



GAO

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability 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: NVT Technologies, Inc.

File: B-297524; B-297524.2

Date: February 2, 2006

Jeffrey A. Lovitky, Esq., for the protester.
James J. McCullough, Esq., and Steven A. Alerding, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for SelectTech Services Corporation, an intervenor.
Maj. Jeffrey Branstetter, Department of the Air Force, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's evaluation of past performance and source selection decision is denied where record shows that the evaluation and award decision were reasonable, consistent with the terms of the solicitation, and in accordance with applicable procurement rules.

DECISION

NVT Technologies, Inc. protests the award of a contract to SelectTech Services Corporation under request for proposals (RFP) No. FA8601-05-R-0034, issued by the Department of the Air Force for facility/laboratory management and equipment maintenance services at the Air Force Research Laboratories at Wright-Patterson Air Force Base, Ohio. NVT challenges the agency's evaluation of the proposals, primarily contending that its past performance was unreasonably downgraded for failure to demonstrate a greater degree of relevance to the current requirements, and that the awardee's proposal is unacceptable for taking exception to material terms of the solicitation.¹

¹ In its initial protest, NVT argued that the agency failed to competitively rank all proposals, failed to properly evaluate NVT's price proposal, improperly coached the awardee to lower its price to be competitive with NVT's price, and failed to give the protester an opportunity to explain any unsatisfactory past performance. NVT failed to respond to the agency's report on these issues; accordingly, we consider them to be abandoned. See The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218 at 5.

(continued...)

We deny the protests.

The RFP, issued on May 24, 2005, contemplates the award of a time-and-materials, indefinite-delivery/indefinite-quantity contract for a base year and 3 option years. RFP at 35. Offerors were advised that their proposals were to “include sufficient detail for effective evaluation and for substantiating the validity of stated claims,” and that award would be made to the offeror providing the agency with “the greatest confidence that it will best meet or exceed the requirements affordably.” Id. at 37, 54. The following three evaluation factors, listed in descending order of importance, were provided: mission capability (to be evaluated for technical acceptability only), past performance, and price. A price/past performance tradeoff was to be conducted if the lowest-priced proposal was not rated exceptional for past performance. Id. at 53, 55.

The RFP advised that the past performance evaluations would be based on the offerors’ proposals, past performance reference questionnaires received, and data obtained from other sources. Offerors were to provide descriptions of the work they performed in order for the agency to assess the efforts’ relevance to the current performance requirements; the RFP specifically cautioned, however, that the agency would not be bound by an offeror’s opinion of the relevance of its past performance efforts. Id. Offerors were to provide contract information and references for up to three recent customers with relevant work of similar scope and complexity, in sufficient detail to demonstrate the ability to perform the proposed effort. Id. at 42, 46. Reference questionnaires were to be reviewed for the quality of work performed; ratings of exceptional, very good, satisfactory, marginal, and unsatisfactory were to be assigned to indicate the overall quality of the contractor’s work efforts. Separately, the relevance of those efforts was to be assessed; ratings of highly relevant (involving essentially the same magnitude of effort and complexity), relevant (much of the same magnitude of effort and complexity), somewhat relevant (some of the magnitude of effort and complexity), and not relevant (little of the magnitude of effort and complexity) were to be assigned. Id. at 57-58. Applying the relevance ratings to the quality assessments, the agency formulated a performance confidence rating for each proposal; the ratings included exceptional/high confidence (indicating essentially no doubt that the offeror will successfully perform the required effort); very good/significant confidence (little doubt of successful performance); satisfactory/confidence (some doubt of successful performance); marginal/little confidence (substantial doubt of successful performance, and where changes in the offeror’s processes may be necessary); and unsatisfactory/no confidence (extreme doubt of successful performance).

(...continued)

The agency reports that while NVT's past performance quality assessment was satisfactory, it received a relatively low relevance rating (of somewhat relevant) since its work descriptions were vague and did not support a higher relevance rating. Due to the low relevance rating, the NVT proposal received an overall performance confidence rating of marginal/little confidence. SelectTech (an incumbent contractor for much of the work required under the RFP) submitted the lowest price of all of the offerors and received higher past performance ratings for quality and relevance than NVT. SelectTech's proposal received an overall performance confidence rating of satisfactory/confidence. A price/past performance tradeoff was subsequently conducted between the SelectTech proposal and the third lowest-priced proposal, which received the same past performance rating as SelectTech's. NVT's second-lowest priced proposal was not considered in the tradeoff with SelectTech's proposal, since SelectTech had a higher past performance rating than NVT, and proposed a lower price. In light of SelectTech's satisfactory past performance confidence rating and its lower price, the source selection official determined that its proposal offered the best value to the government. An award was made to that firm on October 12. This protest followed.

NVT primarily contends that the agency's evaluation of the relevance of its past performance was conducted on an unequal basis (because four past performance reference questionnaires were considered for SelectTech while only three were considered for NVT), and unfairly advantageous to SelectTech (because two of the individuals who submitted past performance references for SelectTech were on the agency's evaluation team for this procurement).² Based on our review of the record in this case, we find no reason to question the propriety of the evaluation or award decision.

²NVT raised numerous other contentions which we have reviewed but decline to discuss in detail since the record shows that they are either factually incorrect, speculative, or did not result in any prejudice to NVT. For example, while NVT alleges that the awardee's proposal must be rejected for that firm's failure to complete and sign its Standard Form (SF) 33, our review confirms that not only did SelectTech properly complete and sign its SF33 (and that, contrary to the protester's allegations, SelectTech also properly signed its acknowledgments of receipt of the amendments), but that the NVT proposal was submitted without a completed or signed SF33 (and without required signed amendment acknowledgements). Additionally, while NVT generally suggests that SelectTech was given advance information about the procurement, nothing in the record supports the protester's speculation. Rather, NVT's contention appears to be based on a strained interpretation of a statement in SelectTech's proposal regarding the firm's asserted preparedness to meet an agency's needs as soon as it learns of the agency's requirements; the agency and intervenor state that the alleged improper communications did not occur and the protester provides no evidence to suggest otherwise. See Robert Wall Edge--Recon., 89-1 CPD ¶ 335 at 2.

In reviewing protests against allegedly improper evaluations, 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. See DeLeon Technical Servs., Inc., B-293783, June 4, 2004, 2004 CPD ¶ 145 at 2. The 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.

NVT does not challenge the quality assessment of the firms' past performance or the fact that SelectTech's past performance was rated higher than NVT's based upon consistently high ratings and highly favorable commentary received from SelectTech's past performance references. Rather, the protester questions the reasonableness of the agency's evaluation of the relevance of NVT's past performance efforts, for which it received a rating of only somewhat relevant. In particular, the protester contends that the agency failed to appropriately consider the additional past performance information NVT provided in its final proposal revision (FPR) in response to having been told during discussions that its relatively low relevance rating was due to the vagueness of the past performance descriptions in the firm's initial proposal.³

In its FPR, the protester provided a chart listing the titles of the general categories and subtasks of the RFP's performance work statement, as well as a brief narrative providing a general overview of the contracts. NVT FPR at III-6-14. The chart listed in the FPR provided separate columns for each of NVT's three referenced past performance efforts; in these columns, NVT placed a checkmark next to each general task that the protester believed was performed under any of the three contracts. The agency contends that the chart provides, at best, only the most general description of work performed as it presents only the general categories of work listed in the RFP's performance work statement, without elaborating (either on the chart or in the narratives) about the specific projects and work actually performed under those categories and subtasks, in order for the agency to assess if the work performed is directly relevant to the identified tasks. Moreover, as

³ NVT argues that a lack of contemporaneous documentation in the record indicates that its FPR was not considered by the agency prior to award. The agency, however, has explained that, because the firm's FPR did not provide any additional information to support a change to its relevance rating, no documentation was generated to confirm its review. We also note that although NVT generally suggests that the agency's source selection decision improperly relied on a meaningless, mechanical application of point scores, the record shows that the offerors' past performance point scores, ultimately converted to adjectival ratings, were based on narratives in the evaluation record and reference questionnaires, and that the source selection decision document contains a lengthy narrative analysis of proposals.

evidenced by the chart in its FPR, NVT itself contends that only about half of the RFP's performance work tasks were performed under two of the three contracts (while all of the tasks were allegedly performed under its third contract). Since the record supports the agency's finding that the protester's proposal and FPR failed to provide sufficiently detailed descriptions of work to either allow for a more comprehensive relevance review or support a higher relevance rating, and since it is clear that, even under NVT's self-assessment, as many as half of the requirements were not involved in two of its three contracts, we see no basis to question the agency's assessment of the work presented as "somewhat relevant" to the current requirements.⁴

NVT next alleges that the past performance evaluation was improper since, although the RFP provided that past performance information was to be limited to work performed for three prior customers, four SelectTech reference questionnaires were reviewed and given equal weight by the evaluators, including two questionnaires that were submitted for the same contract. Only three questionnaires were received and evaluated for NVT. In this regard, NVT suggests that SelectTech received the benefit of having one highly-rated relevant contract (its previous contract for much of the work required under the RFP) being considered twice in the evaluation. Additionally, NVT argues that the two reference questionnaires for the incumbent contract should not have been considered because they were submitted by individuals who were members of the evaluation team for the current procurement.

Evaluators may consider personal knowledge of an offeror in a past performance evaluation, see Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 2, and thus we see nothing improper in an evaluator serving as a past performance reference where, as here, there has been no showing of improper influence on the evaluation or award determination. See George A. Fuller Co., B-247171.2, May 11, 1992, 92-1 CPD ¶ 433 at 4-5. With regard to NVT's other argument--that it was improper for the agency to consider two references for the same contract, both of which came from members of the evaluation team--it is clear that NVT was not prejudiced by any alleged error in this area. Specifically, even if NVT is correct and the agency properly could consider only three past performance references, then only one of the two challenged references/evaluators' ratings would need to be removed from the evaluation record, given our conclusion above that it was not

⁴ This is especially so given that, as stated above, the next highest relevance rating of "relevant" would require a determination that "much" (not "some") of the work under the three contracts was similar in scope and complexity. Past performance evaluations ratings in this regard are, at least in part, subjective in nature, and, contrary to the protester's position otherwise, we do not find unreasonable the view that if, at best, half of the tasks under two of three contracts had been performed, such a record warrants a determination that "some" rather than "much" of the work was similar to the RFP's requirements.

improper to consider references from individuals serving on the evaluation team. Further, our review of the record shows that removing the higher scoring of the two evaluator references clearly would not change SelectTech's past performance adjectival rating, or its position (vis-à-vis NVT) as the higher-rated, lower-priced offeror in line for award under the RFP's evaluation scheme. A showing of competitive prejudice is a necessary element of a viable basis of protest, see 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), and the protester has made no such showing here.

NVT next contends that the awardee's FPR must be rejected for failure to comply with certain requirements of the RFP.⁵ In particular, NVT challenges the acceptability of the SelectTech FPR because it incorporated the model contract previously provided by the agency to all offerors with a cover page (SF33) labeled "draft." NVT states that by including the document, which deletes several solicitation provisions that are not needed for the resulting contract but which were in the original RFP, SelectTech failed to demonstrate compliance with all RFP provisions. The protester's contentions in this regard provide no basis to question the propriety of the award.

First, as the agency explains, all offerors, including NVT, were given the same copy (marked "draft") of the model contract prior to the submission of FPRs in order to confirm the agency's intentions regarding the terms of the resulting contract under the RFP. Since SelectTech's FPR included a fully completed, signed copy of its SF33 agreeing to perform the services required by the RFP, we cannot agree with the protester that inclusion of the model contract's "draft" SF33 cover page (which, again, was supplied in that form by the agency to all offerors) rendered the awardee's FPR unacceptable for failure to otherwise commit to the terms of the solicitation. Also, while NVT complains that certain representations and certifications were deleted from the model contract, and thus were omitted from the SelectTech FPR (e.g., representations regarding recovery of facilities capital cost of money and payments to influence federal transactions), the protester simply has not shown that the provisions in question are material, or that it was in any way

⁵ The protester also alleges that, since SelectTech took exception to certain payment terms in the RFP, its initial proposal was not acceptable. The record confirms, however, that the noted exceptions were withdrawn in the firm's FPR.

prejudiced by any differences between the standard clauses contained in the RFP and in the model contract.⁶

The protests are denied.

Anthony H. Gamboa
General Counsel

⁶ For instance, NVT complains that a payments clause in the original RFP, Federal Acquisition Regulation § 52.232-7(a)(2), was changed from a mandatory requirement for the agency to retain 5 percent of payments to the contractor (up to \$50,000), to a discretionary one in the model contract (allowing the agency, in its discretion, to retain such funds). The protester, however, has not shown any prejudicial effect from this change, e.g., how it would have prepared its proposal differently in view of the changed language.