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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Continental RPVs

File: B-292768.2; B-292768.3

Date: December 11, 2003

Richard B. Oliver, Esq., and Gregory M. Murphy, Esq., McKenna Long & Aldridge, for the protester.

Capt. Tami L. Dillahunt and Mary M. Townsend, Esq., Army Materiel Command, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably evaluated the offerors' technical proposals under a solicitation for a remotely piloted vehicle target (RPVT) system and services is denied where the record shows that the agency's evaluation of proposals was reasonable and consistent with the stated evaluation criteria, and the protester's contentions represent only its disagreement with the agency's evaluation.
 2. Protest that contracting agency improperly relaxed solicitation's technical requirement that offerors be able to perform eight RPVT operations concurrently by allowing the awardee to propose to support only seven concurrent RPVT operations is denied where the agency reasonably determined that the awardee's proposal met the solicitation requirement.
 3. Agency's evaluation of the offerors' past performance, and the source selection decision based upon that evaluation, were not reasonable where the agency evaluated the protester and awardee as each being of low risk under the performance evaluation criterion without the record containing any basis upon which the agency could reasonably have determined that the awardee's past performance was, in accordance with the terms of the solicitation, the "same or similar" to the solicitation requirements for which the protester was the incumbent contractor.
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DECISION

Continental RPVs protests the award of a contract to Griffon Aerospace, Inc. under request for proposals (RFP) No. DAAH01-02-R-0158, issued by the Army Aviation and Missile Command (AMCOM), Department of the Army, for the acquisition of an aerial remotely piloted vehicle target (RPVT) system and services. Continental argues that AMCOM's evaluation of the proposals, including the agency's evaluation of Griffon's past performance, was unreasonable and that the resulting award decision was improper.

We deny the protests in part and sustain them in part.

RPVTs, essentially radio-controlled, sub-scale aerial targets, are a means by which the Army and other United States military services provide training to short range air defense units in countering airborne threats at a reasonable cost; specifically, RPVTs permit live fire engagements by forces equipped with various missile and gun weapons systems. Statement of Work (SOW) § 1.1. While the Army has procured sub-scale aerial targets for many years, the requirements here were significantly expanded beyond those of previous procurements, including newly defined performance parameters that necessitated the redesign of the RPVT target aircraft. Contracting Officer's Statement at 2. In addition to the design and production of an estimated 400 RPVTs annually, the SOW also required the successful offeror to provide extensive operational support services (e.g., flight operations, maintenance services, equipment security) and engineering services for the RPVT system.

The RFP, issued on October 31, 2002, contemplated the award of a fixed-price contract (with some cost reimbursement items) for a base year with four 1-year options. The solicitation identified the following evaluation factors and subfactors:

1. Technical	
	A. Design Approach
	B. Production Approach
	C. Engineering Services
	D. Resources, Personnel Skills and Staffing
2. Operational	
	A. Operational Approach
	B. Equipment Resourcing
	C. Surge (Premium Hour) Operations
	D. Resources, Personnel Skills and Staffing
3. Management	
	A. Organization
	B. Resources
	C. Personnel
4. Past Performance	
5. Price	

The RFP established that the technical, operational, past performance, and price factors were of equal importance, and that the management factor was significantly less important than the other factors.¹ The solicitation also stated the relative importance of the subfactors within each evaluation factor. Additionally, the RFP informed offerors that “[i]nherent in the government’s evaluation will be a consideration of potential risks, *i.e.*, the risk of delivering technically acceptable equipment, meeting operation requirements, and satisfying other contractual requirements given the proposed approach. . . . Each [factor] shall incorporate consideration of risk in the evaluation.” RFP § M-2.b. Award was to be made to the responsible offeror whose proposal was determined to be most advantageous, or “best value,” to the government, all factors considered. RFP § M-2.a.

Four offerors, including Continental and Griffon, submitted proposals by the March 5, 2003 closing date. An Army technical evaluation team (TET) evaluated offerors’ proposals under the technical, operational, and management factors using an adjectival rating system: outstanding/very low risk, highly satisfactory/low risk, satisfactory/acceptable risk, marginal/acceptable with some risk, and unacceptable/unacceptable risk. The agency also employed a performance risk assessment group (PRAG) to separately evaluate offerors’ past performance, using ratings of high risk, medium risk, low risk, and neutral. After the initial review of proposals, AMCOM conducted written discussions with all offerors in the form of “errors, omissions, and clarifications” (EOC). The agency completed its initial evaluation of proposals after receipt and review of each offeror’s EOC responses. The contracting officer then established a competitive range, comprising the proposals of Continental and Griffon, the lowest-priced, highest-rated proposals.

After receipt of final proposal revisions from Continental and Griffon, the Army’s final evaluation ratings were as follows:

Factor	Griffon	Continental
Technical	Highly Satisfactory	Satisfactory
Operational	Highly Satisfactory	Satisfactory
Management	Highly Satisfactory	Satisfactory
Past Performance	Low Risk	Low Risk
Evaluated Price	\$ 36,116,633	\$ 30,058,203

Source Selection Decision at 2-7.

¹ Although not set forth in the RFP, the agency apparently established weights of 22.5 percent each for the technical, operational, past performance, and price factors, and a weight of 10 percent for the management factor. See Source Selection Decision at 8; Contracting Officer’s Statement at 29.

The contracting officer determined that Griffon's superiority under the technical, operational, and management factors, combined with its low risk past performance assessment (equal to that of Continental), outweighed the price difference and made Griffon's proposal most advantageous to the government. *Id.* at 8. Continental subsequently filed these protests with our Office.

In its protests Continental raises numerous issues that can be grouped into three general categories. First, Continental contends that the agency's evaluation of its proposal under the technical, operational, and management factors was improper.² Second, Continental alleges that the Army's evaluation of Griffon's proposal under all non-price factors, including past performance, was unreasonable, and contends that AMCOM improperly relaxed a solicitation requirement for Griffon. Lastly, Continental alleges that the agency's selection decision was unreasonable and not in accord with the RFP's stated award scheme. Our review of Continental's protest issues, as set forth below, is also grouped into the same categories.

We conclude that most of the protester's allegations do not provide a basis for sustaining the protests. However, as explained below, in the case of the agency's evaluation of the awardee's proposal under the past performance factor, the record shows that the evaluation was unreasonable such that the source selection decision is not supported by the record.

Evaluation of Continental's Technical Proposal

Continental first argues that AMCOM's evaluation of its proposal under the technical, operational, and management factors was unreasonable and unsupported. The protester essentially challenges the TET's evaluation of its proposal under all three technical evaluation factors and 11 subfactors, contending that its evaluation ratings should in every instance have been one adjectival rating level higher than those assigned. Although we do not here specifically address all of Continental's complaints about the evaluation of proposals and the agency's selection decision, we have fully considered all of them and find that they afford no basis to question the agency's selection decision.

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria

² Continental also originally protested that the Army had improperly adjusted its proposed price by \$[DELETED]. As the agency addressed this allegation in its report, and the protester failed to respond in its comments, we consider Continental to have abandoned this argument and will not consider it further. MFVega & Assocs., LLC, B-291605.3, Mar. 25, 2003, 2003 CPD ¶ 65 at 4.

and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3; Hydraulics Int'l, Inc., B-284684, B-284684.2, May 24, 2000, 2000 CPD ¶ 149 at 14. A protester's mere disagreement with the agency's judgment does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4. As demonstrated below, our review of the record provides us no basis to find the agency's evaluation here unreasonable or otherwise objectionable.

For example, the solicitation required that each offeror's proposed RPVT include an infrared (IR) enhancing device, for use in both the tracking and live fire of heat-seeking weapon systems such as the Stinger missile system. The RFP required that an offeror's IR payload generate a minimum energy intensity of 15 watts per steradian while the aircraft was in flight at 100 miles per hour (mph) minimum. SOW § 3.8.5. The RFP also stated the agency's desire that the minimum energy intensity be visible as close to 360 degrees around the aircraft as possible, as well as the desire that the offeror's IR design be non-explosive and non-hazardous, such that it could easily be transported worldwide without special packaging and handling.

Continental proposed using its [DELETED] IR payload, which Continental described as [DELETED]. The TET found that Continental's proposal met the RFP requirement regarding IR payload. While expressing some concern about whether the [DELETED] of Continental's IR payload would, as represented by the offeror, be [DELETED] and finding this to be a weakness, the TET correctly noted that this was a desired feature, and not a minimum requirement. Based on a total assessment of the offer's strengths and weaknesses, including the [DELETED] IR payload, the TET rated Continental's proposal as satisfactory under the design approach subfactor.

Continental argues that in the evaluation of its technical design, the TET improperly ignored various proposal strengths, including that Continental's [DELETED] IR payload exceeded the solicitation's minimum [DELETED] requirement, is [DELETED], and [DELETED]. Continental argues that had the TET evaluated its proposed design approach properly, including these strengths associated with its IR payload, Continental's proposal would have been rated as highly satisfactory under the design approach subfactor. We disagree.

The TET reasonably determined that although Continental's proposal claimed that its [DELETED] IR payload exceeded the minimum [DELETED], the supporting documentation consisted of [DELETED] data. By contrast, the RFP's minimum [DELETED] requirement applied to the RPVT aircraft during [DELETED]. Additionally, the TET found that while both [DELETED] of Continental's [DELETED] IR payload, Continental's [DELETED] data did not take these factors into account. Lastly, although Continental's planned IR payload claimed features that the solicitation characterized as desirable (e.g., [DELETED]), Continental's proposal did not provide sufficient information to demonstrate that its IR payload would achieve the benefits associated with the desirable characteristics. In sum, we find that AMCOM's evaluation of Continental's proposal with regard to the IR

payload and other design approach requirements was proper, and the assigned evaluation rating of satisfactory reasonable.

As another example, Continental argues that under the second technical evaluation subfactor, production approach, the agency improperly rated Continental's proposal as satisfactory because the TET ignored Continental's [DELETED], and instead incorrectly identified as a proposal weakness Continental's alleged lack of understanding of environmental stress screening (ESS).³ Continental contends that had the agency evaluated its proposal properly under the production approach subfactor, it would have received at least a "highly satisfactory" evaluation rating.

Under the production approach subfactor, the TET determined that Continental's plan to [DELETED] offered an advantage to the government by [DELETED] and constituted a proposal strength. However, the TET found that Continental's proposal showed a lack of understanding regarding ESS that could affect the risk inherent to both the government and the offeror, and constituted a proposal weakness. Overall, the TET determined that Continental's proposal both substantiated its production capabilities and demonstrated an understanding of the RFP requirements, and thereby rated the proposal as satisfactory under this subfactor.

We find no basis to question the Army's evaluation of Continental's proposal under the technical approach subfactor. The TET reasonably found that Continental's lack of understanding regarding ESS constituted a proposal weakness. Additionally, it is clear from the evaluation worksheets that the TET considered Continental's [DELETED] as part of its evaluation here, but found that the offeror had failed to [DELETED].⁴ Having considered all aspects of the protester's proposal, the Army reasonably determined that Continental's proposal under the technical approach subfactor met all SOW requirements and properly rated the proposal as satisfactory.

Under these and the other evaluation areas questioned by Continental, the record reflects that the Army's evaluation of the protester's proposal was reasonable and consistent with the solicitation criteria; Continental's objections essentially reflect its view that based on its extensive experience as the incumbent RPVT contractor, its proposal should have received a higher rating. This self-assessment and Continental's resulting disagreement with the agency's assessments do not provide a

³ ESS is a technique that applies various types of stresses to help detect latent and intermittent flaws in an electronic product or system that could cause product failures. Contracting Officer's Statement at 12. The SOW required that each offeror's quality system plan include a discussion of ESS.

⁴ AMCOM also properly considered Continental's [DELETED] as part of its evaluation of the offeror's past performance, which the agency rated as low risk.

basis to call into question the agency's evaluation here. Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ __ at 7.

Evaluation of Griffon's Technical Proposal

Continental also argues that the agency's evaluation of Griffon's proposal under the technical, operational, and management factors was unreasonable. Again, we have examined each of the protester's arguments in detail and find no basis to question the agency's evaluation.

For example, Continental argues that AMCOM improperly rated Griffon's proposal as highly satisfactory under the technical factor, as well as under the design approach and production approach subfactors. Specifically, the protester contends that Griffon's IR payload must be a proposal weakness because it [DELETED]. Continental also alleges that Griffon does not have the experienced workforce necessary to meet the RPVT production requirements. Continental argues that with these weaknesses, Griffon could not have reasonably received an overall highly satisfactory rating under the technical evaluation factor.

In its evaluation of Griffon's proposal under the technical factor, the TET identified a total of eleven strengths, including six design approach strengths and three production approach strengths. One of the design approach strengths that the TET found in Griffon's proposal concerned the offeror's IR design. The TET determined that Griffon's proposed use of [DELETED] for its IR payload was an innovation that was of value of the government because it constituted use of a known, low risk technology. More importantly, the TET determined that the [DELETED] of Griffon's IR payload was successfully tested and documented [DELETED], in comparison to the RFP's minimum requirement of 15 watts per steradian, and represented a performance enhancement of benefit to the government. The TET also determined under the production approach subfactor that Griffon's planned use of [DELETED], and the offeror's approach to use of [DELETED] all represented proposal strengths.

We find that the TET's evaluation of Griffon's proposal under the technical factor, including the design approach and production approach subfactors, was reasonable and consistent with the stated evaluation criteria. Continental's allegations that Griffon did not deserve the highly satisfactory ratings it received amount to mere disagreement with the agency's evaluation, which again does not render it unreasonable.

Relaxation of Requirement

Continental protests that AMCOM improperly relaxed a solicitation requirement for Griffon. Specifically, Continental alleges that the agency allowed Griffon to propose to support only seven concurrent RPVT operations, while the RFP required that offerors be able to perform eight operations simultaneously. The protester argues that by not requiring Griffon to staff for an eighth concurrent operation, the agency

failed to maintain a level field of competition for the offerors, resulting in an unfair competitive advantage for the awardee.

It is a fundamental principle of government procurement that competition must be conducted on an equal basis, that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. Systems Mgmt., Inc.; Qualimetrics, Inc., B-287032.3, B-287032.4, Apr. 16, 2001, 2001 CPD ¶ 85 at 8. When, either before or after receipt of proposals, the government changes or relaxes its requirements, it must issue a written amendment to notify all offerors of the changed requirements. Federal Acquisition Regulation § 15.206(a). Our Office will sustain a protest that an agency improperly relaxed its requirements for the awardee where the protester establishes a reasonable possibility that it was prejudiced by the agency's actions. Datastream Sys., Inc. B-291653, Jan. 24, 2003, 2003 CPD ¶ 30 at 6.

The solicitation established that RPVT operational services were to be provided at the Army's National Training Center (NTC), Fort Irwin, California as well as other specified military installations. The RFP required offerors to have the capability both in equipment and personnel to simultaneously perform five "deployed field operations," while also providing up to three RPVT missions concurrently at the NTC.⁵ Griffon's initial proposal planned on using [DELETED] operation teams. In response to agency discussions regarding how Griffon would support eight NTC and deployed field operations concurrently, Griffon stated that it assumed [DELETED], Griffon planned on having eight operation teams, [DELETED].⁶ AR, Tab K-2, Griffon's Technical EOC Responses, at 10-12. The TET subsequently determined that Griffon's proposal met the requirement of being able to perform eight RPVT operations concurrently, although it did assess this aspect of Griffon's proposal as a weakness under the operational factor.

We find that the agency did not improperly relax the RFP requirement that offerors have the capability to perform eight concurrent RPVT operations for Griffon. Instead, it is clear that Griffon's revised proposal complied with the solicitation requirement here. While Griffon planned on [DELETED] when faced with eight simultaneous operations, we find, and Continental does not dispute, that the solicitation does not require that offerors' operation teams be a certain minimum size. Accordingly, there is no merit to the allegation that the agency improperly relaxed the requirement here for Griffon.

⁵ The RFP did not state how often eight concurrent NTC and deployed field operation missions would occur.

⁶ Specifically, Griffon proposed that [DELETED].

Continental argues that even if the RFP did not specifically require three-person operation teams, it was clear that Griffon [DELETED] for each operation, and thus, if Griffon were to staff an eighth operation team it would need to [DELETED]. We disagree. How Griffon decided to best satisfy the agency's requirements, including stated minimum requirements, was simply an exercise of its business judgment. See Techniarts Sci. & Tech. Corp., B-280521.2, B-280521.4, Oct. 15, 1998, 98-2 CPD ¶ 97 at 5-6. The fact that Griffon had originally proposed [DELETED] did not thereby create a de facto requirement, and is irrelevant to our determination of whether the agency improperly relaxed a requirement with which Griffon failed to comply. Having determined that the RFP required only that offerors be capable of performing eight concurrent operations—not that offerors necessarily provide eight dedicated operation teams or eight three-person operation teams—and that Griffon's proposal met this requirement, we find that the agency did not improperly relax a solicitation requirement for the awardee.

Evaluation of Griffon's Past Performance

Continental, the incumbent contractor for the RPVT system and services, argues that the agency's evaluation of Griffon's past performance was unreasonable. Specifically, Continental contends that Griffon has little experience relevant to the various RFP requirements, including RPVT production and operational services, and should not have received the same performance evaluation rating of low risk as did the protester.

An agency's evaluation of past performance, like the evaluation of other aspects of an offeror's proposal, will not be disturbed unless unreasonable or inconsistent with the terms of the solicitation or applicable statutes and regulations. See Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 23; Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3. When made applicable by the solicitation, we review a past performance evaluation to determine the similarity or relevance of the past performance information considered by the agency. See CMC & Maint., Inc., B-292081, May 19, 2003, 2003 CPD ¶ 107 at 3; NavCom Def. Elecs., Inc., B-276163, May 19, 1997, 97-1 CPD ¶ 189 at 3. Here, absent any basis in the record for the agency's conclusion that Griffon's past contracts were similar or relevant to the RFP requirements, we cannot conclude that the agency reasonably assigned the same low risk rating to Griffon as it assigned to Continental, the incumbent contractor.

The solicitation required offerors to submit information for contracts received or performed during the past 3 years which are the "same or similar" to the effort required by the RFP. RFP § L.2.3(b). Among the past performance information deemed relevant by the solicitation and which offerors were required to provide was the dollar value of prior contract efforts. Regarding the evaluation of offerors' past performance, the solicitation stated as follows:

The Government will conduct a performance risk assessment based upon the offerors' current and past record of performance as it relates to the probability of successfully accomplishing this effort. The Government will focus its inquiries on the offeror's and its proposed subcontractor's . . . recent performance as it relates to all solicitation requirements, including price, schedule and technical, operational and management performance. . . . Absent any recent or relevant performance history over the past three years on similar efforts, the offeror's performance risk will be considered neutral and the offeror will be evaluated neither favorably nor unfavorably in the past performance area.

RFP § M-3.5. The agency argues that the past performance of Griffon and its subcontractors reflects experience directly related or similar to the efforts required by the RFP, and that the low risk evaluation rating assigned to Griffon was therefore proper. We disagree.

The PRAG considered three Griffon contracts in its evaluation of the awardee's past performance.⁷ These were: (1) a \$937,124 contract for the design and construction of a sub-scale rocket-powered aerospace flight vehicle for the National Aeronautics and Space Administration (NASA) electromagnetic-levitation launch-assist accelerator track;⁸ (2) a \$435,000 subcontract for the design and test engineering of a 6 x 14 foot cryotank and related subcomponents for NASA; and (3) a \$174,000 subcontract for the design and production of a magnetic resonance imaging (MRI) composite table.

In its review of Griffon's prior contracts, the PRAG reasonably found that Griffon's sub-scale spacecraft contract involved work similar to the design, development, and testing efforts required by the solicitation here; however, the agency found no similarities to many other areas specified in the RFP, including RPVT production and operational services. With regard to Griffon's cryotank contract, the PRAG found no similarities between it and the RFP requirements here, yet nonetheless deemed this past performance relevant and supportive of its performance risk assessment in that Griffon "met technical, cost and schedule requirements," and "consistently found way[s] to keep complex integration jobs on schedule, resolved unanticipated

⁷ The agency properly determined that another Griffon prior effort, the design and production of an experimental category, high performance, 6-place composite aircraft prototype, fell outside the 3-year time period established by the RFP for the determination of relevant past performance.

⁸ We note that while Griffon's proposal stated that the dollar value of its 3-month NASA subscale spacecraft contract was \$937,124, NASA reported that the total contract value was \$39,124; the agency report does not indicate that AMCOM resolved this contract size discrepancy.

problems and developed recovery plans for items that fell behind.” AR, Tab R, PRAG Report at 11. We find the agency’s analysis unconvincing, inasmuch as almost any contract effort would be relevant by this standard. Lastly, the similarities found by the PRAG between Griffon’s MRI composite table contract and the RFP requirements here were limited to “the intricate RPVT airframe specifications” and “innovative testing and composite production techniques.” We note that Griffon’s cryotank and MRI table contracts, like its sub-scale spacecraft contract, involved the design and development of single items and related engineering services. By contrast, the efforts required by the RFP here were not limited to design and engineering services, but also included the production of an estimated 2,000 RPVTs and extensive operational services.⁹ We find, therefore, that the record lacks any basis upon which the agency could reasonably have concluded that Griffon’s prior contracts either individually or collectively demonstrated past performance similar in scope to the efforts required by the RFP.

The past performance of Griffon’s proposed subcontractors also does not provide a basis upon which the agency could have reasonably assessed the awardee’s performance risk rating as low risk. As part of its evaluation, the PRAG determined that Griffon’s two subcontractors, [DELETED] and [DELETED], had relevant past performance in the areas of unmanned aerial vehicle (UAV) flight control systems and engineering services, respectively.¹⁰ AMCOM contends, and we do not disagree, that the past performance of Griffon’s subcontractors is similar to various engineering services requirements of the RFP. However, the record provides no basis to find that the similarity of the subcontractors’ past performance extends beyond engineering services, and like the past performance of Griffon itself, demonstrates no relevance or similarity to the essential RFP efforts of production and operational services.

⁹ Griffon’s prices for the RPVT production line items constituted approximately 25 percent of the total contract effort ($\$8,852,000 / \$36,116,633 = 24.5$ percent). Griffon also estimated that “roughly 54 percent” of the total contract effort was directly related to operations. AR, Tab K-2, Griffon’s EOC Responses, Griffon Fax Transmission to AMCOM, Apr. 24, 2003, at 6.

¹⁰ Similarly, Griffon’s final proposal stated that [DELETED]’s role in contract performance would be in the areas of flight control systems, engineering support, and engineering services (estimated at 7.4 percent of Griffon’s total price), while [DELETED]’s role would be in the areas of engineering support and engineering services (estimated at 4.3 percent of Griffon’s total price), and that neither subcontractor would perform RPVT production and operational services efforts. AR, Tab K-2, Griffon’s EOC Responses, Griffon Fax Transmission to AMCOM, Apr. 24, 2003, at 3-5.

In addition, as Continental contends, the record lacks any basis upon which the agency could reasonably have concluded that Griffon's past contracts were similar in size to the contract being awarded. AMCOM does not assert that Griffon has in fact performed contracts similar in size to the current solicitation; instead, the agency argues that it did not need to take the size of Griffon's referenced contracts into account because it was not required to do so by the solicitation. We disagree. As set forth above, the solicitation deemed the dollar value of prior contract efforts as relevant past performance information which offerors were required to provide. The RFP also informed offerors that the agency's past performance evaluation would focus upon an offeror's recent performance as it relates to all RFP requirements, including price. Accordingly, we think that the agency could not reasonably ignore whether Griffon had performed contracts similar in size to the requirement here. Moreover, a solicitation need not specifically mention magnitude in order for the size of prior contracts to be a proper consideration in determining whether an offeror has experience performing similar contracts. See Proteccion Total/Magnum Sec., S.A., B-278129.4, May 12, 1998, 98-1 CPD ¶ 137 at 6. Here, the largest prior effort apparent from Griffon's proposal was less than 3 percent the size of the contract contemplated here.¹¹ In our view, the agency was not reasonable in determining that Griffon's prior contracts, a mere fraction of the size of the contract contemplated here, were large enough to be deemed similar or relevant.

Given that Griffon did not submit a single past performance reference that was the same or similar in scope or size to the RFP's requirements, we find the agency's rating of low risk was unreasonable. See CMC & Maint., Inc., *supra*; Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4-5.

Source Selection Decision

Lastly, Continental protests that the agency's best value determination was flawed because in making its price/technical tradeoff between the proposals of Continental and Griffon, the agency's approach was merely mechanical and failed to compare the advantages of Griffon's proposal to those of Continental's proposal or explain why any advantages in the awardee's proposal were worth the \$6 million higher price. In light of our determination that the agency's evaluation of Griffon's past performance was unreasonable, and that a new evaluation and source selection decision are necessary, we need not address this issue.

We deny the protests in part and sustain them in part. We recommend that the agency reevaluate Griffon's past performance in light of the "same or similar"

¹¹ $\$937,124 / \$36,116,633 = 2.6$ percent. Likewise, the largest prior effort among Griffon's subcontractors--the \$1.4 million subcontract by [DELETED] for various UAV engineering services--was less than 4 percent the size of the contract contemplated here ($\$1,400,000 / \$ 36,116,633 = 3.9$ percent).

requirement in the RFP. If Griffon's rating is other than low performance risk, then the agency should make a new price/technical tradeoff in accordance with the terms of the RFP. Depending on the results of that tradeoff, the agency should either continue the contract with Griffon or terminate Griffon's contract and award to Continental. We also recommend that Continental be reimbursed its costs of filing and pursuing its protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d)(1) (2003). Continental shall submit its certified claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protests are denied in part and sustained in part.

Anthony H. Gamboa
General Counsel