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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Cortez, Inc.

File: B-292178; B-292178.2; B-292178.3

Date: July 17, 2003

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Mark D. Colley, Esq., David S. Black, Esq., Stuart W. Turner, Esq., Caitlin K. Cloonan, Esq., and Michele M. Brown, Esq., Holland & Knight, for EG&G Technical Services, Inc., an intervenor.
Sumara M. Thompson-King, Esq., and Jerry L. Seemann, Esq., National Aeronautics & Space Administration, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging conduct of price realism evaluation and agency determination that awardee's pricing was realistic is denied where protester does not show that awardee's pricing was likely to result in significant performance risk and agency reasonably found that nothing in awardee's pricing called into question its understanding of the performance requirements set forth in the solicitation.

2. Protest that agency unreasonably found awardee's past performance/experience superior to the protester's (the incumbent contractor), is denied where, although both firms were reported to have strong performance on a number of contracts, and protester was given evaluation credit for experience on the incumbent contract, agency determined, and protester conceded during discussions, that protester had encountered problems in performing the incumbent contract.

DECISION

Cortez, Inc. protests the National Aeronautics & Space Administration's (NASA) issuance of an order to EG&G Technical Services, Inc., under request for quotations (RFQ) No. 8-1-1-A4-00155, for logistics services at NASA's George C. Marshall Space Flight Center (MSFC) in Alabama. The order was issued to EG&G under the General Services Administration's LOGWORLD Federal Supply Schedule. Cortez challenges numerous aspects of the technical and price evaluation.

We deny the protest.

The RFQ contemplated issuance of an order for a base period of 3 years, with 2 option years and 5 award term periods, to furnish, primarily on a fixed-price basis, a wide range of logistics services, including environmental services, mail services, equipment maintenance and repair services, motor pool services, property services, move services, disposal services, and food services. (The solicited effort included lump sum, indefinite-delivery/indefinite-quantity (ID/IQ), pre-priced, and time and materials requirements.) Award was to be made to the offeror whose quotation offered the best combination of price and qualitative merit (including past performance). The "best value" quotation was to be determined based on three evaluation factors: (1) mission suitability, including subfactors for management approach (worth 375 of 1,000 possible mission suitability evaluation points), technical approach (475 points), safety, health and environmental (100 points), and small disadvantaged business participation (50 points); (2) cost/price; and (3) past performance. The RFQ provided that mission suitability, cost/price and past performance were essentially equal in importance, and that qualitative merit, including past performance, was significantly more important than price.

Initial quotations were received from three firms, including Cortez (the incumbent logistics services contractor at MSFC), EG&G, and a third firm (not relevant here). After discussions with Cortez and EG&G, NASA requested final quotation revisions (FQR). Based on its evaluation of the FQRs, NASA determined that EG&G's quotation had a decisive advantage over Cortez's, such that it offered the best value. Specifically, under the mission suitability factor, EG&G's quotation received an evaluation score of 893 points, with 7 significant strengths, 32 other strengths, no significant weaknesses, and 2 other weaknesses, while Cortez's quotation received a score of only 630 points, with 1 significant strength, 14 other strengths, 2 significant weaknesses, and 21 other weaknesses. Further, EG&G received a past performance rating of very good while Cortez's past performance was rated as only good. Finally, EG&G proposed a price of $[DELETED] million, while Cortez proposed a price of $[DELETED] million. Upon learning of the resulting issuance of an order to EG&G, Cortez filed this protest with our Office.

PRICE REALISM AND COMPENSATION

Cortez asserts that the agency failed to adequately evaluate the realism of EG&G's prices and the adequacy of its compensation plan. In this regard, the RFQ provided that "proposed cost/prices will be evaluated for reasonableness and realism." RFQ, § M, at 83. The RFQ also specifically provided under the mission suitability factor that "cost realism, or the lack thereof, will be used in evaluating the Mission Suitability Subfactors as an indicator of the Quoter's understanding of the requirement." RFQ, § M, at 78. Vendors were required to

> provide a narrative . . . that identifies each indirect component with its associated value for Lump Sum, fully burden[ed] labor rates, and Prepriced work . . . . The indirect components associated with Lump Sum, fully burden[ed] labor rates, Prepriced work and the material handling coefficient factors components will be used in the evaluation for reasonableness and realism of proposed prices and price components.

RFQ, § L, at 69. In addition, vendors were required to furnish in the mission suitability volume of their quotation a total compensation plan setting forth salaries/wages, fringe benefits and other types of leave programs for all labor categories, and to demonstrate that their compensation plan was "reasonable and . . . compliant with the Federal labor standards (i.e., Service Contact Act . . . Fair Labor Standards Act, etc.)." RFQ, § L, at 63. All subcontractors were required to furnish the same information. RFQ, § L, at 64.

Where, as here, an RFP contemplates the award of a fixed-price contract, the agency is not required to conduct a realism analysis; this is because a fixed-price (as opposed to a cost-type) contract places the risk and responsibility for loss on the contractor. <u>WorldTravelService</u>, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 3; <u>PHP Healthcare Corp.</u>, B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5. However, an agency may, as the agency did here, provide for the use of a price realism analysis for the limited purpose of measuring offerors' understanding of the requirements or to assess the risk inherent in an offeror's proposal. <u>PHP Healthcare Corp.</u>, <u>supra</u>. The nature and extent of price realism analysis ultimately are matters within the sound exercise of the agency's discretion, and our review of such an evaluation is limited to determining whether it was reasonable and consistent with the solicitation's evaluation criteria. <u>Rodgers Travel, Inc.</u>, B-291785, Mar. 12, 2003, 2003 CPD ¶ 60 at 4; <u>Star Mountain, Inc.</u>, B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 2. Based on our review, we find that Cortez's challenge to NASA's evaluation of price realism and employee compensation furnishes no basis for questioning the award.

Labor Rates

Cortez generally asserts that NASA failed to evaluate the realism of either EG&G's loaded labor rates or of the components that made up those rates. However, the record--including testimony given at a hearing held by our Office--indicates that NASA in fact evaluated EG&G's labor rates and its indirect price components, and we find nothing unreasonable in the evaluation.

EG&G's initial quotation, as required by the RFQ, included job description/ qualifications forms for each labor category, setting forth: the contractor job title; comparable Service Contract Act (SCA) labor category; an indication as to whether the category position is an exempt position under the SCA; an indication as to whether the category is covered by a collective bargaining agreement (CBA); the wages/salary and hourly fringe benefits for the category; a description of the duties for the category; and the qualifications for the category. EG&G explained in its initial quotation that its rates for non-exempt employees were based on the SCA wage rate determination for those not covered by a CBA and on the applicable CBA for those so covered, and that its rates for exempt employees were developed using information from specified national compensation surveys. EG&G Initial Quotation, Price Proposal, at II-5.

NASA first reviewed the wages/salary and fringe benefits indicated on the job description/qualifications forms for conformance to SCA wage rate determinations or a CBA. For purposes of establishing an evaluation benchmark, NASA then calculated a loaded rate for each labor category using the applicable SCA and CBA rates and indirect price components (e.g., general and administrative (G&A), overhead/fringe, and profit) specified in the quotation; NASA compared the benchmark rates to EG&G's proposed rates to ensure that they were sufficient to cover the costs associated with the SCA and CBA requirements. Hearing Transcript (Tr.) at 68, 150-51.

In its FQR, EG&G reduced its overall evaluated price from $[DELETED] million to $[DELETED] million based on several changes, including: (1) an approximately $[DELETED] million reduction resulting from mistakenly including flight hardware in its effort; (2) correction of a $[DELETED] million arithmetical error in its initial quotation; and (3) reduction in staff from [DELETED] to [DELETED] employees (still [DELETED] more than Cortez's [DELETED] employees), for a savings of approximately $[DELETED] million. In addition, EG&G proposed a reduction in profit from [DELETED] to [DELETED] percent, and a reduction in the combined overhead/fringe rate from an evaluated composite rate of [DELETED] percent to [DELETED] percent, based on "changes to our benefit plans, benefit costs, and overhead rates." Tr. at 140-43; EG&G FQR, Price Proposal, at II-1 to II-2. EG&G's FQR specified reduced loaded labor rates "to reflect our reduced pricing structure." EG&G FQR, Price Proposal, at II-2. Although EG&G did not furnish new job description/qualifications forms in its FQR, and did not otherwise restate the base wages/salary of its proposed labor categories, it reaffirmed in its FQR that its rates for non-exempt employees were generally based on the applicable SCA wage rate determination or CBA and that its rates for exempt employees were developed using compensation surveys. EG&G FQR, Price Proposal, at II-7.

In its evaluation of EG&G's FQR, NASA compared EG&G's FQR loaded labor rates to its initial quotation rates and to the benchmark rates NASA had developed for the initial evaluation. NASA determined that, notwithstanding the reduction in loaded labor rates, EG&G had not reduced its base labor rates, Tr. at 176, and EG&G's rates remained sufficient to cover the costs associated with the SCA and CBA requirements. Tr. at 133-36, 159-60. In addition, the agency ensured that all proposed labor was included in the quoted price, by calculating the total cost of the proposed labor in EG&G's mission suitability volume (using EG&G's proposed staffing plan, its schedule of loaded labor rates, and schedule of productive hours), and comparing the result to the estimates in EG&G's price volume. Tr. at 133-36; NASA Comments, July 3, 2003, at 5. Further, NASA considered whether, and determined that, EG&G had proposed a skill mix and staffing level adequate to support the logistic services at MSFC. NASA Contracting Officer's Statement (COS) at 20-21; Legal Memorandum at 10-11. Thus, NASA's methodology in evaluating EG&G's price encompassed, not only a review of the loaded labor rate changes in the FQR, but also a more general consideration of the sufficiency of the revised rates.

As part of its evaluation of the indirect components of EG&G's quoted price, NASA sought input from the Defense Contract Audit Agency (DCAA). DCAA advised that the verified fiscal year 2003 G&A rate from EG&G's forward pricing rate submission dated December 2, 2002, was [DELETED] percent. Although EG&G had indicated that its initial quotation was based on an initial G&A rate of only [DELETED] percent, NASA did not view this lower rate as a matter of concern. Rather, the agency viewed the reduction as simply the result of an EG&G business decision to make its price more competitive, an approach the agency did not find unusual in the context of a fixed price competitive award. Tr. at 32-33, 64, 125-26. (Further, the agency appears to have taken into account the fact that winning a contract would increase the relevant EG&G division's G&A base and thus reduce its G&A rate. NASA Comments, July 3, 2003, at 4.) Indeed, the RFQ here specifically instructed vendors to submit their "most competitive firm-fixed price quote," and provided that "[d]ue to the value of this GSA order, a price reduction to the negotiated GSA Contract rates is requested." RFQ, § L, at 69. (Cortez stated in its FQR that it had reduced its G&A rate from [DELETED] percent to [DELETED] percent. Cortez FQR, Price Proposal, at 2.)

As for overhead, EG&G proposed several combined fringe/overhead rates that were evaluated as totaling approximately [DELETED] percent--or [DELETED] percent when all benefits are added--in its FQR. Final Findings Presentation to the Source Selection Authority at 39; Tr. at 30-35. The [DELETED] percent rate represented a reduction from its initial quotation rate of [DELETED] percent, and from DCAA's reported forward pricing submission overhead rate of [DELETED] percent.[1] However, NASA apparently viewed the reduction from EG&G's forward pricing rates as reflecting the fact that the contract was to be primarily performed using government-furnished facilities. Consistent with this view, both Cortez and the third vendor proposed no overhead. (Cortez did propose fringe, but not as a percentage rate.) NASA found no basis to question these rates, and ultimately concluded that EG&G could perform at its quoted price. Tr. at 45-47, 111, 203-04. Again, we find nothing unreasonable in the agency's conclusions.

Cortez asserts that, given that EG&G reduced its loaded labor rates in its FQR, but did not submit revised job description/qualifications forms, there was no basis for NASA to evaluate its labor rates as adequate. We disagree. As noted above, although

EG&G's FQR did not include new job description/qualifications forms and did not expressly restate the base wages/salary for each proposed labor category, the FQR did reaffirm that EG&G's rates for non-exempt employees were based on the applicable SCA wage rate determination or CBA (and that its rates for exempt employees were developed using information compensation surveys). EG&G FQR, Price Proposal, at II-7. In light of this reaffirmation and the fact that the FQR loaded labor rates remained sufficiently high to cover the cost of the base wages/salary and fringe benefits shown on the job description/qualifications forms, we think the agency could reasonably conclude that EG&G was proposing to reduce the indirect components of the loaded rates, not the base wages/salary and fringe benefits shown on the job description/qualifications forms furnished with its initial quotation. Tr. at 176-77.[1] We note that Cortez itself concedes that it "has no reason to believe that EG&G will not pay its employees the minimums required by law . . . ." Cortez Comments, July 3, 2003, at 6 n.2.

Nor has Cortez shown that EG&G will be unable to obtain its proposed staff at the proposed wages/salary and fringe benefits. The SCA/CBA rates on which EG&G's non-exempt labor rates were based have either been shown in area surveys (by the Department of Labor or otherwise) to be those prevailing in the locality for such employees, or are those negotiated with the represented unions. See 29 C.F.R. §§ 4.3, 4.51, 4.52 (2003); Tr. at 223. As such, there is no basis for concluding that the rates will not be sufficient to attract staff. Indeed, Cortez likewise based its base wages/salary and fringe benefits for non-exempt staff on the applicable SCA/CBA rates. In this regard, it appears from NASA's detailed evaluation of Cortez's initial quotation labor rates that Cortez proposed to pay in the initial contract year no more than the SCA/CBA-required base wages/salary for approximately [DELETED] percent of the covered, identified FTEs, and no more than [DELETED] percent above the SCA/CBA-required base wages/salary for approximately [DELETED] percent of the covered, identified FTEs. Although this amounted to slightly higher base wages/salary than those proposed by EG&G, Cortez has not shown that the difference would materially and adversely affect EG&G's ability to obtain staff. On

[1] For example, Cortez has identified 23 EG&G labor categories in which the FQR loaded rate was more than $1 below the initial quotation rate. However, except for one labor category for which the agency concluded that the initial quotation rate was mistakenly too high, Tr. at 175, 257, cf. Tr. at 307-08, and several exempt labor categories, the greatest reduction in loaded rates (from $[DELETED] to $[DELETED]) was for EG&G's work control technician/administrative order clerk III, a category covering only one full-time equivalent (FTE). (Most reductions were less, averaging approximately $[DELETED], or [DELETED] percent.) Even for this extreme example, EG&G's loaded FQR rate was sufficient to cover the cost of the base wages/salary and fringe benefits ($[DELETED]) indicated on the job description/qualifications forms.

the contrary, the record indicates that EG&G has generally been able to staff service contracts at the SCA/CBA rates. Tr. at 326-29.[2]

Cortez asserts that NASA improperly failed to evaluate the realism of EG&G's rates for the exempt labor categories, and instead unreasonably focused on EG&G's approach to compensating non-exempt positions. This specific argument, focusing on the realism of the rates for the exempt labor categories, is untimely, since it was not raised until more than 10 days after Cortez received a copy of EG&G's quotation and the contemporaneous evaluation record. 4 C.F.R. § 21.2(a) (2003).[3]

Understanding/Performance Risk

In support of its assertion that NASA failed to perform an adequate price realism evaluation, Cortez argues that EG&G's G&A rate, reflecting a [DELETED] percent reduction from its forward pricing rate--from [DELETED] percent to the initial G&A rate of [DELETED] percent indicated in its quotation--was unrealistic. Cortez also questions whether EG&G's FQR reduction in its combined indirect/fringe rate was justified. In addition, Cortez finds no provision in EG&G's price proposal for the cost of the required general liability insurance (estimated by Cortez as amounting to [DELETED] percent to [DELETED] percent) or for the application to labor of GSA's 1-percent Industrial Funding Fee. Cortez concludes that, given that EG&G's

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[2] Further, the record indicates that NASA intended that the contract be subject to annual wage rate determinations notwithstanding the fact that the appropriated funds used to fund the contract are 2-year funds, that is, will be available for obligation during a period of 2 years. NASA reports that because its policy always has been to provide SCA/CBA labor rate adjustments on an annual basis, (1) its written notice of the procurement filed with the Department of Labor did not include the notice required where a proposed contract for a multi-year period will be subject to other than annual appropriations, and (2) the RFQ included Federal Acquisition Regulation Standard Form Clause 52.222-43, which refers to several circumstances warranting adjustment to the contract price, including wage rate determinations applicable on the anniversary date of a multiple year contract. 29 C.F.R. § 4.4(d) (2003); 48 C.F.R. § 1822.1008-270(a); NASA Comments, July 11, 2003; NASA Comments, July14, 2003.

[3] Noting that the RFQ required the submission of the same compensation information for subcontractors as was required for the prime contractor, RFQ, § L, at 64, Cortez asserts that EG&G failed to submit the required information with respect to subcontractor staff. However, it appears from EG&G's quotation that its compensation approach was based on a single base wages/salary and fringe benefits rate (as shown in the job description/qualifications forms) for any particular labor category, irrespective of which entity--prime or subcontractor--was furnishing the labor. Thus, there was sufficient information for NASA to determine that EG&G's overall compensation approach was adequate.

proposed profit was only [DELETED] percent, EG&G will be performing the contract at a loss, and its prices thus cannot be viewed as realistic.

We find Cortez's arguments unpersuasive. As an initial matter, Cortez ignores both the general purpose of a price realism analysis in the context of a fixed-price contract--to assess offerors' understanding of the requirements or to assess the risk inherent in their quotations--and the specific requirements of the RFQ here. The RFQ did not provide for, nor is there any other basis for requiring, a detailed examination of all significant cost elements, and did not generally require vendors to explain the basis for and extent of each of the indirect components or otherwise to submit detailed cost and pricing data. Rather, it required only that vendors "provide a narrative . . . that identifies each indirect component with its associated value for Lump Sum, fully burden[ed] labor rates, and Prepriced work." RFQ, § L, at 69. (We note that Cortez itself furnished no explanation as to how it intended to reduce its G&A from the prior rates. Cortez FQR, Price Volume, at 2; Cortez Initial Quotation, Price, at 6.) Likewise, as noted by the agency, there was no requirement for vendors to explain where in their cost structure were located the costs associated with required general liability insurance. EG&G agreed in its quotation to furnish the required general liability insurance, and the agency reasonably assumed that it was included in EG&G's G&A pool. Tr. at 48-49, 67, 269; NASA Comments, July 3, 2003, at 4.. (Testimony from an EG&G vice president for contracts and pricing confirmed that the cost for general liability insurance was in fact included in its G&A. Tr. at 304.)

We conclude that Cortez has not shown that NASA was unreasonable in concluding from EG&G's quotation that EG&G could perform the contract for the quoted price. Neither has Cortez shown that EG&G's pricing was likely to result in significant performance risk. In this regard, we note that EG&G received generally favorable past performance ratings, including an outstanding quality control/assurance performance rating, with respect to its current $20 million per year center operations support services contract at MSFC, a fixed-price contract for which it assumed a [DELETED] percent G&A rate. Tr. at 324. Finally, the agency reasonably found that nothing in EG&G's pricing calls into question its understanding of the MSFC logistics services requirement. The fact that EG&G reduced its pricing in order to be more competitive does not show any lack of understanding of what will be required to satisfy the MSFC logistic services requirement--in fact, the record indicates that EG&G proposed more staff than Cortez. We conclude that the price realism evaluation was reasonable.

PAST PERFORMANCE

Cortez challenges the evaluation under the past performance factor, under which EG&G was rated very good, and Cortez only good. Cortez maintains that it should have received a higher rating than EG&G in this area. EG&G's very good rating was based on: (1) a significant strength for significant experience and excellent performance with respect to "Firm Fixed Price, Indefinite Delivery Indefinite [Quantity] and Time and Materials" contracts; (2) a significant strength for a world-class safety record, including 2.6 million accident-free labor hours at MSFC; (3) a significant strength for selecting the Alabama Industries for the Blind (AIB) to run the retail store at MSFC, when coupled with EG&G's own experience in operating a retail store; and (4) strengths for outstanding past performance with respect to quality control/assurance at MSFC, EG&G's generally strong past performance questionnaires from customers, strong references and experience in general for subcontractors, the fixed price (including ID/IQ) experience and strong performance of subcontractors/team members, a demonstrated ability to address technical problems in work at the Department of Energy's National Energy Technology Laboratory, and experience with reliability centered maintenance, an area viewed by the agency as important to more effective operations. Final Findings Presentation to the Source Selection Authority, at 45.

As for Cortez, although it received a strength for strong experience as the incumbent prime contractor/joint venture partner under the current cost-reimbursement contract for this requirement, NASA expressed some concern that it lacked (significant) experience with "[Firm-Fixed-Price]/IDIQ" contracts. Final Findings Presentation to the Source Selection Authority, at 44. Further, NASA assigned Cortez a weakness based on the fact that government monitors on the incumbent contract had observed inaccurate and untimely cost reporting, an inability to recognize and resolve problems, high project management personnel turnover, and ineffective management decisions affecting operational efficiency. Indeed, contracting officials at MSFC reported that they would not use this contractor for another contract, citing, among other concerns, little or no innovation and lack of follow-through on problem resolution. Cortez Past Performance Documentation, at 29; Strengths and Weakness Caucus Summary Report, Cortez, at 118-19. Cortez's failure to furnish the required data with respect to its lost time incident rate was also evaluated as a weakness. See RFQ, § L, at 58. However, Cortez received strengths for its generally strong past performance questionnaires from customers, the participation of [DELETED] as its retail store operator, and its innovative approach to addressing contract challenges at Goddard Space Flight Center (GSFC). Final Findings Presentation to the Source Selection Authority, at 44.

Cortez raises several arguments, questioning, for example, NASA's relying on the mostly good ratings for the firm's incumbent contract at MSFC, rather than on the reports for other contracts, including one at GSFC, which included excellent and excellent plus ratings. However, there is nothing unreasonable in an agency's placing particular emphasis upon a firm's performance as the incumbent contractor; such performance reasonably may be viewed as a more accurate indication of likely future performance than performance on other contracts. See D.M. Potts Corp., B-247403, B-247403.2, Aug. 3, 1992, 92-2 CPD ¶ 65 at 4; Inlingua Schools of Languages, B-229784, Apr. 5, 1988, 88-1 CPD ¶ 340 at 5 (prior performance on incumbent contract for the same services was the most relevant). In any case, EG&G also received high performance ratings on a number of contracts. For example, EG&G's performance was rated as excellent plus/excellent for the center operations support contract at MSFC, excellent plus/excellent for a support services contract at the Department of Energy's National Energy Technology Laboratory, exceptional for a contract for operation and maintenance of the Air Force Radar Cross Section Test Facility, and either excellent or excellent/good for a very large classified logistics services contract. EG&G Past Performance Documentation.[4] Unlike Cortez, however, EG&G had not been found deficient in performance of the incumbent contract.

Cortez also denies that it was responsible for the cost reporting problems under its current MSFC contract, and claims that those problems have been corrected. However, in response to written discussion questions concerning these problems in performing the contract--for which Cortez had assumed overall responsibility in a May 2000 contract novation after having been a major subcontractor to the incumbent small disadvantaged business prime contractor--Cortez's chief executive officer (CEO)/president addressed the matter during Cortez's oral discussions in February 2003 as follows:

> "Government monitors on the incumbent contract have observed inaccurate and untimely cost reporting, inability to recognize and resolve problems, high project management personnel turnover, and ineffective management decisions affecting operational efficiency. Applicable contract number is NAS8-97327." Those of you who have been here for several years associated with this contract know that that statement is true and nobody is more concerned with it than me and has been more concerned with it than me. When we took over this contract in April of 2000--when we purchased this contract--there were deficiencies. Performance in this area--some of these areas--did not meet our standards. . . . We were not doing the job the way we should have--the way we were contracted to do the job. So we initiated changes. It was not as quick--the turnaround was not as fast as I would have liked. But in the last six months, it has shown good progress and I have been pleased with the turnaround and I am optimistic and pleased with the staff that we have now have going forward that this will no longer be an issue. But, in answer to your point, guilty. I take responsibility for it, but I am also pleased that we didn't ignore it. We took proactive action as we attempted to correct it.

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[4] In addition, we note that for one of the contracts on which Cortez apparently is relying, a support services contract for the Army's Yuma Proving Ground for which excellent/excellent plus performance ratings were received, the prime contractor in fact was a 50/50 joint venture of EG&G and Cortez. Cortez Past Performance Documentation, at 19.

COS at 46-47.[5] Thus, Cortez's CEO/president conceded Cortez's responsibility for performance problems that continued for over 2 years, with efforts to correct them apparently still underway as late as "the last six months." Id. Furthermore, the most recent performance report received by NASA with respect to Cortez's performance on the incumbent contract indicated that "Cortez continues to replace key project management personnel in and out of this contract. This problem has not helped to resolve some of the issues associated with the cost reporting issues." Cortez Past Performance Documentation, at 29. Thus, it is not evident that the changes made by Cortez to correct the performance problems under its contract were fully successful. In view of Cortez's concession that it was responsible for a continuation of the performance problems we think the agency reasonably could view this as a significant weakness in Cortez's performance, notwithstanding any progress Cortez may have made in addressing the problems.

Cortez also questions NASA's consideration of its lack of significant fixed price experience. In this regard, however, the previous cost-type contracting approach to logistics services at MSFC is being replaced with an fixed price approach, and the RFQ specifically advised vendors of the agency's interest in this consideration, specifically requiring them to discuss their experience in performing fixed price contracts and orders. RFQ, § L, at 58. Further, in its determination of the degree of relevance a prior contract has to the contemplated effort, we find nothing unreasonable in an agency's considering--in addition to the type of services being procured--the contract type.

As another example, Cortez challenges the fact that it received only a strength for its selection of [DELETED] to operate the MSFC retail store, while EG&G received a significant strength for its selection of AIB. We find nothing unreasonable in the ratings. First, AIB received excellent to excellent plus past performance ratings for its operation of the Redstone Arsenal retail store. EG&G Past Performance Documentation, at 103, 106. Further, while Cortez lacked significant retail store experience, NASA viewed it as an advantage that both EG&G and its selected store operator (AIB) had experience operating a retail store. While EG&G received only good or fair ratings on its contract for operation of the retail store at the Fleet Industrial Support Center, Norfolk, we think the agency still reasonably could view

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[5] Likewise, in its written slide for use in the oral presentation, Cortez conceded with respect to the cited incumbent contract performance issues that "Cortez Management has been aware of each operational and administrative issue referenced." Cortez Discussions for Request for Quotations, slide 44. In its FQR, Cortez further stated that "[t]he primary problem that we have acknowledged is in the accuracy of cost reporting, which has led to other operational issues. . . . The problems encountered by Cortez at MSFC are regrettable but we have addressed each issue and have taken the necessary steps to ensure your concerns have been corrected." Cortez FQR, at 21.

as a relative advantage the fact that the prime contractor--the entity ultimately responsible to the government for retail store operations--had experience in that area. The agency therefore reasonably found EG&G's approach in this area more advantageous than Cortez's.

In summary, while we recognize that the record before the contracting officials indicated that Cortez, as well as EG&G, had a history of strong performance on a number of contracts, we find that, given Cortez's admitted problems in performing the incumbent contract, there is no basis for questioning NASA's determination that EG&G possessed an advantage under the past performance factor.

MISSION SUITABILITY

Cortez challenges numerous aspects of the evaluation under the mission suitability factor. As noted above, EG&G's quotation received a mission suitability rating of 893 points, with 7 significant strengths, 32 other strengths, no significant weaknesses, and 2 other weaknesses, while Cortez's quotation received a rating of only 630 points, with 1 significant strength, 14 other strengths, 2 significant weaknesses, and 21 other weaknesses. Although we find that a number of Cortez's arguments have merit, the evaluation finding EG&G's proposal more advantageous overall under the mission suitability factor still appears to have been reasonable due to its substantially greater number of significant strengths and other strengths. However, even if Cortez's arguments resulted in eliminating EG&G's advantage under the mission suitability factor, EG&G's quotation would remain in line for award based on its advantage under the past performance factor and lower price. Thus, Cortez was not prejudiced by any evaluation errors in this area. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

The protest is denied.

Anthony H. Gamboa
General Counsel