



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

## REDACTED DECISION

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**Matter of:** Main Building Maintenance, Inc.

**File:** B-260945.4

**Date:** September 29, 1995

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Garreth E. Shaw, for the protester.

Darcy V. Hennessy, Esq., Moore, Bucher & Morrison, DGR Associates, Inc, an interested party.

Kathryn M. Burke, Esq., Department of the Air Force, for the agency.

John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest is sustained where source selection authority based the selection of the awardee over the protester on his erroneous belief that the awardee's proposal included certain "value added strengths" not included in the protester's proposal.

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## DECISION

Main Building Maintenance, Inc. protests the award of a contract to DGR Associates, Inc., under request for proposals (RFP) No. F08637-94-R-7011, issued by the Department of the Air Force for military family housing maintenance services, including service calls, change of occupancy maintenance, recurring maintenance, and appliance maintenance. Main argues that the agency improperly evaluated proposals and failed to conduct meaningful discussions and that the source selection decision was based on an erroneous understanding of the differences between the proposals.

We sustain the protest.

The RFP contemplated the award of an indefinite delivery, indefinite quantity, fixed-price contract to provide services for a base year and 3 option years. The RFP stated that award would be made to the offeror whose proposal was most advantageous to the government based on an integrated assessment of technical and price criteria, with technical criteria more important than price. The RFP listed the following technical evaluation areas in descending order of importance: area A, comprehension of requirements; area B, management organization and staffing;

area C, contract management; and area D, experience. Each of the evaluation areas included evaluation items.

After an initial evaluation, 11 proposals were included in the competitive range. Discussions were held with the competitive range offerors and best and final offers (BAFO) were submitted and evaluated. Under each of the evaluation areas, the proposals were assigned color-coded ratings, performance risk ratings, and were ranked based on the color and risk ratings.<sup>1</sup> The final evaluation ratings and rankings of Main and DGR were as follows:

Offeror	Main	DGR
Comprehension of requirements	blue, low risk ranked fifth	+blue, <sup>2</sup> low risk ranked first
Management organization and staffing	+blue, low risk ranked first	blue, low risk ranked second
Contract management	+blue, low risk ranked second	green, low risk ranked seventh
Experience	green, low risk ranked seventh	+blue, low risk ranked first

Main's BAFO included a price of [deleted] and DGR's BAFO included a price of [deleted]. In a written source selection decision, the source selection authority (SSA) compared each of the competitive range proposals to DGR's proposal. Based on those comparisons, the SSA decided that DGR's proposal represented the best overall value.

Among numerous other contentions, Main argues that the written source selection decision indicates that the SSA awarded the contract to DGR as a result of a mistaken understanding of the differences between the DGR and the Main proposals. In particular, the protester maintains that a number of significant strengths which the SSA attributed exclusively to DGR's proposal also were present in Main's proposal.

As explained, the SSA compared each of the competitive range proposals to DGR's proposal. In one of those comparisons, to a proposal other than that of Main, the SSA stated:

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<sup>1</sup>The color ratings assigned were: blue-exceptional; green-acceptable; yellow-marginal; and red-unacceptable. Risk ratings of high, moderate, and low were used.

<sup>2</sup>The evaluators assigned "+" or "-" designations to some of the color ratings.

"While offeror `F' was very close to DGR in overall technical ratings, finishing 2nd and 3rd respectively in the two most important technical areas, DGR was technically superior because, along with their other strengths, theirs was the only offer which (i) provided a computerized system [deleted], (ii) provided [deleted] phone line which adds value in terms of customer access, (iii) provided completion of routine service calls in [deleted] days versus thirty, thereby adding value by reducing the probability of costly expenditures for major maintenance, (iv) provided for flexibility in scheduling which adds value in terms of responsiveness to the customer and availability to meet changing requirements, (v) provided [deleted], thereby reducing the probability of expensive delays inherent in obtaining approvals for unscheduled requirements, and (vi) provided for [deleted] contact between the Contract Manager and maintenance personnel through [deleted] thereby adding value in terms of responsiveness and flexibility."

The selection statement further states that DGR's proposal was "clearly superior technically" and "the decision then is whether or not that superiority adds sufficient value to warrant award over the five lower priced offerors," including Main. In comparing DGR's proposal to Main's proposal, the selection statement states: "In the most important [evaluation] area . . . [Main] was clearly inferior to DGR in that none of the value added strengths which established DGR's technical superiority to offeror `F' were present in [Main's] proposal."

Thus, the source selection authority determined that DGR's proposal was technically superior to all others submitted and that it was superior to Main's proposal under the most important evaluation area, Comprehension of requirements, because Main's proposal included none of the six "value added strengths" listed above.

According to Main, the SSA was mistaken concerning at least four of the six strengths on which he relied to decide that DGR's proposal was superior to Main's proposal. Specifically, Main argues that the SSA mistakenly stated that DGR's proposal was the only one to provide:

1. A computerized system [deleted],
2. [Deleted],
3. [Deleted] and
4. [Deleted] contact between the contract manager and maintenance personnel through [deleted].

Main contends that it offered each of these strengths and therefore, the selection decision was flawed and should be overturned.

In reviewing an agency's evaluation of proposals and source selection decision, we will confine our analysis to a determination of whether the agency acted reasonably and consistent with the stated solicitation evaluation criteria. SDA Inc., B-248528.2, Apr. 14, 1993, 93-1 CPD ¶ 320. Here, although the SSA explicitly based the selection decision between DGR and Main on his belief that only DGR's proposal included the six strengths listed above, Main's proposal and the evaluation record demonstrate that the SSA was misinformed on four of those six strengths.

First, although the SSA believed that only DGR proposed a computer system [deleted], in its report in response to the protest, the agency concedes that, in fact, Main did offer such a computer system. The agency argues, however, that DGR's computer system was superior to Main's proposed computer system because it is compatible with [deleted].

While Main does not argue that its proposed computer system is compatible with [deleted], that compatibility was not the basis for the SSA's comparison and was not a basis for DGR's superiority as described by the SSA in the selection statement. Rather, as explained, the SSA relied, erroneously as it turns out, on the belief that DGR, and not Main, offered a computer system [deleted].

Second, the agency essentially concedes that Main also proposed flexibility in scheduling. In response to an allegation by the protester that DGR should not have been given credit in the evaluation for flexibility in scheduling, the agency notes that the evaluators gave Main's proposal credit for "recognizing peak times" and argues that both "flexibility in scheduling" and "recognizing peak times" simply recognize each firm's ability to have personnel available to meet contractual needs, in particular when demand is the greatest. Under the circumstances, we see no basis for the SSA's belief that only DGR's proposal offered flexibility in scheduling.

Third, with regard to the authority of both the contract manager and assistant manager to act on the company's behalf, Main's proposal states:

"The Contract Manager will be vested with full authority to commit all resources at the Company's disposal in all matters within the scope of the contract. In the Manager's absence, the assigned Alternate Contract Manager will also be vested with the same level of authority. There will be no limitations on the Contract Manager and he will be able to make `on the spot' decisions, including the amendment and/or modification of the contract."

Main's proposal does not include an assistant contract manager; instead the proposal refers to this position as an alternate contract manager.<sup>3</sup>

The evaluation record shows that agency technical evaluators recognized that Main had proposed the proper level of authority in its contract manager, although the evaluators did not explicitly recognize that Main's proposal vested the proper authority in the alternate manager. Under the management organization and staffing evaluation area for Main, an evaluator stated:

"Proposal demonstrates a very strong knowledge of the importance of the role and authority for a corporate contract manager. The offeror indicates that there will be no limitations on the Contract Manager and he will be able to make "on the spot" decisions, including the amendment and/or modification of the contract."

Whether in reliance on this evaluation record or otherwise, the SSA's belief that Main's proposal did not provide for the contract manager and the assistant manager to have authority to act on the company's behalf is simply inconsistent with Main's proposal.<sup>4</sup>

Fourth, the record demonstrates that Main did provide for constant contact between the contract manager and maintenance personnel through use of beepers/pagers and radios. Main's proposal, when it described the vehicles it would use on the contract, stated "[e]ach truck will be radio equipped for ease of communications."

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<sup>3</sup>The RFP performance work statement (PWS) does not reference an Assistant Manager; rather, the PWS refers to an Alternate Manager who is to act for the contractor when the Contract Manager is absent.

<sup>4</sup>In response to Main's allegation concerning the authority of the contract manager and assistant contract manager, the agency argues both Main and DGR received the same rating of blue, low risk under the management organization and staffing area, item 3: "Role and authority of the Contract Manager," the evaluation item which concerns the authority of the contract manager and the assistant manager. Thus, although the agency does not challenge Main's assertion that Main's proposal also offered managers with appropriate authority, essentially the agency argues that the failure to recognize this authority as set out in Main's proposal made no difference in the evaluation and selection since both proposals were highly rated on the relevant item. This argument misses the point. The issue is not the manner in which ratings were assigned by the evaluators; rather, as explained, the selection decision was flawed because the SSA selected DGR based, in part, on his erroneous belief that only DGR's proposal had provided the contract manager and assistant manager with proper authority.

In addition, concerning after-hours coverage, Main's proposal stated "on-call craftsman (representative) shall be available by telephone and pager throughout the period for which he is responsible."

Although Main's proposal included the use of radio-equipped vehicles and pagers, this was not reflected in the evaluation record. None of the evaluation documents stated that Main had proposed the use of pagers or radio controlled vehicles. Concerning DGR's proposal, however, a "Strengths Analysis Chart," which was part of the evaluation record, reflected the evaluators' awareness that DGR had proposed [deleted].

In response to the protest, the agency argues that DGR proposed to better equip its personnel so it was reasonable to assign greater credit to DGR. The agency explains that while Main's proposal indicated that its on-call craftsmen would be available by telephone and pagers, DGR proposed to have a [deleted]. In addition, the agency states that DGR proposed that [deleted], which would be a distinct advantage over Main's proposal of radios in vehicles since the majority of the time is spent in housing units and not in the vehicles.

The distinctions referenced by the agency did not appear in the evaluation record and therefore do not appear to have been relied upon by the SSA in the selection decision. Simply stated, it appears to us that the SSA, relying on the evaluation record, which reflected the use of [deleted], but not Main, concluded that DGR's use of those devices was a "value added strength" in DGR's proposal; the SSA does not appear to have concluded that the "value added strength" was DGR's better approach in this area. Because the SSA was not presented with complete, accurate information in this areas, the SSA did not have the opportunity to consider the benefits, if any, of Main's approach before deciding that DGR's proposal had a "value added strength" with respect to this item.

While source selection officials are entitled to independently judge the merits of competing proposals, these judgments must have a rational basis, see TRW, Inc., B-254045.2, Jan. 10, 1994, 94-1 CPD ¶ 18, and agency officials may not disparately evaluate offerors' proposals with respect to the same requirements. Sci-Tec Gauging, Inc.; Sarasota Measurements & Controls, Inc., B-252406; B-252406.2, June 25, 1993, 93-1 CPD ¶ 494.

Here, the written record demonstrates that the SSA was mistaken concerning four of the six "value added strengths" which he attributed exclusively to DGR's proposal. The SSA considered those four strengths to fall within the most important technical evaluation area, comprehension of requirements. Had Main's proposal also been given credit for those four strengths, it is likely that Main's proposal would have been perceived as stronger by the SSA and, on this record, we

cannot conclude that it would not have been selected as the best value. Consequently, we sustain the protest on this basis.

In deciding whether the appropriate remedy should be limited to a new source selection decision, rather than reopening of discussions and reevaluation, we review Main's other challenges to the evaluation of the proposals.

Main argues that DGR should not have been given credit in the evaluation and source selection for proposing to respond to service calls in [deleted] days, since the RFP required responses only in 30 days. The RFP encouraged offerors to include in their proposals all available information relating to the evaluation criteria "as well as any other information which the offeror feels would bear on his ability to perform the services." The RFP also stated that award would be made to the offeror whose proposal was most advantageous to the government and that each offer should be submitted "on the most favorable terms, from both technical and cost standpoints." Where, as here, detailed technical proposals are sought and technical evaluation criteria are used to enable the agency to make comparative judgments about the relative merits of competing proposals, offerors are on notice that qualitative distinctions among the technical proposals will be made under the various evaluation factors. See *Cybernated Automation Corp.*, B-242511.3, Sept. 26, 1991, 91-2 CPD ¶ 293. Consequently, since offerors were on notice from the RFP of a comparative evaluation of the relative merits of competing proposals, any additional credit which DGR received for offering to exceed a minimum requirement was entirely proper. Id.<sup>5</sup>

Main also argues that by giving DGR credit for needing no phase-in period, the evaluators deviated from the evaluation criteria in the RFP. Main argues that under the evaluation plan for the RFP, under the evaluation item "Start-up schedule," credit was to be given based on how well proposals demonstrated the capability to provide required maintenance on the start-up date, including consideration of a phasing chart depicting acquisition of equipment, recruitment, training, and acquisition of materials. According to Main, notwithstanding this standard, the

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<sup>5</sup>Main also argues that in spite of the fact that its proposal and DGR's proposal both offered [deleted] telephone lines--[deleted] more than required by the RFP--the SSA gave only DGR credit for three telephone lines in the source selection. While the agency notes that there is no reference to three telephone lines in Main's technical proposal, Main argues that the itemized cost breakdown in its price proposal included three telephone lines. Nonetheless, the RFP stated that "[t]he technical proposal shall contain sufficient information to enable the evaluator to make a complete analysis of the proposal with respect to the evaluation criteria set out in the [RFP]." We think this should have informed a reasonable offeror that technical credit would be assigned based only on review of the technical proposal.

agency assigned credit to DGR simply because, as the incumbent, DGR would not need a phase-in period. In addition, Main notes that DGR was assigned credit under the comprehension of requirements evaluation area for not needing a phase-in period and argues that this was improper since that evaluation area concerned only offerors' understanding of the requirements.

Contrary to the protester's allegations, we conclude that the credit assigned to DGR's proposal for not needing a phase-in period was reasonable and consistent with the RFP. The evaluation item "Start-up schedule" was included under the comprehension of requirements evaluation area and we think that the evaluation of a phase-in schedule was reasonably contemplated under that evaluation item. Although DGR was given credit for not needing a phase-in period since it was the incumbent, we do not see how this was inconsistent with the agency's concern under that factor for comprehension of the requirements of the solicitation.

Main also notes that the evaluators stated that under an award to the incumbent, "[t]here are no foreseeable obstacles to continued service thus saving time and money while ensuring customer satisfaction." According to Main, this consideration of potential cost savings of awarding to the incumbent was inconsistent with the RFP evaluation scheme which did not indicate that the cost savings related to awarding to the incumbent would be considered. Since the RFP stated that the evaluation would include consideration of the "Start-up schedule" evaluation item, we think that the incidental mention of the advantages to the government of avoiding a transition phase, which would include a potential for a disruptive expenditure of time and money, was reasonable and consistent with the government's well-established practice of recognizing, in appropriate circumstances, the value of continued performance by an incumbent. See, e.g., Benchmark Sec., Inc., B-247655.2, Feb. 4, 1993, 93-1 CPD ¶ 133.

Main also raises a series of allegations in which it essentially disagrees with the ratings assigned to its own proposal or to DGR's proposal. As explained, we confine our review of an agency's evaluation of proposals to a determination of whether the agency acted reasonably and consistent with the stated solicitation evaluation criteria. SDA Inc., supra. Mere disagreement with the agency's evaluation does not render the evaluation unreasonable. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454. Here, we conclude that the ratings challenged by Main were reasonable.

Main argues that the rating of blue, low risk assigned to DGR's initial proposal under the comprehension of requirements evaluation area should have been reduced based on DGR's BAFO which, according to the protester, reduced DGR's ability to provide timely and quality change of occupancy maintenance. DGR's initial proposal stated that each of [deleted] change of occupancy maintenance work crews would consist of [deleted]. In response to a discussion question, DGR

changed its proposal to reflect [deleted], rather than [deleted], basic change of occupancy maintenance work crews. In addition, DGR stated that those crews would not consist of all the members listed above but would include [deleted]. According to Main, this reduction in the number of crews and in the staff assigned to those crews would result in a significant lessening of DGR's ability to provide timely and quality maintenance and should have resulted in a reduction in DGR's rating under the comprehension of requirements evaluation area from blue, low risk to green, moderate risk.

The evaluators, however, did not view the change negatively, but as an appropriate response to a matter raised in discussions. The agency noted during discussions with DGR that the firm's proposal stated that it would have [deleted] work crews "but the workforce is not distributed properly on the chart." Rather than viewing DGR's response as reflecting poorly on DGR's comprehension of the requirements, the evaluators considered the reduction in the number and size of the firm's work crews to be a positive feature since the proposed sharing of personnel would minimize the chance of workers being idle. Main provides no basis for us to conclude that this aspect of the evaluation was unreasonable.

Main also argues that the ratings assigned by the agency to DGR's proposal under the "Appliance and equipment" evaluation item under the first evaluation area and the "Quality control" evaluation item under the second evaluation area should have been lower. Once again, Main has simply disagreed with the ratings, which we conclude are supported by the record.

For instance, although Main challenges the increase in DGR's rating on the "Appliance and equipment" evaluation item from moderate risk to low risk, the record shows that the rating was raised because DGR modified its proposal, as a result of discussions, in order to comply with a solicitation requirement that an annual inspection occur within 3 months of change in occupancy maintenance. On the "Quality control" evaluation item, Main argues that DGR should have been assigned a moderate or high risk rating, instead of low risk, because DGR's quality control representative does not report directly to the corporate office and has multiple duties. The protester again is simply disagreeing with the assigned rating based on its view that it should have been lower; that disagreement provides no basis to challenge the rating assigned by the evaluators.

Main also argues that the agency conducted unequal discussions. The protester points out that the evaluators noted that in their initial proposals both DGR and Main failed to provide addresses and phone numbers of subcontractors. Main notes that while this issue was raised during discussions with DGR--which corrected this discrepancy in its proposal--the issue was not raised with Main, which therefore did not have the same opportunity as DGR to improve its proposal through discussions.

While the record shows that DGR, and not the protester, was given the opportunity to correct the discrepancy, we find that Main was not prejudiced as a result. As the agency points out, although Main did not correct its proposal to include the addresses and phone numbers of its subcontractors, Main's proposal received a rating of blue, low risk, and was the highest ranked proposal under the management organization and staffing evaluation area. In addition, the source selection statement does not mention the failure to include addresses and phone numbers of subcontractors as a distinguishing factor in the selection decision between DGR and Main. Under the circumstances, we conclude that Main was not prejudiced by the agency's failure to raise this matter in discussions.<sup>6</sup>

Finally, Main argues that the agency improperly permitted DGR to amend its proposal late. In a letter to each offeror requesting proposal clarifications, the agency stated that proposal changes must be received on January 23. The protester notes that the agency's "Deficiency/Clarification Log" indicates that DGR's responses were received on January 25, and argues that DGR's clarifications, which included information essential for determining the acceptability of DGR's proposal, should not have been considered. In response, the agency explains that the log to which Main refers was used to record the technical evaluation team's receipt of discussion responses, not the agency's receipt, and that all discussion responses, including those of DGR, were received before the deadline. We have no basis to question the agency's explanation, and simply note that the log shows that the protester's discussion responses also were received on January 25.

In light of the above, we see no need for the reopening of discussions. Therefore, we recommend that the SSA reassess whether DGR's proposal offered the best value to the government in light of the points discussed in this decision. If the SSA decides that the award should not have been made to DGR, the agency should terminate DGR's contract for the convenience of the government and make award as appropriate. In any event, the Air Force should reimburse Main for its reasonable costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1995). In accordance with 4 C.F.R. § 21.6(f), Main's certified claim for such costs, including the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General  
of the United States

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<sup>6</sup>We are aware of no requirement in the RFP, and the protester refers to no requirement, that a proposal include this information. Therefore, it was not a matter of technical acceptability.