



Comptroller General
of the United States

Washington, D.C. 20548

REDACTED VERSION

Decision

Matter of: Meridian Management Corporation, Inc.;
NAA Services Corporation

File: B-254797; B-254797.2

Date: January 21, 1994

Michael A. Gordon, Esq., Holmes, Schwartz & Gordon, for Meridian Management Corporation, Inc.; and Michael A. Hordell, Esq., Joseph J. Petrillo, Esq., and Laurel A. Heneghan, Esq., Petrillo & Hordell, for NAA Services Corporation, the protesters.

Kenneth M. Bruntel, Esq., and Laura D. Koss, Esq., Crowell & Moring, for Omni Corporation, an interested party.

Robert S. Brock, Esq., Federal Emergency Management Agency, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests that evaluation of awardee's proposal was impermissibly based on an inflated assessment of its technical merit are denied where the record shows that the evaluation was reasonably based on the information in the awardee's proposal and was consistent with the stated evaluation criteria.

2. Protests alleging preferential and unequal treatment of offerors and other improper conduct are denied where nothing in the record shows that the awardee improperly received information or gained an improper competitive advantage as a result of communications between the awardee's representative and the source selection chairman acting within the scope of his duties as point of contact for providing technical clarification to prospective offerors.

'The decision issued on January 21, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

3. The agency satisfied its obligation to conduct meaningful discussions where through a series of questions the agency reasonably led the offeror into the deficient areas in its proposal.

DECISION

Meridian Management Corporation, Inc. (MMC)¹ and NAA Services Corporation protest the award of a contract to Omni Corporation under request for proposals (RFP) No. EME-93-R-0389, issued by the Federal Emergency Management Agency for facility operation and maintenance and student support services in support of the National Emergency Training Center (NETC) in Emmitsburg, Maryland. The protesters object to the agency's evaluation of proposals and to the selection of Omni's more costly proposal as most advantageous to the government on the ground that Omni had an improper competitive advantage as a result of information given to it by the source evaluation board (SEB) chairman. They also argue that the chairman was biased in favor of the awardee. We have consolidated the protests as they basically involve the same issues.

We deny the protests.

BACKGROUND

NETC provides a large volume of training and developmental events on behalf of the Emergency Management Institute and the National Fire Academy. The RFP, issued on April 23, 1993, contemplated the award of a fixed-price/labor-hour contract with award fee for a 30-day transition period and four 1-year options. The contract consolidates facility operation, maintenance and student support services that had been procured under separate contracts in the past (MMC was the former facilities maintenance contractor; K&M Maintenance Services, Inc., which now is a subcontractor to NAA Services, was the former contractor for student support services) and adds some new requirements. The services required under the contract range from grounds maintenance, landscaping, craft work (such as carpentry, masonry, painting), warehousing, housekeeping and janitorial services to copying/duplicating, data-entry, and residential transportation services.

The RFP advised offerors that award would be made to the responsible offeror whose proposal conformed to the requirements of the solicitation and was most advantageous to the government, considering technical merit and cost. Technical factors and subfactors would receive a weight of

¹MMC was formerly the Contract Services Company.

60 percent and cost/price factors would receive a weight of 40 percent. The RFP listed the following technical evaluation factors and associated values: (1) work plan (55 percent); (2) key personnel experience (15 percent); (3) past performance (15 percent); (4) corporate experience (10 percent); and (5) quality control (5 percent). Offerors were also informed that a cost realism analysis would be performed. A preproposal conference and site visit of NETC's facilities was held on May 7, and both protesters and the awardee attended. Offerors were encouraged to schedule additional site visits to again inspect the facility and any government furnished equipment. See Hearing Transcript² (Tr.) at 71; McCreary Declaration (Decl.) at ¶ 4.

Ten offerors responded to the solicitation by the June 25 extended due date. The contract specialist, with the contracting officer's concurrence, delegated the responsibility of point of contact for technical clarifications regarding the procurement to a FEMA official. Tr. at 114, 343; McCreary Decl. at ¶ 5. This official also served as the source evaluation board (SEB) chairman. In addition to the evaluation provisions set forth in the RFP, FEMA followed a source selection plan (SSP) in evaluating proposals. The SSP directed that an SEB consisting of five voting members (including a chairman) and five advisory members be convened to evaluate technical proposals. The SSP directed that the five voting members of the SEB should individually score each offeror's proposal under each technical factor and provide written narratives explaining and supporting their individual judgments concerning the proposals, after which a final overall consensus score was to be determined, supported by a narrative discussion of the advantages and disadvantages of each proposal for each evaluation factor.

The SEB evaluated and scored the technical proposals and prepared a preliminary report for the source selection official (SSO). Concurrent with the technical evaluation, the contract specialist (an advisory member of the SEB) and the SEB chairman conducted a review of the offerors' proposed prices and included their findings in the preliminary SEB report. Tr. at 327. In this report, the SEB recommended that eight offers, including Omni's, NAA's and MMC's be included in the competitive range. On July 23, an oral presentation was made to the SSO by the contract specialist, the SEB chairman and others, regarding the preliminary SEB report. Tr. at 185, 329. The SSO adopted

²Transcript citations refer to the transcript of the hearing conducted by our Office to receive testimony regarding the protesters' allegation of agency bias against them and preferential treatment towards Omni.

the SEB's recommendation and established a competitive range consisting of eight offers, including those of Omni, MMC and NAA.

By telefax communications on July 27, the agency commenced discussions with each competitive range offeror, Tr. 358, and on July 29, telephonic discussions were held with each offeror, Tr. at 360. Revised proposals and best and final offers (BAFO) were then submitted and evaluated. The final technical rankings and corresponding prices for the three highest rated proposals were:

<u>Offeror</u>	<u>Technical Score</u> (out of a possible 20 points)	<u>Total Price</u>
Omni	16.29	\$11,874,937.02
[deleted]	[deleted]	[deleted]
[deleted]	[deleted]	[deleted]

Based upon the results of the evaluation, the SEB recommended award of the contract to Omni. This recommendation was based upon the evaluation which showed that Omni scored the highest overall in all technical evaluation categories. The evaluators found that there were no weaknesses in Omni's proposal, that Omni had proposed significant overall enhancements in terms of higher qualified personnel, and had offered a better quality control plan. In accordance with the RFP, the SEB determined that Omni's significant overall technical advantage justified award to Omni at its higher proposed prices. Following a final briefing of the SSO on August 27, the SSO concurred with the recommendation and selected Omni for award, Tr. at 195, 196. Award was made to Omni on August 31,³ and these protests followed.

DISCUSSION

Each protester challenges the evaluation of Omni's technical proposal based upon what each characterizes as preferential treatment given to Omni which resulted in an inflated assessment of Omni's proposal. According to the protesters,

³On September 13, the agency determined pursuant to FAR § 33.104(c) that it was in the best interest of the government to authorize performance notwithstanding the protests.

the SEB chairman engaged in numerous telephone communications with Omni in which they allege technical information was improperly disclosed to Omni which resulted in Omni's receiving an unfair competitive advantage.

Evaluations

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. A protester's disagreement with the agency's judgment does not render the evaluation unreasonable. Id. We have reviewed the record in the context of the parties' arguments and the evidentiary record, including testimony adduced at the hearing, and we conclude that the record reasonably supports the higher overall technical rating assigned to Omni's proposal as well as the lower overall technical ratings assigned to the protesters' proposals.

For example, in assessing proposals under the past performance factor, FEMA explains that each offeror was evaluated based on responses to a standard set of questions which were sent to all references listed in each offeror's proposal. Omni received positive responses from each of its four references, with the result that the SEB rated Omni's past performance as excellent and gave it an average numerical score of 16.4 out of a possible 20 points for this factor. In contrast, while multiple requests were made to MMC's references, only one response was received. [deleted]. Based on the actual responses received from the references, we see nothing unreasonable with Omni's higher rating in this area.'

In assessing offerors' proposed key personnel (project manager and foreman), the SEB assigned a higher score to Omni than to either protester. Omni's proposed project manager had 27 years experience, the last 13 years of which were spent managing a college campus in Emmitsburg similar to FEMA's campus. This was viewed as relevant local experience which the SEB considered an advantage in Omni's proposal. The evaluators believed this project manager's knowledge of local conditions, vendors and the business community, would ensure successful management of FEMA's contract. In contrast, while each protester's proposed key personnel met the minimum qualification/experience requirements, neither had proposed a project manager that

'[deleted]

had comparable relevant experience in the local area.⁵ In our view, there is nothing unreasonable about the SEB's judgment that Omni's proposed project manager's local experience was a benefit and, based on that advantage, scoring Omni's proposal higher overall under that category.

Preferential Treatment

The protesters nonetheless allege that the SEB chairman impermissibly engaged in numerous pre- and post-evaluation telephone communications with Omni which gave Omni an unfair competitive advantage. FEMA takes the position that the telephone communications with Omni were neither improper nor prejudicial to other offerors. According to the agency, since the chairman was the individual designated by the contract specialist to answer technical questions prospective offerors had regarding the solicitation requirements, the calls were within the chairman's scope of authority. FEMA asserts that there is nothing in the record which supports the protesters' contention of bias or improper disclosure of information by this official. The agency maintains that the frequency and the substance of the communications between the chairman and Omni did not provide Omni with any competitive advantage. FEMA asserts that Omni's proposal was technically superior to any other proposal, that the chairman's communications with Omni had no effect on evaluation of the merits of the proposals, and that this is confirmed by the evaluation documentation.

Prejudicial motives will not be attributed to contracting officials on the basis of mere inference or supposition; we require evidence that the official involved influenced the procurement on behalf of the awardee or against the protester. E.J. Richardson Assocs., B-250951, Mar. 1, 1993, 93-1 CPD ¶ 185; Charles Trimble Co., B-250570, Jan. 28, 1993, 93-1 CPD ¶ 77. On the basis of the record before us, we conclude that communications between the chairman and Omni were within the scope of the chairman's designation as the point of contact for technical matters. There is nothing in the record to show that the chairman disclosed any information in these conversations that was source selection sensitive or proprietary to another firm.

The record shows that the contracting officer designated the contract specialist as the single point of contact with competing offerors for this procurement. Tr. at 94. As stated previously, the contract specialist, prior to receipt

⁵MMC had initially proposed an individual with knowledge of the local area as project manager; in its revised proposal, MMC replaced this individual with one who had no knowledge of the local area.

of initial offers, subsequently designated the SEB chairman as the point of contact, for providing technical clarifications to prospective offerors, Tr. at 343. The contract specialist states in his affidavit that he did this with the concurrence of the contracting officer. McCreary Decl. at ¶ 5; Tr. at 116.

While designating an SEB chairman as the point of contact for technical clarification may create a risk that the chairman's duties as point of contact might conflict or appear to conflict with his duties as SEB chairman, based on this record, we find no adverse effect in this procurement. There is nothing in the record which leads to the conclusion that the SEB chairman improperly disclosed proprietary or source sensitive information to the advantage of Omni, as alleged by the protesters. The record shows that the chairman made telephone calls to all competitive range offerors, not just Omni. While the chairman made 10 calls to Omni during the course of the acquisition from May 7 through August 31, he also made 6 calls to NAA between June 6 and June 29. Three of those calls to NAA were conference calls made by the chairman and others on July 29 to NAA and its subcontractor K&M for purposes of conducting oral discussions. The telephone logs further show that the chairman made one call to MMC, two to offeror A, three to offeror B, two to offeror C, four to offeror D, and five to offeror E during this same period.

With regard to the SEB chairman's conversations with Omni's representative, the record establishes that the Omni representative called the chairman once or twice a week for "clarification" purposes and to determine the "status" of the evaluation. Tr. at 90, 91.⁶ Also, on May 18, prior to the June 25 closing date, the chairman spoke with the Omni representative. The chairman testified that during that conversation, the Omni representative had questions about the transportation requirements in the RFP and that he had another FEMA official, a transportation specialist, join the call to answer her questions. Tr. at 339, 340, 423. The chairman testified that the information provided to Omni during this telephone conference was provided to all other offerors by the subsequent issuance of amendment No. 0001 on May 20. Tr. at 576. Other calls were made to Omni before the receipt of initial proposals, including one which

⁶The Omni representative knew that the chairman was the project manager for the existing contract and "assum[ed]" that he was a member of the SEB. Tr. at 164.

involved questions the Omni representative had regarding incomplete information in the RFP concerning contractor liability. Tr. at 94, 95. This contractor liability information was provided to all offerors by amendment No. 0004.

On July 9, one call and two telefax transmissions were sent from the chairman to Omni. The chairman described that conversation as one in which the Omni representative asked "if the evaluation had started and if there was any particular order that the proposals would be evaluated in" and Omni's request that the chairman send it a copy of written questions Omni had previously furnished to FEMA.⁷ Tr. at 353. The Omni representative denied asking the chairman about the order in which proposals would be evaluated. Tr. at 161, 163, 357.

Given the nature of these contacts as described in the hearing and in the agency's telephone logs, and in light of the information provided to all offerors in RFP amendments, we see nothing on which to base a conclusion that any improper disclosure of information to Omni occurred.⁸

On August 24, after receipt of BAFOs, the chairman spoke to the Omni representative. They discussed Omni's move of its headquarters from Las Cruces to Albuquerque, New Mexico. Tr. at 364. The chairman states that "he wanted to know [the reason for Omni's move] to determine if their business/contractor status had changed since the proposals were received." The chairman also testified that he was "curious" about Omni's move. Tr. at 526, 528. While the record does not reveal what information the chairman received concerning the move, we do not see what impact the information about the move could have had on the evaluation. Written notice of Omni's corporate headquarters relocation had previously been given to FEMA, Tr. at 155, and the evaluation factors do not encompass this matter.

⁷Evaluation of initial proposals were on-going from June 29 through July 16, 1993.

⁸FEMA acknowledges that the chairman violated the Office of Federal Procurement Policy Act, 41 U.S.C. § 423 (1988 and Supp. IV 1992) and implementing regulations, FAR § 3.104, when he prematurely disclosed the identity of the winning contractor to his father. Tr. at 134, 499, 453. However, we do not see that this violation affects our conclusions concerning the protesters' allegations.

Other Issues

NAA argues that, the agency failed to hold meaningful discussions because NAA was not advised of certain weaknesses in its proposal in the areas of [deleted]. In order for discussions in a negotiated procurement to be meaningful, contracting officials must advise an offeror whose proposals is in the competitive range of weaknesses, deficiencies or excesses in its proposal, the correction of which would be necessary for the offeror to have a reasonable chance for award, and afford each offeror the opportunity to satisfy the government's needs through the submission of revised proposals. FAR §§ 15.610(b), (c)(2), (5); Department of the Navy--Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ 422.

Here, where there were deficiencies, the agency advised NAA of them, including deficiencies in the three areas NAA identified above. For example, with regard to NAA's [deleted] in its discussion question No. 1, asked NAA [deleted]. In discussion question No. 4, the agency asked NAA, [deleted] Finally, discussion question No. 10 stated that NAA's proposal [deleted] From these series of questions, it is evident that the evaluators wanted NAA to furnish additional information concerning the functions/duties to be performed [deleted] which was one of the deficiencies identified in the evaluation. On this record, we conclude that the discussion questions reasonably led NAA into the areas of FEMA's concerns and that the discussions conducted with NAA satisfied the requirements of FAR § 15.610.

Finally, the protesters complain that Omni proposed certain key individuals knowing that they would not be available to perform the contract. Offeror "bait-and-switch" practices, whereby an offeror's proposal is favorably evaluated on the basis of personnel that it does not expect to use during contract performance, have an adverse effect on the integrity of the competitive procurement system and generally provide a basis for rejection of that offeror's proposal. PRC, Inc., B-247036, Apr. 27, 1992, 92-1 CPD ¶ 396. This does not mean that substitution of employees after award is prohibited; such substitution is unobjectionable where the offeror acted reasonably and in good faith. Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577. Here, there is no evidence that Omni engaged in bait and switch practices. Rather, the record shows that with regard to Omni's proposed project manager, the firm had included a signed statement of intent from that individual

with its proposal; nonetheless, after contract award, the individual proposed as project manager decided not to accept employment with Omni for reasons unrelated to these protests. The mere fact that substitution of this individual and other incumbent employees occurred after contract award does not establish that the award to Omni was improper.

The protests are denied.

Robert R. Murphy
Acting General Counsel