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Decision

Matter of: G&N, L.L.C.

File: B-285118; B-285118.2; B-285118.3

Date: July 19, 2000

Albert B. Krachman, Esq., and Charles S. McNeish, Esq., Bracewell & Patterson, for the protester.
William A. Roberts, III, Esq., and William Lieth, Esq., Wiley, Rein & Fielding, for BMAR & Associates, Inc., an intervenor.
Larry E. Beall, Esq., U.S. Army Corps of Engineers, for the agency.
Christina Sklarew, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation provides that technical proposals will receive highest possible score for fully satisfying the characteristics required in the solicitation and does not provide that additional credit will be given for exceeding the requirements, agency was not required to give additional evaluation credit to a proposal that may have exceeded the solicitation requirements.

2. Protest that evaluation of technical proposals was unreasonable because it was inadequately documented is denied where the evaluation record, as clarified by narrative explanations provided by the agency, presents sufficient detail to assess the reasonableness of the conclusion that awardee's and protester's proposals were technically equivalent.

DECISION

G&N, L.L.C. protests the award of a contract to BMAR & Associates, Inc. under request for proposals (RFP) No. DACA01-99-R-0049 issued by the Army Corps of Engineers for preventive maintenance and equipment inventory at healthcare facilities for the U.S. Medical Command (MEDCOM). G&N challenges the award on numerous grounds, primarily alleging that the Corps improperly evaluated proposals in a manner that was inconsistent with the RFP evaluation criteria and inadequately documented, and that the Corps accorded preferential treatment to the incumbent during the evaluation process by conducting prejudicially unequal discussions.

We deny the protest.

The RFP, issued on June 1, 1999 as a total small business set-aside, contemplated the award of an indefinite-delivery, indefinite-quantity contract against which task orders for preventive maintenance and inventory (PMI) and operation and maintenance (O&M) of various MEDCOM facilities will be placed. The contract was to be awarded for a base period of 1 year, with four 1-year renewal options to the responsible offeror whose proposal was determined to be most advantageous to the government. RFP § M-13.

Section M of the RFP established the following evaluation factors and subfactors:

I. Technical
- Experience and capabilities
- Technical approach
- Technical management
- Quality control

II. Management
- Corporate Experience
- Personnel Qualifications
- Organization
- Response Time Strategy

III. Price
- Reasonableness
- Realism
- Completeness

RFP § M-10.

Section M-10 of the RFP further provided that technical and management areas would be evaluated and scored for quality, and that the technical area would be significantly more important than management and price. Notwithstanding the emphasis on technical merit, the RFP advised that as "scores and relative advantages or disadvantages become less distinct, differences in price between proposals are of increased importance in determining the most advantageous proposal." RFP § M-14.a.

A source selection evaluation board (SSEB) performed an evaluation and scored the quality of each proposal based upon the established evaluation factors. The solicitation provided that SSEB members would support their evaluation scores with a narrative, setting forth strengths and advantages, weaknesses or disadvantages, deficiencies and required clarifications. RFP § M-12.2.b. The RFP also provided explicit scoring guidelines as follows: outstanding (91-100%), excellent (81-90%),

satisfactory (71-80%), susceptible to being made acceptable (65-70%), and unacceptable (64% or less), along with a narrative description of the standard that must be met for each score. As relevant to the issues presented here, the guidelines provide that, under each evaluation factor, in order to warrant a rating of "outstanding," the proposal must:

> satisfy to the fullest extent those characteristics required in the RFP. It presents new or proven methods and is presented in extensive detail to assure the evaluator has a thorough understanding of the proposed approach. The approach has an outstanding probability of meeting requirements with limited technical risk.

In order to be rated "excellent," a proposal must:

> satisfy all the characteristics required in the RFP. It presents a methodology in sufficient detail to assure the evaluator a good understanding of the proposed approach. The approach has an excellent probability of meeting requirements with limited technical risk.

RFP § M-12.2.c.

Although not specified in the solicitation, the agency had developed a specifically tailored "Workbook for Source Selection" that the evaluators were to complete for each proposal during their evaluation process. After scoring the proposals in this way, the SSEB, as provided in the solicitation, was to compare the relative merits of the proposals against each other, establish a consensus evaluation of each proposal, and present a recommendation to the source selection authority. RFP § M-12.2.a.

Three offerors, including BMAR (the incumbent contractor) and G&N, submitted proposals by the established closing date. On August 20, 1999, the Corps issued an amendment deleting a housekeeping requirement that had been included in the solicitation, and revised its evaluation scale to reflect this deletion. The members of the SSEB each reviewed the technical proposals and scored each proposal by completing the above-mentioned evaluation workbook. Initial technical/management scores and prices were as follows:

Offeror	Technical Score	Price
BMAR	178/185	[deleted]
G&N	180/185	[deleted]
Offeror A	146/185	$33,633,733

Agency Report at 2.

By letters dated September 21 to each offeror, the contracting officer identified deficiencies or areas requiring further discussion. Agency Report, Tab L, Deficiencies/Clarifications. The contracting officer's letter to BMAR included three technical/management questions and several questions relating to BMAR's price proposal. Agency Report, Tab L, Letter from Army to BMAR encl. (Sept. 21, 1999). The only question relevant to this protest was a request that BMAR provide additional information regarding how emergency response requirements will be met. The contracting officer posed three technical/management questions to G&N, none of which has been placed in issue. Agency Report, Tab L, Letter from Army to G&N encl. (Sept. 21, 1999). Offerors were permitted to submit technical proposal revisions by October 7. The SSEB reviewed the revised proposals and assigned the following scores:

Offeror	Technical Score	Price
BMAR	185/185	[deleted]
G&N	184/185	[deleted]
Offeror A	171/185	$31,804,872

Agency Report at 2.

The Corps closed discussions and permitted offerors to submit final price proposals, which were received as follows:

Offeror	Price
BMAR	**$20,278,800**
G&N	$20,310,300
Offeror A	$29,980,423

Id. at 3.

The contracting officer, acting as the source selection authority, determined that BMAR's proposal presented the best overall combination of performance capability and price. Agency Report, Tab I, Source Selection Decision Document. The Corps awarded the contract to BMAR on March 17, 2000 and notified the unsuccessful offerors of the award by letter of the same day. G&N requested a debriefing, which was held on April 6. G&N filed its protest in our Office on April 10, within the time period requiring a stay of performance under the Competition in Contracting Act. See 31 U.S.C. § 3553(d) (1994). The agency determined to continue contract performance notwithstanding the protest, based on urgent and compelling circumstances. Memorandum from Deputy Assistant Secretary of the Army (Procurement) to Commanding Officer, U.S. Army Corps of Engineers (Apr. 27, 2000). See 31 U.S.C. § 3553(d)(3)(C)(i)(II) (1994).

G&N challenges the contract award on numerous grounds, primarily asserting that the Corps's evaluation and the resulting source selection were unreasonable because

BMAR's proposal could not rationally be rated as highly as G&N's proposal, that the evaluation was inadequately documented, and that the Corps accorded preferential treatment to BMAR during the evaluation process through the use of unequal discussions.[1] Protest at 1-2; Supplemental Protest at 2-3.

The crux of the protest is the allegation that BMAR's proposal could not reasonably have merited a rating as high as G&N's, and certainly not a perfect technical score. G&N couches this issue as an allegation that the proposals were evaluated unreasonably and in a manner that was inconsistent with the RFP's evaluation scheme. In essence G&N is arguing that, for consistency with the solicitation's emphasis on technical excellence, the RFP must have contemplated a meaningful distinction between "outstanding" and "excellent" ratings. G&N suggests that this distinction should be made by limiting the highest (outstanding) rating to proposals that exceeded (as G&N believes its proposal did) the stated requirements.

Since the RFP's definitions of those terms made no meaningful distinction between an outstanding proposal and an excellent one (and did not reserve the "outstanding" rating for proposals exceeding the RFP requirements), G&N's insistence that the agency, in its evaluation, should have made such a distinction is really an objection to the evaluation scheme established by the RFP, i.e., to the solicitation terms themselves. This protest ground is untimely. Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals shall be filed prior to the time set for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (2000). When initial proposals were submitted, the terms of the RFP had not been protested, and the agency was entitled to apply them as they were.[2]

The most significant example in this regard is G&N's claim that its own experience

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[1] In its initial protest, G&N raised a number of additional issues, alleging for example that the Corps issued an out-of-scope delivery order under the predecessor contract, essentially allowed BMAR to initiate performance prior to the award, and improperly delayed G&N's debriefing for two weeks. These allegations will not be considered on the merits since they do not affect the validity of the decision to award the contract to BMAR. See C-Cubed Corp., B-272525, Oct. 21, 1996, 96-2 CPD ¶ 150 at 4 n.3. In addition, G&N during the course of the protest has raised an array of additional collateral matters which we do not believe warrant full discussion. To the extent that these issues were timely raised, we have considered them and find them without merit.

[2] In this regard, the agency explained at a hearing held by our Office to complete the record in this protest that it believed it could make a qualitative distinction between meeting a requirement--which would earn the rating of "excellent"--and meeting it "to the fullest extent"--earning the rating of "outstanding"--based on the quality of the experience presented in the proposal. See, e.g., Hearing Transcript (Tr.) at 66.

significantly exceeded both the RFP requirements and BMAR's experience, so that G&N should have been more highly rated than BMAR in this area.[3] Because the RFP does not call for awarding extra evaluation credit for exceeding the stated requirements, the agency was not obligated to credit additional evaluation points for doing so. See SeaSpace, B-241564, Feb. 15, 1991, 91-1 CPD ¶ 179 at 4-5. Since the evaluators determined that G&N's proposal met the RFP requirements "to the fullest extent," they rated G&N's proposal outstanding. To the extent G&N is arguing that the agency was required to reserve the highest rating for a proposal that exceeded the requirements, as noted above, there is nothing in the RFP to support this view. The issue is not, as G&N repeatedly insists, whether BMAR's and G&N's proposals demonstrated identical or precisely equivalent technical merit or equivalent experience vis-à-vis each other, but rather, whether each satisfied the RFP requirements and met the RFP definition of "outstanding." G&N does not provide a viable basis to challenge the Corps's conclusion that BMAR's proposal did so; therefore, this aspect of G&N's protest is without merit.

Another of the protester's central concerns relates to the documentation of the evaluation. The protester alleges that the evaluation was inadequately documented, and has identified 11 separate, detailed complaints about the agency's documentation which it considers inadequate. Protester's Post-Hearing Comments at 7-12. An agency's evaluation of proposals and source selection decision should be documented in sufficient detail to allow for review of the merits of a protest. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3; B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. In our view, the narrow focus that the protester urges misconstrues the requirement for adequate documentation.

Here, the protester objects to the agency's reliance on the workbook that was used to record the evaluation of each proposal, contending that the workbook did not provide the "narrative" promised by the RFP. The agency explains that the workbook "was specifically tailored from the RFP document in total, (mostly Sections L and M), and established a consistent form of narratives through a question and response evaluation process." Supplemental Agency Report, Tab EE, Contracting Officer's Statement, at 1. The workbook approach was designed to

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[3] G&N alleges that "relative to G&N, BMAR had virtually no experience in hospital facilities." Protest at 19. However, as G&N itself recognizes, BMAR was the incumbent contractor for this requirement, having been awarded the predecessor contract in 1996. Protest at 5. The contracting officer stated that the work required by this RFP is "identical to the predecessor contract with regards to the statement of work." Tr. at 128. The contracting officer also stated at the hearing that he was familiar with the predecessor contract, and that the Corps had placed over 100 task orders with BMAR to perform at a variety of facilities under that contract. Tr. at 153. We therefore find unsupported G&N's claim that BMAR had virtually no experience in hospital facilities.

divide the proposal into pieces that could be quantified and accurately evaluated, to provide for a more consistent and less subjective evaluation process. Id. at 2. The workbook was structured as a 9-page form with 10 questions "relat[ing] to the necessary requisite [qualifications] to successfully perform this contract." Id. Following each question, the workbook listed the maximum number of evaluation points available under that question and, in some cases, provided a further breakdown of the criteria under which the point scores were allotted. For example, under "[p]revious experience in similar type of work," the workbook lists the following question:

> a. Are there a minimum of 3 preventive maintenance and inventory task performed during the last three years? (5 points)
>
> Are these medical facilities? (5 points)

Agency Report, Tab S, Workbook for Source Selection, at 3.

In order to receive the full 10 points for that aspect of its proposal, an offeror would have to show that it had performed at least three preventive maintenance tasks at medical facilities during the last 3 years. Where a proposal fully satisfied the requirement, the evaluators simply noted the full number of points on the form. Where a proposal received less than the full number of points, the evaluators wrote a separate comment identifying whatever risk or weakness led to the lower score. Supplemental Agency Report, Tab FF, Affidavits from Technical Evaluators, at 3; Agency Report, Tab O, Initial Evaluation of Proposals; Tab K, Consensus Evaluation of Proposals.

While the Corps's evaluation methodology did not specifically provide a "narrative" for each evaluation criterion in the sense of an individually-drafted comment for each factor, we think it satisfies the Federal Acquisition Regulation (FAR) requirement that the agency document the relative strengths, deficiencies, significant weaknesses, and risks supporting the proposal evaluation. FAR § 15.305(a). The workbook scoring provides a detailed list of the underlying bases for arriving at the score for each proposal, which is what the FAR provision requires. Although the protester is correct that the RFP indicated that the evaluators would prepare a narrative, we think it would be elevating form over substance to insist that the evaluation record contain a created narrative where the workbook assessment establishes a form of narrative, and the evaluation record otherwise satisfies the documentation standard established in the FAR. To the extent that any of the workbook questions and scoring allowed for ambiguity, we think the contracting officer and lead evaluator adequately supplemented the contemporaneous written record through testimony and written submissions during the development of the protest record to resolve any possible questions regarding the meaning of information supplied by the evaluation workbooks. Where post-protest explanations simply fill in previously unrecorded details of contemporaneous conclusions, we will

generally consider them in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. NWT Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. We will discuss below certain instances where the evaluation record was more fully explained during the development of the protest.

In sum, the agency reasonably concluded that the proposals both met the RFP requirements in a manner that warranted being credited with the highest rating available under the RFP evaluation scheme; thus, we conclude that the evaluation record, while somewhat sparse, was reasonable under the circumstances presented here.

G&N also protests that the agency improperly relaxed certain requirements during its evaluation, namely, two standards set forth in the evaluation workbook that concern the size of facilities at which the offeror gained its experience and the length of the experience, and a requirement for experience with software known as Defense Medical Logistics Support System (DMLSS).

Regarding the first of these allegations, the workbook includes the following question intended to evaluate the offeror's "[c]apability to perform multiple operation and maintenance tasks during the contract period," which was worth a maximum of 20 points:

> Does the proposal show sufficient evidence to substantiate that the offeror can perform multiple facility O & M [operation and maintenance] task during the contract period (simultaneously)? (5 points.)
>
> If this ability is shown for two or more medical facilities (Add 5 points)
>
> If this ability is shown for two or more clinics or hospitals less than 500,000 SF (Add 10 points)
>
> If this ability is shown for two or more hospitals larger than 500,000 SF (Add 15 points)

Agency Report, Tab S, Workbook for Source Selection, at 4.

In our view, a 20-point (maximum) score for this item might reflect one combination or another of the available points; it was not clear from the number of points awarded the particular manner in which the offer satisfied the requirement (although the score itself indicates that the standard had been met). At the hearing, the lead technical evaluator explained that when the SSEB members were applying this standard during its consensus evaluation, they realized that the RFP did not contain any size-related standard by which to measure the offeror's capability in this way,

Tr. at 72-74, 83, i.e., the RFP never established a requirement for experience in a facility of a particular size. The evaluators noted that G&N's proposal listed several hospitals that met or exceeded the 500,000 square foot standard. While BMAR's proposal listed examples of facilities (to demonstrate different types of experience) that were generally smaller, the evaluators also noted that in another part of the proposal, BMAR's proposal listed the same (larger) facilities that G&N had listed. Id.

Recognizing that offerors had no notice that a 500,000 square foot standard would be imposed during evaluation, or even that the size of the facilities that the offeror chose to list as its examples of projects would matter in any way in the evaluation, the evaluators reasoned that offers should not be evaluated on the basis of a standard that was not disclosed in the RFP. Tr. at 72-74, 78. Instead, the evaluators essentially deleted the "500,000 square feet" portion of the requirement from the workbook and awarded the full 20 points to an offer that showed experience at two or more hospitals of a reasonable size, which was true of both G&N's and BMAR's proposals. Tr. at 80.

While G&N characterizes the SSEB's approach as a "nonenforcement of 500,000 square foot discriminator" and as the "relaxation of a prejudicial discriminator in BMAR's favor," Protester's Post-Hearing Comments at 9, the RFP simply did not include any such "discriminator." The standard, as discussed above, appears only in the workbook. Notwithstanding that the workbook was intended to substitute for a narrative, it is an internal agency evaluation plan. Alleged deficiencies in the application of an agency evaluation plan do not provide a basis for questioning the validity of the award selection; these plans are internal agency instructions and as such do not give outside parties any rights. Management Plus, Inc., B-265852, Dec. 29, 1995, 95-2 CPD ¶ 290 at 2 n.2. Consequently, the fact that the agency may not have precisely followed its internal evaluation instructions is not a valid basis for protest. Moreover, in our view the Corps has provided a reasonable basis for the scoring of this item in the evaluation.[4]

The remaining specific objection to the technical evaluation is an allegation that the Corps improperly relaxed a requirement in the RFP that the proposal include, in its discussion of operations and management, "experience in the use of . . . DMLSS." RFP § L-15. The protester alleges that the evaluators improperly equated "interfacing with DMLSS" (which was described in BMAR's proposal) with "experience in the use of DMLSS," and improperly rated BMAR's proposal as outstanding in this area. At

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[4] G&N raises a similar objection to a workbook question that imposes a standard (of a minimum of 3 years experience in performing operations and management) that is different from the requirement in the RFP (that the offeror show experience during the past 3 years that includes 3 projects). Because the underlying issue and our analysis are identical to the size-of-the-facility issue, above, we will not separately discuss it.

the hearing, the lead evaluator referred to the RFP statement of work and noted that the solicitation itself was "vague on what is required [in connection with DMLSS] during the course of the contract." Tr. at 107. He agreed that during the evaluation, the SSEB was liberal in allowing credit in this area, applying the standard of whether an offeror "show[ed] us a reason to believe that they understand what DMLSS is, that they can support us, fully based on the proposal that they have given us." Tr. at 108. While he stated that the evaluators did distinguish between interfacing with DMLSS and using it, he noted that experience in interfacing with the software was viewed as positive. Tr. at 110. In general, he stated that few contractors have much experience in this area, and that the evaluators believed the level of experience presented in G&N's and BMAR's proposals was equivalent, stating that:

> neither one of them gave me something that I could ironclad say he's been into every part of DMLSS and he fully understand it and I could call him tomorrow and he could go out there and run a DMLSS site for me. But I think that's not a realistic expectation, based on what we required.

Tr. at 112.

The evaluator also pointed out a perceived error in G&N's discussion of DMLSS in its proposal (referring to the use of DMLSS for a purpose for which it allegedly is not used), Tr. at 116, and, when asked about a reference in G&N's proposal to the use of "DMLSS as a standalone system" under a particular contract, pointed out that performance under the contract being cited had not yet begun at the time the evaluation was performed, and thus G&N could not be credited with this experience. Tr. at 119-20. In these circumstances, where the agency has reasonably supported its conclusion that no meaningful distinction could be made between the level of experience presented by the two proposals, where both were deemed to meet the requirement, and where the protester has not rebutted the agency's position that its relatively liberal allowance of credit for this item did not favor one offeror over the other, we think the agency's explanation of how it evaluated the proposals in this area is unobjectionable.

In addition to challenging the evaluation of technical proposals, the protester alleges that the Corps engaged in unequal discussions, favoring BMAR. G&N asserts that although the SSEB found fault with both offerors' proposals in connection with how an emergency response requirement would be met, it only raised this issue as a discussion question with BMAR. G&N did not address this area in its proposal revisions, and it was in this area that its proposal lost the one technical point that separated it from a perfect score.

Although the agency provides an explanation for why it raised this issue only with BMAR, we need not address this question on the merits. The Corps consistently states throughout the evaluation and protest record that it considered BMAR's and

G&N's proposals technically equivalent. While an agency may not conduct prejudicially unequal discussions, SeaSpace, supra, at 6, here, whether the discussions were equal or unequal, there was no prejudice to the protester's competitive position as the result of the loss of one point that might have been avoided had the agency raised the matter during discussion.

The protest is denied.

Robert P. Murphy
General Counsel