



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Advanced Data Concepts, Inc.

File: B-277801.4

Date: June 1, 1998

Cyrus E. Phillips IV, Esq., and Christopher H. Jensen, Esq., Kilcullen, Wilson & Kilcullen, for the protester.

Stuart I. Young, Esq., DynCorp EENSP, Inc., an intervenor.

Gena E. Cadieux, Esq., and Beth Kelly, Esq., Department of Energy, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that one of its evaluated weaknesses was double-counted under one of two personnel subcriteria is upheld where the record shows that the protester's proposal was downgraded under the subcriterion for a matter not reasonably within the scope of the subcriterion, and where the other personnel subcriterion clearly indicated an intent to consider this matter, and reasonably did so.
2. Argument that evaluation of past performance was unreasonable because none of the protester's properly-identified references returned the past performance questionnaire is denied where the agency followed the procedure identified in the solicitation of awarding a neutral rating for such unreturned references, and where there is no showing that the evaluators had some independent basis for knowing of the protester's allegedly excellent past performance, because, absent such a showing, there is no legal requirement that all past performance references be included in a valid review of past performance.
3. Where record shows that the protester cannot reasonably claim that, but for the agency's actions, it would have had a substantial chance of receiving the award, the General Accounting Office will not sustain a protest, even though, in some areas, the contentions raised have merit.

DECISION

Advanced Data Concepts, Inc. (ADC) protests the award of a contract to DynCorp EENSP, Inc., d/b/a DynMeridian by the Department of Energy (DOE), pursuant to request for proposals (RFP) No. DE-RP01-97NN50008, issued to procure technical,

analytical and administrative services for DOE's Office of Declassification. ADC argues that DOE's evaluation of its proposal was unreasonable in the areas of personnel, past performance, and uncompensated overtime, and also contends that the agency failed to hold meaningful discussions with ADC and was biased in favor of the incumbent.

We deny the protest.

BACKGROUND

The RFP here was issued on April 1, 1997, and anticipated award of a fixed-rate labor-hour contract for a 2-year base period, with three 1-year options. RFP § L.16 (as modified by amend. 3 at 3). Offerors were instructed to prepare two proposal volumes and an oral presentation, as follows: a volume for the offer and other documents (RFP § L.29); a volume for the price proposal (RFP § L.31); and oral presentation slides and materials for the technical portion of the proposal (RFP § L.30).

Offerors were advised that award would be made to the offeror whose proposal was considered most advantageous to the government. RFP § M.1. The RFP explained that the oral technical proposal would be more important than price in determining which proposal was most advantageous. RFP § M.2. The solicitation identified four technical evaluation criteria, each of which was comprised of additional subcriteria. Although the RFP did not specifically identify the available points for the evaluation criteria, the criteria and the points used to evaluate them, are set forth below:¹

Personnel Qualifications and Availability	333
Technical Approach	317
Past Performance	250
Organization and Management Capabilities	<u>100</u>
TOTAL	1,000

RFP § M.3; Rating Plan, Feb. 4, 1997, at 2. (We need not set forth here all of the subcriteria and their relative weights, but will discuss them below, as needed.) In assessing the criteria and subcriteria, evaluators assigned a score of 0, 2, 5, 8, or 10, which was then multiplied by preestablished weights to determine the actual score. Rating Plan, supra.

¹Instead, the RFP explained that the criteria were listed in descending order of importance and provided that criteria 1 and 2 (each approximately equal) were each approximately weighted three (3) times the weight of criterion 4, and that criterion 3 was weighted two and a half (2.5) times the weight of criterion 4. RFP § M.3.

After receiving and evaluating initial proposals, the agency made an award without discussions, which was challenged by ADC in two protests to our Office. Both protests were dismissed after the agency agreed to take corrective action in the form of rescinding its initial award decision, making a competitive range determination, and convening discussions with the offerors whose proposals were included in the competitive range. Advanced Data Concepts, Inc., B-277801, B-277801.2, Sept. 16, 1997.

At the conclusion of discussions with the three competitive range offerors in the renewed competition, best and final offers (BAFO) were received from DynMeridian and ADC on November 17. (The third competitive range offeror elected not to submit a revised proposal, and asked to be considered based on its initial submission. Since it did not participate here, and since its scores were lower than those of the protester and the awardee, we will not discuss it further.) After completing its review of the BAFOs, the technical evaluation committee (TEC) assigned the following scores to DynMeridian's and ADC's proposals:

Evaluation Criteria	Dyn.	ADC
Personnel Qualifications and Availability	[deleted]	[deleted]
Technical Approach	[deleted]	[deleted]
Past Performance	[deleted]	[deleted]
Organization and Management Capabilities	[deleted]	[deleted]
TOTAL	970	644.9

Upon reviewing DynMeridian's evaluated price of \$15.9 million, and ADC's price of \$12.6 million, the TEC recommended, and the source selection official (SSO) concluded, that DynMeridian's superior technical proposal was worth its higher evaluated price. TEC Report, Nov. 26, 1997 at 3; Source Selection Statement, Jan. 30, 1998, at 3. The agency made award to DynMeridian on January 30, 1998, and this protest followed.

ANALYSIS

Personnel

ADC argues that the agency improperly evaluated personnel in two ways. First, it argues that DOE misapplied the RFP's stated evaluation weights in assessing proposals under the personnel qualifications and availability criterion. Next, it argues that the agency wrongly imposed an unstated requirement and double-counted one of ADC's weaknesses under both of the criterion's subcriteria.

With respect to the protester's contention that DOE misapplied the RFP's stated evaluation weights, there is no dispute. The RFP advised offerors that subcriterion A (availability of personnel) would be accorded approximately twice the weight of subcriterion B (key personnel qualifications). RFP § M.3. DOE concedes that it reversed the stated weights for subcriteria A and B, and accorded subcriterion B about 50 percent more weight than subcriterion A. The only dispute in this area is whether DOE's remedy was sufficient to correct the problem.

DOE's agency report included a supplemental Source Selection Statement, dated March 17, which admitted the error and explained that under the scheme stated in the RFP--as opposed to the scheme the agency initially used--ADC's score would increase by 20.1 points to a total score of 665, and DynMeridian's score would remain unchanged at 970.² The supplemental Source Selection Statement affirms the agency's selection of DynMeridian over ADC (despite its revised score) because of the technical superiority of the DynMeridian proposal.

ADC argues in its comments that DOE's attempted remedy is insufficient to correct the error, and should be rejected as a reevaluation prepared in the heat of the adversarial process. We disagree on both counts. First, ADC's contention that it would have written a different proposal had it known of the agency's true priorities is not dispositive. The adjustment made in the revised Source Selection Statement corrected the agency's error by recalculating the scores using the relative weights stated in the RFP. Thus, the weights ultimately used are those ADC claims were pivotal in preparing its proposal. Once DOE recalculated the scores of the proposal under the RFP's stated scheme--and scrapped the earlier erroneous relative weights--DOE returned ADC to the ground on which it stood when it prepared its proposal.

In addition, while we are generally skeptical of reevaluations prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, we conclude that the agency's position on this issue is reasonable. The mistake here was a mathematical error. As such, the error was straightforward, easily corrected, easily verified by all parties and by our Office, and addressed by the agency in its first filing after the issue was raised. There is nothing in the record here to support a conclusion that the resulting 20-point

²For the record, we note that correction of the weighting error requires more than simply reversing the weights assigned to the subcriteria, as the agency has done. Simple reversal of the weights does not completely capture the relative weights as set forth in section M.3. The RFP stated that subcriterion A was approximately twice the weight of subcriterion B; thus, instead of relative weights of 20 and 13.3 for subcriteria A and B, respectively, it appears that the agency should have used weights of 22.2 and 11.1. This more accurate adjustment would have an immaterial effect on ADC's corrected score.

change in ADC's score, standing alone, would alter the agency's cost/technical tradeoff decision. Instead, the resulting increase of 20 points, on a 1,000-point scale, is sufficiently de minimis that we do not conclude that this issue alone compels us to sustain ADC's protest. See Textron Marine Sys., B-243693, Aug. 19, 1991, 91-2 CPD ¶ 162 at 12-13. In terms of the concerns that we raised in Boeing, the limited impact of the error here was apparent even without the supplemental submission from the agency, so that the revised decision was fairly clearly discernible from the contemporaneous record.

In contrast, the Boeing case involved a post hoc reevaluation and cost/technical tradeoff late in the protest process where no tradeoff had been made during the initial source selection. Further, the agency continued to assert there was no error, but, in order to immunize itself against losing a protest, submitted a reevaluation that it argued was not necessary. We opted not to permit the agency to both defend its erroneous action and prepare after-the-fact decisional materials for the sole purpose of ensuring that our Office would conclude there was no prejudice to the protester. Boeing Sikorsky Aircraft Support, supra. Unlike the situation here, the substantial nature of the agency's errors and the resulting closeness of the proposals meant that, after the errors were corrected in Boeing, the outcome was not clear.

ADC's second challenge to the personnel evaluation is that the agency abandoned the RFP's stated evaluation scheme when it assessed a weakness against the proposal for a limited number of "classification professionals" under the availability of personnel subcriterion. ADC argues that the agency double-counted this weakness under both of the personnel subcriteria.

Section M.3 of the RFP defined the two personnel subcriteria as follows:

Subcriterion A: Availability of Personnel. The availability of key personnel and administrative/clerical personnel will be evaluated in terms of offeror's current employees and those committed to the project, and the availability of subcontractors and consultants. Availability of qualified key and administrative clerical personnel to cover peak work loads, overlapping or simultaneous assignments, and sick or vacation leave, will also be evaluated.

Subcriterion B: Key Personnel Qualifications. Key management and technical personnel proposed by the offeror will be evaluated on their educational background, directly related work (classification) experience, professional development, and performance record. Of these, years of classification experience will be weighted most heavily. In particular, key staff will be evaluated on recent experience in planning and executing support services to Headquarters type organizations; demonstrated understanding of technical issues relative

to classified and unclassified sensitive information control; and competence in technical program support. Administrative clerical support will not be evaluated in this sub criterion.

In DOE's evaluation of ADC's BAFO, the agency cites two strengths and two weaknesses under the availability of personnel subcriterion, and three strengths and two weaknesses under the key personnel qualifications subcriterion. TEC Report, supra, Attach. 1 at first unnumbered page. Under the availability of personnel subcriterion, one of the two weaknesses cited is:

Limited availability of "classification professionals", i.e., personnel who have direct experience in the development of classification policy (e.g., writing guides) as opposed to merely the application of classification policy (e.g., using guides to review documents as an authorized derivative classifier).

Id. Under the key personnel qualifications subcriterion, one of the two weaknesses cited is:

Of the proposed key personnel, only the proposed Senior Policy Analyst has experience as a classification professional, i.e., an individual with at least some experience in the development of classification policy and guidance. However, the claimed experience of that individual was limited to the development of one chapter in one guide in a narrowly specialized technical area.

Id.

As stated above, ADC argues that the availability of personnel subcriterion, as defined in the RFP, does not encompass the classification experience of non-key personnel, especially when one compares the two definitions. DOE responds that the agency reasonably evaluated the classification experience of non-key employees under the availability of personnel subcriterion because the key personnel qualifications subcriterion was, by definition, limited to key personnel. Thus, the other subcriterion necessarily encompassed the classification experience of non-key personnel. We disagree.

Our review shows that the RFP offered a significant level of detail regarding the agency's intended evaluation approach under these two subcriteria. The key personnel qualifications subcriterion not only identifies classification experience as one of the issues to be evaluated, but advises that this experience will be the most important element of the assessment. In contrast, the RFP's explanation of the availability of personnel subcriterion makes no mention of classification experience. In our view, the availability subcriterion cannot reasonably be read to encompass more than the availability of people in terms of whether they are current employees,

are committed to the project, and are available to meet peak workloads. We see nothing in the description of this subcriterion to advise offerors that the agency will assess classification experience, and we find this omission to be telling when compared with the RFP's clear indication that the key personnel subcriterion will consider this issue.

With respect to the impact of this issue on ADC's score, ADC received 8 of 10 available points under this subcriterion. While we cannot discern with certainty whether ADC would have received the highest rating of 10 points if this weakness were removed from its evaluation--especially since ADC's proposal would still be assessed as having a remaining weakness under this subcriterion³--we note that DynMeridian received a rating of 10 points under one of the evaluation subcriteria while also having a weakness identified. Compare TEC Report, supra, Attach. 2 at second unnumbered page with TEC Report, supra, Attach. 3. If we assume that ADC's rating might have been raised from 8 to 10 under this subcriterion (10 being the next highest increment in the 0, 2, 5, 8, 10 rating scheme used here), its total score under the personnel qualifications and availability criterion rises another 40 points, from 665 (as set forth in the revised Source Selection Statement) to 705.

Past Performance

ADC argues that DOE's evaluation of its past performance was unreasonable because DOE assigned the company a neutral rating when none of the identified contact points for ADC's three references--two of whom are DOE contracting officers, while the third is a contracting officer for the Bonneville Power Administration--returned the past performance questionnaire sent them by the DOE contracting officer here. ADC argues that DOE's contracting officers should be required to return such requests for information, and contends that offerors should not bear the burden of an unfavorable evaluation when agency employees fail to perform their duties. DOE argues that the evaluation was reasonable because offerors were advised in advance that a neutral rating would result from unreturned questionnaires, and that the point score assigned for a neutral rating here was so high that ADC cannot reasonably claim to have been prejudiced.

The RFP for this procurement required each offeror to identify past contracts for review under the past performance evaluation criterion, worth 250 of the 1,000 available points. For each contract identified by the offeror, the offeror was to provide the name of the contracting activity; the contract number, value, and type; a description of the statement of work; and the name and telephone number of the

³For the record, ADC's second weakness under this subcriterion was: "Not clear of the relevance of the nationwide pool of potential staff since Offeror states that emphasis will be on local talent still to be hired." TEC Report, supra, Attach. 1 at first unnumbered page.

contracting activity's contracting officer, program manager, and administrative contracting officer. RFP § L.30 at 86. In addition, offerors were specifically advised not to provide general information about their performance of these contracts, as the contracting agency would obtain such information from the references directly. Id. To this end, attachment 7 to the RFP includes the contractor performance report sent by the contracting officer here to the references, and attachment 6 includes a sample authorization letter that offerors can use to prod their references to respond to the request for information. However, the process set forth in the RFP does not envision any further role for the offerors in obtaining information from the identified references. Finally, the RFP advises that "if an offeror's client is unwilling to provide the Government requested information in support of the Government's past performance evaluation, that experience will be given a neutral rating." Id. at 87.

In response to this requirement, DynMeridian identified three prior DOE contracts for review; ADC identified two prior DOE contracts, and one contract with the Bonneville Power Administration.⁴ The record shows that in each case, the contracting officer here prepared a letter and facsimile to the identified reference. The record further shows that all of DynMeridian's DOE references returned the past performance questionnaire, while neither ADC's DOE references, nor its Bonneville Power Administration reference, responded to the request for information.

In the evaluation of this information, DynMeridian received a total rating of [deleted] points. For ADC, however, since none of the references responded to the contracting officer's request for information, the TEC assigned a neutral rating to ADC's proposal. Contracting Officer's Statement, Mar. 18, 1998, at 22. The TEC then converted the neutral rating to a point score by assigning ADC a rating of 8 under each of the 5 past performance subcriteria, which translated to a total rating of [deleted]. Id.

Federal Acquisition Regulation (FAR) Subpart 42.15 requires that federal agencies establish and maintain a past performance reporting network. Agency contracting officers are to prepare past performance reports--either on an interim basis (voluntary), or at the conclusion of a contract (mandatory)--for all contracts valued in excess of \$1 million, regardless of the date of contract award.⁵ See generally FAR Subpart 42.15. This requirement has been effective since May 30, 1995.

⁴For the record, DynMeridian also identified non-DOE contracts for review in its proposal. ADC's subcontractors identified non-DOE contracts; ADC identified only the references mentioned above.

⁵Effective January 1, 1998, the reporting threshold dropped from \$1 million to \$100,000. FAR § 42.1502(a).

60 Fed. Reg. 16,720 (Mar. 31, 1995). To ensure the effective use of this reporting network, the FAR states:

Departments and agencies shall share past performance information with other departments and agencies when requested to support future award decisions. The information may be provided through interview and/or by sending the evaluation and comment documents to the requesting source selection official.

FAR § 42.1503(c).

Here, ADC argues that the agency has violated the letter and spirit of FAR subpart 42.15 by failing to take steps to ensure that the references ADC identified in its offer--relating to two DOE contracts and one contract with the Bonneville Power Administration--returned the past performance questionnaires. DOE counters that the FAR provisions should not be interpreted to create rights for protesters where their references fail to respond to requests for information from a contracting officer.

Under the circumstances of this case, we need not decide whether DOE violated the FAR provisions at issue here because none of ADC's references fall within the requirements of the subpart. First, ADC admits that its Bonneville Power Administration reference falls outside the subpart because that organization is not covered by the FAR, and thus the requirement to share information, quoted above, does not apply. See International Line Builders, B-227811, Oct. 8, 1987, 87-2 CPD ¶ 345 at 4. DOE also points out that the remaining two contracts referenced by ADC are not yet completed. Since interim past performance reports are voluntary, not mandatory, DOE contends, and we agree, that there was no requirement for it to have information related to these contracts.⁶

The remaining issue here is whether the agency evaluation was unreasonable because ADC was assigned a rating of neutral, in lieu of the actual ratings that could have been used had the DOE employees complied with the agency's request to provide past performance information. ADC argues that its past performance of

⁶Although none of ADC's three contracts are technically within the requirements of FAR subpart 42.15, ADC correctly argues that agency personnel charged with the responsibility of answering past performance inquiries are required to provide such information when asked by the procuring office. See FAR § 42.1503(c). Since none of the DOE references named by ADC returned the procuring contracting officer's questionnaire--while all of DynMeridian's DOE references did so, giving rise to the claim of inequity here--DOE should consider whether measures to ensure compliance with the requirements of this regulation are necessary.

DOE contracts was evaluated very favorably, and contends that the actual ratings would likely have exceeded the neutral ratings awarded by the agency.

Despite ADC's arguments to the contrary, there is no legal requirement that all past performance references be included in a valid review of past performance. Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 8; Questech, Inc., B-236028, Nov. 1, 1989, 89-2 CPD ¶ 407 at 3. For our Office to sustain a protest challenging the failure to obtain or consider a reference's assessment of past performance, a protester must show unusual factual circumstances that convert the failure to a significant inequity for the protester. International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. The record here shows that the agency contacted each of ADC's references, and made at least an initial attempt to obtain the information properly identified by ADC in its proposal. When the agency did not receive responses, the agency followed the RFP-described procedure of assigning a neutral rating in this area. In addition, DOE translated its neutral rating to a favorable numerical score of 8 out of 10 available points. Thus, we cannot say that ADC was harmed in any significant way by the neutral rating. In short, without a showing that the DOE evaluators here should have been aware of the assessments that would have been received, and without some other showing that the agency's evaluation was unreasonable, we deny this protest ground.

Evaluation of Uncompensated Overtime

RFP § L.88 permitted offerors to make use of uncompensated overtime in preparing their proposals, but required full disclosure of, and accounting support for, the use of such time. In their initial proposals, neither ADC nor DynMeridian proposed the use of uncompensated overtime. In its BAFO, however, DynMeridian proposed that its professional employees would provide [deleted] hours of uncompensated overtime each week. While DOE's final price negotiation memorandum considered (and accepted) DynMeridian's offer of uncompensated overtime, there is no mention of this issue in either the original Source Selection Statement, or in any of the technical evaluation materials. Price Negotiation Memorandum, Feb. 18, 1998, at 3.

ADC argues that DOE was required to consider the impact of the awardee's uncompensated overtime on its technical evaluation and that its failure to do so was unreasonable; that the agency's failure to mention the issue in the original Source Selection Statement--and the preparation of the Price Negotiation Memorandum almost 3 weeks after the original Source Selection Statement--shows it was not properly considered; and that the discussion of the issue in DOE's supplemental Source Selection Statement--prepared in response to the protest--should not be allowed. We disagree on all counts.

First, although ADC is able to point to prior decisions of our Office where offerors were properly downgraded in their technical evaluations because of offers of uncompensated overtime--see, e.g., Combat Sys. Dev. Assocs. Joint Venture,

B-259920.2, June 13, 1995, 95-2 CPD ¶ 162 at 10, 11; Quantum Research, Inc., B-242020, Mar. 21, 1991, 91-1 CPD ¶ 310 at 5-6--we are aware of no per se requirement that offers of uncompensated overtime must always be reflected in the technical evaluation, as well as the price evaluation. In addition, the level of uncompensated overtime in at least one of the cases identified above was significantly higher than the [deleted]-hour level proposed by DynMeridian. See, Quantum Research, Inc., supra, at 5. Given the relatively small amount of overtime proposed here, we see nothing unreasonable about the fact that the agency did not downgrade DynMeridian's proposal in the technical area because it relied on uncompensated overtime.

Second, just as we accept the agency's explanation that it did not believe it was necessary to reflect the use of uncompensated overtime in its technical evaluation, we also see nothing unreasonable in the fact that, under the circumstances here, the original Source Selection Statement makes no mention of the issue. Similarly, the fact that the Price Negotiation Memorandum (PNM) was prepared after the original Source Selection Statement does not compel the conclusion urged by ADC. DOE explains that the analysis in the PNM was begun prior to the award decision, and informed that decision. Not only do we have no reason to believe otherwise, but the omission of a discussion about this issue from the original Source Selection Statement is consistent with the agency's view that an offer of [deleted] hours of uncompensated overtime from the awardee's professionals was not likely to have a significant impact on the company's ability to attract and retain employees.

Finally, we see nothing improper in the agency's decision to now include a discussion of this issue in its supplemental Source Selection Statement, dated March 17. Since we conclude that the issue need not have been addressed by the original Source Selection Statement, we fail to see how ADC has been harmed by its inclusion now.

Meaningful Discussions

ADC argues that the questions used by DOE during discussions did not accurately communicate the agency's concerns, and as a result, ADC had no meaningful opportunity to address the agency-perceived weaknesses in its proposal. In support of its contention, ADC points to a document in the agency record that lists each evaluation concern and the corresponding discussion question. In four areas, ADC claims this document shows that discussions were misleading.

DOE responds that ADC was not misled and was thoroughly apprised of the agency's concerns. First, DOE notes that it elected to advise ADC of all of the proposal's evaluated weaknesses, not just those that were significant or major, and it contends that the discussion questions accurately reflected those concerns. DOE also claims that ADC's argument misleadingly relies upon neither the primary evaluation document, nor the questions provided to the company during

discussions. Instead, the document was a management tool prepared to ensure that a question was asked for each identified weakness.

It is a fundamental precept of negotiated procurement that discussions, when conducted, must be meaningful and must not prejudicially mislead offerors. SRS Techs., B-254425.2, Sept. 14, 1994, 94-2 CPD ¶ 125 at 6; Ranor, Inc., B-255904, Apr. 14, 1994, 94-1 CPD ¶ 258 at 4. Specifically, an agency may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns; misinform the offeror concerning a problem with its proposal; or misinform the offeror about the government's requirements. Price Waterhouse, B-254492.2, Feb. 16, 1994, 94-1 CPD ¶ 168 at 9; DTH Management Group, B-252879.2, B-252879.3, Oct. 15, 1993, 93-2 CPD ¶ 227 at 4.

For each of the four areas where ADC claims it was misled by the discussions, we have reviewed in detail the agency's evaluation materials, discussion questions, and its management control sheet, as well as the protester's responses to the questions and its arguments here. In each case, we conclude that the questions asked were not misleading and that ADC was adequately and fairly apprised of the agency's evaluation concerns. To illustrate our conclusion, we set forth in detail below one of the four areas where ADC claims it was misled by the agency.

ADC argues that it was misled by the agency's technical discussion question regarding the adequacy of its proposed senior technical analyst. Specifically, ADC contrasts the agency's technical discussion question number 9, with the stated concern on the management control sheet. Compare DOE Letter to ADC, Oct. 29, 1997, Attach. 1 at first unnumbered page with Untitled Chart, undated, second unnumbered page, Agency Report, Tab 12. The chart states the agency's concern as follows:

Proposed senior technical analyst technical experience is limited to Materials Control and Accountability and computers. No demonstrated expertise in weapons design, development or testing.

The chart lists the related question: "Does your proposed senior technical analyst have the required education." ADC argues that it appropriately addressed the education of its proposed senior technical analyst, and as a result, was deprived of the opportunity to address the agency's true concern.

When the stated concern and related question shown above are viewed apart from the context of other discussion questions asked of ADC, one might reasonably conclude that ADC was deprived of a fair opportunity to address DOE's actual evaluation concerns. However, ADC's contention overlooks other, related questions that were asked of the company. Our review shows that ADC was given ample

notice of precisely the agency's concern about its senior technical analysts' technical experience in a different question. Specifically, DOE asked:

Position qualifications require that the document reviewer, the senior technical analyst, and the technical analyst positions, have experience in two or more of the following areas:

- a. Nuclear Weapons Design, Development, Testing and Production
- b. Production Reactor Operations (fissile material fuel processing, isotope separation and SNM accountability)
- c. Nuclear Weapons Safeguards and Security
- d. SNM Production/Processing

Please explain how the ADC team adequately covers all of these four technical areas. In addition, demonstrate that your proposed senior technical analyst has the expertise in at least two of the four areas. Materials control and accountability experience is not sufficient by itself to cover production reactor operations.

Discussion question No. 10, DOE Letter to ADC, Oct. 29, 1997, Attach. 1 at first and second unnumbered pages.

Simply put, question 10 raised the agency's concerns about ADC's senior technical analyst. The fact that ADC can claim that question 9 did not adequately raise the agency's concerns--when question 10 clearly did--does not show that the discussions were misleading. This protest contention is denied.

Bias

As a final matter, ADC argues that DOE was biased against awarding the contract here to any offeror other than the incumbent, DynMeridian. Our review of this record has not shown any evidence of agency bad faith, nor has the protester submitted proof of any sort to support its claim of bias. Since contracting officials are presumed to act in good faith, and since no evidence has been presented to lead us to conclude otherwise, we deny the allegation. See Indian Affiliates, Inc., B-243420, Aug. 1, 1991, 91-2 CPD ¶ 109 at 5.

CONCLUSION

While we conclude that the evaluation of ADC was unreasonable in one area--and while DOE itself concedes that in a second instance the protester's score should be increased by 20 points--our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial

chance of receiving the award. 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).

In this procurement, the agency originally concluded that DynMeridian's higher-rated (970 points), higher-priced (\$15.9 million) proposal represented a greater value to the government than ADC's lower-rated (644.9 points), lower-priced (\$12.6 million) proposal. In its initial report, the agency reconfirmed its selection decision based on its concession that the ADC proposal would have received a rating of 665 points had the agency not used an erroneous weighting scheme. Despite our agreement with ADC in one other area--which we assume could raise ADC's score as high as 705 points--we cannot conclude that ADC was prejudiced here.

Our review of the Source Selection Statement reveals that the decision to select DynMeridian's higher-rated, higher-priced proposal was driven by the conclusion that DynMeridian's personnel qualifications significantly exceeded those of ADC. Specifically, the selection official focused on experience shortfalls for ADC's key personnel, and on areas of technical approach and understanding. None of these concerns is called into question by our findings here, and our findings do not suggest any significant change in the relative standing of these two offerors. Given these circumstances, and the significant remaining difference between the scores reasonably awarded these competing proposals, we cannot conclude that the limited errors identified in the conduct of this procurement support a reasonable finding that, but for the agency's actions, ADC would have had a substantial chance of receiving the award.

The protest is denied.

Comptroller General
of the United States