



G A O

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

**Comptroller General
of the United States**

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: Enercorp Federal Services Corp.

File: B-290184.2

Date: September 23, 2002

James S. DelSordo, Esq., for the protester.

David C. Rickard, Esq., Defense Threat Reduction Agency, for the agency.

Paul I. Lieberman, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency made award on the basis of an unstated evaluation criterion is denied where the allegation is contradicted by the record, which establishes that the evaluation and award determination were consistent with the solicitation criteria.

DECISION

Enercorp Federal Services Corp. protests the award of a contract to BAI, Inc. under request for proposals (RFP) No. DTRA01-02-R-0002, issued by the Defense Threat Reduction Agency (DTRA). Enercorp asserts that the agency relied on an allegedly unstated evaluation criterion as the basis for its decision to award to BAI.

We deny the protest.

The RFP, initially issued on November 20, 2001, as an 8(a) set-aside, sought proposals for technical and analytical support for the Nuclear Treaties Program Office. The incumbent contractor did not participate in the competition; two proposals were received, one from Enercorp, the other from BAI; the agency selected the BAI proposal for award. Enercorp protested that award decision to our Office, objecting to the evaluation of Enercorp's past performance and to the agency's use of an artificial "normal workload" factor in evaluating the proposed prices. The protest was dismissed as academic after the agency determined to take corrective action in the form of giving Enercorp an opportunity to provide additional past performance information concerning one contract for which information had been unavailable when the proposals were evaluated, and recalculating the proposed prices, after which the agency would perform a reevaluation with the understanding that if a different award determination was warranted, it would terminate BAI's

contract. As a result of the corrective action, the agency again made a determination that the award to BAI was appropriate, and this protest followed.

The RFP sets forth as evaluation factors mission capability (to be assessed on a pass/fail basis), past performance, and price, stating that past performance is significantly more important than price, and that the agency would make “an integrated past performance/price tradeoff assessment and award to the technically acceptable offeror whose performance assessment and price provides the best value to the Government.” RFP § M(a), (d). Under the reevaluation performed as a result of the corrective action, both proposals continued to be evaluated as technically acceptable, that is, “pass,” under mission capability, with BAI’s total contract price reevaluated as \$4,789,360, and Enercorp’s as \$4,533,066. Agency Report (AR), Tab 18, Proposal Analysis Report, at 13. Under the initial evaluation, “normal workload” prices had been calculated as \$3,529,950 for BAI and \$3,619,121 for Enercorp. AR, Tab 9, Final Source Selection Evaluation Briefing, Feb. 20, 2002, at 15. The overall past performance evaluations remained unchanged, with BAI’s proposal evaluated by the source selection evaluation board (SSEB) as “Very Good/Significant Confidence,” while Enercorp’s proposal was evaluated as “Satisfactory/Confidence.” The SSEB recommended BAI’s proposal for award as providing the best value on the basis that the RFP provided that “past performance [was] significantly more important than price,” and “BAI’s higher past performance rating and the evaluators’ higher confidence in BAI’s ability to successfully perform all required services were significantly more important than the minimal price difference of 5.7 [percent].” AR, Tab 18, Proposal Analysis Report, at 13. The SSA adopted this recommendation and concurred with the selection of BAI for award, noting also that “[a]ward of this contract to BAI will provide the Government with knowledgeable, experienced personnel who are fully capable of successfully performing all elements of this Statement of Work immediately upon contract award.” AR, Tab 20, Source Selection Decision, at 4.

Enercorp alleges that the agency improperly applied an evaluation criterion that is not provided for under the RFP evaluation criteria, and in particular asserts that the agency report confirms that “the Government’s award decision is clearly based on the Government’s belief that only BAI would deliver the incumbent workforce to the Government.” Protester’s Comments at 5. In our view, this assertion is without merit.

The evaluation of technical proposals, including the evaluation of past performance, is a matter within the contracting agency’s discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Symtech Corp., B-285358, Aug. 21, 2000, 2000 CPD ¶ 143 at 4. Our Office will question an agency’s evaluation of proposals only if it lacks a reasonable basis or is inconsistent with the RFP’s stated evaluation criteria or procurement statutes or regulations. While an agency is required to identify the significant evaluation factors and subfactors, it is not required to identify the various aspects of each factor which might be taken into

account as long as those aspects are intrinsically related to the RFP's stated criteria. Advanced Data Concepts, Inc., B-280967.8, B-280967.9, June 14, 1999, 99-2 CPD ¶ 19 at 4.

Here, under the past performance factor, the RFP called for a performance confidence assessment representing an evaluation of the offeror's present and past work record to assess the government's confidence in the offeror's probability of successfully performing as proposed. The solicitation directed offerors to submit information on up to five recent relevant contracts. RFP at 40. The evaluation criteria called for a relevance determination based on similar project complexity, scope, type and schedule, with more recent and relevant performance to be given greater weight. RFP § M(f). The RFP describes "Very Good/Significant Confidence" as a determination that "[b]ased on the offeror's performance record, little doubt exists that the offeror will successfully perform the required effort," while "Satisfactory/Confidence" constitutes a determination that "some doubt exists that the offeror will successfully perform the required effort." Id.

BAI submitted a list of six contracts for itself and its subcontractor, four of which were evaluated as relevant, one as slightly relevant and one as highly relevant.¹ BAI's performance assessment was exceptional under five of these contracts, and very good under one. The SSEB states that based on BAI's excellent performance ratings in conjunction with the fact that "one contract was determined to be highly relevant, with the majority of contracts considered relevant," BAI's proposal "was rated as Very Good for the past performance factor." AR, Tab 18, Proposal Analysis Report, at 9. Enercorp submitted a list of five contracts for itself and its subcontractor, two of which were evaluated as relevant, two as slightly relevant, and one as not relevant. Enercorp's performance assessment was exceptional under four of these contracts and very good under one. The SSEB states that Enercorp's rating was "affected by the lower overall relevancy of the past performance efforts," and that the evaluators "weighed the high performance ratings . . . with the lower overall relevancy and

¹ Enercorp objects that the agency "evaluated six past performance references from BAI, but only the five required references from [the protester]." Protester's Comments at 5. The agency has explained that three of the contracts listed by BAI are identical, and received identical references consisting, as is indicated in the Proposal Analysis Report, of "three relevant contracts [that] were all for the same customer and were virtually identical as they were each one-year efforts, two of which were follow-on sole-source contracts." AR, Tab 18, Proposal Analysis Report, at 8. In these circumstances we find unobjectionable the agency's assessment that BAI submitted a past performance list that essentially amounted to four contracts. Further, Enercorp has not shown, nor does the record reflect, any benefit to BAI or detriment to Enercorp arising from the agency's consideration of all of the contracts listed in BAI's proposal. In short, we see no basis to object to the agency's evaluation of the listed contracts.

determined that some doubt existed regarding the [protester's] ability to successfully perform the required effort," resulting in a rating of "Satisfactory for the past performance factor." Id. at 10.

Enercorp does not directly object to the reasonableness or propriety of the respective past performance evaluations contained in the record. Rather, Enercorp alleges that the agency's past performance evaluation and award determination were actually driven by the motive that "from the beginning the Government wished to continue employing the services of the incumbent employees [and for] some reason . . . came to the conclusion that only BAI could provide these employees." Protester's Comments at 9. According to the protester "BAI was given credit for proposing to provide the incumbent workforce where no such requirement or evaluation criteria existed." Id. at 8.

As the protester notes, while the RFP did not require any identification of proposed staff, both offerors stated in their proposals that they intended to hire the incumbent staff to perform the contract. Protester's Comments at 2, n.2. We need not address the question of whether an offeror's ability to retain qualified incumbent employees who had been successfully performing the precise services being procured is intrinsically related to past performance evaluation criteria designated as assessing confidence in an offeror's probability of successfully performing as proposed, even without having been specified as a past performance subfactor, because the record simply does not support Enercorp's contention that the agency based its evaluation and award determination on an assessment of this retention ability. Citing the source selection decision, Enercorp asserts that "the record clearly demonstrates that the SSA based its award decision on this [incumbent retention] claim by BAI." Protester's Comments at 10. Because the protester specified as support two pages in the source selection decision which do not contain any references to incumbent retention, the protester was provided an opportunity in a telephone conference to identify the particular language on which it was relying. The protester indicated two references. The first consists of the SSA's statement under his summary of the evaluations that "[t]he BAI proposal met all the requirements of all subfactors. BAI demonstrated a complete understanding of the requirement and the ability to provide experienced personnel to perform the work." AR, Tab 20, Source Selection Decision, at 2. The second consists of the SSA's statement in his conclusion that "[a]ward of this contract to BAI will provide the Government with knowledgeable, experienced personnel who are fully capable of successfully performing all elements of this Statement of Work immediately upon contract award." Id. at 4.

The simple answer is that nothing in these statements substantiates or supports the assertion that retention of the incumbent work force was the determining evaluation and award factor, or even that the likelihood of such retention was specifically considered by the SSA. There is nothing in either quote which refers to the likelihood of BAI's retaining the incumbent employees, and the reference to BAI's ability to provide experienced personnel capable of immediately successfully

performing is consistent with the stated intent of the past performance evaluation criterion to assess whether a firm's performance was indicative of the probability that it could successfully perform this contract. The agency's determination that BAI had successfully performed contracts that were more relevant encompasses an assessment that BAI could provide better experienced personnel. In light of this evaluation, the SSA determined that "BAI's higher past performance rating and the evaluators' higher confidence in BAI's ability to successfully perform all required services were significantly more important [than] the minimal total price difference (5.7%) over the proposal submitted by Enercorp." AR, Tab 20, Source Selection Decision, at 4. This tradeoff and award determination were reasonable, substantiated, and consistent with the evaluation criteria, and nothing in the record supports the protester's assertion that the evaluation and award were actually driven by the agency's application or consideration of an unstated criterion reflecting an intent to ensure retention of the incumbent workforce.²

The protest is denied.

Anthony H. Gamboa
General Counsel

² Enercorp also asserts that the award determination reflects the agency's "clear bias . . . for BAI over [Enercorp]." Protester's Comments at 7-8. Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Therefore, where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and that the agency's bias translated into action that unfairly affected the protester's competitive position. Dynamic Aviation-Helicopters, B-274122, Nov. 1, 1996, 96-2 CPD ¶ 166 at 4. Here, the protester's bias allegation is based in substantial part on the alleged application of an unstated evaluation criterion which, in light of our determination of the reasonableness of the agency evaluation, does not provide any evidence of bias. Fishermen's Boat Shop, Inc., B-287592, July 11, 2001, 2001 CPD ¶ 123 at 5. The other alleged evidence of bias consists of the agency's initial evaluation of the respective prices using a "normal workload" methodology which resulted in a smaller price differential in favor of Enercorp than the final differential under the corrective action, and the agency's failure to stay performance by BAI. Neither allegation provides any basis to attribute prejudicial motives to the agency, and certainly does not evidence that the agency took adverse action that unfairly affected Enercorp's competitive position. Accordingly, the bias allegation is unfounded and without merit.