



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States General Accounting 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: Gulf Group, Inc.

File: B-287697; B-287697.2

Date: July 24, 2001

Patricia A. Snyder, Esq., and Thomas E. Abernathy, Esq., Smith, Currie & Hancock, for the protester.

Joseph A. Gonzales, Esq., and Larry Beall, Esq., U.S. Army Corps of Engineers, and John W. Klein, Esq., and Kenneth W. Dodds, Esq., Small Business Administration, for the agencies.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly applied undisclosed evaluation factor regarding specific experience of offerors is denied; agency properly may consider specific experience where, as here, solicitation provides for evaluation of experience.
 2. Agency reasonably considered past performance reference in evaluating protester's proposal, even though protester claims the reference mistakenly rated its performance too low, where nothing on the face of the reference rating gave agency reason to look behind it.
-

DECISION

Gulf Group, Inc. protests the award of a contract to ABC Landclearing & Development/Tri-State Design and Construction, Inc. (ABC) under request for proposals (RFP) No. DACW01-00-R-0030, issued by the U.S. Army Corps of Engineers on a competitive section 8(a) basis for dredge material disposal area management and levee maintenance. Gulf principally challenges the technical evaluation.

We deny the protest.

The RFP provided for award of a contract on an indefinite-delivery, indefinite-quantity (ID/IQ) basis for all rental equipment, operators, supplies, materials, labor, and transportation necessary to perform maintenance and rehabilitation of approximately 18 dredge material disposal sites and levee maintenance along

14 miles of levee in Alabama, Georgia, and Florida. Performance was to include disposal area work (raising dikes, new area construction, grading material, and ditching), levee maintenance (mowing, fertilizing, ditching, vegetation control, excavation, grading and filling), and dredging (removing shoaled material and placement on adjacent beach). RFP § 952.000-4214. The RFP contemplated the award of a fixed-price contract for a base year, with 4 option years. Proposals were to be evaluated on the basis of price and performance, with performance evaluated under two equal subfactors, management capability/effectiveness and past performance. RFP § 0120.6.1. Award was to be made to the offeror whose proposal represented the best value based on a performance/price trade-off in which the performance factor was significantly more important than price. Id.

Seven offerors, including Gulf and ABC (the incumbent), submitted proposals. After an initial evaluation, five offerors' proposals were included in the competitive range, and the agency conducted discussions with these firms. Gulf and ABC submitted discussion question responses and final proposal revisions (FPR). The source selection evaluation board (SSEB) evaluated the initial offers, supplemental information, and FPRs in reaching the following final evaluation results:

Offeror	Performance Rating	Price
Gulf	Satisfactory	\$12,124,250
ABC	Very Good	\$12,711,375
Offeror 3	Very Good	\$17,663,175
Offeror 4	Satisfactory	\$17,245,157
Offeror 5	Very Good	\$17,097,001

The contracting officer independently assessed the proposals and reviewed the SSEB's award recommendation. He noted Gulf's lower price, but specifically found that "ABC's past performance proposal illustrated considerably more relevant past performance and experience as it relate[d] to the instant contract requirements." He concluded that this made ABC's proposal the best value, and made award to the firm. Agency Report (AR), Tab P, at ¶ 11. After receiving a debriefing, Gulf filed this protest.

SPECIFIC EXPERIENCE

Gulf asserts that the evaluation is flawed because the SSEB improperly applied an undisclosed evaluation factor. Specifically, Gulf contends that it was improper to consider Gulf's lack of specific experience in ID/IQ task order contracts covering disposal area maintenance. Gulf claims that, had it known of this specific factor, it would have submitted additional examples of its past performance in dredging and in ID/IQ contracts.

This argument is without merit. Where, as here, experience is to be evaluated, agencies may consider an offeror's experience in the specific area that is the subject

of the procurement. See Wyle Labs., B-239671, Sept. 19, 1990, 90-2 CPD ¶ 231. That is what the agency did here. In any case, Gulf should have been aware from the RFP that the agency would consider specific experience. For purposes of evaluation under the performance factor, the RFP requested offerors to list prior contracts demonstrating a record of satisfactory, recent, related experience in the type of construction described in the RFP, RFP § 0120.3.2, and described the work as including dredging and maintenance of dredge material disposal areas and as being initiated on an ID/IQ task order basis. RFP §§ 952.000-4214, 00800.16. These provisions, read together, made it clear that the agency intended to evaluate experience based, in part, on similarity to the current requirement; Gulf therefore was on notice of the need to identify in its proposal any dredging and ID/IQ contracts it had performed. While the agency considered Gulf's referenced contracts (e.g., levee and storm water control system construction, sewer rehabilitation, and road construction and maintenance) to be relevant, it concluded that those contracts were not as similar to the solicited work, and thus not as relevant, as ABC's contracts, which included the predecessor contract for this requirement.¹ In this regard, experience as an incumbent may offer genuine benefits to an agency, and therefore may reasonably be considered in the evaluation of proposals, especially, as here, in distinguishing the proposal from one offering less specifically related experience. See Dr. Carole J. Barry, B-271248, June 28, 1996, 96-1 CPD ¶ 292 at 3.

PERFORMANCE FACTOR

Gulf challenges the evaluation of its proposal under the performance factor as only satisfactory. In Gulf's view, its rating under the management capability subfactor should have been higher because its proposal initially was evaluated by the agency as satisfactory in this area, and it revised its proposal in response to discussions. Gulf also maintains that its rating under the past performance subfactor should have been higher because two of its references mistakenly rated its past performance too low.

The evaluation of technical proposals is the function of the contracting agency; our review is limited to determining whether the evaluation was reasonable and

¹ Gulf asserts that, because the agency found that it lacked dredge disposal area experience, Gulf should have received a neutral rating for its past performance. This argument is without merit. Under the terms of the RFP, a neutral rating was to be given where an offeror had "no relevant performance history." RFP § 0120.3.2. Although Gulf was found to lack experience of the specific kind discussed in the text, above, the experience it referenced was deemed relevant. There thus was no basis for the agency to rate its proposal as neutral under this subfactor. In any event, since the RFP provided that a neutral rating could be considered less favorable than a favorable performance rating, we fail to see how Gulf was prejudiced by a satisfactory rating.

consistent with the RFP evaluation factors. The Arora Group, Inc., B-270706.2, June 18, 1996, 96-1 CPD ¶ 280 at 3.

The evaluation in this area was reasonable. With regard to the management capability subfactor, while Gulf did submit proposal revisions in response to discussions, the SSEB found that Gulf's FPR did not adequately address all the matters discussed, AR, Tab K, and that a higher rating was not warranted. For example, while the agency asked Gulf to address its failure to include a list of its subcontractors (AR, Tab J), its FPR did not identify its subcontractors or explain the circumstances under which they would be required. AR, Tab L. Gulf does not dispute the agency's finding that its FPR did not address all of the discussed deficiencies and weaknesses.

With regard to the past performance subfactor, the agency rated three of Gulf's five contract references very good and two satisfactory. Because, as discussed above, the agency did not consider the work under these contracts to be entirely similar to the RFP work, and thus considered their relevance to be limited, it translated these reference ratings into an overall satisfactory rating for Gulf under the subfactor. Gulf asserts that one of its references provided an inaccurate rating for Gulf for a particular contract; while the reference previously had rated Gulf's performance outstanding, the reference mistakenly provided the Corps with a rating of only very good. The agency concedes that, "[d]uring the post-award debriefing with Gulf, it was discovered that this questionnaire had been erroneously prepared and that Gulf did in fact earn an 'outstanding' rating for [that] project." AR, Tab B, at 8. Gulf believes this error warrants increasing its overall past performance rating. We disagree. Notwithstanding the reference's earlier higher performance evaluation, the form the reference submitted for this procurement indicated that Gulf's performance was only very good. Since nothing on the face of the reference rating reasonably would have led the agency to look behind it, the agency could rely on the rating in evaluating Gulf's proposal. See A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5. In any case, given the limited relevance of Gulf's prior contracts, there is no reason to believe that raising one reference rating would have affected Gulf's overall rating.²

Gulf also has submitted a letter from a second reference stating that he misunderstood the rating sheet he submitted on Gulf's behalf. Protester's Comments, Exh. 1. The reference states that he ordinarily would "always classify" Gulf with the "highest rating," which usually is designated as "outstanding." The

² Moreover, even if Gulf's overall rating for this subfactor were increased to very good, its rating under the management capability subfactor would remain only satisfactory. Because ABC's proposal was rated very good under both subfactors, its proposal would remain superior to Gulf's under the performance factor.

reference asserts that here, however, because he was unfamiliar with the rating sheet's highest rating of "exceptional," he rated Gulf's performance as only very good, the second highest rating. This explanation is unpersuasive. Since the rating sheet clearly designated "exceptional" as the "highest rating," the reference's explanation that he was somehow confused into giving Gulf other than the highest rating simply is not credible. In any case, again, since there was nothing on the face of the reference rating suggesting that it was in error, the agency properly relied upon it in evaluating Gulf's proposal. See A.G. Cullen Constr., Inc., supra.

ELIGIBILITY DETERMINATION

Gulf asserts that the Corps improperly made award to ABC, a joint venture, prior to receiving an April 24 determination from the Small Business Administration (SBA) that ABC was eligible for award as an 8(a) firm. However, while the protester has submitted a news release indicating that an "increment" was awarded to ABC prior to receipt of SBA's eligibility determination (Protester's Comments, Exh. 3), the agency reports that, in fact, the award was not made until April 25. AR, Tab A. In any event, since it is undisputed that SBA has unequivocally determined that ABC is eligible for award, Gulf was not prejudiced by any premature contract award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

The protest is denied.

Anthony H. Gamboa
General Counsel