. In essence, the Army believed that the benefit of increased confidence in the missile tests outweighed the benefit of cost savings or a

reserve of untested missiles. Sherrick's disagreement with the agency's judgment provides no basis to sustain the protest.

Finally, the protester argues that the agency unreasonably determined that Sherrick's proposal had a weakness under the subfactor titled "sequence of tests," under the technical factor, based on its proposal to perform a "loose cargo" test. The Army concluded that Sherrick's approach of performing this test early in the sequence of tests was a weakness because it could result in damage to the missiles before other tests were complete. AR, Tab E, SSD at 59-60. The protester does not rebut the agency's criticism of its proposed test sequence, but instead contends--with no support for its assertion--that Sierra Lobo's proposal followed the same approach. Although our Office issued a protective order in connection with this protest, under which counsel for Sherrick was provided access to Sierra Lobo's proposal and the agency's evaluation documents, the protester does not cite any evidence to support its position regarding Sierra Lobo's proposal. We have also reviewed the record and find no support for the protester's argument. Thus, the protester's unsupported allegation provides no basis to sustain a protest. See, e.g., McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 24.

Source Selection Decision

Finally, the protester argues that the Army improperly weighed the evaluation factors in its selection decision, and that the agency also failed to adequately justify its rationale for selecting Sierra Lobo's proposal. As discussed above, the protester's objections to the evaluation of offerors' proposals and the selection decision focuses on the number of strengths and weaknesses assigned to each proposal, and certain discriminators identified between the proposals. Our review, however, finds that the SSA in her selection decision considered the full evaluation record and reasonably exercised her discretion in identifying a overall discriminator that merited selecting Sierra Lobo's proposal for award. On this record, the protester provides no basis to challenge the reasonableness of the selection decision.

The protest is denied.

Gary L. Kepplinger
General Counsel