



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: Del-Jen International Corporation

File: B-297960

Date: May 5, 2006

William A. Roberts, III, Esq., Richard B. O’Keeffe, Esq., and William J. Grimaldi, Esq., Wiley Rein & Fielding LLP, for the protester.

Thomas P. Humphrey, Esq., Amy E. Laderberg, Esq., and Matthew J. Bonness, Esq., Crowell & Moring LLP, for GS21, LLC, an intervenor.

Maj. Jeffrey Branstetter and Thomas E. Sheldon, Esq., Department of the Air Force, for the agency.

Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement that provided for a pass/fail technical evaluation and a tradeoff between past performance and price, with past performance being significantly more important than price, agency reasonably awarded a contract to the higher-priced offeror where the agency found, based upon the protester’s performance of its incumbent contract, that the protester presented more performance risk than the awardee.

DECISION

Del-Jen International Corporation protests the award of a contract to GS21, LLC under request for proposals (RFP) No. FA5240-05-R-0012, issued by the Department of the Air Force for supply and transportation services at Andersen Air Force Base, Guam. Del-Jen alleges that the agency improperly evaluated its proposal, as well as the awardee’s proposal, and thus reached an improper source selection decision.

We deny the protest.

The Air Force issued the solicitation on June 29, 2005, seeking proposals for supply and transportation services at Andersen Air Force Base, Guam, in the following five functional areas: (1) supply; (2) vehicle fleet management (including maintenance); (3) vehicle operations; (4) traffic management office; and (5) combat readiness. The RFP provided for the award of a fixed-price contract for a 2-year base period, plus four 1-year option periods, as well as the opportunity to earn additional “award term”

periods based on successful performance. Award was to be made on a “best value” basis to the firm whose proposal was determined to be the “most advantageous to the Government, price and other factors considered.” RFP at 78.

The RFP set forth three evaluation factors: (1) technical capability, (2) past performance, and (3) price. Under the RFP, technical capability was to be evaluated solely to determine whether or not an offeror met minimum standards—a pass/fail evaluation. Acceptable proposals under the technical capability factor would then be subject to a tradeoff between past performance and price with past performance considered “significantly more important than price.” RFP at 80.

The solicitation provided for the assignment of performance confidence ratings to offerors based on their past performance. There were six possible ratings, including, as it relates to the protest, exceptional/high confidence (“Based on the offeror’s performance record, essentially no doubt exists that the offeror will successfully perform the required effort”); very good/significant confidence (“Based on the offeror’s performance record, little doubt exists that the offeror will successfully perform the required effort”); and satisfactory/confident (“Based on the offeror’s performance record, some doubt exists that the offeror will successfully perform the required effort”).¹ RFP at 80-81. The RFP advised that the past performance evaluation would be accomplished by reviewing offerors’ relevant present and recent past performance; the solicitation defined recent past performance as work performed within the last 3 years. “Relevant” was defined as “information that has a logical connection with the following: Ground Passenger Transportation, Cargo Transportation Service, Vehicle Management, Vehicle Maintenance, Personal Property, Passenger Travel, Supply Support, Supply Mobility and Contingency Supply.” RFP at 80. The RFP further provided that relevance would also be determined based on dollar value and size of the work performed, and stated that “relevant past performance may be considered more favorably than less relevant performance.” Id.

The RFP indicated that, in evaluating past performance, the agency would consider information obtained from various sources, including, but not limited to, “offeror-provided references, Past Performance Information Retrieval System (PPIRS), Defense Contract[] Management Command (DCMC) channels, and interviews with program managers and contracting officers or other sources known to the Government.” Id. In order to facilitate the past performance evaluation, the RFP required offerors to submit with their proposals a list of relevant contract references, with specific information for each reference, including, among other things, the contracting agency/customer, contract dollar value, period of performance, and “[c]omments regarding any known performance deemed unacceptable to the

¹ The other ratings were: neutral/unknown confidence; marginal/little confidence; and unsatisfactory/no confidence.

customer, or not in accordance with the contract terms and conditions.” RFP at 73. Offerors were required to explain how the contracts performed in connection with their references were relevant to the RFP’s requirements, which might “include a discussion of efforts accomplished by the offeror to resolve problems encountered on prior contracts” Id.

To the extent an offeror’s past performance record reflected performance problems, the RFP stated that the Air Force would consider “the number and severity” of the problems and corrective actions taken. It further stated that “[o]fferors will have the opportunity to address any negative or adverse past performance information received during this evaluation (subject to the restrictions of FAR 15.306(e)(4)), for which they have not had an opportunity to address in the past.” RFP at 81.

Seven proposals were received by the August 30, 2005 closing date. Five were determined to be technically acceptable, including those of GS21 and Del-Jen. In evaluating offerors’ past performance, the Air Force assigned GS21 a performance confidence rating of very good/significant confidence, while Del-Jen received a rating of satisfactory/confident. Based on consideration of three of the five remaining proposals—one proposal was determined to have an unreasonable price and another had been assigned a “neutral” past performance rating—the source selection authority (SSA) selected GS21’s higher-rated, higher-priced (\$55,108,688) proposal, as representing the best value to the government, as opposed to the lower-rated and lower-priced proposals of Del-Jen (\$53,178,688) and the third remaining offeror. Upon learning of the agency’s decision to make award to GS21, Del-Jen requested and received an agency debriefing and then filed its protest with our Office.

Technical Evaluation

Del-Jen challenges the agency’s evaluation of its proposal in several respects. With regard to the technical evaluation, Del-Jen argues that the Navy did not adhere to the pass/fail evaluation scheme set forth in the RFP, but rather penalized Del-Jen for not proposing more than the minimum standards and innovative solutions, which was manifested through a lowering of Del-Jen’s past performance score. In reviewing a protest of an agency’s proposal evaluation, our review is confined to a determination of whether the agency acted reasonably and consistent with the terms of the solicitation and applicable statutes and regulations; it is not our role to reevaluate proposals. The protester’s mere disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. Hanford Env’tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4.

As support for its contention, Del-Jen relies on statements allegedly made by the Air Force during its debriefing. According to Del-Jen, during the debriefing, the Air Force stated that “minimal success is not what we’re looking for” and “we’re looking beyond the minimum for innovative and creative ways of doing the job.” Protest

at 14. Based on these statements Del-Jen surmises that the Air Force employed a “secret evaluation criterion, which measured [Del-Jen’s] technical solution beyond the explicitly stated minimum standards.” Id.

The agency maintains that it evaluated Del-Jen’s proposal under the technical factor solely on a pass/fail basis, and to the extent the statements alleged by Del-Jen were made during its debriefing, they “reflect[ed] the Air Force’s intent to award a contract to [the] offeror that offered the best value to the Government, not as a comparison of technical proposals.” Agency Report, Tab 2, Contracting Officer’s (CO) Statement of Facts, at 3.

To the extent the remarks alleged were in fact made during the debriefing, they are unclear and perhaps were, understandably, misconstrued by the protester.² Nevertheless, Del-Jen’s reliance on these statements is misplaced. Our Office is primarily concerned with the evaluation record, not comments made during a debriefing, since a debriefing is only an explanation of the agency’s evaluation and source selection decision, not the evaluation or decision itself. EER Sys., Inc., B-290971.3, B-290971.6, Oct. 23, 2002, 2002 CPD ¶ 186 at 13; Tulane Univ., B-259912, Apr. 21, 1995, 95-1 CPD ¶ 210 at 5-6.

Here, contrary to Del-Jen’s assertions otherwise, there is no evidence in the record that the agency evaluated offerors’ technical proposals on other than a pass/fail basis. According to Del-Jen, the Air Force’s improper technical evaluation is evidenced by the Air Force’s evaluation of its past performance. Specifically, Del-Jen contends that the improper downgrading of its proposal for failing to propose innovative solutions or a “higher quality product” is evidenced by the fact that the Air Force considered the “quality” of Del-Jen’s performance on its prior contracts when it evaluated Del-Jen’s past performance, as opposed to simply considering the degree of doubt as to whether Del-Jen would or would not get the job done. Protester’s Supplemental Comments at 5. This argument, however, is wholly unpersuasive given the nature of the past performance evaluation, which in this case was designed to consider whether an offeror would “successfully perform,”

² Del-Jen opines that the alleged misevaluation under the technical factor was the result of misleading instructions given to the evaluators through a briefing document, stating that “technical capability and past performance [are] significantly more important than price.” AR, Tab 6, Source Selection Briefing, at 4. According to Del-Jen, this statement led the evaluators to believe that the technical evaluation was not merely a pass/fail determination, but rather required a comparative evaluation. Del-Jen, however, failed to note that the briefing document also clearly informed the evaluators that in evaluating offerors’ technical proposals, they were to “rate each proposal as technically acceptable or not technically acceptable,” thus leaving no doubt as to the proper basis of the technical evaluation. Id.

not, as Del-Jen suggests, to simply determine whether an offeror would or would not “get the job done.” By the terms of the RFP, the past performance evaluation was qualitative in nature. The logical extension of Del-Jen’s interpretation of the solicitation would be to reduce the past performance evaluation to a mere pass/fail analysis, a result clearly not intended by the solicitation.

Past Performance

Del-Jen challenges the Air Force’s past performance evaluation. Regarding its own evaluation, Del-Jen contends that, contrary to the provisions of the RFP, the Air Force did not provide Del-Jen with an opportunity to address negative past performance information to which it had not previously had the opportunity to respond. Del-Jen further argues that the weaknesses identified in the past performance evaluation of its proposal were not documented, not supported by the record, and inconsistent with Del-Jen’s “exceptional” past performance. As to the evaluation of GS21’s past performance, Del-Jen argues that the Air Force improperly evaluated the relevance of GS21’s past performance, failed to properly consider “multiple flaws” in GS21’s past performance, and unequally evaluated offerors’ past performance by considering certain issues in the evaluation of Del-Jen’s past performance, while ignoring the same issues in GS21’s past performance evaluation.

At the heart of Del-Jen’s past performance evaluation challenge is the Air Force’s consideration of Del-Jen’s performance as the incumbent contractor under the current Andersen supply and transportation services contract. The record reflects that the Air Force did in fact consider Del-Jen’s performance as the incumbent contractor on the Andersen contract, albeit based on the evaluators’ personal knowledge of Del-Jen’s performance, and through their discussion of five 2005 contract deficiency reports issued in connection with Del-Jen’s performance under the Andersen contract, as well as their discussion of “status of service” delivery summaries, which rated Del-Jen’s performance in various performance categories for fiscal years 2004 through July 5 of fiscal year 2005. AR, Tab 2, CO Statement, at 6. As a general matter, the record considered by the Air Force reflects that Del-Jen has had significant performance problems, as assessed by the Air Force, in its performance of the Andersen contract.

Specifically, the first contract deficiency report reflected numerous cited failures in tracking delayed maintenance, resulting in a drop in the “vehicle in commission” rate to 56 percent capability of handling heavy aircraft—below the 90 percent capability required under the contract—“which caused severe mission degradation to Andersen’s fire fighting capabilities.” AR, Tab 2, attach. 1. The second deficiency report noted violations of the “terminal security program,” a quality control concern. AR, Tab 2, attach. 2. The third report indicated that Del-Jen had failed to keep proper account of equipment, updates were not provided in a timely manner, and despite requests to be informed where standards could not be met, Del-Jen failed to provide information until the government identified defects during inspections. The

fourth report noted performance problems with Del-Jen's accounting for and maintaining supplies in accordance with shelf-life limitations, a quality control concern in the Air Force's view, and further noted that Del-Jen failed to implement corrective actions. The fifth report was based on a finding that classified items, which were described as "extremely important" for security issues, were identified as missing during an inspection, and further indicated that Del-Jen had failed to implement corrective actions. *Id.* The Air Force's monthly pass/fail summary reports of status of delivery of required services under the Andersen contract further reflected numerous failures by Del-Jen in the various contract areas during fiscal year 2004 through July 5 of fiscal year 2005. Throughout this period, Del-Jen received a total of 86 service failures and there was not a single month that Del-Jen received a pass for all required services. AR, Tab 2, CO Statement, attach. 2.

In challenging its past performance evaluation, Del-Jen first argues that, contrary to the requirements of the RFP, it was not provided an opportunity to address the negative past performance information in connection with its performance of the Andersen contract. As noted above, the RFP provided the Air Force would afford offerors the opportunity to address negative past performance information "which they have not had an opportunity to address in the past." RFP at 81. The record, however, reflects that during performance of the Andersen contract, Del-Jen was in fact afforded numerous opportunities to respond to the Air Force's negative assessment of its performance. Specifically, Del-Jen responded to the contract deficiency reports, as well as the monthly status of delivery summary reports, in writing and during monthly Business Requirements Advisory Group (BRAG), meetings. *See*, AR, Tab 2, CO Statement, attach. 2; AR, Tab 12. Since Del-Jen had been provided with the opportunity to address the agency's concerns in connection with performance under the Andersen contract during contract performance, the Air Force was not required to afford Del-Jen a second opportunity to address them during the conduct of this procurement. *See PharChem, Inc.*, B-292408.2, B-292408.3, Jan. 30, 2004, 2004 CPD ¶ 60 at 12-13.

Del-Jen also suggests that because the negative information was not the subject of an official 2004³ Contractor Performance Assessment Reporting System (CPARS) report, thus depriving Del-Jen of an opportunity to respond to the negative assessments through the formal CPARS process, it was inappropriate for the Air Force to consider Del-Jen's performance problems in connection with the Andersen contract. Del-Jen maintains that the Air Force should have instead looked to its 2003 CPARS report, which reflected a positive performance rating for Del-Jen.

Since, as discussed above, the Air Force had provided Del-Jen with opportunities to address the Air Force's negative assessments of its performance under the Andersen

³ Del-Jen's 2005 CPARS report is in process and according to Del-Jen, it will reflect Del-Jen's exceptional performance under the contract. Protest at 16 n.5.

contract, the question for our Office is whether it was legally improper for the Air Force to have considered its own negative assessment of Del-Jen's performance absent the formalities of the CPARS process. We have held that it is proper for agency contracting officials to consider and rely on their personal knowledge of an offeror's past performance where a solicitation contains past performance as an evaluation factor. See, e.g., Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 2 n.2; HLC Indus., Inc., B-274374, Dec. 6, 1996, 96-2 CPD ¶ 214 at 6. Thus, we conclude that notwithstanding whether the information was included in a CPARS report, it was proper for the Air Force's evaluators to have considered their personal knowledge of Del-Jen's performance on the Andersen contract. In addition, to the extent Del-Jen contends that the Air Force inappropriately failed to prepare a CPARS report in connection with its performance under the Andersen contract for 2004, this challenge pertains to a matter regarding the administration of Del-Jen's Andersen contract and, as a consequence, it is not subject to review by our Office.⁴ See GAO Bid Protest Regulations § 21.5(a) (2006). Moreover, it was not unreasonable for the Air Force to rely on Del-Jen's more recent poor performance on the incumbent contract as opposed to its less recent good performance, as reflected in its 2003 CPARS report, to predict Del-Jen's likely future success on the Andersen contract. See ProServe Corp., B-247948 et al., Oct. 5, 1992, 92-2 CPD ¶ 225 at 5.

Del-Jen also argues that the agency's assessment of its past performance was undocumented, unsupported and inconsistent with its record of "exceptional" contract performance. Del-Jen more specifically argues that while the Air Force purported to base its (merely) satisfactory rating on problems with staffing and quality control, the evaluators' comments and source selection report are devoid of any discussion of quality control problems. As a general matter, where an agency fails to document or retain evaluation records, it bears the risk that there may be inadequate supporting rationale in the record for its evaluation and source selection decision and that we will not conclude that there is a reasonable basis for the agency's evaluation or decision. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3; B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56. However, we will not disrupt an agency's procurement merely because the agency has failed to adequately

⁴ The record is unclear as to why the Air Force decided not to prepare a CPARS report in connection with Del Jen's performance under the Andersen contract for 2004. While Del-Jen asserts that the Air Force did not prepare a 2004 CPARS report for the Andersen contract because the contracting officer believed that Del-Jen was not receiving a fair assessment by the customer and that the evaluation was "tainted," Protest at 23 n.8, the contracting officer denied Del-Jen's characterization and explained that it was decided not to issue the 2004 report in an effort to salvage a working relationship, which had become "non-existent," between Del-Jen and the customer, who had rated Del-Jen's performance as 100 percent unsatisfactory. AR, Tab 2, CO Statement at 7.

document its evaluation or source selection decision, where the record otherwise shows the evaluation or source selection decision to be reasonable. Id.

Here, while the contemporaneous narrative description of the Air Force's evaluation of Del-Jen's past performance is thin, it is nonetheless supported by and consistent with the record. Specifically, with regard to Del-Jen's record of quality control, the record of the Air Force's assessment of Del-Jen's strengths and weaknesses under the past performance factor reveals that the evaluators considered Del-Jen's contractor deficiency reports, which principally concerned problems with Del-Jen's quality control, as well as the fact that Del-Jen had failed to maintain a quality control plan or program in connection with its Andersen contract. The contracting officer further explained that the evaluators discussed the status of delivery reports in connection with the evaluation of Del-Jen's performance on the Andersen contract. AR, Tab 2, CO Statement at 6. Moreover, communications between Del-Jen and the Air Force regarding Del-Jen's performance on the Andersen contract reveal numerous discussions of Del-Jen's quality control problems. AR, Tab 12. To the extent Del-Jen argues that the Air Force placed too much emphasis on the problems with the Andersen contract in light of its exceptional record of performance on other contracts,⁵ such that there was "no doubt" that Del-Jen would successfully perform the follow-on Andersen contract, Protest at 24, it was reasonable for the Air Force to place particular emphasis on Del-Jen's performance as the incumbent contractor since performance on such contracts may be viewed as a more accurate indication of likely future performance than performance on other contracts. Cortez, Inc., B-292178 et al., July 17, 2003, 2003 CPD ¶ 184 at 9. Second, we view Del-Jen's argument in this regard as essentially disagreement with the Air Force's judgment, which does not render it unreasonable.

Evaluation of GS21

As a final matter, Del-Jen challenges the Air Force's evaluation of GS21's past performance. First, Del-Jen argues that the Air Force improperly failed to recognize the limited relevance of GS21's past performance, since GS21's past performance record was based primarily on its performance of Navy contracts. According to Del-Jen, Air Force contracts are more relevant to the performance of the Andersen contract than the Navy contracts performed by GS21. Since its own performance record was based on performance of more relevant Air Force contracts, Del-Jen maintains that it was unreasonable for the Air Force to have rated GS21 more highly.

While Del-Jen asserts that Air Force contracts are of greater relevance, this conclusion was not required by the terms of the RFP. Rather, relevance of past performance information was based primarily on the type of work performed, i.e.,

⁵ We note that Del-Jen's past performance record, as reflected in questionnaires and CPARS ratings, did in fact reflect highly favorably on Del-Jen.

ground passenger transportation, cargo transportation service, vehicle management, vehicle maintenance, personal property, passenger travel, supply support, support mobility and contingency, and supply, not the agency for which the work was done. Thus, the Air Force was not required, as Del-Jen suggests, to have given it a superior rating, or GS21 a lower rating, simply because Del-Jen's past performance was in connection with Air Force contracts and GS21's past performance was not. See East Slope Conservation Servs., B-282661.2, July 1, 1999, 99-2 CPD ¶ 9 at 2.

Second, Del-Jen argues that the Air Force ignored multiple flaws in GS21's past performance, resulting in a flawed evaluation as well as unequal treatment since the Air Force had downgraded Del-Jen for the same past performance problems. Contrary to Del-Jen's allegations, however, the record reflects that the Air Force did in fact identify specific weaknesses in evaluating GS21's past performance; these weaknesses, however, were simply not comparable to the negative information in connection with Del-Jen's past performance. Specifically, in evaluating GS21's past performance, the Air Force noted the following weaknesses: "vehicle maintenance issues"; that it was "not comfortable" with its experience in certain areas; that GS21's contracts have been on very small fleets; and that its main experience was in dealing with the Navy. AR, Tab 4, Snapshot of GS21. The Air Force, however, also identified numerous strengths, including "very good past performance rating." In fact, unlike Del-Jen, all of GS21's past performance information was overall very positive.

Del-Jen more specifically identifies particular "issues" in GS21's CPARS reports regarding the areas of shipping, management, billing and personnel quality. The overall reports, and in several instances the tenor of the comments upon which Del-Jen relies, in fact reflect positively on GS21. For example, Del-Jen cites a comment contained in one of GS21's CPARS reports as an example of a "shipping issue" in connection with GS21's past performance. Del-Jen, however, cited only a small portion of the comment to our Office--in its full text, the CPARS report comment reflects positively on GS21. Specifically, the relevant report states as follows:

Despite the increase of operations during after Operation Enduring Freedom and the 2004 Summer Olympics in Greece, the contractor met all obligations and on several occasions went above requirements to ensure the mission was fulfilled. Contractor is indeed part of the command team as several noteworthy accomplishments were made during the reporting period. Personal property and cargo shipments increased from the original needs and occasionally were routed incorrectly to Souda en route to Cyprus, which is not a part of Greece. Even though the contract doesn't call for the contractor to reroute and process such cargo, the contractor did so with professionalism.

AR, Tab 4, CPARS Report for Contract N6817101D4043, NSA Souda Bay, Crete, Greece at 3. The Air Force reasonably read this comment as reflecting positively on

GS21, indicating GS21's willingness to perform "above and beyond" the requirements of its contract. In sum, based on our review of the record as a whole, we conclude that the agency reasonably evaluated the proposals of Del-Jen and GS21.

The protest is denied.

Anthony H. Gamboa
General Counsel