



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Sundt Construction, Inc.

File: B-288136

Date: September 25, 2001

Scott R. Schoenfeld, Esq., Jenkins & Gilchrist, for the protester.
Daniel J. Dykstra, Jr., Esq., Department of the Army, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency did not sufficiently credit protester's offer of single detached housing units under solicitation for family housing in selecting a proposal for award that offered mostly duplex housing units is denied where the protester's proposal was given appropriate credit under the only evaluation subfactor that addressed housing unit type and the awardee's lower-priced proposal had strengths under the other evaluation factors and subfactors that offset the protester's advantage under the housing unit type subfactor.

DECISION

Sundt Construction, Inc. protests the award of a contract to Lend Lease Actus, LLC under request for proposals (RFP) No. DACA05-01-R-0001, issued by the United States Army Corps of Engineers, Sacramento, California, for construction work. Sundt complains that the evaluation was not in accord with the stated evaluation scheme of the RFP.

We deny the protest.

The RFP, issued November 13, 2000, was to reconstruct an entire neighborhood at Fort Huachuca, Arizona under a fixed-price contract. The project required replacing 110 Capehart family quarters on a design/build basis with various factory built/manufactured and/or conventionally on-site constructed dwellings. The replacement dwellings were to consist of variously configured single and/or

multi-unit, one- and two-story buildings to be constructed at three sites in the neighborhood.¹

The RFP provided for award on a best-value basis. The RFP stated that the price/cost factor was approximately equal in value to the combined value of the other factors. RFP amend. 1 at 00120-6. The RFP, as amended, listed the following evaluation factors and their relative weights:

Factor 1, HOUSING UNIT DESIGN, is the most important and is slightly more than the combined weight of Factors 2, 3, and 4.

Factor 2, SITE DESIGN, is worth slightly more than one-third the weight of Factor 1.²

Factor 3, HOUSING UNIT ENGINEERING, is worth approximately one-fourth the weight of Factor 1.

Factor 4, SITE ENGINEERING, is worth approximately one-fourth the weight of Factor 1.

Factor 5, EXPERIENCE, PAST PERFORMANCE AND CAPABILITY, is worth approximately one-half the weight of Factor 1.

Factor 6, SMALL BUSINESS UTILIZATION, is the least important Factor and is weighted one-eighth the weight of Factor 1.

RFP amend. 1 at 00120-8. The RFP also listed subfactors, and their relative weights, for each factor. Factor 1, Housing Unit Design, listed 15 subfactors: 1a. Housing Unit Type; 1b. Net Floor Area; 1c. Exterior Appearance; 1d. Outdoor/Indoor Integration; 1e. Storage; 1f. Vehicle Storage; 1g. Functional Arrangement; 1h. Living, Dining, and Family Areas; 1i. Sleeping; 1j. Bathing; 1k. Food Handling; 1l. Utility and Work Areas; 1m. Exterior Finishes, 1n. Historic Features; and 1o. Interior Finishes. Subfactor 1g was the most important subfactor with 1a and 1c approximately equal in importance and each weighted less than half of subfactor 1g, and the remaining subfactors were of various lesser values. RFP amends. 1 & 2 at 00120-9-13. Regarding subfactor 1a, Housing Unit Type, the RFP stated:

¹ The three sites are Mills Circle/Dove, Bonnie Blink, and Mason/Crandel.

² "SITE DESIGN includes overall planning, layout, design and development of the housing site(s), exclusive of utility systems. It embraces considerations of community appearance, compatibility of grounds and buildings, functionality, dignity and livability." RFP amend. 1 at 00120-13.

The mix of housing unit types will be evaluated on the basis of a formula which assigns each type of housing unit a point value. The relative weight of housing unit types are in descending order of importance: (1) single detached units in single story at the Mills Circle/Dove site, single detached units in single story at the Bonnie Blink site, and no preference at the Mason/Crandel site; (2) single detached units in single story at the Mills Circle/Dove site, duplex units in one story at the Bonnie Blink site, and no preference at the Mason/Crandel site; (3) single detached units in single story at the Mills Circle/Dove site, two story duplex units at the Bonnie Blink site, and no preference at the Mason/Crandel site. Mixes at the Bonnie Blink site will be given partial extra points based on the ratios of the preferences. Number 1 will receive the most points and number three the least. The number of each type of housing unit is then multiplied by the point value for the housing unit type. The sum of three values is then divided by the total number of housing units to arrive at an average score for the housing unit type.

RFP amend 2 at 00120-9. The RFP further advised that “proposals which exceed the minimum criteria or include desirable optional features will . . . be rated higher than proposals which only meet the minimum criteria in accordance with the perceived value of these features to the Government.” RFP amend. 1 at 00120-8.

Five proposals, including Sundt’s and Actus’s, were received by the February 7, 2001 closing date. Sundt’s proposal was based upon constructing single detached units in single story for all 110 units: 27 units at the Mills Circle/Dove site, 63 units at the Bonnie Blink site, and 20 units at the Mason/Crandel site. See Agency Report, Sundt Proposal at ASP-1, ASP-2, ASP-3. In contrast, Actus’s proposal was based on furnishing 28 single detached units in single story and 82 duplex, two-story units with 8 of the single detached units at the Mills Circle/Dove site and 20 of the single detached units at the Mason/Crandel site, and the 82 duplex units at the Bonnie Blink site. See Agency Report, Actus Proposal, Site Plan, at C1, C2.

The Corps established a national evaluation team (NET), composed of architects and engineers, to evaluate the proposals. The NET rated and assigned points to the proposals under each factor and subfactor as keyed to an adjectival rating scale.³ The NET independently reviewed and rated the advantages and disadvantages of each technical proposal, and then as a group reached a consensus rating for each proposal. After the initial evaluation, the proposals of Sundt, Actus and a third firm were included in the competitive range. Contracting Officer’s Statement at 5. The

³ The maximum possible point score was 1,246 and the possible adjectival ratings under each factor and subfactor were unsatisfactory, marginal, satisfactory, very good, and excellent.

proposals of Sundt and the third firm were determined acceptable, whereas Actus's proposal was considered unacceptable but capable of being made acceptable. Agency Report, Tab 6, Pre-Negotiation Business Clearance Memorandum, at 4.

The Corps then conducted discussions with the offerors. In discussions, the Corps advised Sundt only that its price was considered high compared to the funding authorized for the project. On the other hand, the Corps advised Actus of the various deficiencies identified in its proposal, for example, under Factor 1k, housing unit design, where no windows were provided in the kitchen, and under Factor 3b, housing unit engineering, where its proposed carbon monoxide detector was not hard-wired.

Final proposal revisions were received from offerors on May 11. The final evaluation results for the two proposals relevant here were as follows:

| Offeror | Final Score | Price |
|----------------|--------------------|--------------|
| Actus | 941 | \$15,038,152 |
| Sundt | 904 | \$15,093,314 |

Agency Report at 7. Under Factor 1, housing unit design, of the 496 possible points for this factor, Sundt's proposal (400 points) and Actus's proposal (399 points) received nearly the same score. Sundt's proposal received the maximum possible 52 points for subfactor 1a, housing unit type, while Actus's proposal received 42 points.⁴ On the other hand, Actus's proposal received 90 of the 112 possible points for subfactor 1g, functional arrangement, while Sundt's proposal received only 75 points. Under all other factors, Actus's proposal received an equivalent or slightly higher numerical score than Sundt's. For example, under site design, Actus's proposal received 142 out of 175 points, while Sundt's proposal received only 128 points. Contracting Officer's Statement, app. A. The proposals of the three competitive range offerors received identical adjectival ratings under each of the six evaluation factors of very good, very good, satisfactory, very good, very good, and satisfactory, respectively, and overall ratings of very good with a low performance risk rating. Agency Report, Tab 16, Post-Business Clearance Memorandum, at 4.

Following the NET's final evaluation, the source selection evaluation board (SSEB), independently reviewed the technical proposals, including final proposal revisions, and the NET report, and determined that Actus's proposal constituted the best value

⁴ The protester points out the evaluators' worksheets for this subfactor did not reflect the evaluation scheme as updated by the most recently issued amendments. However, the score under the subfactor was derived from a formula and there is no evidence that the outdated language on the worksheets affected the point scores awarded the proposals under this subfactor.

and recommended that award be made based on Actus's highest-rated, lowest-priced proposal. Agency Report, Tab 15, Best Value Analysis Report. The source selection authority (SSA) concurred with the SSEB's recommendation and made award to Actus.⁵ After a debriefing, this protest followed.

Sundt protests that the Corps failed to adhere to the stated evaluation scheme in evaluating the proposals for award. Sundt argues that the RFP's evaluation scheme required the Corps to give greater weight to proposals that offered all single detached housing units in single story, such as proposed by Sundt, over proposals offering a mixture of housing unit types, such as Actus's. Sundt notes in this regard that housing design was the most important evaluation factor and under that factor the RFP provided that more points would be awarded proposals offering single detached housing units in a single story than those offering any other housing type. Thus, Sundt argues that the Corps's relative evaluation of the proposals was improper.

We find that Sundt has misconstrued the RFP's evaluation scheme. The preference for single detached units in single story is contained only in the housing unit type subfactor, which is only 1 of the 15 subfactors of the housing unit design factor. This subfactor is not even the most heavily weighted subfactor of those comprising the housing unit design factor. Moreover, no other housing unit design subfactor or other RFP factor provides for any preference to be given offers of single detached units in single story. While Sundt asserts that it was misled by the preference for single detached units in single story expressed under the housing unit type subfactor, a reasonable reading of this subfactor indicates that offerors could offer a variety of housing types and a reasonable reading of the RFP indicates that housing unit type was only one of the numerous subfactors to be considered in evaluating proposals. It was thus within the technical and business judgment of each offeror to prepare a proposal that it believed would constitute the best value to the government, considering price and the listed evaluation factors and subfactors, and there is simply no basis for Sundt's expressed belief that the preference for single detached units in single story should be applied under all of the evaluation factors and subfactors.

Here, the record shows that Sundt received credit for its proposal based on single detached units in single story under the applicable subfactor, but that the particular

⁵ In the agency report, the SSA advised that she considered the technical proposals essentially equal in view of their identical technical ratings. Agency Report, Tab 14, Declaration of SSA, at 2. While Sundt complains that no cost/technical tradeoff was conducted, none was required here where the award was made based on the lowest-priced proposal that was rated technically equal or superior to the other proposals. See Winstar Fed. Servs., B-284617 et al., May 17, 2000, 2000 CPD ¶ 92 at 11, 13.

strengths of Actus's proposal, which offered 82 duplex housing units, under the other subfactors and factors offset Sundt's evaluated advantage.⁶ For example, Actus's proposal was rated higher under the primary subfactor, 1g, functional arrangement, of the housing unit design factor than Sundt's—a rating that Sundt has not specifically challenged—and higher under the site design factor. While Sundt complains that Actus's advantage under the site design factor was a result of its offer of duplex housing units, which allowed for more open space and a higher site design rating, that certain advantages and disadvantages might accrue under the various subfactors and factors from choosing a particular ratio of housing unit types was clearly inherent in the evaluation scheme and Sundt's strengths under the site design factor were clearly related to that factor.⁷

The protest is denied.

Anthony H. Gamboa
General Counsel

⁶ While it could be argued that Sundt should have enjoyed more than a 10-point advantage under the housing unit type subfactor since it proposed all of the preferred housing unit type and Actus proposed only approximately 25 percent of the preferred housing unit type, no possible error in this area could have prejudiced the protester, given Actus's overall 37-point advantage and lower price.

⁷ Sundt also protests that the discussions were not meaningful because the agency did not advise Sundt that it would not be sufficiently credited for its single detached unit in single story approach. This protest ground is based upon the false premise that the RFP's preference for such units extended beyond the subfactor where it was expressed. Sundt also complains that the discussions were unequal because the deficiencies in Actus's proposal were pointed out to that firm. However, since Sundt's technical proposal contained no deficiencies (except with regard to its high price, which was pointed out), this does not evidence unequal discussions. See Federal Data Corp., B-236265.4, May 29, 1990, 90-1 CPD ¶ 504 at 5 (agency may conduct extensive technical discussions with offerors that contain technical deficiencies without providing such discussions to offerors whose proposals do not contain such deficiencies).