



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: AIROD Sdn. Bhd.

File: B-294127

Date: August 16, 2004

Sathiasgaran Rajoo for the protester.

Eric Kattner, Esq., and Dennis A. Walker, Esq., Department of the Air Force, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that an agency's evaluation of its past performance was unreasonable because the agency overlooked the protester's most recent performance report related to the predecessor contract for the services being procured is denied where the agency's error was mitigated by its supplemental use of questionnaires and interviews related to the protester's performance on the earlier contract, resulting in the protester's receipt of the highest possible past performance rating.

DECISION

AIROD Sdn. Bhd., an aviation maintenance company in Malaysia, protests the award of a contract to Singapore Technologies Aerospace by the Department of the Air Force pursuant to request for proposals (RFP) No. F09603-01-R-30001, issued to procure programmed depot maintenance services for Air Force C-130 aircraft located in the Pacific Theater. AIROD argues that the agency misevaluated its past performance by failing to consider AIROD's most recent performance information, and by failing to properly credit its experience as the incumbent performing these services. As a result, AIROD argues that the Air Force unreasonably failed to select its higher-priced proposal for award.

We deny the protest.

The RFP for these depot maintenance services was issued on April 17, 2002, and anticipated award of a mixed fixed-price and cost-reimbursement contract for an 8-year period followed by a 120-day option. Agency Report (AR) at 1; RFP at 112.

The RFP advised potential offerors that the agency would first evaluate proposals to determine technical acceptability, and then perform a tradeoff between past performance and price, with past performance being more important than price. RFP at 118. With respect to past performance, the agency anticipated assigning one of six performance/confidence ratings addressing both the offeror's past performance, and the agency's confidence that the offeror will be able to perform the effort covered by this contract. RFP at 119. These ratings are: (1) exceptional/high confidence, (2) very good/significant confidence, (3) satisfactory/confidence, (4) neutral/ unknown confidence, (5) marginal/little confidence, or (6) unsatisfactory/no confidence. Id.

After discussions with all offerors, and a call for revised proposals, the agency ultimately received five technically-acceptable proposals. All five offerors were then reviewed by a Performance Risk Assessment Group (PRAG) in order to develop a performance/confidence rating. At the end of this process both AIROD and Singapore received performance/confidence ratings of "exceptional/ high confidence," while the other three offerors received lower performance/confidence ratings. AIROD and Singapore also submitted the two lowest-priced proposals--by a significant margin. Since Singapore's total evaluated price of \$51.3 million was considerably lower than AIROD's price of \$54.2 million, and since both offerors received the highest past performance assessment of exceptional/high confidence, no tradeoff was performed and award was made to Singapore on March 29, 2004. After its agency-level protest was denied by the Air Force, AIROD filed this protest with our Office.

AIROD raises several complaints about the agency's evaluation of its performance, all of which, in essence, argue that AIROD's rating of exceptional/high confidence should have been viewed as better than the exceptional/high confidence rating given Singapore, and that the agency should have performed a tradeoff to select AIROD's higher-priced proposal.

Our Office will examine an agency's past performance evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' past performance records are primarily matters within the contracting agency's discretion. Kay & Assocs., Inc., B-291269, Dec. 11, 2002, 2003 CPD ¶ 12 at 4. In this regard, our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

Before turning to the specifics of AIROD's challenges, we note that its arguments are based on the premise that the agency abandoned the solicitation's evaluation scheme when it did not select AIROD's higher-priced proposal for award. In AIROD's view, since the solicitation advised that past performance was more important than price, the agency erred in not: (1) recognizing that AIROD's past performance was better than Singapore's, and (2) selecting AIROD's higher-priced proposal as a result.

AIROD's underlying premise is wrong. Although the solicitation here anticipated a past performance/price tradeoff, and advised that past performance was more important than price, an agency must always consider cost or price to the government in evaluating competitive proposals and in making a source selection decision. 10 U.S.C. § 2305(a)(3)(A)(ii) (2000); Federal Acquisition Regulation (FAR) § 15.101-1(c). Although agencies are allowed to make tradeoffs in best value procurements, the perceived benefit of the higher-priced proposal must merit the additional price and the rationale for the tradeoff must be documented in the file. FAR § 15.101(c). We will sustain a protest where an agency makes a past performance/price tradeoff to award to a higher-priced offeror, but offers no justification for why it was worth paying a premium over the lower price of another offeror. See, e.g., Beautify Prof'l Servs. Corp., B-291954.3, Oct. 6, 2003, 2003 CPD ¶ 178 at 6.

With respect to AIROD's specific complaints, almost all of the protest challenges raised involve the evaluation of AIROD's own proposal. For example, AIROD argues that the agency's evaluators did not review all the relevant past performance information in generating the company's rating. In this regard, AIROD is right.

The record shows, and the Air Force acknowledges, that in considering AIROD's most relevant performance information—*i.e.*, the information about AIROD's performance of the predecessor contract for these services—agency evaluators reviewed computerized records of past performance, called Contractor Performance Assessment Reports (CPAR), for every year of performance except the most recently-completed year, covering the period from May 2002 through May 2003. These most recent records were not retrieved by the Air Force's search, although the agency did retrieve annual records covering 1998 through 2002. Although the evaluators rated AIROD's CPAR information as "satisfactory" for the predecessor contract, when supplemented by other evidence of AIROD's past performance—including responses to questionnaires and follow-up interviews regarding its performance on this contract—the company received an overall rating of "exceptional/high confidence."

AIROD points out that its CPAR data for the year ending May 2003 shows improvement in its performance of the predecessor contract, and argues that inclusion of this data might have resulted in a higher rating for its CPAR information, which might then have been reflected in its overall performance/confidence assessment. AIROD further contends that this more favorable information might also have provided a basis for selecting its higher-priced proposal over the lower-priced proposal of Singapore.

While we understand that AIROD is frustrated that favorable performance information was overlooked by the agency, our review of the record leads us to conclude that the agency's evaluation of AIROD's past performance was reasonable,

despite the error, and that any claim that AIROD was prejudiced by this error is purely speculative.

As indicated above, the CPAR were not the only source of information used to evaluate AIROD's performance of the prior contract for these services. In large measure, the agency's failure to obtain the most recent CPAR information was mitigated by use of past performance questionnaires and follow-up interviews with agency officials familiar with the company's performance on this contract. These materials generated ratings ranging from satisfactory to exceptional, with most of the ratings in the "very good" category. AR, Tab 6 at 16. In addition, officials at the Defense Contract Management Agency reported very favorably on their experience with AIROD on the earlier contract. Their favorable comments included that AIROD meets scheduling requirements, does a good job of handling unscheduled work and expanded scopes of effort, has good management, and makes impressive efforts to support customer needs. *Id.* In short, the omission of 1 year's worth of favorable CPAR data did not cause the agency to overlook the company's favorable past performance on the predecessor contract.

Moreover, we do not think AIROD can reasonably claim it was prejudiced by the agency's omission. Our Office will not sustain a protest unless there is a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 154 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

AIROD's challenges to its performance/confidence rating must be considered in light of the evaluation results: put simply, AIROD has already received the highest rating available under the agency's evaluation scheme for its past performance. For our Office to find prejudice here would require several layers of speculation. First, given that the agency obtained information about AIROD's performance of its predecessor contract from sources other than CPAR data, we would have to speculate that the missing CPAR information would materially enhance the agency's already favorable view of AIROD's performance. Second, we would have to speculate that this additional information would have resulted in a perceived difference between AIROD's and Singapore's exceptional ratings. Finally, we would have to speculate that the agency would have chosen to justify the expenditure of an additional \$3 million to obtain the benefit of this perceived difference. In our view, there is nothing in this record to justify a conclusion that, but for the agency's failure to obtain the 2003 CPAR report, AIROD would have had a substantial chance of receiving the award.

We turn next to AIROD's contentions that the agency's evaluators understated the number of aircraft AIROD has successfully overhauled in recent years; wrongly concluded that one of its earlier contracts was only "semi-relevant," while considering a similar contract held by Singapore to be "very relevant"; and failed to give adequate credit to AIROD's status as the incumbent contractor for these

services since 1990. We have reviewed each of these contentions, and conclude that none of them states a basis for overturning the selection decision here.

With respect to the number of aircraft overhauled, the PRAG report states that under its predecessor contract AIROD overhauled four to six aircraft annually. In its protest AIROD submitted performance data showing that it actually overhauled eight aircraft in 1 year, and seven in another, although for the other years it overhauled between three and six aircraft. Initial Protest, Tab 16. In our view, the evaluation comment set forth in the PRAG report's narrative description of AIROD's prior contract was not an indication of any limitation in AIROD's capacity, but simply a description of the scope of the contract. The evaluators still determined that the contract was "very relevant," and still assigned AIROD a performance/confidence rating of exceptional/ high confidence. We see nothing in this record to support a conclusion that this rating would be materially enhanced by a more precise description of the number of aircraft overhauled under AIROD's prior contract.

With respect to the contention that the agency wrongly considered another of AIROD's prior contracts to be only "semi-relevant," while deciding that a similar contract of Singapore's was "very relevant," the record shows that AIROD failed to sufficiently describe the tasks performed under the contract in as much detail as Singapore. Thus the agency did not know of the similarities in the two contracts when it reached its conclusions.¹

With respect to whether the agency properly considered that AIROD has performed these services for the Air Force since 1990, we think AIROD asks too much of its status as the incumbent. There is no dispute here that AIROD is a well-regarded incumbent contractor; its incumbency was noted in the evaluation material, and its performance of its prior contracts was assessed as exceptional. Nonetheless, there is no requirement that an incumbent be given extra credit for its status as an incumbent, and there is nothing per se unreasonable about giving a successful

¹ There is also nothing in this record to suggest—as AIROD argues—that the agency violated FAR § 15.306(d) by not raising questions about this contract during discussions. First, there was nothing about AIROD's performance of this contract that was weak or deficient. See FAR § 15.306(d)(3). Second, AIROD bore the responsibility for providing sufficient detail about its past performance for the Air Force to recognize that the work involved was "very relevant" rather than "semi-relevant." RFP at 115; see Infrared Tech. Corp., B-282912, Sept. 9, 1999, 99-2 CPD ¶ 41 at 4-5.

incumbent and a challenger equally favorable past performance ratings. Modern Tech. Corp., et al., B-278695 et al., Mar. 4, 1998, 98-1 CPD ¶ 81 at 7.

The protest is denied.

Anthony H. Gamboa
General Counsel