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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Schleicher Community Corrections Center, Inc.

**File:** B-270499.3; B-270499.4; B-270499.5

**Date:** April 18, 1996

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Kent C. Dugmore, Esq., Parsons, Behle & Latimer, for the protester.  
Granette Trent, Esq., Federal Bureau of Prisons, for the agency.  
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## DIGEST

1. Contention that protester's proposal for residential community corrections services should have been rated higher in the evaluation than other proposals because protester offered the only operational, accredited facility, is without merit, where solicitation required only that proposed facility be "fully operational and ready for performance to begin within 60 days" after award, and the evaluation scheme announced in the solicitation did not contemplate rewarding proposals which offered an existing, operational facility.
2. Agency conducted meaningful discussions where the record shows that the agency's detailed written discussion items corresponded to the deficiencies the evaluators identified in the protester's proposal; specifically referenced the applicable sections of the solicitation's requirements where the protester's proposal was found deficient; and sufficiently alerted the protester to the specific areas of its proposal requiring further explanation.
3. Even if contracting agency should have held discussions with protester regarding weaknesses in one area of its proposal, there is no basis to object to the award decision where the record shows that even if discussions had been held and protester's proposal had been awarded the maximum number of points available in that area, the protester's proposal would not have displaced the awardee's or another offeror's higher rated proposals, both of which were lower priced.

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## DECISION

Schleicher Community Corrections Center, Inc. (SCCC), the incumbent, protests the award of a contract to Cornell Corrections of California, Inc. under request for proposals (RFP) No. 200-256-W, issued by the Federal Bureau of Prisons for residential community corrections services. The protester argues that the agency

improperly evaluated its proposal with respect to the facilities offered, and that the agency failed to conduct meaningful discussions with SCCC. The protester also requests that we reconsider our dismissal as untimely of certain issues it raised in its first supplemental protest.

We deny the protests and the request for reconsideration.

The RFP contemplated the award of a requirements-type, indefinite-delivery contract, for a 12-month base period, with up to three 1-year option periods. Section M of the RFP listed the following evaluation factors in descending order of relative importance (subfactors within each factor are shown in parenthesis): technical (reports/policy/procedure; facility; overall programs approach); cost; and management (personnel and staffing; experience and structure). Offerors were instructed to submit proposals in two separate volumes--volume I, the technical proposal and volume II, the business proposal. Section L of the RFP provided specific, detailed instructions on the contents of each volume.

In addition to evaluating written proposals, the RFP explained, the agency would also conduct a site visit of the offeror's facility to determine whether the proposed facility was in compliance, or capable of becoming compliant, with the RFP requirements. The RFP instructed offerors to respond by addressing each chapter of the statement of work (SOW) "section-by-section." Offerors were warned not to merely repeat or paraphrase the SOW, or to simply agree to comply with the SOW. Rather, they were to provide direct, concise descriptions of their capabilities and proposed approaches to meeting the objectives of the SOW. Award was to be made to the offeror whose proposal was determined to be "in the best interest" of the government.

A technical evaluation panel (TEP) rated proposals by assigning numerical ratings to the technical and management factors (for a maximum of 700 points). Cost was numerically scored by assigning the maximum number of points available (300) to the proposal offering the lowest price, with higher priced proposals earning proportionately lower scores. The following is the result of the final evaluation for the four offerors whose proposals were retained within the competitive range.

Offeror	Tech. Scores	Cost Scores	Total Proposed Cost
Cornell	674	300	\$3,237,002
B	665	279	\$3,476,625
C	620	264	\$3,671,097
SCCC	588	258	\$3,781,925

Based on these results, the source selection authority concluded that Cornell's and offeror B's proposals were technically equal. Thus, Cornell's lower price became the determining factor for award to that firm. The agency informed the protester of the award on October 30, 1995. This protest followed.

Although SCCC takes issue with virtually every aspect of the evaluation of its proposal, the protester's central contention is that the evaluation of SCCC's proposal under the "facility" subfactor was unreasonable. In this connection, the protester asserts that it offered the only operational facility accredited by the American Correctional Association, and thus its proposal should have been rated higher under that subfactor. SCCC also maintains that the agency failed to conduct meaningful discussions with the firm.

## ANALYSIS

### Technical Evaluation

In reviewing a protest challenging an agency's technical evaluation, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. See *Abt Assocs. Inc.*, B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Based on our review of the record, we find no basis to question the TEP's evaluation of SCCC's proposal.

Under the "facility" subfactor, out of a maximum possible score of 150 points, SCCC's proposal earned a total of 143 points—nearly a perfect score.<sup>1</sup> SCCC contends that its proposal should have received a higher rating under this subfactor because it proposed an existing facility. The RFP did not require offerors to include in their proposals an existing operational or accredited facility; in this regard, section F.3 of the RFP required only that the contractor's facility be "fully operational and ready for performance to begin within 60 days after the date of contract award." Further, there is nothing in the evaluation scheme announced in the RFP to suggest that the agency would reward offerors who proposed an existing facility. Accordingly, we see no basis to question the evaluation of SCCC's proposal under this subfactor.

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<sup>1</sup>The record shows that during the site visit to SCCC's facility, the evaluators identified numerous items of concern under the facilities subfactor, for example, noncompliance with safety codes, including fire safety standards (fire extinguishers, gas heaters); the lack of laundry facilities or garbage disposal; and the adequacy of the telephones. The record shows that the evaluators nevertheless concluded that SCCC had provided an adequate facility, and in fact rated the firm's proposal within the "excellent" range of possible point scores (125-150).

The protester's proposal lost the most number of points under the "overall approach" subfactor, which was worth a maximum of 120 points; SCCC's proposal earned a total of 75 points under this subfactor, the lowest score earned by any proposal. The evaluators concluded that, for the most part, SCCC's proposal was poorly written and disorganized, and contained excessive and irrelevant information. One evaluator noted that it appeared as if SCCC had simply copied sections of the SOW. Primarily as a result of the lack of explanation and detail, the evaluators downgraded SCCC's proposal under the "overall approach" subfactor.

Our review of the record confirms the agency's conclusion that in responding to the RFP's "overall approach" requirement, the protester's proposal essentially parrots the SOW, does not explain how SCCC proposed to accomplish the RFP's requirements, and lacks sufficient detail to allow the agency to determine SCCC's understanding of the requirements. This was not an acceptable approach, especially in light of the RFP's specific warning that offerors must not merely repeat or paraphrase the SOW, but must respond in a direct, concise manner to the RFP's requirements. See Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. As a result, we have no reason to question the TEP's rating of SCCC's proposal under the "overall approach" subfactor.<sup>2</sup>

SCCC maintains that to the extent its proposal was disorganized and poorly written, this resulted from ambiguities in the SOW, the RFP's instructions, and the evaluation scheme. According to the protester, it was simply following the RFP's unclear instructions in preparing its proposal. Our review of the RFP reveals no such ambiguities. In any case, if SCCC objected to the RFP's instructions to offerors or to the evaluation scheme, it was required under our Bid Protest Regulations 21.2(a)(1) to raise its concerns prior to the time set for receipt of proposals. Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Since SCCC did not raise this issue until it filed its protest in our Office, well after the closing time, these allegations are untimely and will not be considered.

## Discussions

For each evaluation subfactor, the evaluators' individual worksheets listed several items which were categorized as either "major" or "minor" elements of the respective subfactor. For each item, evaluators were to indicate with a check mark whether that element had been satisfied, or enter some notation indicating a deficiency. SCCC contends that the agency failed to conduct meaningful

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<sup>2</sup>The protester also challenges various other aspects of the evaluation of SCCC's and Cornell's proposals. We have reviewed the record in light of SCCC's numerous allegations and find nothing unreasonable about the TEP's evaluation of proposals.

discussions with the firm because it failed to apprise the firm of several items identified on these worksheets as deficient in SCCC's proposal.

Contracting officials must balance a number of competing interests in selecting matters for discussion based on the facts of each acquisition. Federal Acquisition Regulation § 15.610; Matrix Int'l Logistics, Inc., B-249285.2, Dec. 30, 1992, 92-2 CPD ¶ 452. They must point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Department of the Navy-Recon., 72 Comp. Gen. 221 (1993), 93-1 CPD ¶ 422. We have reviewed the discussion items here in light of the protester's allegations, and, except as explained below, we conclude that the agency's approach to discussions was reasonable.

The record shows that by letter dated August 4, 1995, the agency informed SCCC that its proposal was acceptable, but that the TEP had identified deficiencies in SCCC's proposal that required discussion. The letter categorized the various deficiencies noted by the TEP according to the evaluation factor and subfactor(s) affected by the deficiency, and referenced the specific chapter and SOW section where the requirement was explained in detail. For instance, under factor I (technical), the agency's letter to SCCC delineated 12 separate deficiencies noted in SCCC's proposal under subfactor I (reports/policy/procedure). Similarly, under subfactor II (facility), the letter listed several deficiencies concerning compliance with mandatory safety codes and SCCC's proposed plan for handling handicapped referrals. The letter also specifically enumerated several deficiencies related to structural components of the building, including items directly related to the safety of the residents such as exposed beams, gas heaters, fire barriers, and emergency escapes. The letter further pointed out to SCCC several areas in its proposal requiring clarification or further explanation concerning personnel and staffing, and its cost proposal.

For each deficiency identified in the letter to SCCC, the evaluation documents contain notations from the evaluators identifying those areas of the protester's proposal requiring discussion. The record shows that the protester was able to improve some of its proposal's numerical ratings based on the written responses it submitted to the agency's discussion items. SCCC's answers did not overcome all the evaluators' concerns, however; in some cases SCCC's answers simply consisted of a promise to correct the noted deficiency in the future. With respect to these areas found deficient in SCCC's proposal, we conclude that the agency's discussion questions accurately reflected the TEP's concerns about SCCC's proposal, and adequately pointed out those areas of SCCC's proposal requiring further clarification or explanation. See ITT Fed. Servs. Corp., B-250096, Jan. 5, 1993, 93-1 CPD ¶ 6. The fact that SCCC's scores did not improve as significantly as SCCC would have liked following discussions does not mean that the agency's approach to discussions was flawed.

SCCC argues, however, that the agency improperly failed to raise during discussions deficiencies the TEP identified under the "overall approach" subfactor, where, as explained above, the protester's proposal was significantly downgraded. SCCC maintains that the agency's failure to point out these deficiencies prevented the firm from improving its proposal's rating under the "overall approach" subfactor.

The agency explains that the "overall approach" subfactor was actually a compilation of all SOW chapters and all evaluation factors. According to the agency, any deficiencies affecting this subfactor were also reflected in the deficiencies noted within each of the other evaluation subfactors. The agency thus maintains that it would have been "redundant" to raise during discussions deficiencies identified under the "overall approach" subfactor, since those deficiencies were identified and discussed under the other subfactors.

We need not decide whether the agency was required to raise these issues as separate discussion items since the record shows that SCCC was not prejudiced by the agency's failure to do so. Specifically, the record shows that even if SCCC had been able to correct the deficiencies the TEP identified under the "overall approach" subfactor concerning the organization and overall quality of its proposal, and earn the maximum number of points in this area, SCCC's proposal's overall technical rating (633 points) would not have displaced the awardee's or offeror B's higher-rated (674 and 665, respectively), lower price proposals. Thus, the fact that the agency did not raise as separate discussion items the TEP's concerns with SCCC's proposal under the "overall approach" subfactor was immaterial to the relative standing of SCCC's proposal with respect to the awardee's or offeror B's proposal, and to the selection decision. Accordingly, the lack of separate discussions under this subfactor provides no basis to object to the award decision. See Lithos Restoration Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379 (competitive prejudice is an essential element of a viable protest).

#### REQUEST FOR RECONSIDERATION

In a supplemental protest, SCCC alleged that on August 30, 1995, the landlord of the protester's current facility (which SCCC had offered under the RFP) conducted an unannounced inspection of the building. According to the protester, at that time, the landlord had in his possession what the protester believes was a copy of correspondence from the agency detailing deficiencies in the building noted by the agency's evaluators during an earlier site visit to the facility.<sup>3</sup> The protester alleged

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<sup>3</sup>It appears that in addition to SCCC, another offeror also offered to house its program in the landlord's building. Consequently, in June 1995, the agency conducted two site visits to that facility—one in connection with the evaluation of  
(continued...)

that the agency improperly disclosed to the landlord information concerning deficiencies in SCCC's proposed building.<sup>4</sup>

As explained in our earlier decision dismissing these allegations, under the Bid Protest Regulations SCCC was required to file its supplemental protest within 10 working days of August 30, or by September 14. Since SCCC did not file its supplemental protest in our Office until December 1, several months later, the issues raised in its supplemental protest were properly dismissed as untimely.<sup>5</sup>

In its request for reconsideration, SCCC argues that we should consider the issue raised in its supplemental protest under the "significant issue" exception to our timeliness requirements found in section 21.2(c) of our Bid Protest Regulations, 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(c)). In this connection, the protester argues that the SCCC's allegations regarding the improper disclosure of procurement-sensitive information concern violations of procurement regulations and of the procurement integrity provisions of the Office of Federal Procurement Policy Act, 41 U.S.C. § 423 (1994).

In order to prevent our timeliness rules from becoming meaningless, the significant issue exception is rarely used. Midwest Pipeliners, Inc., B-250795, Jan. 12, 1993, 93-1 CPD ¶ 40. The exception is limited to untimely protests that raise issues of widespread interest to the procurement community and that have not been considered on the merits in a prior decision. DynCorp, 70 Comp. Gen. 38 (1990), 90-2 CPD ¶ 310. The question of whether an improper disclosure of proprietary or procurement-sensitive information has occurred has been addressed in numerous decisions by our Office. See, e.g., CBIS Federal Inc., 71 Comp. Gen. 319 (1992), 92-1 CPD ¶ 308, recon. denied, Telesec Library Servs.; Department of Agriculture--Recon. B-245844.3; B-245844.4, Aug. 13, 1992, 92-2 CPD ¶ 103; Science Pump Corp., B-255737, Mar. 25, 1994, 94-1 CPD ¶ 246; Meridian Mgmt Corp., Inc.; NAA Servs.

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<sup>3</sup>(...continued)

SCCC's offer and one in connection with the evaluation of the other offeror's proposal.

<sup>4</sup>The protester also argued that the landlord maintained an allegedly improper business relationship with one of SCCC's competitors under the RFP. SCCC further argued that the landlord's unannounced inspection of the facility violated the terms of SCCC's current lease. These allegations involve disputes between private parties which are for resolution by the parties involved through the courts, if necessary, not our Office. See, e.g., Sublette Elec., Inc., B-232586, Nov. 30, 1988, 88-2 CPD ¶ 540.

<sup>5</sup>We also dismissed as untimely several allegations challenging the terms of the RFP. SCCC does not take issue with this aspect of our decision.

Corp., B-254797; B-254797.2, Jan. 21, 1994, 94-1 CPD ¶ 167; KPMG Peat Marwick, B-251902.3, Nov. 8, 1993, 93-2 CPD ¶ 272, aff'd, Agency for Int'l Dev.; Development Alternatives, Inc.--Recon., B-251902.4; B-251902.5, Mar. 17, 1994, 94-1 CPD ¶ 201. Accordingly, there is no basis to invoke the exception here.

The protests and the request for reconsideration are denied.

Comptroller General  
of the United States



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