G A O
Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting 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: Day & Zimmermann Pantex Corporation

File: B-286016; B-286016.2; B-286016.3; B-286016.4

Date: November 9, 2000

Richard J. Conway, Esq., Jacob B. Pankowski, Esq., and Denis W. Kohl, Esq., Dickstein, Shapiro, Morin & Oshinsky, for the protester.
John W. Chierichella, Esq., Anne B. Perry, Esq., and Marjorie D. Purcell, Esq., Fried, Frank, Harris, Shriver & Jacobson, for BWXT Pantex, LLC, an intervenor.
Gena E. Cadieux, Esq., Joseph A. Lenhard, Esq., Wilfred E. Maez, Esq., and Keith R. Landolt, Esq., Department of Energy, 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

Protest against agency past performance evaluation rating protester, the incumbent contractor at nuclear weapons plant, as only satisfactory overall when awardee was rated as outstanding overall is denied, where record supports agency determination that protester has had continuing, significant problems in ensuring that plant is fully able to perform critical mission, necessary to ensure the safety and reliability of the United States nuclear weapons stockpile, of assembling and disassembling nuclear weapons in support of nuclear stockpile life extension and evaluation programs, while the awardee's team has a very good performance record under a number of relevant contracts.

DECISION

Day & Zimmermann Pantex Corporation (DZX) protests the Department of Energy's (DOE) award of a contract to BWXT Pantex, LLC under request for proposals (RFP) No. DE-RP04-00AL66620, for management and operation of DOE's Pantex Plant near Amarillo, Texas. DZX, the incumbent contractor (after acquiring the prior contractor, Mason & Hanger Corporation, on June 1, 1999), primarily challenges the evaluation of the offerors' past performance.

We deny the protest.

BACKGROUND

The solicitation contemplated the award of a cost-plus-award-fee contract, with a 5-year base period with the option to extend the contract for an additional 5 years, to manage and operate the Pantex Plant. The Pantex Plant, which includes 730 buildings on more than 10,000 thousand acres, is the only United States plant for the assembly and disassembly of nuclear weapons. The plant is primarily used for (1) the maintenance, assessment and refurbishment of nuclear weapons in the active inventory, and (2) the dismantlement of nuclear weapons to be retired from the active inventory. The solicitation's statement of work (SOW) provided for the continued performance of national defense missions assigned and to be assigned to the Pantex Plant, including such specific weapons program work as the assembly and disassembly of nuclear weapons in support of DOE's stockpile life extension and stockpile evaluation programs, repair and modification of nuclear weapons, components, and related devices, and the disassembly of nuclear weapons and related devices no longer required in the military stockpile. More generally, the SOW established a number of overall performance objectives, including requirements to "[e]nsure the full set of manufacturing and evaluation operations can safely be performed on any weapon at any time"; "[i]mplement world class technical business practices and safety management to establish and sustain a state of readiness that will improve . . . mission performance"; implement new diagnostic techniques that will provide high quality data on the safety and reliability of the nuclear weapons stockpiles by FY [fiscal year] 2006; and "[e]ffectively use advanced design and manufacturing technologies and systems to design and produce products on short cycle times, with quality that approaches zero defects, by FY 2006." SOW §§ C.1.2, C.1.3. The SOW provided further that, "[i]n order to achieve the above results, the Contractor is expected to move to a higher level of performance throughout the term of the Contract by making the following process enhancements: Demonstrate a culture of continuous improvement for plant disciplines (such as disassembly and assembly of nuclear weapons, quality, meeting schedule, cost controls, authorization bases) . . . ." SOW § C.1.3.

Award was to be made to the responsible offeror whose proposal conformed to the solicitation and represented the best value to the government. The solicitation provided for proposals to be evaluated based on the following six factors: (1) environmental safety and health (ES&H) in nuclear facility operations (NFO), including (among other evaluation elements) "the degree to which the Offeror's proposal instills a system of continuous improvement, with technical support from the Offeror's parent organization" (worth 200 of 1,000 available technical/business points); (2) management and organization, including subfactors for organization plan and key personnel (300 points); (3) approach for technical and business functions, including (among other evaluation elements) "the degree the Pantex Plant will be operated to meet overall Corporate expectations for continuous improvement, the application of new business practices, and quality initiatives" (250 points); (4) experience and past performance "in managing operations similar to the Pantex Plant with emphasis on nuclear facility operations" (150 points); (5) transition and

implementation plans (100 points); and (6) cost, defined for evaluation purposes as the sum of the proposed maximum available fee for FY 2001 through FY 2010, the evaluated cost for the transition period, and the evaluated cost of Key Personnel for the first 2 years of contract performance after the transition period. RFP § M.4.[1] Cost was "significantly less important than the Technical and Business Management Evaluation Criteria." RFP §§ M.3(b), M.4.

Four proposals were received in response to the RFP; only BWXT's and DZX's were included in the competitive range. DOE conducted discussions with BWXT and DZX, obtaining written responses to questions pertaining to their initial written proposals and affording them an opportunity for a second oral presentation with respect to questions pertaining to their initial oral presentation. BWXT and DZX also were afforded an opportunity otherwise to revise their proposals. The results were as follows:

	Maximum	**BWXT**	**DZX**
TECHNICAL/BUSINESS			
ES&H in NFO			
Written	150	143 O	135 O
Oral Hypothetical	50	20 S	35 G
Management and Organization			
Organization	100	85 E	75 E
Key personnel	200	190 O	170 E
Approach for Technical and Business Functions			
Written	200	180 O	190 O
Oral Hypothetical	50	40 E	45 O
Experience	75	75 O	75 O
Past Performance	75	68 O	30 S
Transition and Implementation	100	85 E	85 E
TOTAL	1,000	886	840
EVALUATED COST		$186,977,126	[DELETED]

(O-Outstanding; E-Excellent; G-Good; S-Satisfactory)

Although both proposals were rated excellent overall, the source selection official (SSO) determined that there were important differences between them such that

---

[1] The RFP defined "nuclear facilities" as "those that conduct activities or operations that involve radioactive and/or fissionable materials in such form and quantity that a nuclear hazard potentially exists to the employees or the general public," and stated that ES&H in NFO referred to "those management and technical functions necessary to safely operate nuclear facilities in the U.S. to current standards." RFP § L.4.

BWXT's proposal was technically superior. Specifically, the SSO noted that BWXT's proposal offered a "significant advantage" in its focus on continuous improvement and the application of modern quality principles, which were expected to yield significant operating cost reductions. Source Selection Decision (SSD) at 7. In this regard, the SSO considered BWXT's emphasis on continuous improvement and operational excellence to be credible because of BWXT's detailed and comprehensive discussion of its proposed methods and procedures and because of the experience demonstrated by the BWXT team--including Honeywell Corporation, which the agency viewed as a recognized national leader in quality improvements--in using these methods. Source Evaluation Board (SEB) Final Report at II-A 13. The SSO indicated that he also was impressed by the outstanding quality of BWXT's key personnel, who were high quality managers with significant positive experience in the areas emphasized under the solicitation. In particular, focusing on the proposed overall managers, a position described by the RFP as significantly more important than any of the other key personnel, the SSO determined that the difference between the proposed general managers was a basis for distinguishing the proposals; according to the SSO, BWXT's proposed general manager had significant experience in NFO, whereas DZX's proposed (and incumbent) general manager had only the NFO experience he had acquired since assuming that position in January 2000. SSD at 8.

In addition, the SSO noted that the most significant difference in point scores between the offers was in the area of past performance. In this regard, the SSO contrasted BWXT's consistent high marks for extremely relevant and varied past performance, resulting in an overall outstanding rating for past performance, with DZX's past performance with respect to NFO, which the RFP indicated would be emphasized in the past performance evaluation, and where DZX had not been a strong performer. The SSO specifically observed that DZX's most relevant past performance as the incumbent contractor was the source of its weakness in the past performance area. In this regard, noted the SSO, mainly as a result of problems in NFO, DZX had received only approximately 30 percent of the available award fee in the most recent, FY 1999, award fee determination for its Pantex contract. Further, according to the SSO, while DZX had "shown improvement since they acquired Mason & Hanger and since the most recent performance evaluation, and, I believe, has a strong corporate ethic for continued improvement . . . the degree of performance improvement has been less than desired, and does not show the continuous improvement potential of the BWXT Pantex proposal." SSD at 6, 8-9. As a result, DZX received a weakness in NFO past performance which, when combined with a minor strength for other than NFO past performance, yielded only an overall satisfactory rating for past performance.

In determining that BWXT's proposal represented the best value to the government, the SSO emphasized that the RFP provided that technical and business management criteria were significantly more important than cost; according to the SSO, this emphasis on technical capabilities was particularly appropriate in light of the fact that the Pantex Plant was a high-risk, technically complex production facility that

was the only United States facility with the capability for the assembly and disassembly of nuclear weapons. In these circumstances, found the SSO, the technical superiority of BWXT's proposal was worth the additional $29.5 million evaluated cost of the proposal. The SSO added that: "Moreover, BWXT Pantex's technical proposal included an approach for continuous improvement to achieve operating efficiencies and overall operational cost savings that should significantly overshadow the differences that exist in the evaluated costs." SSD at 9. Upon learning of the resulting award to BWXT (on July 20, 2000), and after being debriefed by the agency, DZX filed this protest.

PAST PERFORMANCE

DZX primarily challenges the evaluation of both its and BWXT's past performance. According to the protester, in assigning a weakness to DZX's proposal with respect to NFO past performance, the agency ignored DZX's NFO performance before and after FY 1999 (when it received a low award fee percentage). Further, according to the protester, in assigning a strength to BWXT's proposal with respect to NFO past performance, the agency failed to account for numerous weaknesses in BWXT's performance. DZX essentially argues that its past performance was no worse than BWXT's, such that it was improper for DOE to rate DZX as only satisfactory overall in this area while rating BWXT as outstanding overall.

Our Office will examine an agency's past performance evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the contracting agency's discretion. Pacific Ship Repair and Fabrication, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4. Further, in conducting a past performance evaluation, an agency has 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 solicitation requirements. Ideal Electronic Sec. Co., Inc., B-283398, Nov. 10, 1999, 99-2 CPD ¶ 87 at 4; Federal Envtl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398 at 12. An agency may base its evaluation of past performance upon its reasonable perception of inadequate prior performance, even where the contractor disputes the agency's interpretation of the facts, KELO, Inc., B-284601.2, June 7, 2000, 2000 CPD ¶ 110 at 3; PEMCO World Air Servs., B-284240.3 et al., Mar. 27, 2000, 2000 CPD ¶ 71 at 7, and a protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. KELO, Inc., supra; Coffman Specialties, Inc., B-284546, B-284546.2, May 10, 2000, 2000 CPD ¶ 77 at 5. Furthermore, in establishing its requirements and assessing offerors' relative abilities to perform those requirements, an agency's judgment in matters related human safety and national defense carries considerable weight. PEMCO World Air Servs., supra.

Based on our review of the record, we find that the agency reasonably evaluated DZX's past performance in the NFO area as a weakness and BWXT's NFO

performance as a strength. Further, given the RFP's emphasis on NFO and DZX's evaluated relative weakness in this area, we find no basis to question the agency's overall evaluation of BWXT as having outstanding past performance and DZX as having only satisfactory past performance.

DZX Past Performance

DZX challenges the evaluation of its past performance on the basis that DOE improperly ignored its FY 1997 and FY 1998 NFO performance and failed to take into account the fact that it had either corrected by June 2000, or made significant progress toward correcting, the major perceived deficiencies with respect to NFO cited in the FY 1999 award fee report.[2]

The overall evaluation of DZX's past performance was reasonable. In this regard, the RFP required offerors to submit information for no more than five contracts that are currently being performed or have been completed within the past 3 years, and which are "related to operations similar to the Pantex Plant with emphasis on managing nuclear facility operations." RFP § L.4(d). In addition, offerors were advised that they "may also provide information on problems encountered on the identified contracts and the Offeror's corrective actions." Id.

Although DZX designated three of the five contracts for which it submitted past performance information as NFO contracts, DOE determined that only one of the five contracts, its incumbent contract for managing and operating the Pantex Plant, in fact was a qualifying NFO contract. With respect to the Pantex contract, DOE obtained a response to a detailed past performance questionnaire from two DOE sources--[DELETED] and [DELETED]--who were familiar with DZX's performance primarily in non-NFO areas and provided positive evaluations, Agency Report, Tab 12 at 12-22; AR at 21; reviewed the last 3 years of award fee determinations, AR, Tabs 20-22; issued a discussion question to DZX concerning its Pantex performance; reviewed databases for enforcement actions against DZX; reviewed a May 25, 2000 draft of a report by an independent DOE oversight office on procedures for conducting nuclear weapons work at Pantex, AR, Tab 41, Follow-up Evaluation of Authorization Basis at the Pantex Plant, June 2000 (May 25, 2000 draft); reviewed a draft letter to DZX (never sent) which addressed DZX's recent performance, AR, Tab 23; and, just before the source selection decision was made, discussed DZX's recent past performance with DOE's Amarillo Area Office Manager, DOE's Albuquerque, New Mexico Operations Office Manager (whose office has oversight over Pantex and the Amarillo office), and other DOE officials. AR at 16-25.
Based on the above information, DOE determined that, while DZX had performed well with respect to non-NFO at the Pantex Plant and elsewhere, it had not

---

[2] References to the performance of DZX prior to June 1, 1999, when it acquired Mason & Hanger, refer to Mason & Hanger.

performed well in NFO at the Pantex Plant, and that its continuing failures in this regard had adversely affected the ability of the United States to perform the nuclear weapons disassembly and assembly operations which are a fundamental part of the Pantex Plant's mission and are necessary to ensure the safety and reliability of the nuclear weapons stockpile. We find that the record supports this determination.

Authorization Basis

Of particular importance to the agency's determination was DZX's perceived failures with respect to ensuring that there was the required authorization basis (AB) for performing nuclear weapons assembly and disassembly operations. The record indicates that the ability to disassemble, inspect and reassemble nuclear weapons is necessary to ensure the safety and reliability of the United States nuclear weapon stockpile, and that the inability to perform this mission potentially could adversely affect DOE's and the Department of Defense's required annual certification of the safety and reliability of the nuclear weapon stockpile. Declaration of the DOE Manager of the Albuquerque Operations Office, Oct. 3, 2000, at 1-2; Hearing Transcript (Tr.) at I-89 to I-91, I-273 to I-277, I-287 to I-288, I-294 to I-297; I-351 to I-353; DOE Comments, Oct. 3, 2000, at 19-22; DOE Post-Hearing Comments at 2-3, 7-8.

The record further indicates that nuclear weapons are never more hazardous than when in a partially assembled (or disassembled) state, without their special safety and security features in place; it is at this time that they are most vulnerable to natural phenomena (lightning, earthquake, etc.) and to operational accidents. As a result, special DOE safety authorizations are required before the contractor can work on nuclear weapons. AR at 1-2. As defined by DOE, this required AB consists of those aspects of the facility design basis and operational requirements relied upon by DOE to authorize operation. Specifically, the contractor must analyze the general operational hazards associated with the operation of Pantex Plant nuclear facilities, including the degree of protection provided to nuclear weapons from natural hazards (in particular lightning), as well as the hazards introduced by the unique features of each weapon type. Once these hazards and their potential consequences are analyzed, the contractor must develop a set of engineering and management controls that can be kept in place while weapon operations are occurring. These safety analyses and controls are documented in detailed technical reports (e.g., safety analysis reports, hazard analysis reports, and technical safety requirements) which are provided to DOE for approval with a contractor assertion that the weapon operations can be performed safely. This collection of technical information comprises the AB for the performance of work on each weapon type.[3] As noted by

---

[3] Because the completion of all of the above analyses can take several years, at times DOE has asked that more preliminary justifications be provided prior to the

(continued...)

DOE's independent Office of Oversight, the AB is an essential part of a safety management program because it identifies and analyzes hazards, identifies and establishes controls needed to ensure safety, and analyzes and accepts residual risks associated with hazardous material operations. Evaluation of Authorization Basis Management Systems and Processes at the Pantex Plant, DOE Office of Oversight, Environment, Safety and Health, Aug. 2000, at 4; AR at 2.

Although there appears to have been an approved AB at one time for every nuclear weapon at Pantex, the record indicates that, at the time of award on July 20, 2000, the AB for three of the seven nuclear weapons in the active nuclear stockpile had expired, and a new AB, compliant with current safety standards, to perform the required work had not been approved. In this regard, the record indicates that, under prior practice, an AB was developed, in part, with reliance on an expert-based approach, in which experienced technical and safety personnel determine that operations are sufficiently safe. However, DOE is transitioning to a standards-based under which decisions about the adequacy of safety practices are based on rigorous processes for systematically identifying hazards, detailed technical analysis, and clear standards. Id. While DZX has been revising its AB documents to meet these enhanced, more disciplined and rigorous safety requirements, its failure to obtain approval for a revised AB, and the expiration of the prior AB, resulted in an inability at the time of award to disassemble, inspect and/or refurbish and reassemble three of the seven nuclear weapons in the active inventory. (One of the three weapons can be disassembled but not reassembled; the other two cannot even be disassembled.) Declaration of the DOE Manager of the Albuquerque Operations Office, Oct. 3, 2000, at 2; Hearing Transcript (Tr.) at I-87 to I-93, I-277 to I-278, I-287 to I-288, I-294 to I-297, I-349 to I-357, I-532; DOE Comments, Oct. 3, 2000, at 19; DOE Post-Hearing Comments at 2-3, 7-8.

Further, the record indicates that DOE attributed to DZX significant responsibility for performance deficiencies under the Pantex contract, including deficiencies with respect to AB. DOE Post-Hearing Comments at 9-11; Declaration of the DOE Manager of the Albuquerque Operations Office, Oct. 3, 2000, at 2-3. According to DOE's Manager of the Albuquerque Operations Office, DZX was "substantially accountable" for delays with respect to the inability to disassemble and assemble of nuclear weapons in the active inventory. Tr. at I-298. According to this manager:

> There are a number of places I can attribute the factors that caused us not to be able to work on the weapon, not to have a defensible case for why we know it's safe enough. Some of those are solely within the responsibility of Mason & Hanger/Day & Zimmerman. And primarily

---

(...continued)
completion of all analyses. These interim authorization documents are called a Basis for Interim Operations (BIO). AR at 2.

> it's been the inability to deliver good quality technical work on time and have it approvable the first time.

Tr. at I-288 to I-289. Thus, while DZX received an overall rating of satisfactory in DOE's December 2, 1999 award fee determination for FY 1999, DZX's performance was rated as marginal with respect to effectively managing the startup of new weapon processes in support of the enduring stockpile and dismantlement; unsatisfactory for effectively managing the BIO upgrade projects; and unsatisfactory for developing and implementing the unreviewed safety question program.[4] Overall, the agency noted:

> In contrast to prior year award fee determinations where factors outside [DZX's] control contributed substantially to performance deficiencies, the significant drop in the FY 1999 award fee represents the Department's conclusion that [DZX's] inabilities to meet key Department expectations are now driven by factors within [DZX's] control.

AR, Tab 22, Award Fee Determination for Pantex Contract for FY 1999 (Oct. 1, 1998 to Sept. 30, 1999), Dec. 2, 1999, at Cover Letter, 3, 25-26. As a result, DOE initially calculated an award fee amounting to only 17.6 percent of the available award fee. (However, the fee determination official determined that the agency "decision that performance deficiencies previously attributed to other organizations are now within [DZX's] control constitutes a significant increase in expectations," and thus increased the award fee by $2 million, yielding an overall award fee amounting to 30.3 percent of the available award fee. Id. at Cover Letter.

Although DZX has not disputed that there were performance problems in FY 1999, it has suggested that the agency's imposition of additional responsibilities for which there was inadequate funding was a factor in its FY 1999 performance. DZX Post-Hearing Comments, Oct. 24, 2000, at 16-18. However, DZX's own proposal, in discussing the "operational problems" encountered in the past few years at Pantex, specifically noted an "[i]nability to deliver quality AB documents on time." DZX Proposal, attach. E, Past Performance Package, at 11. Likewise, when questioned during discussions about the FY 1999 unsatisfactory and marginal performance ratings, DZX explained that "[o]verall, the evaluations showed that insufficient technical resources were allocated to the projects to achieve DOE expectations"; "expectations for safety basis documentation were not well understood, and delays and poor quality in weapon hazards analyses were slowing the startup of new

---

[4] The unreviewed safety questions process is a method of change control for NFO used when new technical information is obtained that suggests that current safety standards may be inadequate. AR at 18 n.14.

weapon programs"; and "there was an inadequate focus on program management as well as inexperienced program managers on staff." DZX Response to Discussions, June 26, 2000, at 2-1 to 2-4.

Corrective Action

While DZX also does not dispute that DZX's performance still needs improvement, DZX Post-Hearing Comments, Oct. 24, 2000, at 18 n.25, it claimed in its proposal and during discussions, and argues in its protest, that it has undertaken corrective action to address the evaluated problems in its performance. For example, DZX stated during discussions that "[w]ith respect to the AB program, [DZX] initiated efforts to apply modern project management techniques, [DELETED] and create AB documents in full compliance with DOE orders." Id. at 2-2.

DOE recognized that there had been an improvement in performance at the Pantex Plant, with the SSO noting both improvement since FY 1999 and "a strong corporate ethic for continued improvement." SSD at 9. However, the SSO considered that "the degree of performance improvement has been less than desired," such that significant problems remained. Id. In this regard, DOE's manager of the Albuquerque Operations Office testified that DZX had

> added in a senior position, a competent authorization basis manager. They have not addressed the weaknesses in the staff that reports to that manager. But we have seen products requiring one or two rounds of rework in lieu of the three or four or five rounds of rework we were getting prior to the arrival of the new manager.

Tr. at I-368 to I-369. Further, according to DOE's Albuquerque manager,

> the performance has not yet gotten to the point where the operating contractor has been able to deliver acceptable technical work without help from the government.
>
> So the documents that we've been able to approve have been approvable in large part because of the technical staff in the DOE area office or in Albuquerque who have helped identify the weaknesses in the proposal and helped get them corrected.

Tr. at I-284. The Albuquerque manager stated further that

> my staff is pointing out where the change needs to be made and what has to be different. And then the contractor's management is figuring out how to get it there. What I need is a contractor management who . . . knows themselves what it needs to be and can make it happen so that I can get my staff back into the independent oversight role.

Tr. at I-370 to I-372. As explained by the Albuquerque manager, his staff "can't do an independent review if they're helping to do the job"; "[i]f my staff at the area office is helping prepare the document, there isn't anybody to check to see if they messed it up." Tr. at I-289.

Likewise, DOE's April 24, 2000 mid-FY 2000 performance assessment for the Pantex contract, cited by DZX as support for its claim of improved performance, reported that the "[q]uality of W76 and W88 [nuclear weapons] initial Authorization Basis submittals [was] not sufficient for approval," and that "[t]he general quality of deliverables in the area of safety documentation has been inadequate." Performance Evaluation Mid-Year Assessment, Apr. 24, 2000, at Core Mission/P.O.-1/P.E.-1b, Corporate Management/P.O.-8/P.E.-8a. Indeed, the record indicates that by June 2000, a draft memorandum to DZX had been prepared by DOE staff in which DZX was to be warned that "the continued lack of action and performance by [DZX] management is reflected in missed mission critical milestones that affect our DoD customer requirements"; characterizing DZX's performance as "unsatisfactory," the draft letter indicated that the award fee associated with missed deliverable dates for two of the warheads had been eliminated, and warned that continued missed deliverable dates could result in complete elimination of the management award fee. (While the draft memorandum ultimately was never sent, the concerns expressed in the memorandum were raised with DZX in a June 28, 2000 meeting. AR at 19, 24 n.21; Tr. at I-66 to I-68.)

The May 25, 2000 draft report by DOE's independent Office of Oversight on AB management and processes at Pantex was somewhat more favorable, stating that there had been improvements in AB activities--including clarifying and centralizing previously dispersed responsibilities for the AB process by reassigning responsibilities to site management, leaving DZX responsible for development of all AB documents--and that recently developed AB documents were thorough and exhibited few deficiencies. However, the report noted continuing problems at the Pantex Plant. For example, the report indicated that "the contractor's technical capability still does not match its increased responsibility for [AB] development; the ongoing efforts to enhance technical capabilities in this area is critical to success." AR, Tab 41, Follow-up Evaluation of Authorization Basis at the Pantex Plant, June 2000 (May 25, 2000 draft), at 9, 11.

In any case, as noted above, at the time of award, the AB for three of the seven nuclear weapons in the active nuclear stockpile had expired and a new AB, compliant with current safety standards and permitting performance of the full cycle of disassembly and assembly, had not been approved. The record supports DOE's position that DZX bore at least some responsibility for this failure. Further, given the continuing weaknesses in DZX's technical capability, as made evident by its continuing inability to deliver acceptable technical work without help from the government, we find that the evaluators here reasonably concluded that DZX had not yet corrected the weaknesses in its performance that led the Pantex contracting

officials first to significantly reduce DZX's award fee, and then to consider eliminating it altogether.

FY 1997/FY 1998 NFO

We recognize that DZX also claims that DOE ignored its FY 1997 and FY 1998 NFO performance in rating DZX satisfactory overall for past performance. As noted by the agency, however, although DZX received overall good ratings and was awarded a higher percentage of award fees in FY 1997 and FY 1998 (60 percent and 59.1 percent of the available award fee, respectively) than in FY 1999 (17.6 percent initially, subsequently increased to 30.3 percent), DOE had already begun to express concerns about DZX's performance in important contract areas. For example, in DZX's FY 1997 award fee determination, DOE noted that an "inability to plan and integrate projects across organizational lines impacted high priority projects," and characterized as a notable deficiency the fact that "[p]roposed changes to authorization basis documentation contained insufficient technical justification for first time approval by DOE." AR, Tab 20, Pantex FY 1997 Award Fee Determination (Oct. 1, 1996 to Sept. 30, 1997), at 3, 9. Likewise, in DZX's FY 1998 award fee determination, DOE noted that DZX "management has not yet met DOE's expectation in assuming a strong leadership role to identify and implement safety improvements." AR, Tab 21, Pantex FY 1998 Award Fee Determination (Oct. 1, 1997 to Sept. 30, 1998), at 5. More importantly, even accepting that DZX's performance at Pantex in FY 1997 and FY 1998 was markedly better than its performance in FY 1999, we believe that the agency could reasonably assign greater weight to the significant deficiencies in DZX's more recent performance at Pantex, deficiencies which affected Pantex's ability to meet its vital national security mission.

BWXT Past Performance

DZX primarily argues that the strength assigned to BWXT's proposal with respect to NFO past performance is inconsistent with numerous weaknesses in BWXT's performance.

DOE determined that four of the five contracts for which BWXT had submitted past performance information were NFO contracts, but was only able to obtain performance information for three of the contract efforts: (1) BWXT's contracts to operate the Naval Nuclear Fuel Division in Lynchburg, Virginia, which [DELETED]; (2) BWXT of Ohio's performance (commencing in October 1997) managing and operating DOE's Miamisburg Environmental Management Project (known as Mound), which is a former nuclear weapons component production site in Ohio where the primary task is decontaminating the site for eventual transfer to the community for commercial use, but at which BWXT also makes power sources from encapsulated plutonium-- a NFO production function--for National Aeronautical and Space Administration (NASA) space missions; and (3) the contract of Bechtel Nevada, a joint venture in which Bechtel, a BWXT team member, is the principal partner, to manage and operate the Nevada Test Site, which has low-level nuclear

waste disposal facilities, assembly and test facilities for plutonium experiments, and environmental monitoring and remediation programs associated with a former underground nuclear test program. DOE was unable to obtain performance information relative to a fourth contract, Bechtel BWXT Idaho's contract to manage and operate the Idaho National Environmental and Engineering Laboratory (INEEL), since that contract had only been awarded on July 1, 1999, the award fee performance evaluation for the first 6 months of the contract was still underway, and contract officials offered little useful information on performance there.[5] BWXT also submitted past performance information for the contract of Honeywell International, Inc., a BWXT team member, to manage and operate DOE's Kansas City (Missouri) Plant, which manufactures non-nuclear components for nuclear weapons; DOE determined that, although this contract involved operations similar to those at the Pantex Plant, Honeywell's work did not involve NFO. (Honeywell's Kansas City Plant contract was the only BWXT contract evaluated as a non-NFO contract.)

Mound

DZX primarily argues that the information available to the agency indicated that there were significant deficiencies and problems in BWXT's performance at Mound, weaknesses that allegedly were not taken into account in the evaluation of BWXT's past performance and called for a lower past performance rating. For example, DZX notes that the past performance questionnaire documenting the response from the [DELETED] at Mound indicated that "[p]roject control and financial management was poor," with "weaknesses in project control and high management involvement"; that, while the contractor had been cooperative in resolving issues, its response had been slow; and that the [DELETED], when questioned about whether he had reservations concerning future awards, had responded "[s]uggest project and financial control be looked at closely." AR, Tab 12, at 57-59. Likewise, as indicated in his past performance questionnaire, the [DELETED] at Mound advised that "[d]uring the first two years of this contract there has been problems with the baseline, schedule, and cost management activities." Id. at 52. In addition, DZX alleges that there have been significant deficiencies with respect to BWXT's implementation of the required bioassay testing program, that is, the testing of samples from Mound workers to detect the excessive uptake of radioactive elements.

---

[5] On June 26, 2000, subsequent to DOE's inquiry to INEEL contracting officials, Bechtel BWXT Idaho was awarded 90.6 percent of the available award fee; according to the award fee determination, faced with "inherited numerous legacy issues from the previous contractor" which "presented complex challenges in all aspects of contract performance," the contractor "placed high quality personnel in critical management positions," and its overall performance "exceeded expectations." Performance Evaluation Report, Bechtel BWXT Idaho, Oct. 1, 1999, through Mar. 31, 2000, at 2-3.

DOE maintains that there are no significant deficiencies in BWXT's performance at Mound. Based on our review of the record, we conclude that the information relied upon by the agency in its past performance evaluation, the accuracy of which was confirmed in testimony by DOE's director for Mound, reasonably supports the agency's evaluation of BWXT's performance.

As noted by the agency, the past performance questionnaire for DOE's [DELETED] for Mound, cited by DZX, also indicated that the contractor has "assembled a very high quality team"; project planning and accounting "have recently been strengthened"; and "[a]t this point we believe that the management team has adjusted to correct these problems," that is, the problems with the baseline, schedule, and cost management during the first two years of the contract. AR, Tab 12, at 52-53. Further, the [DELETED] reported that "[t]echnical work has been performed at or above expectations," and that the contractor "has been extremely cooperative and responsive in resolving issues" and "very willing to work together with the government." Id. at 51-53. The [DELETED] added that he had "[n]o reservations at all" about recommending a future contract award. Id. at 53. Likewise, DOE's director for Mound confirmed in his testimony that, while there had been "[d]uring the first year of the contract . . . issues related to the financial control systems that were being utilized by the contractor organization and its ability to integrate and communicate with the project side of the house," the contractor had replaced personnel and there had been "marked improvements in that area." Tr. at II-37 to II-38. Furthermore, the record indicates that BWXT is performing "exceptionally well" with respect to making power sources for space missions from encapsulated plutonium, which is the only NFO production function performed at Mound (as opposed to the general environmental remediation effort that is underway there). Tr. at II-69 to II-70.

In addition, DOE's [DELETED] for Mound reported that BWXT "has a strong safety program," while DOE's [DELETED] indicated that "safety has made [a] dramatic improvement." AR, Tab 12, at 52, 58. Likewise, DOE's [DELETED] for Mound has stated that safety and health was "one of [BWXT's] strong areas of performance," with the contractor having accumulated an "exemplary" safety record of approximately 4.3 million hours without a lost time accident. Tr. at II-60; Declaration of DOE [DELETED] for Mound Oct. 3, 2000. Indeed, the [DELETED] noted that BWXT had developed an innovative basis for evaluation of the physical and chemical nature of stable tritiated compounds that would facilitate the safe decontamination of the Mound site. Tr. at II-61 to II-65.[6]

---

[6] While DZX points to findings by DOE's Office of Oversight of deficiencies in the emergency management program at Mound, we note that a report which DZX produced prior to the hearing in this regard not only details criticisms, but also notes that "[t]he significant programmatic improvements that DOE and [BWXT] have

(continued...)

With specific regard to the bioassay program at Mound, DOE's director for Mound testified that there had been a legacy problem dating back to around 1994 and a prior contractor, which involved retaining bioassay samples too long before having them tested, which can affect the ability to determine an accurate dose rate. Depending upon which nucleotides are involved, the timeframe for testing differs--some nucleotides are left to grow for 60-90 days before testing while others take less time. The record indicates that it is more difficult to perform bioassay surveys at Mound because, as a result of its former use as a production and research and development facility, there is a much broader range of elements that may be encountered and need to be searched for, and some uncertainty over which elements are present at any particular location. However, the director testified that BWXT had turned the bioassay program around such that there was not a continuing bioassay problem at Mound on July 20, 2000, when the Pantex award was made. The director specifically testified that he would not have disagreed with a statement, made by BWXT in its proposal with respect to the problems with the bioassay program, that BWXT had "resolved all issues." Tr. at II-41 to II-60; BWXT Proposal, Vol. II, Past Performance, at II-12/D-12.[7]

(...continued)
achieved since July 1998 provide a solid foundation for the [Mound] emergency management program and have positioned the site well for the eventual transfer to the community." Independent Oversight Follow-up Review of the MEMP Emergency Management Program, DOE Office of Oversight, Office of Environment, Safety and Health, Oct. 1999, at 3. Further, given the favorable assessment by DOE officials with direct oversight responsibility for Mound of BWXT's overall safety record at the site, we find no basis to question the agency's position that there are no significant deficiencies in BWXT's performance at Mound. See Tr. at I-156 to I-162.

[7] DZX notes the discovery by BWXT, in July 2000, of approximately 127 bioassay samples taken by the prior contractor in 1995 but not tested; it asserts that this indicates a problem at Mound that should have been taken into account in the evaluation. However, BWXT's director of environment, safety, health and quality at Mound has submitted a sworn declaration explaining that it was only after an inventory conducted on July 24, 2000--that is, 4 days after award--and subsequent review that it was determined that some of the samples, which had been assumed to be duplicate backup samples not requiring analysis, in fact were not duplicate samples--they were samples which had never undergone the required analysis. BWXT Comments, Tab 25, Declaration of BWXT Director of Environment, Safety, Health and Quality. Furthermore, the record indicates that DOE officials at Mound, and most certainly DOE source selection officials for the Pantex procurement, were not aware of this discovery until after award. Tr. at I-248, II-72 to II-76; DOE Comments, Oct. 3, 2000, at 4-5, and attached Declarations of Source Selection Officials. In any case, there is no basis to question DOE's position that this discovery of legacy, 5-year old untested samples does not indicate a significant current (as of
(continued...)

DZX further argues that, given the reports of performance problems in the past performance questionnaires, DOE was required to inquire further as to BWXT's performance at Mound and obtain DOE's award fee reports for that contract. These reports, asserts the protester, revealed serious problems in BWXT's performance at Mound, which were inconsistent with DOE's past performance evaluation here.

DZX's argument is not persuasive. Even accepting its contention that the agency should have obtained the award fee reports for Mound, we see no basis for concluding that this would have warranted a different overall evaluation result. It already was apparent from the past performance questionnaires for DOE's [DELETED] and [DELETED] at Mound that BWXT's performance there had not been without problems. The question, therefore, is whether the award fee reports revealed any additional problems or more severe problems that could have called into question DOE's evaluation of BWXT's overall past performance as outstanding. We find no basis for such conclusion.

First, we find reasonable the position of DOE's director for Mound that the award fee reports are not inconsistent with the past performance survey results for Mound as reported to the Pantex evaluation team. Tr. at II-29 to II-30. In this regard, while the extremely detailed award fee reports for the first and second part of FY 1999, in excess of 30 pages each, indicate a number of performance problems, they also indicate numerous accomplishments. Thus, while report No. 99-1 (for the period Oct. 1, 1998 through Jan. 31, 1999) listed 4 notable deficiencies, it also listed 9 significant achievements and 13 (less significant) notable achievements. AR, Tab 17, Performance Evaluation Report, Miamisburg Environmental Management Project, Oct. 1, 1998 through Jan. 1, 1999. Likewise, while report No. 99-2 (for the period Feb. 1, 1999 through Sept. 30, 1999) listed 4 significant deficiencies and 7 (less significant) notable deficiencies, it also listed 8 significant achievements and 32 notable achievements. AR, Tab 18, Performance Evaluation Report, Miamisburg Environmental Management Project, Feb. 1, 1999 through Sept. 30, 1999. Further, while BWXT received a grade of C in both periods for financial/business management and for program accomplishments in FY 99-2, the contractor received an overall grade of B+ for both periods in the much more important category of environmental safety and health, a B+ for management practices and stakeholder outreach in FY 99-2, and Bs otherwise for both periods. Finally, BWXT received award fees of 70.25 percent in FY 99-1 and 74.5 percent in FY 99-2, both significantly in excess of the 30.3 percent received by DZX in its most recent performance evaluation for the Pantex contract.

(...continued)
July 20, 2000) problem with the bioassay program at Mound that would call into question DOE's favorable evaluation of BWXT's performance in this regard. Tr. at I-248 to I-249.

Naval Nuclear Fuel Division

Second, whatever weaknesses there may have been in BWXT's performance at Mound, we find reasonable DOE's position that the Mound contract was a less relevant contract for purposes of predicting future performance at Pantex than the other NFO contracts evaluated for BWXT, contracts for which DOE had very favorable past performance reports. In this regard, DOE apparently considered BWXT's Naval Nuclear Fuel Division (NNFD) contracts, [DELETED], to be the most relevant of BWXT's three evaluated NFO contracts because of the similarities between the required efforts at NNFD and Pantex. BWXT's contract at Mound involved a smaller scale, [DELETED]-worker, self-contained site cleanup effort, performed on a building-by-building basis, without the challenge of complex scheduling and performance demands characteristic of an integrated production process. In contrast, both NNFD and Pantex involve significantly larger scale efforts (approximately [DELETED] workers), in which the contractor must undertake a significant integrated production process, integrating deliveries from outside with on-going production or assembly/disassembly that is performed to schedule, and must meet similar NFO technical requirements for safety analysis, hazard analysis and management control systems. Tr. at I-109 to I-113, I-117 to I-118; DOE Post-Hearing Comments at 25, 35-36.

DOE evaluators received favorable reviews of BWXT's performance at NNFD. In his past performance questionnaire, the DOE [DELETED] for the NNFD DOE work reported that BWXT "[DELETED] high quality [DELETED] in a time frame which supports program needs," and has "no specific weak points." AR, Tab 12, at 16-18.[8] Likewise, the contract performance reports for the NNFD contracts indicated that BWXT "continues [DELETED] high quality [DELETED] in a time-frame which supports program needs," and rated BWXT's performance as either 3 or, for one contract, 4 on a scale of 1 to 5. AR, Tab 16. In addition, the Nuclear Regulatory Commission, which licenses operation of NNFD, reported that, based on its review of BWXT's licensed activities at NNFD, it had determined that BWXT "continued to operate the facility safely and demonstrated a number of strengths in chemical safety, criticality safety, plant operations, fire safety, radiation protection, emergency preparedness, and licensing." AR, Tab 12, at 27-28.

---

[8] In addition, the Bettis Atomic Power Laboratory's [DELETED] reported that BWXT was a "good manufacturer with [a] strong engineering staff," whose strength was the "delivery of high-quality products on time," and whose overall performance at NNFD was "very satisfactory." AR, Tab 12, at 14. Further, according to the [DELETED], when a problem arose, BWXT "[a]pplied focused attention, developed state-of-the-art tools to diagnose the problem, and proceeded to implement the fixes." Id. at 13. The chairman of the SEB testified that the fact that the reference was from a person [DELETED] "cautioned" him, but he noted that [DELETED]. Tr. at I-261.

Nevada Test Site

DOE evaluators also received favorable reviews of the performance of the joint venture (Bechtel Nevada), of which Bechtel (part of the BWXT team) is the principal partner, in operating the Nevada Test Site (NTS). DOE maintains performance of this contract is relevant to the Pantex contract because of similarities between operations and conditions at NTS and Pantex. According to the agency, NTS is the only other place in the United States that has facilities exactly like some of those at Pantex; the facilities were built for the assembly of nuclear test devices, which use the same management controls as the nuclear weapon assembly at Pantex. DOE further reports that NTS facilities are currently used for subcritical experiments, involving high explosives and plutonium, where the plutonium cannot go critical, and that there are similar safety issues associated with handling plutonium at Pantex and NTS. Tr. at I-167 (NTS performance reports considered in past performance evaluation), I-257 to II-259; DOE Post-Hearing Comments at 27-28.

In his past performance questionnaire, the NTS [DELETED] rated Bechtel Nevada's performance as "excellent" and without weak points; according to the [DELETED], "Bechtel provides outstanding support. They are customer focused and technically competent. I highly recommend them for addition[al] contracts." AR, Tab 12, at 68-70. Another reference also advised that Bechtel Nevada is "cooperative and maintain[s] a good working relationship with the environmental regulator." Id. at 71. Further, in DOE's fee determination for the period ending March 31, 1999, the fee determination official stated that he "continue[d] to be encouraged by [Bechtel Nevada] senior management and Bechtel corporate commitment to enhancing the operational safety culture at the NTS"; recognized Bechtel Nevada's "senior management['s] strong commitment towards strengthening business management systems and processes"; and noted that Bechtel Nevada had provided "outstanding technical support" for certain sub-critical experiments. Id. at 63-64. As a result, Bechtel Nevada, which received an award fee of 81.8 percent in FY 1998, received an overall award fee of 84.5 percent in FY 1999. DOE Post-Hearing Comments at 43-44.

Kansas City Plant

BWXT's overall outstanding past performance rating, as well as the assigned minor strength for other than NFO past performance, also was based on reports of Honeywell's strong performance managing and operating DOE's Kansas City Plant, which manufactures non-nuclear components for nuclear weapons. In this regard, in [DELETED] past performance questionnaire, DOE's [DELETED], reported that Honeywell

> has consistently achieved delivery performance of near 100% for the past five years. They have also demonstrated continuous improvement in quality measures such as cost of non-conformance, and percent accepted trouble free. In general, the contractor has been able to

> achieve significant productivity gains, allowing them to increase output, while reducing costs.

AR, Tab 12, at 89. Further, reported the [DELETED], Honeywell "has always had a very strong safety program," and "has developed an Environmental, Safety, and Health Program that is a model for industry for light manufacturing facilities." Id. Further still, according to the [DELETED], Honeywell "has effectively incorporated an integrated safety management system into the workplace"; has been "proactive in taking lessons learned and taking corrective action to assure" that safety problems are not repeated; and has "consistently achieved world class safety statistics, including [a] lost workday case rate of less than one." Id. Similarly, DOE's Kansas City Area [DELETED] noted that Honeywell is "proactive in resolving problems"; "effective in its management and use of the workforce"; has a "strong emphasis on quality and continuous improvement"; and has been "able to achieve significant productivity gains which, in turn, led to cost reductions." AR, Tab 12, at 97-98. According to the [DELETED], there were no significant weaknesses in Honeywell's performance at the Kansas City Plant. Id. at 98.[9]

Summary

In summary, we find that the record supports DOE's determination that DZX has had continuing, significant problems in ensuring that the Pantex Plant is fully able to perform the critical mission, necessary to ensure the safety and reliability of the United States nuclear weapons stockpile, of disassembling and reassembling nuclear weapons in support of DOE's stockpile life extension and stockpile evaluation programs. In contrast, the record supports DOE's determination that the BWXT team has a very good performance record with respect to a number of contracts, especially those most relevant to operations at the Pantex plant. We conclude that DOE reasonably determined BWXT's past performance to be superior to DZX's, and we find no basis to question the overall evaluation in this regard.

CONTINUOUS IMPROVEMENT

DZX challenges DOE's evaluation of continuous improvement. As noted above, the SSO determined that BWXT's proposal offered a significant advantage in its focus on

---

[9] Honeywell received overall performance ratings of good in its FY 1997, FY 1998 and FY 1999 award fee reports. Further, Honeywell received 88 percent of the maximum available award fee (with a weighted grade of 94) for FY 1999; a 65.6-percent award fee (with a weighted grade of 90.7) for FY 1998; and a 75-percent award fee (with a weighted grade of 92) for FY 1997. AR, Tab 13, Performance Evaluation Report, FY 1997 (Oct. 1, 1996 to Sept. 30, 1997), Tab 14, Performance Evaluation Report, FY 1998 (Oct. 1, 1997 to Sept. 30, 1998), Tab 15, Performance Evaluation Report, FY 1999 (Oct. 1, 1998 to Sept. 30, 1999).

continuous improvement and the application of modern quality principles, which were expected to yield significant operating cost reductions. SSD at 7. In this regard, the SSO noted a number of the efficiencies and improvements proposed by BWXT, including his understanding that BWXT was proposing to increase productive output by 50 percent by the end of 5 years, and stated:

> These efficiency and operational improvements would yield significant operating cost reductions, or allow the reapplication of savings to currently unfunded high priority activities. BWXT's detailed and comprehensive discussion of its proposed methods and procedures, the experience demonstrated by BWXT in using these methods, and its past performance in operating plants which demonstrate these principles, gives me confidence that BWXT Pantex would successfully initiate improvements to the current operating procedures at the Pantex Plant.

Id.[10] Then, having determined that the technical superiority of BWXT's proposal was worth the additional $29.5 million evaluated cost of the proposal, the SSO stated that BWXT's approach for continuous improvement to achieve operating efficiencies and operational cost savings should yield overall savings that significantly overshadow the differences in the evaluated costs. Id. at 9; SEB Final Report, II-A 2, 3, and 9.

DZX argues that the agency's emphasis on continuous improvement was inconsistent with the solicitation. Further, according to the protester, the extent of the savings and increased efficiencies proposed by BWXT was unrealistic, a fact that the protester asserts should have been apparent to the agency because of BWXT's poor past performance.

We find no basis to question DOE's evaluation of the proposals in this area. First, given the RFP's repeated references to desired improvements--continuous and otherwise--in performance, it cannot be said that the agency's emphasis in the evaluation on proposed approaches to continually improving operations at the Pantex Plant was inconsistent with the RFP. As noted, the SOW specifically provided that, "[i]n order to achieve the [overall performance objectives of the contract], the Contractor is expected to move to a higher level of performance throughout the term of the Contract by making the following process enhancements: Demonstrate a culture of continuous improvement for plant disciplines (such as disassembly and assembly of nuclear weapons, quality, meeting schedule, cost controls, authorization bases)." SOW § C.1.3. Likewise, under the evaluation factor for ES&H in NFO, the RFP specifically provided for consideration of "the degree to which the Offeror's proposal instills a system of continuous improvement, with

---

[10] BWXT's proposal anticipated an average annual increase in productive output of [DELETED]. BWXT Proposal at II-74/C-2, II-76/C-4.

technical support from the Offeror's parent organization." RFP § M.4(a). In addition, under the evaluation factor for approach to technical and business functions, the RFP specifically provided for consideration of "the degree the Pantex Plant will be operated to meet overall Corporate expectations for continuous improvement, the application of new business practices, and quality initiatives." RFP § M.4(c)(1). More generally, the RFP provided for evaluation, under the management and organization factor, of the "ability to rapidly implement proposed organizational improvements," and key personnel's ability to "cause overall positive change; improve performance"; and for evaluation, under the approach to technical and business functions factor, of "the feasibility and reasonableness for achieving greater operating efficiencies." RFP §§ M.4(b), (c)(1).

In any case, where an RFP provides for evaluation of an offeror's proposed approach to performance, we think it is implicit that the agency will consider whether the proposed approach will result in improved, more efficient ways of performing the SOW requirements. In these circumstances, there is no basis for concluding that offerors could have been misled, to their competitive prejudice, as to the agency's intention to consider continuous improvement when preparing their proposals.

Second, we find no basis to question the reasonableness of DOE's determination that BWXT's approach to ensuring continuous improvement was more likely to yield continuing significant increased efficiencies than DZX's. In this regard, the record supports DOE's position that BWXT based its approach to performing the contract and ensuring continuous improvement on specific structured, continuous improvement management processes with which the agency was familiar and which it was aware had been successfully implemented by members of the BWXT team and others. BWXT explained in detail how it would apply these management techniques to improving performance at the Pantex Plant. Foremost among the management techniques on which BWXT based its proposal was the "assess, improve and modernize" (AIM) approach, a structured management approach with which the chairman of the SEB--who had been involved in training nuclear weapons production management teams in continuous improvement processes--was familiar and which he believed was very credible. The AIM approach is a [DELETED]. Tr. at I-122 to I-129. BWXT proposed providing [DELETED]. BWXT Proposal at II-2/A-2. BWXT described in detail its implementation of an AIM-based approach to performing the contract, including applying AIM principles to improve the AB process (an area in which the incumbent contractor, DZX, had had significant performance problems). BWXT Proposal at II-1/A-1 to II-4/A-4, II-8/A-8 to II-12/A-12, II-17/A-17 to II-18/A-18, II-73/C-1 to II-81/C-9, and II-88/C-16 to II-90/C-18.

In addition, BWXT explained that it would use Six Sigma quality methodologies to improve quality at the Pantex Plant. According to BWXT, it would [DELETED]. BWXT Proposal at II-73/C-1 to II-74/C-2, II-87/C-15 to II-90/C-18. The Albuquerque Area manager, who has oversight authority for the Kansas City and Pantex Plants, described Six Sigma as an "effective management tool," developed by Allied Signal

(Honeywell), that is one of a number of "very good ways to approach continuous process improvement." Tr. at I-302 to I-305.

Further, as noted by the SSO, BWXT team members have successfully implemented continuous improvement approaches to achieve significant efficiencies under other contracts. Again, DOE's Kansas City Area manager, with oversight responsibility for the Kansas City Plant, reported that Honeywell had "demonstrated continuous improvement in quality measures such as cost of non-conformance, and percent accepted trouble free" such that, while achieving delivery performance of nearly 100 percent, it was "able to achieve significant productivity gains, allowing them to increase output, while reducing costs." AR, Tab 12, at 89. Likewise, DOE's Kansas City Area program secretarial officer noted that Honeywell has a "strong emphasis on quality and continuous improvement" and has been "able to achieve significant productivity gains which, in turn, led to cost reductions." AR, Tab 12, at 97-99. The agency also took into account BWXT's implementation, as described in its proposal, of continuous improvement techniques at NNFD, a contract for which (as discussed above) the agency had received favorable performance evaluation reports. Tr. at I-263 to I-265; BWXT Proposal at II-4/D-4.

While the agency credited DZX with proposing continuous improvement techniques (such as Six Sigma), and determined that they would have "a positive effect on plant operations," the agency essentially concluded that a management approach for continuous improvement was not fundamental to DZX's proposal in the same manner as it was to BWXT's, and that no more than a minor strength in this regard was warranted. SEB Final Report at II-B 10-11; Tr. at I-265 to I-266. Given the fundamental role continuous improvement processes played in BWXT's approach to performing the contract, as explained in detail in its proposal, and the success of the members of BWXT's team in implementing continuous improvement processes, there is no basis to question DOE's determination that BWXT's proposal afforded the agency a significant advantage in this regard. This is the case even if DZX is correct that some of BWXT's forecasts of future savings and increased efficiencies may be unduly optimistic; it remains that the agency had a reasonable basis for anticipating that BWXT's more systematic approach to continuous improvement would yield greater savings and efficiencies than DZX's.

OTHER ARGUMENTS

DZX asserts that an organizational conflict of interest with respect to the activities of the president of Omicron Safety and Risk Technologies, Inc. resulted in a procurement process "improperly infected" by "tainted Omicron evaluations." DZX Comments, Oct. 12, 2000, at 8. In this regard, the record indicates that the president of Omicron was an initial member of a safety basis review team reviewing proposed AB documents submitted by DZX for a nuclear weapon. After submission of the team's comments, including criticism by Omicron's president of the adequacy of DZX's fire hazards analysis, DZX advised the agency on or before February 16, 2000, that Omicron had been hired by a competitor in the Pantex procurement. DOE

reports that when Omicron subsequently (on February 19 or 20) advised DOE, in response to the agency's inquiry, that it intended to accept an offer to work for a competitor of DZX (not BWXT), the agency immediately removed Omicron's president from the AB review process, conducted a factual accuracy review of the team's findings in conjunction with DZX, and ultimately declined to adopt any of the team's findings as a precondition (condition of approval) to commencement of operations on the nuclear weapon in question. (Instead, some of the findings were to remain open or were to be considered in other, site-wide contexts.) DOE Supplemental Report, Oct. 3, 2000, at 1-7. It is DOE's position, which DZX disputes, that Omicron's comments did not affect the evaluation under the Pantex solicitation.

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 the protest, even if a deficiency in the procurement is found. IT Facility Servs.--Joint Venture, B-285841, Oct. 17, 2000, 2000 CPD ¶ ___ at 12-13; 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). As discussed above, the agency's evaluation of significant deficiencies in DZX's performance at the Pantex Plant was based on extensive evidence of continuing, unsatisfactory performance over a period of time, which adversely affected accomplishment of a core, nationally important mission of the facility. In these circumstances, there simply is no basis for concluding that any input from the president of Omicron had a material impact on DZX's past performance evaluation.

DZX also alleges a violation of 41 U.S.C. § 423(d)(1) (1994), which prohibits, among other conduct, a former official of a federal agency from accepting compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of 1 year after the former official either (1) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor, or (2) personally made for the federal agency a decision to approve issuance of a contract payment or payments in excess of $10,000,000 to that contractor. Here, according to the protester, a former DOE employee [DELETED] approved a contract payment of $10.7 million to Bechtel Nevada sometime after October 1998, and then, while employed by a consulting firm, began furnishing consulting services to BWXT in August 1999.

The interpretation and enforcement of post-employment restrictions are primarily within the ambit of the Department of Justice and the procuring agency. Our general interest within the confines of a bid protest is to determine whether any action of the former government employee may have resulted in prejudice for, or on behalf of, the awardee. See Proteccion Total/Magnum Sec., S.A., B-278129.4, May 12, 1998, 98-1 CPD ¶ 137 at 3; Guardian Techs. Int'l, B-270213 et al., Feb. 20, 1996, 96-1 CPD ¶ 104 at 6; FHC Options, Inc., B-246793.3, Apr. 14, 1992, 92-1 CPD ¶ 366 at 4-5. DZX has not alleged, nor does the record demonstrate, that the actions of the former DOE employee afforded BWXT an unfair competitive advantage in this procurement.

Based on our review of the record, including the arguments made by the protester, we conclude that DOE reasonably determined that BWXT's proposal offered significant advantages over DZX's, both with respect to the proposed approach to performing the contract and the likelihood of successful performance, as indicated by BWXT's past performance record. We find no basis to question the agency's determination that these significant advantages were worth the additional cost of BWXT's proposal.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel