

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 05-488C

(Filed: June 29, 2005)

RISC MANAGEMENT JOINT VENTURE,)
)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES,)
)
 Defendant,)
)
 VALLEY GARBAGE & RUBBISH CO., INC.)
 dba HEALTH SANITATION SERVICE,)
)
 Defendant-Intervenor.)

ORDER

In this post-award bid protest case, plaintiff, RISC Management Joint Venture (“RISC”), has filed a motion to conduct limited discovery and to supplement the administrative record. The disputed contract concerns waste management services at Vandenberg Air Force Base, California. A key issue is the Air Force contracting authority’s consideration of the competing offerors’ past performance in undertaking environmental reporting functions. In essence, RISC seeks discovery, with attendant supplementation of the record with any fruits of the discovery, in three areas: (1) the Air Force contracting authority’s consideration of the past performance of RISC’s joint venture partner, Inland Service Corporation, in preparing environmental reports at Fort Hood, Texas, (2) details of conversations the Air Force’s Contracting Officer had with persons who served as references for Pellu Systems, Inc., RISC’s proffered subcontractor for environmental reporting functions, and (3) the Air Force contracting authority’s consideration of RISC’s and Pellu’s past performance of work at Fort Hood and Vandenberg Air Force Base. RISC avers that the second category of discovery is being sought to explain “terse” notes made by the Contracting Officer regarding the conversations, and that the third category of discovery is being sought “[f]or the purpose of demonstrating prejudice.”

Each of the parties accepts that the administrative record of the procurement should be the focus of this court’s consideration of the issues in the case. RISC argues that supplemen-

tation is appropriate to fill gaps in the record, to provide a documentary record of information that may have been known by the contracting authority but was not captured in writing and is thus absent from the record of the procurement, and to explore a possibility of prejudice or bias. The government and intervenor resist any discovery aimed at supplementation of the record.

RISC has made a sufficient showing that the Air Force's contracting authority may have gained knowledge that is not reflected in the administrative record as it now stands, respecting two areas: the past performance of RISC's joint venture partner, Inland Service Corporation, in preparing environmental reports about work at Fort Hood, Texas, and conversations the Contracting Officer had with persons serving as references for Pellu Systems, Inc. RISC has also shown that there is a reasonable possibility that the contracting authority may have taken that information into account in reaching a decision on the procurement without documenting it. In these circumstances, discovery with attendant supplementation of the administrative record is appropriate. *See J.C.N. Constr. Co. v. United States*, 60 Fed. Cl. 400, 404-05 n.8 (2004) (citing *Esch v. Yeutter*, 876 F.2d 976, 991 (D.C. Cir. 1989)).

However, RISC has not come forward with evidence that would suggest or support the possibility that prejudice or bias affected the contracting authority's decision on the procurement. Consequently, discovery and supplementation in that regard is not appropriate. *See International Res. Recovery, Inc. v. United States*, 61 Fed. Cl. 38 (2004).

For the foregoing reasons, and as provided above, RISC's motion to conduct discovery and to supplement the administrative record is **GRANTED** in part and **DENIED** in part. The court grants RISC leave to conduct discovery limited to items (1) and (2) listed above, but not item (3). Such discovery shall be completed by August 29, 2005.

It is so **ORDERED**.

Charles F. Lettow
Judge