



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Trauma Service Group

**File:** B-254674.2

**Date:** March 14, 1994

Ruth E. Ganister, Esq., and Glenn L. Blackwell, Esq., Rosenthal and Ganister, for the protester, Stephen S. Kaye, Esq., Bryan Cave, for NES Government Services, Inc.; and Kenneth A. Martin, Esq., and Andrew B. Katz, Esq., Elliott, Vanaskie & Riley, for Coastal Government Services, Inc., the interested parties. Colonel Riggs L. Wilks, Jr., and Major Bobby G. Henry, Jr., Department of the Army, for the agency. Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency improperly downgraded protester's proposal based on concerns about the protester's performance on another contract is denied. Although technical evaluation points were deducted from protester's proposal based on concerns about performance of the other contract, the record shows that, even had that contract not been considered by the evaluators, a contract would not have been awarded to the protester since, even without deduction of points based on concerns about the previous contract, the protester's proposal still would have been lower rated technically and higher in price than the proposals submitted by the awardees.

### DECISION

Trauma Service Group protests the award of contracts to NES Government Services, Inc. and Coastal Government Services, Inc. under request for proposals (RFP) No. DADA10-93-R-0002, issued by the U.S. Army Health Services Command for emergency room physician services. The protester argues that the evaluation of its offer was unreasonable and that discussions were inadequate.

We deny the protest.

## BACKGROUND

The RFP contemplated the award of three firm, fixed-price indefinite quantity contracts, one for each of three geographic regions, on an all-or-none basis for a base year and 2 option years. The RFP provided that awards would be made to the offerors whose proposals were determined to be most advantageous to the government considering technical merit and price. The RFP included the following technical factors and subfactors:

- (1) past and present performance
- (2) personnel qualifications
  - a. management qualifications
  - b. employee/subcontractor qualifications
- (3) understanding of the requirement/commitment
  - a. recruitment
  - b. substitute coverage
  - c. retention

The RFP stated that the first factor, past and present performance, was approximately equal to the personnel qualifications and understanding the requirement factors combined and that the third factor, understanding the requirement, was approximately twice as important as personnel qualifications. Under the RFP, the technical factors combined were significantly more important than price but price could become the determinative selection factor if technical proposals were determined to be substantially equal.

The RFP required offerors to submit at least three past and present performance questionnaires for recent and relevant contracts. The questionnaire asked for a brief description of the contract, period of performance, original and final contract value, and original and actual completion dates.

Twelve proposals were submitted. A technical evaluation team evaluated the proposals using the following point system and five-category adjectival rating scheme: (1) outstanding, 511 to 600 points; (2) excellent, 421 to 510 points; (3) satisfactory, 331 to 420 points; (4) susceptible to being made satisfactory, 241 to 330 points; and (5) unsatisfactory, 240 or fewer points. Initially, Trauma's proposal received 406 points and a satisfactory rating. Coastal's proposal received 495 points and an excellent rating and NES' proposal received 465 points and an excellent rating. Under the past and present performance factor, Trauma received 211 points and an excellent rating; Coastal received 260 points and an

outstanding rating; and, NES received 225 points and an outstanding rating.'

Ten proposals were included in the competitive range, including those of Trauma, NES, and Coastal. The agency conducted discussions by providing each competitive range offeror with a list of weaknesses in its proposal. Trauma was notified that the agency required additional information concerning the firm's recruitment, its procedures to retain qualified personnel, and narrative support for each element in its price proposal.

The agency conducted a second round of technical evaluations. Because of retirements and transfers, the original evaluation board was replaced. The new board members were given copies of the offerors' original proposals, the original evaluation worksheets, discussion letters, and each offeror's response.

The new board leader had previously served at the medical center at Fort Bragg while Trauma was performing a contract at that medical center for, among other things, emergency medical services. Although Trauma had not listed the Fort Bragg contract in its proposal, the team leader evaluated Trauma's past and present performance as "unsatisfactory" based on that contract. This evaluator believed that Trauma's original past and present performance score, which was based on the performance questionnaires the firm had submitted with its proposal, was incorrect.

Since the evaluation team could not reach a consensus regarding Trauma's past and present performance rating, the contracting officer conducted a second round of discussions by telephone. The agency's telephone log of the discussions with Trauma states that the contracting officer "asked for information on performance" and told Trauma that:

"[b]ased on the response to performance checks, we understand Trauma has had problems in the following areas at one or more facilities: providing complete credentials packages; day-to-day scheduling; adherence to established schedules; providing approved backup/replacement personnel; adequate numbers of personnel; working

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'The point scores and adjectival rating scheme for past and present performance was as follows: (1) outstanding, 256 to 300 points; (2) excellent, 211 to 255 points; (3) satisfactory, 166 to 210 points; (4) susceptible to being made satisfactory, 121 to 165 points; and, (5) unsatisfactory, 0 to 120 points.

relationships; furnishing and complying with QA/QC [quality assurance/quality control] plans."

The log states that Trauma was asked to explain how it had resolved these problems and what steps it had taken "to preclude similar future problems." According to the log, Trauma stated that it would have no problem responding. Trauma submitted an 11-page description of its plans and policies relating to scheduling, physician reserves, back-up system, quality assurance, and credentialing.

The technical review board reached a consensus on Trauma's past and present performance rating, giving the firm a satisfactory rating with a score of 177 points. The record shows that Trauma's rating on this factor was based on an evaluation of three contracts, including two contracts Trauma had listed on the questionnaires and the Fort Bragg contract.

The Army requested best and final offers (BAFO). Final evaluation scores and prices offered by the protester and the awardees were as follows:

Offeror	Score	Prices		
		Region I	Region II	Region III
Trauma	381	\$12,311,316.29	\$ 9,869,680.77	\$12,281,829.86
NES	465	14,919,635.76	10,006,499.16	10,165,795.40
Coastal	495	12,145,304.91	9,435,745.02	10,805,017.42

The agency determined that it was most advantageous to award Coastal the contracts for Regions I and II and NES the contract for Region III.

#### PROTESTER'S CONTENTIONS

The crux of Trauma's protest is that the evaluation was unreasonable and biased against the protester. In both of these claims, Trauma focuses on the decision by the second evaluation team to lower Trauma's proposal rating from "excellent" to "satisfactory" and reduce its score by 34 points on the past and present performance factor. According to Trauma, its score in this area was unfair because it is based, in part, on its performance on the Fort Bragg contract which Trauma had not listed in its performance questionnaires and which the protester alleges the agency should not have considered and did not carefully or thoroughly review.

Specifically, Trauma argues that the evaluation team never "bothered to inquire what Trauma was actually required to do under [the Fort Bragg] contract and whether it fulfilled its contractual requirements." According to Trauma, in addition

to emergency room services, the Fort Bragg contract required pediatrician, family practice and physician's assistant services. Trauma states that all but the emergency room service portion of the contract was terminated for the convenience of the government because of reduced need and that the agency paid Trauma settlement costs for emergency room services because the services actually ordered were significantly below the estimates given in the solicitation. While Trauma admits that the actual hours ordered and the scheduling of those hours made it difficult for Trauma to provide the services ordered, Trauma contends that there is "no indication in the contract documents that Trauma failed to meet its contractual obligations."

Trauma also alleges that the technical evaluation of its proposal was unfair because Trauma was never advised in discussions that the Fort Bragg contract was a concern to the evaluators and was asked only for "some generic information concerning certain performance issues--not past performance issues." The protester argues that other offerors were treated differently because they were notified in discussions of specific past contracts that were of concern and were given an opportunity to address the agency's concerns.

Trauma also argues that it was treated differently because, while the agency investigated four references cited by each of the awardees, the agency did not contact all six of Trauma's references. Trauma contends that, unlike its treatment, the agency did not investigate any prior Coastal or NES contracts that were not listed by those offerors.

Finally, Trauma alleges that the team leader's bias against Trauma tainted the entire evaluation process and "had a severe chilling effect on the rating ultimately assigned to Trauma." In this respect, Trauma argues that the team leader influenced the other evaluation team members and that it is not possible to determine if the team leader's bias had an effect on Trauma's evaluation in areas other than past performance.

#### ANALYSIS

Although Trauma argues that the evaluators improperly downgraded its proposal based on the Fort Bragg contract and that the firm was not given a reasonable opportunity to address the agency's concerns about that contract, we need not resolve these issues. Rather, as we explain below, the agency's concerns about Trauma's performance on the Fort Bragg contract had no impact on the selection decisions and Trauma therefore was not prejudiced by the evaluators' consideration of that contract or by the failure to

specifically inform Trauma that the evaluators were considering that contract in the evaluation.

Competitive prejudice is an essential element of a viable protest; where no prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. See MetaMetrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306. Based on our review of the record, we find no basis to conclude that Trauma was prejudiced by the evaluators' consideration of the Fort Bragg contract or by the failure to specifically discuss that contract with Trauma. Trauma does not argue that its initial past and present performance score--the 211 points awarded it by the first evaluation team--was improper. Rather, the protester merely argues that its final score--the 177 points assigned by the second evaluation team after considering Trauma's Fort Bragg performance--is unfair. If Trauma had not been downgraded based on concerns about the Fort Bragg contract, it would have received the same past and present performance score as it did originally and about which it does not complain.<sup>2</sup> Under these circumstances, since even without the deduction of points for the Fort Bragg contract, Trauma's overall technical score would have been lower than the awardees' scores on each of the three contracts, and since Trauma's price was higher than the awardee's for each of the contracts, Trauma would not have been in line for award on any of the contracts. Accordingly, there is no reason to consider Trauma's allegations concerning the Fort Bragg contract.

Trauma also argues that it was treated unfairly because the agency did not investigate any Coastal or NES contracts not listed by those firms in their proposals and did not contact all six of the references Trauma listed in its questionnaires. As to why the agency did not investigate Coastal or NES contracts other than those listed by the

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<sup>2</sup>Trauma's speculates that its score could have improved to more than 211 points, based on one instance where another offeror's past and present performance rating increased 70 points because the offeror was specifically advised of a deficiency during discussions. This contention is unpersuasive. In the instance to which Trauma refers, the offeror had failed to provide the three references required by the solicitation and was given an opportunity to correct this deficiency. No similar deficiency was found in Trauma's proposal. Rather, since Trauma's initial score of 211 points was assigned without considering the Fort Bragg contract, there is no reason to assume that its score would have increased had the issue of its performance under the Fort Bragg contract been raised with Trauma.

firms, there is no indication that the evaluators were aware of other Coastal or NES contracts. In addition, although the agency did not contact all of the references listed in Trauma's proposal, the RFP asked for information on only three previous contracts and, although offerors were free to submit more than three, an offeror's decision to do so did not obligate the agency to contact any particular number.

Trauma contends that the leader of the second evaluation team was biased against Trauma and that his bias influenced the other members of the evaluation team and "tainted" the evaluation on other than the past performance criteria. To show bias, the record must show that the agency had a specific intent to injure the protester. Securigard, Inc.; Halifax Sec. Servs., B-248584; B-248584.2, Sept. 4, 1992, 92-2 CPD ¶ 156. Here, there is no evidence to substantiate such a claim. Rather, the record shows that the evaluation team leader merely downgraded Trauma's past performance rating because of his experience and the agency's dissatisfaction with the firm on a previous contract.

In addition, contrary to Trauma's assertions, there is no evidence that the second evaluation team leader's knowledge of Trauma's past performance at Fort Bragg "tainted" the entire evaluation. Indeed, the record shows that in the final evaluation, Trauma's score increased on one subfactor and, while Trauma was downgraded on past and present performance, its proposal was not downgraded on any other factor or subfactor.

The protest is denied.

*Robert P. Murphy*  
Robert P. Murphy  
Acting General Counsel

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<sup>3</sup>Trauma also alleges that, after its contract was awarded, Coastal requested a waiver of the physician credentialing requirements set forth in the solicitation. Trauma argues that this action shows that Coastal "misrepresented its capability" and that the evaluation of Coastal's proposal was flawed. The agency has informed us that it has not waived the credentialing requirements. Whether Coastal has complied with the terms of its contract is a matter of contract administration which our Office does not review.  
4 C.F.R. § 21.3(m)(1) (1993).