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Comptroller General  
of the United States

United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** Aerotek Scientific LLC

**File:** B-293089

**Date:** January 23, 2004

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Richard P. Rector, Esq., and Carl L. Vacketta, Esq., Piper Rudnick, for the protester. W. Thomas Newell, Esq., for Top Echelon Contracting, Inc., an intervenor. Barbara J. Stuetzer, Esq., Department of Veterans Affairs, for the agency. Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency reasonably issued a blanket purchase agreement against a vendor's Federal Supply Schedule contract where that vendor's higher technically rated, low priced quotation was determined to represent the best value to the government and where the protester, whose quotation was higher priced, failed to demonstrate how it was prejudiced by some flaws in the agency's technical evaluation.

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### DECISION

Aerotek Scientific LLC protests the issuance of a blanket purchase agreement (BPA) to Top Echelon Contracting, Inc. under request for quotations (RFQ) No. M8-Q11-03, issued by the Department of Veterans Affairs (VA) for non-personal staffing services for the Dallas Consolidated Mail Outpatient Pharmacy (CMOP)<sup>1</sup> facility in Lancaster, Texas. Aerotek, which submitted a higher priced quotation than Top Echelon, challenges the VA's evaluation of quotations.

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<sup>1</sup> The CMOP system is the principal means by which prescriptions are dispensed to veterans and other authorized persons.

We deny the protest because, while there were some flaws in the agency's technical evaluation, Aerotek failed to demonstrate prejudice.<sup>2</sup>

The RFQ was issued on September 5, 2003 to contractors with current Federal Supply Schedule (FSS) contracts that covered licensed pharmacists, national certified pharmacy technicians, and pharmacy aides. The RFQ stated that the agency would issue the BPA to the responsible vendor whose quotation was determined most advantageous to the government, considering technical evaluation factors, past performance, and price.

The technical evaluation factors, which were worth a maximum of 96 points, were listed in descending order of importance as follows: (1) past performance; (2) management (staff recruitment, retention, and management; replacement plan; staff scheduling; and quality assurance); and (3) corporate experience (key onsite management personnel; corporate resources; and cost management).<sup>3</sup> With respect to past performance, the RFQ required a vendor to provide a list of companies and contracts under which the firm has provided comparable staffing services within the past 3 years. Among other things, the RFQ required the vendor to list the number of "medical personnel" provided by classification, e.g., "pharmacists, pharmacy technicians, pharmacy aides, etcetera." RFQ at 9. With respect to management and corporate experience, the RFQ required onsite management personnel to be available 100 percent of the time and pharmacy staff to be available 97 percent of the time. (The RFQ defined these availability rates as the percentage of time that required positions were staffed.) The RFQ required a vendor to disclose its employee availability rates for the last 3 fiscal years. The RFQ also required a vendor to list past availability rates, "showing both the required and achieved rates," for similar projects. *Id.* at 9. The RFQ required a vendor to provide resumes for its proposed onsite management personnel. In this regard, the RFQ required the vendor to provide two onsite project managers (one per shift); the individuals proposed for these onsite management positions were required to have 5 years of human resources experience and 3 years of supervisory experience. The RFQ further

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<sup>2</sup> This decision addresses the primary issues presented in Aerotek's protest. Aerotek raised a number of collateral issues that we have considered and find to be without merit; these collateral issues do not warrant detailed analysis or discussion. In addition, we note that in its supplemental comments on the agency's supplemental report, Aerotek withdrew allegations involving the materially unbalanced nature of Top Echelon's price and Top Echelon's proposed use of project managers who were not available.

<sup>3</sup> There were 24 technical evaluation factors/subfactors/requirements, each of which could receive from 0 to 4 points, for a maximum total of 96 points. Each point corresponded to one of the following adjectival ratings: 4--exceptional; 3--highly acceptable; 2--acceptable; 1--marginally acceptable; and 0--unacceptable.

required a vendor to provide a replacement plan for onsite management personnel in the event that the onsite managers were absent from their jobs for any reason.

In addition, a vendor's past performance, based on information reported by references, would be evaluated under a separate past performance evaluation factor that was worth a maximum of 75 points. Finally, with respect to price, which was worth a maximum of 57 points,<sup>4</sup> amendment No. 5 to the RFQ required a vendor to provide fixed discount percentages from the corresponding unit prices in its FSS contract. A vendor's proposed discount would be applied to the FSS contract unit price to arrive at a unit price for each RFQ line item and then this unit price would be multiplied by the estimated quantity for each RFQ line item. A vendor's total price would be calculated by adding all discounted unit prices together.

The RFQ stated that in determining the quotation most advantageous to the government, the technical evaluation factors, including past performance, would be considered significantly more important than price. The RFQ advised that the agency intended to evaluate quotations and issue the BPA without conducting discussions.

Six vendors, including Aerotek (the incumbent contractor at the Dallas CMOP facility) and Top Echelon, submitted quotations by the amended closing date of September 19. Both Aerotek and Top Echelon organized their respective quotations by restating an individual RFQ requirement and then narratively addressing the particular requirement. As relevant here, the quotations of Aerotek and Top Echelon received the following point scores, which were supported by written evaluation narratives:

	Aerotek	Top Echelon
Technical	80	96
Past Performance	73	74
Price	56.94	57
TOTAL POINTS	209.94	227

Agency's Memorandum of Law at 5.

Top Echelon's low priced quotation received the maximum number of available points for the technical evaluation factor and for price; Top Echelon's quotation lost 1 point for past performance. Aerotek's slightly higher priced quotation lost a total of 16 points for the technical evaluation factor because, in the agency's view,

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<sup>4</sup> The vendor submitting the lowest priced quotation would receive 57 points and the other vendors would receive a percentage of these points based on a ratio of the low priced vendor's quotation to the other vendors' higher priced quotations.

Aerotek failed to provide the availability rates required to be maintained for similar projects; Aerotek failed to demonstrate that its proposed onsite management personnel each had 5 years of human resources experience and 3 years of supervisory experience; and Aerotek failed to identify specific individuals to serve as replacement onsite managers. Aerotek's quotation also lost 2 points for past performance. Finally, because Aerotek's price was approximately one-tenth of 1 percent higher than Top Echelon's price, Aerotek's quotation lost a fraction of a point for price. The agency determined that Top Echelon's low priced, highest technically rated quotation represented the best value to the government and, accordingly, the agency issued the BPA to Top Echelon.

Aerotek challenges the reasonableness of the agency's evaluation of its quotation, particularly in the areas described above where its quotation received less than the maximum number of available points. Aerotek also challenges the reasonableness of the agency's evaluation of Top Echelon's quotation.

Under the FSS program, an agency is not required to conduct a competition before using its business judgment in determining whether ordering supplies or services from an FSS vendor represents the best value and meets the agency's needs at the lowest overall cost. Federal Acquisition Regulation § 8.404(a); Information Spectrum, Inc., B-285811, B-285811.2, Oct. 17, 2000, 2001 CPD ¶ 133 at 4. However, where, as here, an agency conducts a competition, we will review the agency's actions to ensure that the evaluation and source selection were reasonable and consistent with the terms of the solicitation. Id. In this case, contrary to Aerotek's assertion, we believe that there is sufficient contemporaneous narrative documentation in support of the points assigned to the vendors' quotations for our Office to review the reasonableness of the agency's evaluation of quotations and the agency's decision that Top Echelon's quotation represents the best value and meets the agency's needs at the lowest overall price. As we will discuss below, while it is evident from the record that there were some flaws in the agency's technical evaluation, Aerotek has failed to demonstrate prejudice, which is an essential element of a viable protest. Id. at 10-11.

#### Availability Rates<sup>5</sup>

As set forth above, the RFQ contained two requirements regarding a vendor's reporting of its historical availability rates. First, the RFQ required a vendor to disclose its employee availability rates for the last 3 fiscal years and second, the RFQ required a vendor to list past availability rates, "showing both the required and achieved rates" for similar projects. Aerotek restated both of these RFQ

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<sup>5</sup> Aerotek and Top Echelon each committed in their respective quotations to satisfy the RFQ's 100-percent availability rate for onsite managers and the RFQ's 97-percent availability rate for pharmacy staff.

requirements, verbatim, in its written quotation prior to providing its narrative response to each requirement. Aerotek's Technical Quotation at 10, 21.

The record shows that Aerotek complied with the RFQ's first requirement by reporting, in percentage terms, the availability rates it achieved in each of the last 3 fiscal years as the incumbent contractor at the Dallas CMOP facility.<sup>6</sup> *Id.* at 10. With respect to the RFQ's second requirement, the record shows that Aerotek listed two private companies (one involving three media facilities and one involving a distribution center for a national office supply retailer) for which it provided staffing considered in its view to be very similar (because of the pace of the operations) to the requirements of the RFQ. Aerotek listed an average availability rate it achieved for each of these efforts, but did not state, contrary to the terms of the RFQ, the availability rate required to be maintained for each of these efforts. *Id.* at 21. Since the RFQ required a vendor to list past availability rates, showing both the required and achieved rates for similar projects, we believe the agency reasonably downgraded Aerotek's quotation (by deducting a total of 4 points) because Aerotek failed to fully comply with the RFQ's second availability rate requirement.

To the extent Aerotek argues that its compliance with the RFQ's first availability rate requirement, where the firm reported the availability rates it achieved for the last 3 fiscal years as the incumbent contractor at the Dallas CMOP facility and where the firm reported that there was no requirement under that contract to maintain a specific availability rate, demonstrates compliance with the RFQ's second availability rate requirement, we find this argument is without merit. In this regard, it is clear from Aerotek's quotation that the firm understood that there were two separate RFQ requirements in terms of reporting availability rates. This is evidenced by the fact that, as noted above, Aerotek restated in its quotation, verbatim, both of the RFQ requirements concerning availability rates and provided a different narrative response to each of these requirements. We believe it is disingenuous for Aerotek to argue that there was no RFQ requirement to report "required," as opposed to simply "achieved," availability rates for similar projects where this is belied by the contents of Aerotek's quotation. On this record, we have no basis to question the reasonableness of the agency's evaluation of Aerotek's availability rates.

#### Qualifications of Onsite Management Personnel

As stated above, the RFQ required a vendor to provide resumes for its proposed onsite management personnel. More specifically, the RFQ required the vendor to provide two onsite project managers, each of whom was required to have 5 years of

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<sup>6</sup> In its quotation, Top Echelon also reported, in percentage terms, the availability rates it achieved in each of the last 3 fiscal years. Top Echelon's reported rates were higher than those reported by Aerotek. Contrary to Aerotek's position, the RFQ did not require a vendor to do more than report its availability rates.

human resources experience and 3 years of supervisory experience. Aerotek, which submitted resumes for two individuals proposed as onsite management personnel, challenges the reasonableness of the agency's decision to downgrade its quotation (by deducting a total of 6 points) because its proposed onsite management personnel allegedly did not meet the RFQ's experience requirements. Aerotek maintains that the two individuals it proposed for the onsite management positions each had 5 years of human resources experience and 3 years of supervisory experience.<sup>7</sup>

The resume of the first individual, Ms. A, shows that at the time Aerotek submitted its quotation (in September 2003), Ms. A had been employed by the parent company of Aerotek for just over 3 years, since June 2000. While employed by the parent company of Aerotek, Ms. A's resume shows that from June 2000 through December 2000, Ms. A was a "commercial recruiter"; from December 2000 through July 2001, she was an "internal recruiter"; and beginning in July 2001, she was the "on-premise manager" at the Dallas CMOP facility. Thus, at the time of quotation submission, Ms. A had been successfully performing as the onsite project manager at the Dallas CMOP facility for over 2 years; prior to that, Ms. A had been a recruiter for just over 1 year. Based on the information in her resume, it is clear that Ms. A did not have, in accordance with the terms of the RFQ, 5 years of human resources experience and 3 years of supervisory experience. On this record, we have no basis to question the reasonableness of the agency's evaluation of Ms. A's experience where Ms. A failed to demonstrate compliance with the objectively stated experience requirements contained in the RFQ.

The resume of the second individual, Ms. J, shows that from November 1995 through May 2000, she was a "co-proprietress" at the Fort Worth, Texas location of a national retail specialty clothing store for women. In this position, Ms. J engaged in "training/staff development" (i.e., recruit, interview, screen, hire, schedule, train, supervise, evaluate, develop, and promote a staff ranging from 10 to 40 employees); "management" (i.e., manage daily sales and customer service operations); "visual merchandising" (i.e., design and set up window displays); "financial operations" (i.e., balance and audit cash registers daily; prepare and deliver bank deposits; and investigate and resolve cash, check, and credit discrepancies to ensure accurate financial records); and "inventory control" (i.e., monitor and track inventory of merchandise and supplies to control operating costs and to maximize profitability).

In addition, the resume of Ms. J shows that since May 2000, Ms. J has been employed by the parent company of Aerotek as an "on premise manager/recruiter" at the Dallas location of a leading worldwide technology provider (which is based in Munich, Germany) where she supervises and manages up to 95 employees. In this position, Ms. J specifically listed "human resources" experience (i.e., resolution of human

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<sup>7</sup> Aerotek does not challenge the qualifications of Top Echelon's five proposed onsite management personnel.

resource issues involving, for example, paycheck and timecard discrepancies, retirement plan and 401(k) availability, and worker's compensation issues; completion of new hire orientation and necessary paperwork; and involvement with performance evaluations); "training/self development" experience (i.e., counsels and advises contractors on their performance evaluations, attendance, and training; monitors and evaluates positions that require specific skills sets; and conducts new hire orientation on safety and related regulations); and "management" (i.e., meets with managers to ensure performance, attendance, and training of contract employees).

It is clear from Ms. J's resume that at the time Aerotek submitted its quotation (in September 2003), Ms. J had been employed by the parent company of Aerotek for just over 3 years as an "on premise manager/recruiter," but did not have in this position, in accordance with the terms of the RFQ, 5 years of human resources experience and 3 years of supervisory experience. However, the RFQ did not in any way restrict where an individual proposed for an onsite management position at the Dallas CMOP facility gain human resources and supervisory experience. For this reason, we agree with Aerotek that Ms. J's experience for over 4 years as the "co-proprietress" of a retail clothing store for women, where Ms. J's responsibilities included, among other things, recruiting, interviewing, screening, hiring, scheduling, training, supervising, and evaluating personnel, should have been considered human resources and supervisory experience. On this record, we believe that the agency did not reasonably evaluate Ms. J's experience based on the objectively stated experience requirements contained in the RFQ. Accordingly, for the technical evaluation factor involving the qualifications of a vendor's proposed onsite management personnel, we believe that since one of Aerotek's proposed onsite project managers--Ms. J (but not Ms. A)--satisfied the RFQ's experience requirements, Aerotek's quotation reasonably should have received an additional 2 points, for a total of 4 points (out of a possible 8 points) for this aspect of the evaluation.

#### Replacement Plan for Onsite Management Personnel

As stated above, the RFQ required a vendor to provide a plan for replacing onsite management personnel who were absent from their jobs for any reason. The record shows that Aerotek and Top Echelon each described in their respective quotations such a plan. In describing their replacement plans, neither Aerotek nor Top Echelon identified specific individuals who potentially could serve as replacement onsite project managers. Aerotek's Technical Quotation at 1; Top Echelon's Technical Quotation at 6. Despite this similarity in quotations, the agency downgraded Aerotek's, but not Top Echelon's, quotation (by deducting a total of 6 points) because Aerotek failed to identify specific individuals who potentially could serve as replacement onsite project managers.

We conclude that the agency did not evaluate the quotations of Aerotek and Top Echelon equally in this area. In this respect, there was no requirement in the

RFQ for a vendor to identify, as part of its replacement plan for onsite management personnel, specific individuals who potentially could serve as replacement onsite project managers. Rather, the RFQ only required that a vendor describe a plan, or approach, for replacing onsite management personnel who were absent from their jobs. The agency does not dispute that Aerotek, just like Top Echelon, complied with this requirement, that is, both of these vendors described an approach for replacing onsite management personnel who were absent from their jobs for any reason. Based on this record, for the technical evaluation factor involving a vendor's replacement plan for onsite management personnel, we think that Aerotek's quotation reasonably should have been rated the same as Top Echelon's quotation and, as a result, Aerotek's quotation reasonably should have received an additional 6 points, for a total of 8 points (out of a possible 8 points) for this aspect of the evaluation.

### Past Performance

As described above, the RFQ required vendors to provide a list of companies and contracts under which the firm has provided comparable medical personnel staffing services within the past 3 years. The RFQ further required vendors to list the number of medical, as opposed to just pharmacy, personnel provided by classification, e.g., "pharmacists, pharmacy technicians, pharmacy aides, etcetera." Aerotek argues that as the successfully performing incumbent contractor, it should have been rated higher than Top Echelon for past performance because, for example, Top Echelon has never performed a VA CMOP contract and has never staffed a medical facility with professionals at the level of a licensed pharmacist. Aerotek's argument, however, is not supported by the underlying record.

In its quotation, Aerotek listed its contract with the Dallas CMOP facility, under which it has provided 42 pharmacists and 206 pharmacy technicians. Aerotek also listed its contract with a private mail order pharmacy, under which it has provided 40 pharmacy technicians and 40 pharmacy aides. Finally, Aerotek stated that it was not practical to provide a total list of current contracts because it has over 500 current clients nationwide; instead, Aerotek listed by name, with a point of contact, four private companies--two pharmaceutical, one medical diagnostic, and one clinical research--for reference purposes. The record shows that the agency was able to contact only two references for Aerotek. The reference for the Dallas CMOP contract rated Aerotek as overall very good (as opposed to excellent), noting that the lack of onsite personnel at times caused small problems. The reference for another VA CMOP facility, where Aerotek has provided 3 pharmacy technicians, also rated Aerotek as overall very good (as opposed to excellent), noting that the service provided was very responsive. The agency assigned 24 points out of a possible 25 points to Aerotek's quotation for each of these references (for a total of 48 points out of a possible 50 points). In addition, the record shows that while the agency made repeated, yet unsuccessful, attempts to obtain a third reference for Aerotek, the agency nevertheless assigned Aerotek's quotation the maximum of 25 points to allow for the missing reference. Thus, for past performance, based on information



reported by references, Aerotek's quotation received 73 points out of a possible 75 points.

In its quotation, Top Echelon provided a list of 808 companies for which it has provided staffing services in the past 3 years. In addition, Top Echelon provided specific information for 11 healthcare contracts with the government and private companies where it has provided various medical personnel, for example, pharmacists, clinical research coordinators, radiologic technology professionals, biomedical equipment technicians, physical therapists, neonatal nurse practitioners, and registered nurses. The record shows that the agency was able to obtain three references for Top Echelon. The reference from the VA Medical Center in Minneapolis, Minnesota, where Top Echelon has provided five pharmacists, rated the firm as overall very good (as opposed to excellent), noting that in the future, the agency would require personnel to be fluent in English and to have computer skills. The agency assigned Top Echelon's quotation 24 points out of a possible 25 points based on this reference. The reference from a pharmaceutical company where Top Echelon has provided 30 clinical research coordinators rated the firm as overall excellent, noting that Top Echelon is very cost conscious; that Top Echelon uses innovative and knowledgeable search methods to find excellent personnel candidates; that Top Echelon has achieved rapid turnaround in locating viable candidates for open positions throughout the United States; and that Top Echelon has been very responsive to questions and issues regarding payroll and benefits. The agency assigned Top Echelon's quotation the maximum of 25 points for this reference. Finally, the reference from a medical technology firm, where Top Echelon has provided 12 biomedical equipment technicians, rated the firm as overall excellent, indicating satisfaction with the quality of service rendered and noting no problems in Top Echelon's administration of the contract. The agency assigned Top Echelon's quotation the maximum of 25 points for this reference.

In sum, the record shows that both vendors complied with the RFQ requirement to provide past performance information for work involving comparable medical personnel staffing services. Contrary to Aerotek's position, there simply was no requirement in the RFQ defining comparable past performance in terms of VA CMOP contracts or restricting the agency's consideration of past performance information to the furnishing of pharmacy personnel, as opposed to other medical personnel. Thus, to the extent Aerotek is arguing, after the issuance of the BPA, that the RFQ should have provided for special consideration of its past performance as the successfully performing incumbent contractor and that the agency should have restricted its consideration of past performance information to contracts in which the vendor has staffed a medical facility with pharmacy professionals, like Aerotek has done at the Dallas CMOP facility, these arguments are untimely as they involve alleged solicitation improprieties apparent from the face of the RFQ that were not timely raised prior to the closing date for receipt of quotations. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2003).

Further, the record shows that in assessing a vendor's past performance, the agency attempted to consult three references per vendor. For Aerotek, the record shows that the agency was able to obtain two, but not three, past performance references for the firm. Nevertheless, the agency gave Aerotek the benefit of the doubt concerning the third reference by assigning Aerotek's quotation the maximum number of points--25--for this missing reference. Obviously, Aerotek does not challenge the agency's evaluation in this regard. The record further shows that where a reference for either Aerotek or Top Echelon reported very good, but not excellent, past performance, the agency was consistent in evaluating the quotations of these firms by deducting 1 point for the particular reference, *i.e.*, by assigning 24, not 25, points for a very good past performance reference. Therefore, on this record, we believe the agency reasonably evaluated the quotations of Aerotek and Top Echelon in the area of past performance and Aerotek has failed to show otherwise.

### Tradeoff

Aerotek argues that the agency improperly issued the BPA to Top Echelon based on its submission of a technically acceptable, low priced quotation, rather than considering that the technical evaluation factors, including past performance, were significantly more important than price in determining the best value. We disagree.

As stated above, the RFQ provided that the technical evaluation factors, including past performance, were significantly more important than price. The record shows that the agency determined that Top Echelon's higher technically rated (based on points and supporting narratives), low priced quotation represented the best value to the government. The record further shows that even if 8 points were added to Aerotek's higher priced quotation for the areas, as discussed above, where there were some flaws in the agency's technical evaluation, Aerotek's quotation still would receive a lower technical rating than Top Echelon's quotation because, for example, Aerotek did not comply with the RFQ provision requiring that a vendor report not only achieved, but also required, availability rates for similar projects and Aerotek proposed an onsite project manager who did not satisfy the RFQ's human resources and supervisory experience requirements. In our view, these examples support the reasonableness of the agency's decision to downgrade Aerotek's quotation.

Moreover, reading the record in the light most favorable to Aerotek, that is, assuming that Aerotek's higher priced quotation received the same number of points as Top Echelon's low priced quotation, these quotations would be deemed essentially technically equal. In such circumstances, price appropriately would become the determining factor in making the selection decision, notwithstanding that under the

terms of the RFQ, price was assigned less importance than the technical evaluation factors, including past performance.<sup>8</sup>

Based on this record, we conclude that Aerotek has failed to demonstrate how it was prejudiced by the flaws in the agency's technical evaluation where Aerotek's price is higher than Top Echelon's price and Aerotek's quotation is, at best, technically equal to Top Echelon's quotation.<sup>9</sup> We further conclude that the agency reasonably determined to issue the BPA to Top Echelon, which submitted the higher technically rated, low priced quotation that was determined to represent the best value to the government.

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>8</sup> We also point out that even with the stated flaws in the agency's technical evaluation, Aerotek has not shown that its higher priced quotation was technically superior to Top Echelon's quotation, thereby justifying the payment of a price premium.

<sup>9</sup> After supplemental comments on the agency's supplemental report were filed, counsel for Aerotek requested that GAO advise the parties of the status of the pending protest. Accordingly, with the agreement of the parties, GAO conducted outcome prediction alternative dispute resolution in which GAO advised Aerotek, as discussed above, that while there were some flaws in the agency's technical evaluation, our review of the record showed that Aerotek failed to demonstrate prejudice in terms of being in a position, as a higher priced vendor, to argue that it reasonably was entitled to be issued the BPA.