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

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## **Decision**

**Matter of:** DWMS-Ameriko

**File:** B-287680

**Date:** August 9, 2001

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John Lukjanowicz, Esq., and James F. Nagle, Esq., Oles Morrison Rinker & Baker, for the protester.

Vern Crosby for Aztec Facility Services, Inc., an intervenor.

Major Ralph J. Tremaglio, III, Department of the Army, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protester's allegation that awardee's price is so low as to indicate an inadequate level of staffing for hospital cleaning services is denied where the record shows that the agency properly concluded that awardee's price was reasonable through comparison with the government estimate and other offerors' prices, and awardee's proposed level of staffing in fact is virtually identical to protester's.

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### **DECISION**

DWMS-Ameriko, a joint venture between Dan White's Maintenance Service and Ameriko, Inc., protests the award of a contract to any other offeror under request for proposals (RFP) No. DADA13-00-R-0004, issued by the Department of the Army for hospital housecleaning services at Madigan Army Medical Center, Tacoma, Washington.

We deny the protest.

The RFP contemplated the award of a fixed-price requirements contract for a base period of 1 year and 4 option years. The solicitation provided for award to the offeror submitting the most advantageous proposal. Factors to be considered in the selection process, listed in descending order of importance, were technical/oral

presentation,<sup>1</sup> past performance, and price.<sup>2</sup> The RFP notified offerors that the agency intended to evaluate proposals and make award without discussions. RFP § M.1.1.

Six offerors submitted proposals by the November 21, 2000 closing date. The evaluators rated the proposals as follows:

Offeror	Technical Merit (Point Score)	Proposal Risk	Performance Risk	Past Performance	Evaluated Price
Aztec Facility Services	Excellent (946.22)	Low	Low	Very Good	\$20,875,106
Offeror A	Excellent (918)	Medium Low to Low	Medium Low to Low	Exceptional	\$17,384,816
DWMS-Ameriko	Excellent (915)	Low	Low	Satisfactory	\$24,952,121
Offeror B	Excellent (914)	Low	Medium Low to Low	Exceptional	\$20,205,611
Offeror C	Good (809)	Medium	High	Very Good	\$16,557,236
Offeror D	Marginal (675)	High	High	Satisfactory	\$15,776,543

The Source Selection Authority (SSA) determined that Aztec's proposal represented the best value to the government. In comparing Aztec's proposal with DWMS-Ameriko's, the SSA noted that Aztec's technical rating was higher than the protester's, while its price was 16 percent lower. Source Selection Decision Document, Apr. 9, 2001, at 6. On April 23, the contracting officer awarded a contract to Aztec.

In its initial protest, DWMS-Ameriko argued that Aztec's price was so low that it was apparent that Aztec had not proposed a level of staffing adequate to meet the requirements of the solicitation. The protester subsequently extended the arguments

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<sup>1</sup> The following three subfactors, of equal importance, were to be considered under the technical/oral presentation evaluation factor: on-site work execution, quality control, and management. RFP § M.3.1.

<sup>2</sup> With regard to the relative weights of the three factors, the RFP provided that technical/oral presentation was slightly more important than past performance and somewhat more important than price, and that technical/oral presentation and past performance, when combined, were significantly more important than price. RFP § M.3.

that it had raised with regard to Aztec to Offeror B, the offeror identified by the agency as next in line for award after Aztec.

The agency responded to the protester's argument by noting that Aztec had proposed a level of housekeeper staffing ([deleted] full-time equivalents (FTE)) virtually identical to the level proposed by the protester ([deleted] FTEs), and that Offeror B had proposed a higher level of housekeeper staffing ([deleted] FTEs) than the protester. Agency report at 8. The agency further noted that based on a comparison of offerors' prices with one another and with the government estimate, two of the price analysis techniques provided for in Federal Acquisition Regulation § 15.404-1(b)(2), it had determined that Aztec's and Offeror B's prices were reasonable, DWMS-Ameriko's price was too high, and Offeror A's price was too low.

In commenting on the agency report, the protester did not take issue with or attempt to rebut the agency position that both Aztec and Offeror B had proposed adequate levels of staffing; accordingly, we consider it to have abandoned this argument. O. Ames Co., B-283943, Jan. 27, 2000, 2000 CPD ¶ 20 at 7. The protester did take issue with the agency's contention that it properly had established the reasonableness of Aztec's and Offeror B's prices through comparison with the government estimate, however, maintaining that the government estimate was outdated. The protester also argued that Aztec's general and administrative (G&A) and profit rates<sup>3</sup> were extraordinarily low and posed a risk to successful performance.

The agency responded to the protester's argument regarding the currency of its estimate by noting that although its initial estimate had been developed in February 1998, approximately 2 years prior to issuance of the solicitation, the estimate had been updated twice during the procurement process. The agency explains that in January 2000, shortly before release of the solicitation, it recalculated the estimate to reflect the wage rates set forth in the applicable collective bargaining agreement entered into in 1999, and that in April 2001, it again recalculated the estimate to reflect the deletion of certain positions from the RFP and to update the wages, fringe benefits, and tax information to the current year. Agency Comments, July 3, 2001, at 1-2; Contract Specialist's Memorandum for the Record, June 29, 2001, at 1. Thus, the record does not support the protester's contention that the agency estimate was outdated.

Regarding DWMS-Ameriko's contention that Aztec's G&A and profit rates are so low as to pose a risk to successful performance, the agency notes that it considers the [deleted] G&A rate used by Aztec reasonable considering that the awardee will receive office space, furniture, break room facilities, and a large storage area at no

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<sup>3</sup> Offerors were not required to submit cost or pricing data since the RFP contemplated award of a fixed-price contract; nonetheless, Aztec did so.

cost, and similarly saw no reason to question the profit rate, which simply reflects a business judgment by the offeror. Agency Comments, July 3, 2001, at 3; Contract Specialist's Memorandum for the Record, June 29, 2001, at 2. Moreover, the agency determined Aztec's overall price to be reasonable. The protester did not attempt to rebut the agency's conclusions, and we see no basis to question their reasonableness.

In commenting on the agency report, DWMS-Ameriko also took issue with the agency's evaluation of its technical proposal, complaining that several of the evaluators' criticisms were unfounded. Specifically, the protester asserts that one of the evaluators unjustly criticized its oral presentation for not making clear what reports other than quality assurance reports would be used to track work and performance, and that another unfairly criticized it for not furnishing an equipment listing.

While the protester takes issue with these individual criticisms of its proposal, it has not argued that the evaluators who made the criticisms scored its proposal unfairly low under the pertinent subfactor elements--and indeed the record shows that the point scores that the evaluators in question assigned under these subfactor elements were in the excellent range and consistent with the scores assigned by the other evaluators.<sup>4</sup> Moreover, it is apparent from the record that DWMS-Ameriko's overall technical score would have remained lower than Aztec's even if the protester's proposal had received perfect scores from the evaluation panel under the subfactor elements with regard to which the protester contends it was unfairly criticized;<sup>5</sup>

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<sup>4</sup> The evaluator who criticized DWMS for not furnishing sufficient detail regarding its quality control reports gave the protester a score of 850 under the subfactor element with regard to which he made the comment (i.e., quality control/documentation and reports), while the evaluator who criticized the joint venture for not furnishing an equipment listing gave the protester a score of 900 under the relevant subfactor element (i.e., on-site work management/consumable supply estimating/provisioning). According to the instructions furnished to the evaluators, a score in the range of 801-900 (of a maximum possible of 1,000) equated to a rating of excellent. Instructions for Technical Evaluation Board at 2. The other evaluators gave the protester's proposal scores of 850 and 900 under the first subfactor element and scores of 920 and 950 under the second.

<sup>5</sup> The final technical scores were calculated by adjusting the raw point scores assigned by the evaluators to reflect the relative weights of the various subfactor elements. After the weighting was applied, the maximum possible scores for the two subfactor elements at issue were 83 and 111. The protester's proposal received scores of 72 and 102. Final Consensus--Technical Evaluation of Oral Presentation--DWMS-Ameriko, at 7. Accordingly, if the protester's proposal had received perfect scores under these subfactor elements, its overall technical score would have improved by 20 points to 935, which is still below Aztec's technical score of 946.

accordingly, the record fails to demonstrate that the protester was prejudiced by these scores. See Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5 (competitive prejudice is an essential element of every viable protest).

The protester also complains that a technical advisor was added to the evaluation panel prior to its evaluation of final technical proposals and that this individual considered matters not pertaining to on-site work execution in her evaluation under that subfactor. We have reviewed the documents pertaining to the evaluation of final technical proposals and find no evidence that the technical advisor's comments had any impact on the scoring of DWMS-Ameriko's proposal under the on-site work execution subfactor. In this regard, the evaluators rescored final technical proposals under only one element of that subfactor (*i.e.*, work execution management), and all three evaluators gave the proposal identical scores of 920 for that element, which score also was adopted as the consensus score.

Finally, DWMS-Ameriko takes issue with the rating assigned it for past performance. The protester contends that since one of the joint venturers, Ameriko, received a past performance rating of exceptional, while the other, DWMS, received a rating of satisfactory, the joint venture as a whole should have received a rating higher than satisfactory.

While the protester has asserted that it should have received a past performance rating better than satisfactory, it has not asserted that it should have received a rating better than Aztec's rating of very good. In other words, the protester has not asserted that it should have received a past performance rating favorable enough to have had an impact on the best value determination. In this regard, since best value was to be determined based on technical/oral presentation, past performance, and price, and Aztec's technical score was higher and its price lower than the protester's, DWMS-Ameriko's proposal could have been determined a better value than Aztec's

only if the protester had received a better past performance rating than Aztec. Accordingly, even assuming that we concluded that the protester's contention had merit, the protester would not be in line for award.<sup>6</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>6</sup> We note, in any event, that the record does not support the protester's contention. Specifically, the agency recognized that both the protester and the awardee are joint ventures, with one member (Ameriko for the protester, and Crothall Healthcare, Inc. for the awardee) whose experience was directly relevant and whose past performance was considered exceptional. With regard to the other member of each joint venture, the agency concluded that, while neither had experience in cleaning large hospitals, Aztec, for the awardee, had experience cleaning large buildings as well as large medical facilities, while DWMS, the other member of the protester joint venture, had no such experience. Given these facts, which the protester does not refute, we cannot conclude that the overall past performance ratings--satisfactory for the protester and very good for the awardee--were unreasonable.