



United States General Accounting Office  
Washington, DC 20548

Comptroller General  
of the United States

**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:** Beneco Enterprises, Inc.

**File:** B-283512

**Date:** December 3, 1999

---

Clark B. Fetzer, Esq., Kirton & McConkie, for the protester.  
M. Dale Marsh, Esq., Cassady, Fuller & Marsh, for Hammer LGC, Inc., the intervenor.  
Col. Nicholas P. Retson and Capt. Elizabeth G. Eberhart, Department of the Army, for the agency.  
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Agency unreasonably evaluated proposals under past performance evaluation factor where the solicitation contemplated a qualitative assessment of the quality of performance of contracts relative to the size and complexity of the job order contract (JOC) for construction services being procured, and the agency gave the highest possible rating to an offeror with no JOC prime contractor experience and whose experience was in performing relatively small dollar construction contracts, and a lower rating to an offeror with extensive, successful performance of JOCs similar to JOC under consideration.

---

### DECISION

Beneco Enterprises, Inc. protests the award of a contract to Hammer LGC, Inc. under request for proposals (RFP) No. DABT01-99-R-0002, issued by the Department of the Army for construction, repair and maintenance of real property at Fort Rucker, Alabama.

We sustain the protest.

The RFP, issued March 10, 1999, contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity job order contract (JOC) for the construction services for 1 year with 4 option years. RFP at B-3 to B-6 and amend. 0002, at C-1. Under the JOC, task orders may be issued in any amount from \$2,000 to \$300,000; larger orders to a maximum of \$2 million may be issued, with specific approval, for emergency situations. RFP amend. 0002, at C-2. The guaranteed minimum contract

value per year is \$300,000 and the estimated maximum value per year is \$5 million or a maximum total of \$25 million for all contract years if the annual estimated maximum value is exceeded. RFP amend. 0002, at C-1, H-3. There are no other limitations on the number or value of task orders that may be issued under the JOC. RFP at I-11.

The RFP stated that award would be based on the best overall value to the government, considering the technical, past performance, price, cost/price realism and subcontracting plan evaluation factors. RFP at M-1 and amend. 0002, at M-2. Price was to be offered in coefficient form as a percentage of unit prices for the various construction tasks listed in the unit price book (UPB),<sup>1</sup> and was to be evaluated on an estimated contract value of \$3 million for the base period and each of the option years.<sup>2</sup> RFP at B-1, M-5. The RFP stated the relative significance of the evaluation factors as follows:

In order to receive consideration for award, the coefficients (price) must be considered reasonable and realistic, and any large business offeror must have a satisfactory subcontracting plan. Of the remaining factors set forth above, technical is somewhat more important than past performance, past performance is slightly more important than price. Technical and past performance combined are significantly more important than price.

RFP amend. 0002, at M-2.

The RFP also identified subfactors under the technical and past performance factors and their relative importance. Among the technical subfactors was the management

---

<sup>1</sup> For example, a price coefficient of 1.0 would represent a price equal to the UPB unit prices, a price coefficient of .95 would represent a price 5 percent lower than the UPB unit prices, and a price coefficient of 1.2 would represent a price 20 percent higher than the UPB unit prices. The JOC UPB for Fort Rucker was incorporated into the RFP. RFP TE-2, vol. 2.

<sup>2</sup> To the extent Beneco alleges that price should be evaluated based on a higher annual estimated contract value, Protest at 13-14, Protester's Comments at 14, Protester's Supplemental Comments, Oct. 22, 1999, at 11-13, the allegation represents an untimely protest of an alleged solicitation defect apparent on the face of the RFP that was not raised until after award. To be considered timely, this protest of the terms of the solicitation should have been filed prior to the time for submitting initial proposals. 4 C.F.R. § 21.2(a)(1) (1999).

plan, where contractor staff was evaluated. Id. The past performance subfactors were (a) quality of service, (b) timeliness of performance, (c) cost control, (d) business relations, and (e) customer satisfaction. RFP amend. 0002, at M-4. The RFP also stated:

Past performance will be used to conduct a performance risk assessment as it relates to the probability of successfully accomplishing the proposed effort.

Id.

The RFP proposal instructions identified the minimum information that offerors were to provide corresponding to each evaluation factor. Under past performance, offerors were to list all contracts awarded during the past 3 years from all sources. The RFP stated that the Army would issue past performance surveys to the sources of these contracts for the purpose of evaluating offerors under the past performance factor. RFP amend. 0002, at L-12, L-13. The RFP then stated:

Each offeror will be evaluated on his/her performance under existing and prior contracts for similar construction work. Performance information will be used for both responsibility determinations and as an evaluation factor against which offerors' relative ranking will be compared to assure best value to the Government. The Government will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration.

RFP amend. 0002, at L-13 (emphasis added).

The agency received six initial proposals. After evaluating these proposals, the Army established a competitive range of four proposals, including Beneco's and Hammer's. Beneco's proposal received a technical score of 8,735 out of 10,000 possible points, and Hammer's proposal received a technical score of 9,553 points. Agency Report, Tab H, Source Selection Evaluation Board (SSEB) Initial Consensus Evaluation of Beneco's Proposal, at 63, and Tab I, SSEB Initial Consensus Evaluation of Hammer's Proposal, at 63.

The past performance evaluation was based on surveys that the agency received from points of contact on six contracts identified in each offeror's proposal. Past performance ratings were based on a five-place adjectival scale of unsatisfactory, marginal, satisfactory, good and exceptional.

Of the six surveys the agency received for Beneco, all concerned Beneco's performance as the prime contractor on JOC construction contracts or JOC-type construction task order contracts, which contracts ranged in value from \$11 million to more than \$40 million. Agency Report, Tab C, Beneco's Proposal, Past

Performance Record, at 2-5, 12-14, 21-27, 35-37, and Tab E, Beneco's Past Performance Rating. The written survey comments generally praised Beneco's performance. Although not every written comment was positive, all of the surveys rated Beneco's performance as either excellent or good. Agency Report, Tab E, Beneco's Past Performance Rating.

Hammer's proposal did not identify any contract experience as a prime contractor on a JOC or JOC-type contract. Agency Report, Tab D, Hammer's proposal, Past Performance Volume. The proposal indicated that Hammer's experience with JOCs was as a subcontractor under Beneco's incumbent contract from 1996 to 1999 in performing a number of task orders for construction projects ranging from \$30,000 to \$300,000 in value.<sup>3</sup> *Id.* at 2-4, 6-9, 16-17, 23. The agency did not survey Beneco concerning Hammer's performance as a subcontractor, although the Army contract administrator completed a survey form for this work.<sup>4</sup> Agency Supplemental Report, Oct. 18, 1999, at 4; Agency Supplemental Submission, Oct. 28, 1999, at 2. The remainder of Hammer's experience involved performing various construction contracts, with values ranging from \$19,365 to \$303,459, for Alabama cities and federal agencies. Agency Report, Tab D, Hammer's Proposal, Past Performance

---

<sup>3</sup> Beneco actually commenced performance under this JOC in November 1997 pursuant to a novation agreement; Gracon Corporation was the contractor for which Beneco took over contract performance. Protester's Post-Hearing Comments, Affidavit of Beneco's General Counsel, Nov. 10, 1999, at 3. Hammer's proposal also shows that it performed various delivery orders under the predecessor JOC at Fort Rucker from 1994.

<sup>4</sup> The survey form completed by the Army contract administrator on the Beneco contract regarding Hammer's subcontract performance was eliminated from the evaluation by the SSEB Chairperson because the contract administrator was also a member of the SSEB, which the SSEB Chairperson believed constituted a perceived conflict of interest. Hearing Transcript (Tr.) at 97-99. Beneco alleges that this survey was not eliminated from consideration and/or the participation of this individual as a contracting official on prior government contracts performed by Hammer and as an SSEB member was a conflict of interest that tainted the SSEB and rendered the entire evaluation improper. Protester's Comments at 8-9; Protester's Supplemental Comments, Oct. 22, 1999, at 1-4; Protester's Supplemental Comments, Nov. 2, 1999, at 2-4. However, the protester states that it imputes no improper motive to this evaluator, Protester's Supplemental Comments, Nov. 2, 1999, at 2, and absent a specific showing by the protester of an act of bias, we do not consider the participation of this SSEB member a conflict of interest. See Sterling Servs., Inc.; Trim-Flite, Inc., B-229926.5, B-229926.6, Oct. 3, 1988, 88-2 CPD ¶ 306 at 6 (fact that evaluators also administer government contract with an offeror does not show bias). Therefore, even if the evaluator's survey had been considered in the evaluation, it would be unobjectionable.

Volume. The six surveys received from points of contact for Hammer's contracts rated Hammer's performance as either excellent or good. Agency Report, Tab F, Hammer's Past Performance Rating. All of the written comments on Hammer's surveys were laudatory.

The agency's evaluation under the past performance factor rated Hammer excellent and Beneco good. Agency Report, Tab E, Beneco's Past Performance Rating, at 1; Tab F, Hammer's Past Performance Rating, at 1. Aside from the survey responses and these ratings, there is little record of the agency's past performance evaluation.

The agency conducted discussions, requested and received final proposal revisions and evaluated them. The technical scores changed slightly. Beneco's final proposal received a total technical score of 8,794 points and Hammer's received a score of 9,648 points; Hammer's technical proposal was rated higher than Beneco's under each of the technical evaluation factors and subfactors. Agency Report, Tab J, SSEB Report, at 20-21. The past performance ratings did not change, although the final evaluation report did provide subfactor ratings for the past performance evaluation. Beneco's five subfactor ratings consisted of three good ratings and two excellent ratings, and Hammer's consisted of five excellent ratings. *Id.* at 14, 18-19. The final price evaluation was based on the average proposed price coefficient. *See* RFP amend. 0002, at M-5. The average price coefficient for Beneco's proposal was [DELETED] and for Hammer's proposal [DELETED]. Agency Report, Tab J, SSEB Report, at 38. The average price coefficients translated into evaluated total prices of \$[DELETED] for Beneco (the lowest price) and \$[DELETED] for Hammer (the third-lowest price).<sup>5</sup> *Id.*

The source selection authority (SSA) selected Hammer's proposal for award based on the final evaluation results. The SSA's decision document stated the total technical scores, the overall past performance ratings and the evaluated prices for all four final revised proposals. The decision stated that all offerors' prices were determined by the Army to be realistic<sup>6</sup> and all offerors had submitted acceptable

---

<sup>5</sup> The evaluated prices are based on a single year contract value of \$3 million. Although the RFP stated that offerors would be evaluated for award purposes considering the total price for all options, RFP amend. 0002, at M-6, the agency's price evaluation considered only the base year.

<sup>6</sup> Some of Beneco's initially proposed price coefficients were [DELETED], which the agency considered below cost and unrealistic. Contracting Officer's Statement at 2-3. Beneco's final proposal revision increased its coefficients to what the agency considered an acceptable level. Agency Report, Tab K, Source Selection Decision, at 1. While Beneco alleges that an award of a JOC by another Army activity to Beneco at an even lower-priced coefficient shows that the agency's initial price evaluation was unreasonable, Protester's Supplemental Submission, Oct. 28, 1999, at 2, this is not a valid protest basis, because each procurement is a separate

(continued...)

subcontracting plans. The SSA's justification for awarding a contract to Hammer at a higher price was as follows:

Hammer LGC scored higher than all other offerors in technical and had the highest past performance rating. Hammer's proposal as outlined by the source selection board has several distinctive strengths, which include [DELETED]. Of the past performance survey references received, Hammer's results were the only ones where all were in the excellent area,<sup>7</sup> with not one negative comment received.

Hammer LGC has a proven record as an exceptional construction firm that does quality work. This firm handled many of the most difficult projects as a subcontractor on Fort Rucker's previous JOC contracts and the proposed project manager has many years of proven ability managing JOC contracts, the past three years here at Fort Rucker.

In consideration of the above, the proposal submitted by Hammer LGC is deemed technically superior with a technical score approximately 10% above that of the next highest rated proposal. Additionally, with the only excellent past performance rating, Hammer offers the least risk to the Government in the accomplishment of the work required by this contract. And although Hammer's price is approximately [DELETED]% higher than that of the lowest offeror in this least important evaluation factor, the technical strengths provided within Hammer's proposal and the excellent past performance rating equating to zero performance risk are worth the additional cost.

Agency Report, Tab K, Source Selection Decision, at 1-2.

On August 9, the Army awarded a contract to Hammer. After requesting and receiving a debriefing, Beneco protested the award to our Office. The Army subsequently suspended performance of Hammer's contract.

---

(...continued)

transaction, and action on one procurement does not govern action on another procurement. See Red John's Stone, Inc., B-280974, Dec. 14, 1998, 98-2 CPD ¶ 135 at 7.

<sup>7</sup> We note that Hammer's survey ratings were not all in the excellent area. One respondent's ratings included some average ratings. The ratings on this survey were not even predominately excellent and, overall, Hammer's performance was rated good by this reference. Agency Report, Tab F, Hammer's Past Performance Rating, at 48-55.

Beneco alleges that, under the past performance factor, the Army unreasonably evaluated Hammer's proposal as excellent, the highest rating possible, even though Hammer has no experience as a JOC contractor, nor has it performed contracts of a value that approaches the estimated value of this JOC. Protest at 7-11. Beneco also protests the agency's evaluation under the technical factor and the source selection cost/technical tradeoff decision. We sustain Beneco's protest of the past performance evaluation.

In reviewing a protest of an agency's evaluation of proposals, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. Ogden Support Servs., Inc., B-270012.2, Mar. 19, 1996, 96-1 CPD ¶ 177 at 5.

The protester has attacked numerous aspects of the technical evaluation, which ranked Hammer's proposal consistently higher than Beneco's highly rated proposal. Based on our review of all of these contentions, which were the subject of a hearing conducted by our Office, and as illustrated by the following example, the protester has failed to show that the technical evaluation was unreasonable. For example, the protester alleges that it was unreasonable for the agency to evaluate Hammer's proposed staff superior to Beneco's, since much of Hammer's proposed staff were the same individuals proposed by Beneco. Protester's Supplemental Comments, Oct. 22, 1999, at 5. While it is true that many of the individuals proposed by the two offerors are the same, there are some differences which reasonably support a higher rating for Hammer's proposal. In particular, Hammer proposed [DELETED]. Tr. at 27-28, 130-35. Hammer also proposed a senior project manager who used to work for Beneco on the Fort Rucker incumbent contract and who is highly regarded by the evaluators and the SSA. Tr. at 24-25, 120; Agency Report, Tab K, Source Selection Decision, at 2. This individual has 10 years experience on JOCs and has demonstrated an ability at Fort Rucker to build teams that perform well. Tr. at 25-27; Agency Report, Tab D, Hammer's Proposal, Management Plan, at 1-3 to 1-5. In contrast, Beneco does not propose this individual [DELETED]. Agency Report, Tab C, Beneco's Proposal, Management Plan, at 9. Thus, the agency could find that Hammer's proposed staff exceeds that offered by Beneco and provides a reasonable basis for rating Hammer's technical proposal higher than Beneco's in this respect. Similarly, the protester has not shown Hammer's ratings for other aspects of the technical evaluation were unreasonably higher than Beneco's. We thus deny this portion of Beneco's protest.

Turning to the protest of the past performance evaluation, we find that there is insufficient information and analysis in the record to establish a reasonable basis for evaluating Hammer's proposal as excellent and a zero performance risk with a rating higher than Beneco's past performance rating. The RFP stated that offerors would be evaluated under the past performance factor based upon their records of performing contracts for similar construction work and that the evaluation would "focus on information that demonstrates quality of performance relative to the size

and complexity of the procurement under consideration.” RFP amend. 0002, at L-3. Since the RFP indicated that proposals would be qualitatively evaluated for quality of performance relative to the size and complexity of the JOC procurement under consideration, it follows that a proposal reflecting successful past performance on contracts closer in size and complexity to the procurement under consideration should be rated higher than a proposal reflecting successful performance on less similar contracts. See Ogden Support Servs., Inc., B-270012.4, Oct. 3, 1996, 96-2 CPD ¶ 137 at 3; Chem-Services of Indiana, Inc., B-253905, Oct. 28, 1993, 93-2 CPD ¶ 262 at 3-4. Here, the evaluation did not so qualitatively evaluate past performance.

As the RFP makes clear, the JOC under consideration involves more than simply performing a construction project; it involves managing and performing multiple construction projects at the same time throughout the contract term.<sup>8</sup> See RFP amend. 0002, at M-4 (past performance business relations subfactor--“successfully manage small to medium scale construction and repair projects simultaneously”), L-10 (“discuss staffing levels available to scope and negotiate delivery orders simultaneously and effectively”), L-12 (“coordinating, scheduling and ensuring timeliness of work execution and completion of multiple projects with multiple subcontractors”), I-11 (“there is no limit on the number of orders that may be issued . . . may issue orders requiring delivery to multiple destinations or performance at multiple locations”), C-2 to C-3 (stating JOC contractor’s responsibility under contract includes “planning, programming, administration, and management necessary to provide work as specified . . . [and] all related administrative services”). The SSEB Chair testified that the JOC prime contractor, rather than a subcontractor, is the one credited with and responsible for the management of task orders being performed simultaneously. Tr. at 329. The management of multiple task orders, which may be simultaneously performed, is an important aspect of JOCs, particularly considering the potential size of this kind of contract; for example, at the end of each year the agency traditionally issues many task orders requiring simultaneous planning and performance of as many as 40 projects valued at approximately 60 to 70 percent of the annual construction and repair funds. Tr. at 13-14, 367-68.

As indicated, the record shows that Beneco has an extensive record of successfully performing as the prime contractor under construction JOCs or contracts similar to JOCs valued from \$11 million to more than \$40 million, for which its past

---

<sup>8</sup> We have found that the extent of an offeror’s experience with JOCs (or a substantially similar type of contract) is a significant distinguishing characteristic in a past performance evaluation under a solicitation for a JOC where the solicitation, either expressly or implicitly, provides for evaluating the quality of performance of contracts similar to the solicited procurement. See Volmar Constr., Inc., B-270364, B-270364.2, Mar. 4, 1996, 96-1 CPD ¶ 139 at 6-7 n.2; SEEMA, Inc., B-277988, Dec. 16, 1997, 98-1 CPD ¶ 12 at 4-5.

performance has been considered good or excellent.<sup>9</sup> In contrast, Hammer had no experience as a prime contractor on a JOC or JOC-type construction contract. Hammer's JOC experience involves performing construction contracts or task orders as a JOC subcontractor, with contract/subcontract values ranging from \$20,000 to slightly more than \$300,000. Agency Report, Tab D, Hammer's Proposal, Past Performance Volume, at 3-14.

The agency, in evaluating the past performance references, weighted all of the offerors' reference surveys equally, without considering their value or whether they were JOCs. Agency Report at 5-6; Agency's Supplemental Report, Oct. 18, 1999, at 4-6; Agency's Post-Hearing Comments at 2-4; Tr. at 422-24. That is, Hammer's performance of a \$40,000 contract for an Alabama city was considered the same as Beneco's performance of a \$40 million JOC. Such an evaluation does not consider the quality of performance "relative to the size and complexity of the procurement under consideration," which is a JOC for construction services valued at \$3 million per year.

The agency's evaluation record also shows that the highest possible rating was given to Hammer's proposal because it received the highest total average survey point scores submitted by its contract references and because it received no negative written comments. Agency Report, Tab J, SSEB Report, at 25. This basis for awarding Hammer the highest possible rating again demonstrates that the agency failed to take into account, in its evaluation of the quality of performance, the size

---

<sup>9</sup> The extent and success of Beneco's record of performing JOCs is not disputed. Beneco has 13 years experience as a JOC general contractor with an aggregate contract value of \$1 billion and more than 9,000 orders performed. Protest at 10. It is the incumbent contractor for this Fort Rucker procurement. Agency Report, Tab C, Beneco's Proposal, Past Performance Records, at 1. All of the past performance surveys rated Beneco's performance as either excellent or good. Agency Report, Tab E, Beneco's Past Performance Rating. Although these surveys provided written comments that generally praised Beneco's performance and capabilities, the agency's record of evaluations identifies only the few comments that are less than positive (*i.e.*, a minor safety violation and an incomplete quote that stated Beneco's performance "has fallen off somewhat in the past 18 months"). Agency Report, Tab J, SSEB Report, at 26. The reference who stated Beneco's performance had fallen off also stated that Beneco's prior performance on that contract had been "excellent" and rated its overall performance as "good." Agency Report, Tab E, Beneco's Past Performance Rating, at 35. The agency's evaluation does not reference any of the more numerous comments that praise Beneco's ability to do JOCs well. Finally, and most troubling, there is no evidence that the agency's evaluation focused on the similarity between Beneco's past work and the size and complexity of the JOC procurement under consideration.

and complexity of the JOC procurement under consideration, as was contemplated by the RFP.

Since Beneco's evaluated contracts were for highly relevant JOC construction contracts of similar size and complexity, which it successfully performed with few negative reference comments, and since Hammer has no experience in performing JOCs as a prime contractor and its construction experience is on contracts of a much smaller value (approximately \$300,000 or less) and less complex (contracts for single projects), the record does not support Hammer's proposal receiving a perfect past performance rating nor a rating higher than Beneco's. Ogden Support Servs., Inc., supra.

The Army states that it performed a qualitative evaluation consistent with the terms of the RFP, in that it considered the size and complexity of the individual task orders to be placed under the contract to be awarded under this RFP and found all referenced contract experience on projects similar to these individual task orders to be equal in evaluating past performance. Agency Report at 6; Contracting Officer's Statement at 4-5; Agency Post-Hearing Comments at 2-5. This is an unreasonable interpretation of the terms of the solicitation. The solicitation stated that the evaluation would consider quality of performance relative to the size and complexity "of the procurement under consideration." RFP amend. 0002, at L-13. The procurement under consideration is an entire JOC, not an individual task order, and one offeror's experience performing a single task order cannot reasonably be considered comparable to another offeror's experience managing and performing multiple task orders simultaneously under a JOC.<sup>10</sup>

The agency alternatively argues that Hammer successfully performed several contracts simultaneously for the city of Elba, Alabama, which were similar to the type of work required under the RFP.<sup>11</sup> Agency's Post-Hearing Comments at 3. At best, this experience involved simultaneous performance of multiple projects over

---

<sup>10</sup> While the agency states that distinguishing between offerors in this manner based on the size and complexity of their past performance presents an obstacle to competition by small business concerns, Agency's Post-Hearing Comments at 2, this was the evaluation scheme that the agency stated in the solicitation.

<sup>11</sup> This is an argument that is neither apparent in the contemporaneous evaluation record, nor presented by the agency in its first response to the protest. In fact, it is contrary to agency's position that the basis for the evaluation is that contract experience on projects similar to individual task orders were considered equal regardless of other factors. Agency Report at 5-6; Agency Supplemental Report, Oct. 18, 1999, at 4-6; Agency Post-Hearing Comments at 2-4; Tr. at 422-24. For this reason, we give little weight to this allegation and its accompanying testimony. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

the course of 5 months for a total value of less than \$400,000. It also involves separate contracts, which may give the contractor much greater flexibility in selecting projects it is capable of performing and in managing resources than is present in a JOC where an offeror is expected to perform all task orders as issued. Hammer's experience in this regard is relevant, but would seem to be limited in relative size and complexity as compared to the JOC procurement under consideration, particularly in comparison to Beneco's substantial experience.<sup>12</sup>

Thus, the agency's past performance evaluation was unreasonable. Since the source selection decision adopts these unreasonable evaluation results and relies on them in significant part to make the source selection decision, the flaw in the past performance evaluation makes a new source selection decision necessary.

The Army argues that, even if we were to conclude that the past performance evaluation was improper, the source selection would be unaffected, since the agency would have awarded this contract to Hammer due to its technical superiority alone. Agency Post-Hearing Comments at 8. This is not at all apparent from the contemporaneous source selection record. The SSA's decision document gives great weight to the perceived past performance superiority of Hammer, so much so as to determine that Hammer's proposal represented a "zero performance risk," and was a significant consideration in selecting the proposal at a higher price. Agency Report, Tab K, Source Selection Statement, at 2. It was only in the heat of the adversarial process that the agency argued that correcting the past performance evaluation would not affect the ultimate source selection, and we have concern that this argument may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process; we thus accord this argument little weight. Boeing Sikorsky Aircraft Support, supra.

We recommend that the agency reevaluate proposals under the past performance factor consistent with the terms of the RFP and this decision and make a new source

---

<sup>12</sup> At the hearing, agency witnesses testified that the experience of Hammer's key personnel was also evaluated as part of the past performance evaluation, which they stated was consistent with the RFP. Tr. at 370-71, 435. The evaluation record provides no evidence that this was done, and the agency's written submissions on the protest do not so state. Moreover, the RFP states only that newly formed entities, without prior contract experience, may rely on the experience of their key personnel for the past performance evaluation. RFP amend. 0002, at L-13. Hammer's proposal did not provide such references for evaluation purposes, and the agency did not receive past performance surveys for any of Hammer's key personnel. Considering the lack of evidence to support this argument and the fact that the agency has not formally presented it in its written submissions, we do not consider it further.

selection decision.<sup>13</sup> If a proposal other than Hammer's is selected for award, the Army should terminate the contract previously awarded to that firm. We also recommend that the protester be reimbursed the reasonable cost of filing and pursuing its protest including attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General  
of the United States

---

<sup>13</sup> Since we are sustaining the protest and recommending that the agency perform a new source selection decision, Beneco's protest of the cost/technical tradeoff decision is academic.