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United States General Accounting Office
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Decision

Matter of: Base Technologies, Inc.

File: B-293061.2; B-293061.3

Date: January 28, 2004

L. James D'Agostino, Esq., Richard L. Moorhouse, Esq., Leigh T. Hansson, Esq., and Natalia W. Geren, Esq., Reed Smith, for the protester.
Michael D. Harbart, Esq., Department of Treasury, for the agency.
Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's consideration of key personnel's lack of law enforcement, and limited years of, experience was proper, where these matters were reasonably encompassed within the solicitation's evaluation criteria and related to the solicitation's requirements.

2. During discussions, an offeror need not be told of all weaknesses that would enable it to achieve maximum evaluation score.

3. Agency may consider the references of one joint venture partner in evaluating a joint venture offeror's past performance where they are reasonably predictive of performance of the joint venture entity.

4. Agency's scoring of past performance was reasonable and consistent with the solicitation's evaluation criteria; protester's argument that agency failed to follow scoring scheme set forth in agency's internal evaluation plan does not provide a valid basis for protest.

DECISION

Base Technologies, Inc. (BTI) protests the award of a contract to Lifecare-Advanta Joint Venture[1] (LAJV) under request for proposals (RFP) No. BPD-03-R-0010, issued by the Bureau of Public Debt, Department of Treasury, for financial crimes investigative services. BTI contends the agency conducted a flawed evaluation of both offerors' proposals, and held inadequate discussions with BTI.

We deny the protests.

The Financial Crimes Investigative Network (FinCEN) provides intelligence and analytical support to the international, federal, state, and local law enforcement and regulatory communities. It provides analytical case reports to investigators using state-of-the-art technology, in-house analysts, and various data sources to uncover potential criminal relationships. The FinCEN has a continuing requirement for on-site support related to these investigative services, which BTI currently provides under a contract set to expire shortly.

The RFP, issued as a small business set-aside, sought a contractor to provide on-site support for the FinCEN in five program areas: case management, the USA Patriot Act, the commercial database program, the gateway program, and the pro-active targeting program. As stated in the RFP, case management support involves researching three classes of information--commercially available data (e.g., ChoicePoint, Lexis-Nexis, and Dun & Bradstreet databases), financial information (e.g., Bank Secrecy Act reports and Department of Treasury databases), and law enforcement information (e.g., FinCEN past cases, and databases from the Departments of Treasury, Justice, and Defense)--and involves such tasks as mail processing and telephone coverage, management of case information, and target information processing. USA Patriot Act support requires services related to an information-sharing service between law enforcement and financial and regulatory communities with respect to the investigation of financial crimes, money laundering, and terrorist activities, and includes such tasks as research (which was noted in the RFP as the "highest priority" to the FinCEN and the agencies supported by the FinCEN), case opening and closing, maintenance of financial institutions' points of contact and e-mail address logs, returning results to the requestor, and archiving cases. Commercial database system and gateway system support requires answering requests for user identifications and passwords, maintaining logs and files of user access accounts, conducting database searches, and responding to requests concerning the gateway process. Pro-active targeting program support involves

[1] LAJV is a joint venture formed specifically to respond to this RFP. The joint venture partners are LifeCare Management Partners and Advanta Medical Solutions, LLC.

using artificial intelligence technology to locate unusual or questionable financial activity in various reports and financial records, and requires the contractor to conduct research, organize data, and process the results in the reports. RFP § C.2.

The RFP contemplated the award of a "labor-hour, performance-based contract" for a base year with four 1-year options, with a minimum value of $1,000 and a maximum value of $20 million. RFP §§ B.3, B.4, F.2.

The RFP provided that award would be made to the offeror whose proposal presented the "best overall value" to the government, considering past performance, technical merit, and price. Technical merit was said to be more important than past performance, and technical merit and past performance combined were said to be approximately equal to price. The technical merit factor included five subfactors, listed in descending order of importance: infrastructure, key personnel, hiring and retention plan, transition and succession plan, and sample reports. RFP §§ M.2, M.5.

For the infrastructure subfactor, the RFP provided that the agency would evaluate "[t]he Offeror's ability and infrastructure to manage the requirements of this contract and deliver the services described in the performance work statement (Case Management, USA PATRIOT Act, Gateway, Commercial Database, and Pro-Active Targeting) . . . within sixty days of award." This subfactor also addressed requirements for security clearances, stating that

> [t]he Government expects that the key personnel will start working on the contract as soon as their clearances are granted or on the effective date of award, whichever occurs later. The Contractor shall be able to provide at least 25% [of] the staff (excluding key personnel), with the appropriate adjudicated backgrounds within 15 business days after the effective date of the contract, 50% within 30 days, 75% within 45 days, and 90-100% within 60 days.

RFP amend. 0003, § M.5.b(1).

For the key personnel subfactor, the RFP provided that the agency would consider "[t]he qualifications of the Offeror's key employees (defined at [section] H.3), which also includes their current security level clearance."[2] RFP amend. 0002, § M.5.b(2).

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[2] Section H.3, titled "Reassignment and Replacement of Key Contractor Personnel," permits the agency to require a contractor to replace key personnel who are "objectionable" to the government. This clause does not define qualifications for the key personnel, but does identify the key personnel positions to be evaluated (project managers, supervisors, and senior data retrieval specialists); the position descriptions for these positions are listed elsewhere in the RFP.

The RFP specified that past performance would be evaluated for performance on "similar products or services . . . focus[ing] on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration." The RFP further stated that "[a]n offeror with no past performance information will receive a neutral rating (i.e., the rating will not add to or detract from its rating)." RFP § M.5.a.

The RFP provided offerors with the expected staffing levels and the estimated annual hours per labor category, which offerors were to use in developing their evaluated prices. The RFP stated that price would be evaluated, for the base and option years, by multiplying the estimated number of hours per labor category (provided in the RFP) by the proposed hourly rates (provided by the offerors), and totaling these products to calculate the offeror's annual evaluated prices.

Six proposals were submitted in response to the solicitation. Three proposals, including BTI's and LAJV's, were found to be in the competitive range and discussions were conducted with these offerors.

According to BTI, during discussions, BTI was informed of weaknesses in the qualifications of four of its key personnel: that one lacked law enforcement experience, one was not "management material," and two others lacked the "capability" to perform their positions.[3] Hearing Transcript (Tr.) at 33-38. The record shows that BTI was also informed of weaknesses with its transition and succession plan, and was encouraged to reduce its price. BTI was also advised of adverse past performance concerning three of its contracts, including its incumbent contract.

In its final proposal revision (FPR), BTI replaced one of its key personnel, but retained the other three, asserting that their qualifications were compliant with the RFP requirements. BTI also affirmed its belief that its transition and succession plan satisfied the RFP requirements, although it did not provide the additional detail requested by the agency, and stated that it would not be lowering its price. BTI explained its performance under the three prior contracts and objected to the inclusion of two of the negative references, including a recent incumbent contract reference.

During discussions, LAJV was informed of weaknesses in its transition and succession plan, asked to explain how it would achieve the necessary security clearances for its employees, and encouraged to reduce its price. LAJV specifically addressed these concerns in its FPR and also reduced its price.

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[3] Although the parties dispute what was said during discussions, for purposes of this decision, we accept the protester's recitation of events.

The final evaluation scores for both offerors were as follows:[4]

		BTI	LAJV
Technical Merit			
	Infrastructure (35 pts.)	35	35
	Key Personnel (30 pts.)[5]	20	20
	Hiring & Retention Plan (25 pts.)	25	25
	Transition & Succession Plan (20 pts.)	10	20
	Report Samples (15 pts.)	15	15
Past Performance			
	References (75 pts.)[6]	72	75
	Relevance (25 pts.)[7]	25	15
Total Score (technical + past performance)		202	205
Price		$15,854,126.20	$15,009,062.20

[4] The evaluation plan, which was not disclosed to the offerors, provided that each proposal could receive a maximum of 225 points: 125 points for technical merit and 100 points for past performance.

[5] To receive the maximum 30-point score for key personnel, the evaluation plan stated that all designated key personnel had to have "extensive experience, and demonstrated knowledge in law enforcement, regulatory, financial or relevant programs." Fewer points were awarded if only some of the key personnel had such experience (e.g., 20 points if only the project managers and at least three key personnel had the requisite experience, 10 points if only the project managers had the experience, and 0 points if none of the key personnel had the experience). AR, Tab 16, Evaluation Plan, at 6.

[6] References were asked to evaluate quality, timeliness, cost control, problem resolution, and customer service, which were worth 15 points each.

[7] Under the evaluation plan, to receive the maximum score (25 points) under the relevance subfactor, an offeror's prior contracts had to be "close to or exceed the estimated size of the requirement in terms of contractor personnel furnished," have "a sufficient number of government clients to indicate an understanding of governmental contracts," and have a "mix of labor categories and work . . . comparable to what is described in the solicitation." Fifteen points were to be awarded if the prior contracts were "close but do not match the estimated size of the requirement in terms of contractor personnel furnished, there are some governmental clients, and the mix of labor categories and work matches some of the solicitation requirements." Ten points were to be awarded if the prior contracts were "considerably less than the estimated size of the requirement in terms of contractor personnel furnished, there are few governmental clients, and the mix of labor categories and work matches a few of the solicitation requirements." AR, Tab 16, Evaluation Plan, at 4.

AR, Tab 10, Recommendation for Award, at 6-7.

The agency found that BTI's proposal warranted only 20 points under the key personnel subfactor, because "[o]ne supervisor has little management experience or training" and "[m]any of the proposed key personnel have a small amount of law enforcement, regulatory, or financial knowledge and experience." Id. at 2. The agency noted three specific examples of key personnel that lacked experience--a case management night supervisor (who assertedly lacked law enforcement experience) and two senior data retrieval specialists (who each had less than 1 year of experience performing this function)--only one of which was mentioned during discussions. Id. at 3. The agency also noted that the four individuals mentioned during discussions were "unacceptable for the proposed key personnel positions" due to performance problems under the incumbent contract, but that this was "not a factor in the evaluation." Id. at 2.

Under the transition and succession plan subfactor, BTI's proposal received less than full points because its plan was considered "weak and sketchy" and BTI did not provide additional detail in its FPR, even though these concerns were raised during discussions. Id. at 3.

With regard to past performance, the agency gave BTI's proposal full points under the relevance subfactor based solely on its incumbent contract. Id. at 1; Tr. at 211. BTI's 72 out of 75-point score under the references subfactor did not include consideration of its incumbent contract, since the report on BTI's performance under this contract had not been finalized and BTI objected to the inclusion of a negative assessment of its performance given by the most recent contracting officer's technical representative (COTR). Instead, BTI's reference scores were based on two other references provided by BTI, and two references obtained from the Contractor Performance System.[8] AR, Tab 10, Recommendation for Award, at 1-2.

LAJV's proposal received maximum scores under the infrastructure, hiring and retention plan, transition and succession plan,[9] and report sample subfactors, but received only 20 points under the key personnel subfactor because, as the agency noted, not all of LAJV's key personnel had the required security clearances or

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[8] The evaluation record does not explain how, or even if, these two contracts are relevant to the requirements here.

[9] Under the transition and succession subfactor, LAJV's initial proposal did not receive maximum points because its plan, like BTI's, lacked detail. However, unlike BTI, it provided a more detailed plan in its FPR in response to discussions, which caused the agency to raise LAJV's score in the final evaluation.

experience. The agency noted that although LAJV made "improvements [in its FPR in response to discussions] related to the number of personnel with security clearances and indicated it anticipates hiring some personnel from the current contract with existing security clearances," some of its key personnel still lacked "extensive experience." Id. at 5-6.

With regard to past performance, the agency noted LAJV had no past performance as a newly formed joint venture, but evaluated the contracts determined relevant of one of the partners. AR, Tab 15, LAJV Technical Evaluation Summary Score Sheet, at 3. The agency gave LAJV less than the maximum points (15 of 25 points) under the relevance subfactor because "not all of the referenced contracts had work similar to [this] requirement." However, the agency gave LAJV the maximum 75-point score under the references subfactor because the references rated LAJV's performance as "superior" in each of the five elements assessed. AR, Tab 10, Recommendation for Award, at 5.

Based upon LAJV's higher overall score (205 points as compared to BTI's 202 points) and lower evaluated price, the agency determined that LAJV's proposal provided the best overall value and selected LAJV for award. These protests followed.

BTI challenges the evaluation of both its and LAJV's proposals under the technical merit evaluation factor, arguing that LAJV's score should have been lower, and its score should have been higher under certain technical merit subfactors. In reviewing protests against allegedly improper evaluations and source selection decisions, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria and applicable procurement statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. UNICCO Gov't Servs., Inc., B- 277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7.

BTI first argues that LAJV's proposal should have received a lower technical score because LAJV is a new joint venture, with no Dun & Bradstreet rating or corporate experience. Although the protester does not point to which subfactor LAJV's proposal should have been downgraded under in this regard, the corporate infrastructure subfactor appears to be the only relevant subfactor under which this information could have been assessed. However, the record shows that, under this subfactor, the agency recognized that LAJV proposed a corporate infrastructure and staffing plan sufficient to begin delivering services within 60 days of contract award, as contemplated by this evaluation subfactor (quoted above). AR, Tab 15, LAJV Technical Evaluation Summary Score Sheet, at 4. Based on our review, we find the agency's judgment was reasonable.

BTI also contends that LAJV's proposal should have received a lower technical score under the infrastructure and key personnel subfactors because not all of its key personnel would have security clearances at the start of the contract.[10] However, the RFP did not require that all of the key personnel have security clearances at the start of the contract; rather, the RFP not only contemplated that key personnel might not have clearances until after contract award, but actually provided, under the infrastructure subfactor, for performance by the key personnel to begin either the effective date of award or when security clearances were obtained, whichever is later. As the agency was satisfied with LAJV's proposed plan to obtain security clearances in a timely fashion, it did not downgrade LAJV's proposal under this subfactor. However, under the key personnel subfactor, where the agency evaluated the current status of the security clearances of key personnel, LAJV's proposal was assessed a weakness and received a lower score because not all of LAJV's key personnel currently possessed these clearances. Based on our review, we find this evaluation unobjectionable, as it was reasonable and consistent with the RFP's evaluation criteria.

BTI next contends that its proposal was improperly downgraded under the key personnel subfactor because not all of its key personnel had law enforcement or years of experience. BTI asserts that these experience requirements constituted impermissible unstated evaluation criteria. We disagree.

In evaluating a proposal, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. North Am. Military Housing, LLC, B-289604, Mar. 20, 2002, 2002 CPD ¶ 69 at 5. Here, the key personnel subfactor stated that the "qualifications" of key personnel would be qualitatively evaluated. Given that an individual's experience is part of his or her qualifications, we believe that under this subfactor the agency could reasonably consider whether key personnel have relevant experience (in this case law enforcement experience) as well as the years of experience of these individuals. In this regard, we note that this experience is logically related to the requirements of the RFP, which recognizes that the FinCEN's mission is to provide analytical and intelligence support to law enforcement and regulatory communities, and requires the contractor to provide support for this

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[10] BTI also complains that none of LAJV's key personnel (who BTI asserts do not have a history of employment with either LAJV or the joint venture partners) provided commitment letters to demonstrate that LAJV could adequately staff the contract. However, the RFP did not require offerors to submit commitment letters from its proposed personnel, and BTI similarly did not provide commitment letters. To the extent that BTI complains that LAJV does not currently employ sufficient people to staff the contract, we note that BTI's proposal states that it also does not have a full complement of employees hired and ready to begin work at the commencement of the contract. See AR, Tab 6, BTI's Initial Proposal, § 2.3.2, at 15.

mission, including investigative research in various law enforcement, financial, and regulatory databases to uncover potential criminal relationships. Thus, we find that the agency could properly consider the contractor's proposed key personnel's law enforcement and years of experience in its evaluation under this subfactor.[11]

BTI nevertheless complains that the agency failed to hold meaningful discussions with it concerning the lack of law enforcement and years of experience of its key personnel. Although BTI acknowledges that law enforcement and years of experience were discussed in the context of four of its key personnel, it complains that the agency failed to raise these concerns with regard to any of its other personnel, and that it was misled as to the agency's concerns and requirements. Protester's Hearing exh. 5; Tr. at 34, 38, 54-56.

While discussions must address at least deficiencies and significant weaknesses identified in proposals, the scope and extent of discussions are largely a matter of the contracting officer's judgment. Federal Acquisition Regulation (FAR) § 15.306(d)(3); Northrop Grumman Info. Tech., Inc., B-290080 et al., June 10, 2002, 2002 CPD ¶ 136 at 6. In this regard, we review the adequacy of discussions to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Northrop Grumman Info. Tech., Inc., supra. An agency is not required to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score, and it is not required to advise an offeror of a weakness that is not considered significant, even if the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. Hines Chicago Investments, LLC, B-292984, Dec. 17, 2003, 2003 CPD ¶ __ at 3-4.

Here, even assuming that the agency did not reasonably apprise BTI during discussions that its proposal would be downgraded if the proposed personnel did not have law enforcement or extensive years of experience,[12] this weakness related only to BTI's ability to achieve a maximum score under this subfactor, and did not

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[11] BTI's proposal contained numerous references to law enforcement and financial crimes as it relates to the contractor's support of the FinCEN's mission. This evidences that BTI was aware that law enforcement experience could well be credited under the RFP.

[12] Although disputed by the protester, the agency asserts that it specifically advised the protester during discussions that lack of law enforcement experience and work experience would be considered in the evaluation. Tr. at 98, 100. As indicated above, for purposes of this decision, we do not resolve this dispute, but will accept the protester's version.

prevent BTI from having a reasonable chance for award. Thus, discussions were not required to be conducted with BTI on this point.[13]

Additionally, we find no evidence in the record that BTI was misled by the discussions as to the agency's concerns or requirements. To the contrary, according to BTI, it specifically informed the agency during discussions that it disagreed with the agency that law enforcement experience was required by the RFP and discussed with the agency the years of experience of some its personnel. Tr. at 38, 55; Protester's Hearing exh. 5; BTI's Post-Hearing Comments at 14-15.

BTI also complains that it was not "adequately advise[d]" during discussions about weaknesses in its transition and succession plan arising out of a lack of detail. Protest at 9. However, BTI does not deny that it was advised during discussions that its succession plan was "weak" or that it was requested to provide more detail. Indeed, BTI claims in its FPR that it reviewed its submitted succession plan (which consists of less than one page of text) and determined it to be compliant with the requirement of the RFP. Thus, the record shows that the agency's discussions on this point were meaningful.

BTI next contends that LAJV should have received a lower past performance score because it is a new joint venture without any prior history of past performance. BTI also complains that LAJV's past performance score was based solely on the performance history of only one of the joint venture partners.

Where an RFP requires the evaluation of offerors' past performance, an agency has the discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the RFP's requirements. Honolulu Shipyard, Inc., B-291760, Feb. 11, 2003, 2003 CPD ¶ 47 at 4. The performance history of one or more of the individual joint venture partners may be considered in evaluating the past performance of the entire joint venture, so long as doing so is not expressly prohibited by the RFP. Northrop Grumman Tech. Servs., Inc.; Raytheon Tech. Servs. Co., B-291506 et al., Jan. 14, 2003, 2003 CPD ¶ 25 at 30.

Here, the RFP did not preclude consideration of a joint venture partner's past performance in lieu of performance by the joint venture entity, or require consideration of all of the partners' past performance, but instead contemplated that the agency would evaluate relevant contracts and subcontracts that are similar in nature to the requirements of the RFP.

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[13] We note that LAJV was not afforded discussions on this issue either, even though it was assessed a similar weakness for lack of key personnel experience.

In its proposal, LAJV identified several prior contracts from only one of its partners, LifeCare, who was proposed to provide investigation experts and analysts, to include all of the senior project management and supervisory team and senior data retrieval specialists, and corporate resources for specialized investigation research training and Microsoft product training. The proposal explained that LifeCare's "core competencies include legal counsel, forensic accounting, auditing, assessments and reviews, investigations, data analysis, data mining, case management, and centralized operations center management." AR, Tab 8, LAJV Proposal, § 1.3. Given that the description of LifeCare's efforts encompassed most of the services required under the RFP, we find that the agency could properly consider LifeCare's performance history to be reasonably predictive of the performance of the joint venture as a whole. See Northrop Grumman Tech. Servs., Inc., supra, at 30-31.

We also find unobjectionable that the agency did not consider the past performance of LAJV's other partner, Advanta, who, according to LAJV's proposal, would be "support[ing]" the LifeCare efforts by providing staffing of data retrieval specialist and administrative support personnel. AR, Tab 8, LAJV Proposal, § 1.3. As noted above, the RFP did not require consideration of the past performance of all of the joint venture partners, and LAJV did not provide (nor was it required to provide) performance history of this partner, given the apparent lesser role that Advanta would play in performing the contract.

BTI complains, however, that, in considering the prior contracts of LifeCare, the agency inflated LAJV's scores under the relevance subfactor. BTI argues that, under the evaluation plan's scoring scheme, LAJV's proposal should have received a score of no more than 10 points (rather than the 15 points received) for relevance because the identified contracts were "considerably less" in dollar value than that which will be required under the RFP. As BTI notes, in order to receive a score of 15 points under the evaluation plan, an offeror's contracts had to be "close but do not match" the estimated size of the requirement, and contracts that were "considerably less than" the estimated size, such as LAJV's here, could receive a score of no more than 10 points.

However, where, as here, an agency's source selection evaluation plan is an internal agency guideline, not incorporated into the RFP, the failure to adhere to such a plan does not provide a valid basis for protest. Global Readiness Enters., B-284714, May 30, 2000, 2000 CPD ¶ 97 at 6. It is the evaluation scheme in the RFP, not internal agency documents, to which an agency is required to adhere in evaluating proposals and in making the source selection. Basic Contracting Servs., Inc., B-284649, May 18, 2000, 2000 CPD ¶ 120 at 11 n.2.

Here, the record demonstrates that the agency evaluated relevance in accordance with the RFP criteria--namely it considered whether the identified contracts provided the same or similar services to the RFP's requirements, focusing on the quality of performance relative to the size and complexity of the procurement under

consideration--and recognized the relative distinctions among offerors as required by the FAR, see FAR § 15.305(a)(2)(i), and these distinctions were reasonably reflected in the respective past performance scores.

Specifically, the agency noted that BTI's incumbent contract provided the "same type of services" as required here, and gave it the maximum 25 points under the relevance subfactor.[14] In comparison, the agency recognized that LAJV's contracts were less relevant than BTI's, which translated into a lower score of 15 points. While the agency found several strengths regarding the relevance of LAJV's past performance, such as LAJV's "good" "general knowledge," "government contracting experience," and the fact that at least one of the contracts appeared to involve "similar type" investigative work, AR, Tab 15, LAJV Technical Evaluation Summary Score Sheet, at 2-3; Tr. at 183-85, 189, the agency also noted that not all of LAJV's referenced contracts had work similar to the RFP's requirements, specifically noting as weaknesses that a "[m]ajority of contracts provided had to do with medical services or Workers Compensation management," that LAJV lacked law enforcement experience, and that LAJV's specific knowledge of the FinCEN's processes and techniques was "sketchy." AR, Tab 15, LAJV Technical Evaluation Summary Score Sheet, at 3; Tr. at 222. The agency also noted in its evaluation that the joint venture was newly formed and had no record of past performance outside of its individual partners, and that the dollar values of LAJV's referenced contracts were smaller than that of the effort which will be required here.[15] All of these evaluated factors resulted in a score of only 15 of 25 points under the relevance subfactor.

Thus, the record evidences that the agency fully recognized the relative strengths and weaknesses of these offerors in terms of whether the prior contracts provided similar services, including consideration of the size of the contracts, in a manner consistent with the RFP, and thus awarded LAJV's proposal a significantly lower score than BTI's for the relevance subfactor. Tr. at 183-91. BTI's argument that LAJV should have received an even lower score reflects either its attempt to impose the internal agency evaluation plan on the evaluation, which does not constitute a valid basis for protest, or its disagreement with the agency's judgment, which does not render this judgment unreasonable. UNICCO Gov't Servs., Inc., supra, at 7.

BTI also complains that the agency misevaluated its past performance under the references subfactor, where it only received 72 of a possible 75 points. As noted

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[14] BTI's other contracts were smaller in dollar value than the required effort here and were for "straight" information technology services, which did not include performing the investigative support work required under the RFP. Thus, it appears that BTI was given the benefit of the doubt in receiving a perfect score under the relevance subfactor.

[15] The dollar values of LAJV's contracts are also smaller than those identified by BTI.

above, the agency received unfavorable comments from the COTR on BTI's incumbent contract for the period of June 2002 through March 2003, and brought this to BTI's attention during discussions. In response, BTI asserted that the negative reference should be ignored because BTI had not had an opportunity to "formally" respond (although BTI provided a written response to the negative comments in its FPR), and informed the agency of three earlier assessments of its incumbent contract performance that were more favorable. Given BTI's objection to the consideration of the most recent past performance, which the agency reasonably believed to be the most relevant with regard to the incumbent contract, the agency did not consider any of the earlier incumbent contract performance references, either. BTI contends that the failure to consider the earlier, more favorable references was unreasonable, arguing that this positive performance was "simply too close at hand to ignore." Supplemental Protest at 3.

The record shows that BTI's past performance evaluation was downgraded only 3 points; thus, even assuming BTI's past performance warranted a perfect score, its total score would then be 205 points, the same score received by LAJV's proposal, and LAJV's proposal would still be in line for award based on its lower evaluated price. Thus, BTI's was not prejudiced by the agency's past performance evaluation, even assuming BTI's protest arguments here have merit.[16]

Finally, BTI argues that the agency improperly evaluated LAJV's price. As BTI notes, LAJV proposed five part-time management personnel at no cost to the government to support contract performance. BTI asserts that the agency was required to, but did not, assess the impact on price or risk associated with these "free" individuals.[17]

However, as the agency explains, the five "free" individuals were not required under the RFP, nor obligated to perform under the contract, and thus pricing information was not required. Moreover, the individuals were considered "superfluous" to the

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[16] Competitive prejudice is necessary before we will sustain a protest; where the record does not demonstrate that the protester would have a reasonable chance of receiving award but for the agency's actions, we will not sustain a protest, even if deficiencies, such as an unequal evaluation of proposals or lack of meaningful discussions, are found. Statistica v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

[17] BTI also asserted that the five positions were "transferred" from key personnel positions to "free" positions, thus allowing LAJV to improperly "reclassify[] employees from direct to indirect charges" and unfairly reduce its price. BTI's Comments at 28. However, the record shows this to be untrue, since LAJV's proposal makes clear that the five positions were, at all times, proposed at no cost to the government (that is, a "transfer" of positions did not occur), and the reductions in LAJV's FPR price were unrelated to these positions. See Tr. at 269, 272.

contract, because the services to be performed were covered by other stated personnel, who were priced as required under the RFP using the estimated number of hours stated in the RFP. Tr. at 262-66, 281. The record also reflects that these "free" individuals were "irrelevant" to the evaluation and were "not a factor in recommending award." Tr. at 263; AR, Tab 10, Recommendation for Award, at 6. Thus, we fail to see how there was any risk to the government, or that the price of these individuals was required to be evaluated.

The protests are denied.

Anthony H. Gamboa
General Counsel