



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arco Management of Washington, D.C., Inc.

File: B-248653

Date: September 11, 1992

Richard J. Oparil, Esq., Schwalb, Donnenfeld, Bray & Silbert, for the protester.
Sharon Matthews Swair, Department of Housing and Urban Development, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of revised offers and the subsequent award decision cannot be found reasonable where the record includes only technical point scores unaccompanied by any contemporaneous evaluation documentation or other explanation that would support the scores awarded to the protester and the awardee.

DECISION

Arco Management of Washington, D.C., Inc. protests the award of a contract by the Department of Housing and Urban Development (HUD) to Intown Properties, Inc. under request for proposals (RFP) No. 13-91-051. Arco protests that HUD failed to follow the evaluation criteria stated in the RFP, and that it did not base its award decision primarily on technical merit, as required under the RFP, but improperly based its decision on price. We sustain the protest.

HUD issued its solicitation on December 6, 1991, requesting offers for property management services for certain multi-family properties located in Virginia. The RFP contemplated the award of a firm, fixed-price, indefinite quantity contract for an initial 2-year period, with two 1-year option periods. Offerors were advised to submit separate

technical/management and cost proposals, and were cautioned that price would be considered secondary to the technical and management factors. The RFP stated that award would be made to the responsible offeror whose offer conforming to the solicitation would be most advantageous to the government, cost or price and other factors as specified in the solicitation considered. The RFP provided a detailed breakdown for scoring the technical and management factors in the proposals, listing the maximum attainable points for each of the seven factors and subfactors for a maximum total score of 100 points.

Thirteen proposals were submitted by the closing date of January 15, 1992. A Source Evaluation Board (SEB) was formed, with five voting members and additional advisory members. The SEB reviewed and evaluated the technical proposals and the contracting officer reviewed the submitted price data. On the basis of these reviews, the contracting officer determined that the offers with the six highest technical scores should be included in the competitive range. Arco's technical proposal received the highest score and Intown's received the second highest score, and thus, they were included. Written discussion questions reflecting areas where proposals were downgraded were submitted to the competitive range firms, which were instructed to submit any proposal revisions by February 21. These revisions were then reviewed and evaluated by the SEB. As a result of the revisions, every offeror's technical score was increased except Arco's. Intown's technical score, which had initially been lower than Arco's, was increased as a result of the revisions it submitted and now matched Arco's. The agency requested best and final offers (BAFOs) by March 9.

On March 13, the SEB convened to discuss its award decision. The SEB determined that any one of the top three offerors "would be able to perform the services required under the solicitation." However, the offeror with the highest technical score had submitted a final price that was significantly higher than the next two offers (submitted by Arco and Intown); because this price was considered unreasonably high, this offer was not considered further.

Intown's final price was lower than Arco's. The contracting officer states in the agency report that "this SEB did not feel strongly in favor of one contractor over any other." Therefore, "in consideration of all factors," the SEB recommended that the contract be awarded to Intown, and the Source Selection Official (SSO) concurred. The award was made to Intown, and Arco filed an agency-level protest, challenging the agency's evaluation of proposals and its award decision. The contracting officer denied Arco's protest and this protest followed.

Arco contends that its proposal was evaluated in an arbitrary and capricious manner, rendering the award decision improper. Further, the protester asserts that the evaluation and subsequent award decision were not adequately documented, as required by the Federal Acquisition Regulation (FAR). Arco also contends that the agency's technical evaluation was unduly influenced by price considerations, and that price was given greater importance in relation to technical merit than was permitted under the evaluation scheme established in the RFP.

In reviewing protests against allegedly improper evaluations, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the solicitation's stated evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. In order for us to review an agency selection determination, an agency must have adequate documentation to support its selection decision. Department of the Army--Recon., B-240647.2, Feb. 26, 1991, 91-1 CPD ¶ 211; American President Lines, Ltd., B-236834.3, July 20, 1990, 90-2 CPD ¶ 53. The Federal Acquisition Regulation (FAR) requires agencies to document their evaluation of proposals and their selection decisions so as to show the relative differences between proposals, their weaknesses and risks, and the basis and reasons for the selection decision. FAR §§ 15.608 and 15.612(d)(2) (FAC 90-7).

The report that HUD submitted to our Office in response to this protest includes little documentation of the agency's technical evaluation process beyond copies of the evaluation sheets completed by the SEB voting members and one set of evaluation sheets representing the "consensus evaluation." On these forms, SEB members inserted a numerical score for each of the seven evaluation factors for each initial proposal. These scores are, in some instances, crossed out, with new scores inserted; although there is no narrative or summary explaining the numerical scores, it appears that the subsequent score entries reflect the evaluation of the revised proposals. The evaluation record contains no hint, however, as to the basis for the scoring of Arco's revised proposal.

The discussion questions that were posed to Arco addressed five technical areas of the firm's proposal, in some cases requesting only that the firm provide "further elaboration [of a particular factor] to obtain maximum points"; other questions required more specific information. Arco submitted a response for each of the questions, in some instances, providing documents illustrating its experience under other contracts. For example, when asked to elaborate further on a particular element demonstrating Arco's experience in managing major repair and rehabilitation

programs, Arco submitted a modification to one of its current HUD property management contracts, in which HUD was increasing Arco's responsibility and independent involvement. When asked to elaborate on the question of whether the offeror had ever visited the project, Arco provided a written memorandum from one of its employees, reporting on an inspection and survey he had conducted at the project. Asked to discuss whether the firm had ever managed a property where the residents became owners or were becoming owners, Arco identified a HUD contract it had performed under which a 200-unit rental building was converted into a tenant-owned co-op; two current contracts that had involved such conversion; and two current contracts in which Arco was working with HUD to attempt conversions. When asked to clarify whether Arco would actually manage the properties if awarded this contract, Arco responded unequivocally that it would. In spite of what appear to us to be substantive answers to each of the questions, Arco's revised proposal earned the firm no additional points. Its initial technical score remained completely unchanged.

On the other hand, Intown's score was increased, sometimes on the basis solely of conclusionary responses. For example, Intown was asked to discuss the problems it expected to encounter and to explain how it had dealt with similar problems in the past. Intown's response identified the types of problems it anticipated, and stated that it had dealt with such problems in the past and could deal with them again; this conclusion was repeated several times with no specifics as to how it had dealt with the problems. For this response, Intown's score was increased to the maximum number of points available for that element of the evaluation factor. On the basis of all its responses, Intown's overall score was increased to Arco's exact score.

We find nothing in the record which explains the scoring increases for Intown and all of the other competitive range offerors while Arco's proposal score was left unchanged.¹

¹Arco's initial protest specifically requested that the agency produce all documents relating to the evaluation of proposals and the manner in which proposals were evaluated, and all documents relating to the consideration of proposals by the SEB. After HUD submitted its report, our Office questioned whether there remained any further record of the evaluations; the agency responded that the record was complete. While Arco did not focus its protest on the lack of documentation until after this issue was disclosed in the agency report, the agency then responded with a rebuttal submission. The rebuttal, however, did not provide any further documentation or additional factual support; it
(continued...)

Since Arco addressed all the questions raised during discussions, it seems reasonable that its score should have increased just as the scores of its competitors increased. At the very least, the evaluators should have provided a rationale for their conclusion that no scoring change was warranted for Arco. Beckman Instruments, Inc., B-246195.3, Apr. 14, 1992, 92-1 CPD ¶ 365; Amtec Corp., B-240647, Dec. 12, 1990, 90-2 CPD ¶ 482, recon. denied, B-240647.2, Feb. 24, 1991, 91-1 CPD ¶ 211. In the absence of this rationale, on its face, the evaluation of Arco's revised proposal appears to be unreasonable.

This, in turn, carried over into the source selection determination. The SSO concurred in the award recommendation memorandum, which merely lists the offerors' technical scores and proposed prices and contains a brief, general discussion of the SEB's basis for its award recommendation. There is nothing in the record which shows that the SSO ever was made aware of or otherwise assessed the strengths and weaknesses of Arco's proposal in light of the information submitted in its revised proposal. The result is that there is inadequate supporting documentation for the award decision. In these circumstances, we cannot conclude that the agency had a reasonable basis for its selection. U.S. Defense Sys., Inc., B-245563, Jan. 17, 1992, 92-1 CPD ¶ 89.²

Since we find that HUD failed to evaluate the technical proposals reasonably, or to document its evaluation and award decision, we recommend that HUD reevaluate the final proposals submitted consistent with the technical factors and related weights listed in Section M of the RFP. Following this evaluation, HUD should determine which offer is most advantageous to the government as provided in the RFP. In the event Arco's proposal is determined to be most advantageous to the government, HUD should terminate the contract with Intown Properties, Inc., and award the

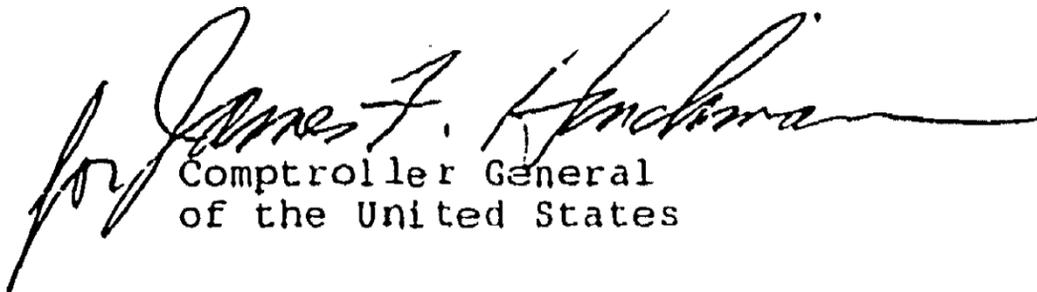
¹(...continued)

relied instead primarily on the same conclusory statements in its initial report.

²We will not separately consider Arco's contention that HUD based its award decision on price, rather than technical merit, given our determination that HUD's technical evaluation was improper. Without an adequately supported technical evaluation, a proper award determination could not be made.

contract to Arco. We also find that Arco is entitled to the costs of filing and pursuing this protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1992).

The protest is sustained.


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