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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Ameriko, Inc.

**File:** B-272989

**Date:** November 4, 1996

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Lynn Hawkins Patton, Esq., Ott & Purdy, for the protester.

Ross L. Crown, Esq., and Dennis E. Jontz, Esq., Kemp, Smith, Duncan & Hammond, P.C., for Phillips National, Inc., an intervenor.

Diane D. Hayden, Esq., and V. Paul Clay, Esq., Department of the Navy, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest that agency miscalculated awardee's proposal as superior to protester's under experience factor is denied where record shows that agency's conclusion reasonably was based on the fact that awardee performed (and received "strong" reference ratings for) significantly greater number of similar contracts than protester.

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## **DECISION**

Ameriko, Inc. protests the award of a contract to Phillips National, Inc. under request for proposals (RFP) No. N63387-95-R-0069, issued by the Department of the Navy for military family housing and maintenance services.

We deny the protest.

The RFP, for the award of a fixed-price/indefinite quantity contract, provided that proposals would be evaluated under three factors: (1) management/administration plan (with four subfactors), (2) contractor experience (two subfactors), and (3) price. Each of the technical factors and subfactors was to be given an adjectival rating of strong, average, marginal, or unacceptable. The technical factors were significantly more important than price.

Of the eight proposals received, Phillips's and Ameriko's were ranked first and second, respectively, in technical merit, both receiving strong ratings overall and for each subfactor. The agency ranked Phillips's proposal first based on a superior quality control plan (the second subfactor under management/administration plan), and more extensive experience performing military family housing maintenance

contracts (the first subfactor under contractor experience). Since Phillips's proposal also was \$1.1 million lower priced than Ameriko's (\$7.9 million vs \$9.0 million), the agency selected Phillips for award.

Ameriko challenges the agency's evaluation of Phillips's experience on military family housing maintenance contracts as superior to its own. Ameriko asserts that Phillips provided only three contract references regarding past performance and that the agency was unable to contact any of those references, and therefore questions how Phillips's proposal could have been rated strong under this subfactor. Ameriko also argues that the agency failed to give its proposal sufficient credit for the firm's performance as the incumbent contractor for the requested services.

Ameriko's arguments are based on incorrect facts. First, Phillips provided references for 19 prior military family housing maintenance contracts, not 3 as Ameriko asserts; the agency was able to contact 12 of these references; 9 rated Phillips's performance as strong and 3 average. We find nothing unreasonable in the agency's conclusion that the high number of strong references warranted a strong rating for Phillips's proposal under the experience factor. By the same token, while Ameriko received strong ratings from all three references contacted (of the five provided by Ameriko), it clearly was reasonable for the agency to conclude that the significantly greater number of housing maintenance contracts performed by Phillips (as well as the greater number of strong ratings) warranted regarding Phillips's proposal as somewhat superior to Ameriko's under the experience factor. Finally, there is no basis for finding that Ameriko's proposal rating improperly failed to reflect its performance as the incumbent. The record shows that the agency contacted the reference provided by Ameriko for its current contract, and that this was factored into Ameriko's strong rating under corporate experience and past performance.<sup>1</sup>

Ameriko also challenges the evaluation of Phillips's quality assurance plan as superior to its own. However, even if Ameriko were correct that its plan should have been rated equal to Phillips's, the award decision would not change in light of our conclusion that the agency reasonably rated Phillips's experience superior to Ameriko's, and Phillips's lower proposed price. Indeed, even if the proposals were rated technically equal, Phillips would remain entitled to the award based on its

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<sup>1</sup>The agency also points out—in response to Ameriko's argument that as the incumbent for identical services it is uniquely qualified to perform this contract—that Ameriko's current contract in fact covers only 66 percent of the requirements under the current RFP.

lower price.<sup>2</sup> See PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366.<sup>3</sup>

The protest is denied.

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<sup>2</sup>Ameriko also argues that the agency did not perform a proper cost analysis because it did not consider the transition costs associated with having Phillips perform the contract. As transition costs were not a stated evaluation factor, the agency was under no obligation to consider them. See DDD Co., B-250213, Jan. 15, 1993, 93-1 CPD ¶ 48. Further, to the extent Ameriko argues that the agency did not consider cost realism, the agency was not required to do so since it was awarding a fixed-price contract. See Olin Corp., B-258113.2; B-258113.3, Nov. 13, 1995, 95-2 CPD ¶ 221.

<sup>3</sup>Ameriko also complains that the agency deviated from the source selection plan. This is not a sustainable basis of protest. See EG&G Team, B-259917.2, July 5, 1995, 95-2 CPD ¶ 138.