



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Cobra Technologies, Inc.

File: B-280475; B-280475.2; B-280475.3

Date: October 6, 1998

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Robert J. McCall, Esq., General Services Administration, for the agency.

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

DIGEST

1. Contracting agency reasonably rated awardee--a new joint venture--very high on corporate experience where: (1) request for proposals stated that corporate experience would measure the collective experience of an offeror's proposed project team and that prior performance by company officers and predecessor companies would be considered; (2) the two companies that formed the joint venture had previously successfully performed together the same type of work under separate contracts for the contracting agency at one of the four government buildings that is the subject of the present contract; and (3) all of the awardee's proposed employees have had significant relevant experience.

2. Protest challenging agency's evaluation of proposals and alleging that agency failed to consider revisions contained in protester's best and final offer and to upgrade protester's score based upon revisions is denied, where the record shows that evaluation was reasonable and that evaluators were aware of protester's revisions and, as a result, upgraded protester's score based upon some revisions but not for others; protester's disagreement with agency's evaluation provides no basis to find the evaluation unreasonable.

3. Agency properly awarded contract to the offeror of the higher technically rated, higher-priced proposal where the request for proposals stated that technical merit and price would be given equal weight and the agency reasonably determined that the extra technical merit of the awardee's proposal justified its higher price. (Awardee's proposal was rated [deleted] percent higher than protester's on

technical merit, and awardee's proposed price was only [deleted] percent higher than protester's.)

DECISION

Cobra Technologies, Inc. (Cobra) protests the award of a contract to HAI-WW, LLC (HAI-WW) by the General Services Administration (GSA) pursuant to request for proposals (RFP) No. GS-03P-98-QAC-0003. Cobra contends that the evaluation of proposals was flawed and that the agency did not consider Cobra's lower proposed price in selecting HAI-WW's proposal for award. We deny the protest.

Issued on April 8, 1998, the RFP solicited offers for providing facilities engineering, repairs and building maintenance services at four buildings in Baltimore, Maryland. The contractor would provide all management, supervision, manpower, materials, supplies and equipment; the contractor would plan, schedule, coordinate and assure effective performance of all services. RFP § B.1. The RFP contemplated a fixed-price contract for a basic period of 1 year and included options for 4 additional multi-year periods.¹ RFP § B. The RFP stated that the contract would be awarded to the offeror whose proposal offered the greatest value to the government and that price and technical merit would be given approximately equal weight in determining greatest value. RFP § M.1. The RFP stated that technical merit would be measured in terms of a level of confidence (LOC) rating reflecting how confident the agency was that the offeror would be fully successful in furnishing the required services after evaluation of technical proposals on three criteria, listed in descending order of importance as: management plan, corporate experience, and qualifications of key personnel. RFP §§ M.1, M.3.

Six offerors submitted initial proposals. The source selection panel (SSP) members individually evaluated each technical proposal; then, the SSP met as a group and gave each technical proposal a consensus LOC (*i.e.*, technical) rating. HAI-WW's initial proposal was rated the highest on technical merit, with a score of [deleted] out of a possible [deleted] points for a "very high" rating, while Cobra's initial technical proposal was rated second-highest, with a score of [deleted] points for a "low" rating. SSP Initial Report at 2-3; Determination of Competitive Range at 1. HAI-WW's initial proposed price was \$[deleted] and Cobra's initial proposed price was \$[deleted]. Determination of Competitive Range at 1.

The contracting officer determined that only Cobra's and HAI-WW's proposals would be kept in the competitive range. *Id.* at 2. Discussions were held with both firms, and best and final offers (BAFO) were accepted and evaluated by the SSP. The following table (taken from the SSP Final Report at 4) sets forth the consensus technical scores and proposed total prices, as well as the independent government price estimate.

¹The basic contract plus all four option periods totals 12 years.

Offeror	Technical Score	Total Price
HAI-WW	[deleted]	\$22,381,800
Cobra	[deleted]	\$(deleted)
Government Estimate	- - -	\$(deleted)

The SSP recommended that the contract be awarded to HAI-WW on the basis that HAI-WW's BAFO represented the greatest value to the government. SSP Final Report at 4. The contracting officer and the source selection authority (SSA) concurred and, on June 16, 1998, the contract was awarded to HAI-WW. *Id.* at 5; Contracting Officer Statement, July 30, 1998, at 3. After a debriefing, Cobra filed its initial protest in our Office.²

Cobra contends that the agency's evaluation of proposals and selection of HAI-WW were unreasonable and unsupported by the record and, therefore, the award decision should be overturned.

Our Office will only question an agency's evaluation of proposals if it lacks a reasonable basis or is inconsistent with the stated evaluation criteria for award. *DAE Corp., Ltd.*, B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95 at 4. A protester's mere disagreement with the agency over its technical evaluation does not establish that the evaluation was unreasonable. *Id.*; *Cubic Applications, Inc.*, B-274768 *et al.*, Jan. 2, 1997, 97-1 CPD ¶ 98 at 3. Here, after reviewing the record in light of the protester's arguments, we have no basis to question the agency's evaluation.

Cobra contends that GSA's evaluation of HAI-WW's corporate experience was fatally flawed. Cobra asserts that since HAI-WW is a newly created concern, HAI-WW did not have any relevant experience. Initial Protest at 4. Cobra argues that GSA overlooked HAI-WW's lack of experience and unreasonably gave HAI-WW a nearly perfect score for corporate experience. Supplemental Protest at 2.

²Cobra's initial protest, filed on June 29, alleged that GSA rated HAI-WW's proposal too high on corporate experience and did not consider Cobra's lower proposed price in selecting HAI-WW's proposal for award. Initial Protest at 4-5. Cobra's first supplemental protest, filed on July 2, alleged that GSA rated Cobra's proposal too low in a number of areas. First Supplemental Protest at 2-7. Cobra's second supplemental protest, filed on August 10, asserted that GSA rated HAI-WW's proposal too high and Cobra's proposal too low on the qualifications of proposed key personnel. Second Supplemental Protest at 2-4.

The RFP stated that corporate experience was a measure of "the collective experience of the offeror's proposed project team." RFP § L.3.B. The RFP also stated that prior performance by company officers and predecessor companies would be considered and that evidence of past successful performance as a team was desired for joint ventures. Id. The evaluation of HAI-WW's corporate experience was both reasonable and consistent with the RFP's standards.

HAI-WW is a joint venture of two companies--HAI Integrated Building Services, Inc. and WW Contractors, Inc.--that was formed in 1998. HAI-WW Proposal, § 6, Corporate Information. The record shows that the SSP discussed one evaluator's concern that the HAI-WW teaming partners had only 1 year of experience working together, but resolved that this was not a deficiency because the RFP did not contain any minimum level of experience an offeror's project team should have. The SSP further noted that two different government employees had provided references indicating that the HAI-WW joint venture partners had performed successfully when working together over the past year at the Fallon Federal Building, one of the four buildings that are the subject of the present contract; the contracting officer explains that the two companies had worked as a team under separate contracts to address operational problems with the building's systems. SSP Initial Report, Consensus Scoresheet (HAI-WW), at Corporate Experience; Contracting Officer Statement, July 30, 1998, at 3. In this connection, the two government references cited by the SSP provided glowing appraisals of the outstanding work done by both companies at the Fallon Federal Building. Reference Check Sheets [deleted].

The contracting officer also states that HAI-WW's very high rating on corporate experience was justified because both teaming partners had successfully performed building engineering and maintenance services for many years and HAI-WW's proposal included examples of the companies' relevant past performance on several different projects. Contracting Officer Statement, July 30, 1998, at 3. In addition, the agency points out that the resumes of company officers reflect significant relevant experience. Agency Report, July 30, 1998, at 4. In this connection, we note that resumes included in HAI-WW's proposal show that all of the joint venture's named proposed employees had previously worked on the Fallon Federal Building project.

Since the RFP stated that corporate experience is a measure of the collective experience of the offeror's team and that prior performance by company officers and predecessor companies would be considered, the agency's consideration of the teaming partners' past performance and excellent references for work done for GSA at the Fallon Federal Building, as well as its consideration of HAI-WW's proposed employees' performance on the Fallon Federal Building project, was completely consistent with the RFP. Moreover, as the Fallon Federal Building is one of the four buildings for which services will be provided under the contract, the past performance of teaming partners and proposed employees at that building clearly

was relevant in evaluating HAI-WW's project team's past performance on similar work. TEAM Support Servs., Inc., B-279379.2, June 22, 1998, 98-1 CPD ¶ 167 at 4-5; see Young Enters., Inc., B-256851.2, Aug. 11, 1994, 94-2 CPD ¶ 159 at 6 (agency properly evaluated protester's prior performance on allegedly dissimilar projects with procuring agency where prior performance was relevant to protester's working relationship with agency contracting officials); see also LD Research Corp., B-230912.3, Sept. 9, 1988, 88-2 CPD ¶ 223 at 6 (in evaluating the experience of a new business, agency properly considered experience of supervisory personnel, as well as the firm's experience prior to its incorporation). Thus, there is no basis to conclude that the agency's high rating of HAI-WW's corporate experience was unsupported, inconsistent with the RFP, or otherwise unreasonable.

The protester alleges that GSA unfairly downgraded its initial proposal for weaknesses that did not really exist and that, when Cobra addressed the alleged weaknesses in its BAFO, GSA did not consider the new information or upgrade its rating of Cobra's BAFO. Cobra cited a number of examples to support this allegation, and GSA responded to each. We have considered each of the examples, as well as the pertinent arguments. We have also reviewed the entire evaluation record (including evaluators' handwritten notes, consensus scoresheets, and SSP reports) in light of the protester's examples and arguments. Based upon our review of these materials, we have no basis to conclude that the evaluation of Cobra's proposal was unreasonable or that the SSP did not consider the revisions Cobra incorporated into its BAFO. Basically, Cobra disagrees with the agency's evaluators and the contracting officer over the technical merit of its proposal; such disagreement does not establish that the evaluation was unreasonable and provides no basis for overturning the award. Cubic Applications, Inc., *supra*, at 3. We will discuss only two of the more significant examples raised by Cobra.

The first example concerns the agency's downgrading of Cobra's proposal under the management plan criterion because the proposal gave little indication that Cobra's management would be proactive. GSA Debriefing Memorandum at 1. Cobra asserts that its proposal set forth Cobra's proactive philosophy and the steps Cobra would take to implement that philosophy. First Supplemental Protest at 3-4. Cobra asserts that, after GSA informed it of this perceived weakness during negotiations, Cobra supplemented its proposal with additional proactive measures, but GSA did not consider the revisions or increase its rating of Cobra's BAFO. *Id.* The record shows that Cobra's initial proposal received just [deleted] out of a possible [deleted] points in the management plan evaluation. SSP Initial Report, Consensus Scoresheet (Cobra), at Management Plan. The proposal was downgraded, only in part, because the SSP believed that the proposal did not demonstrate that Cobra would manage proactively. *Id.* The SSP criticized the proposal because it "[deleted] [contracting officer's representative]." SSP Initial Report at 2-3. Cobra's initial proposal was also downgraded in the management plan evaluation because the evaluators believed that the [deleted], and for other perceived weaknesses. SSP Initial Report, Consensus Scoresheet (Cobra), at Management Plan. Cobra was

informed of the deficiencies in its management plan during negotiations. Letter from the Contracting Officer to the President of Cobra Attachment, at 1 (May 22, 1998).

Contrary to Cobra's assertion, the record shows that the evaluators did consider the revisions Cobra incorporated into its BAFO. Specifically, the SSP noted that Cobra had [deleted] and that Cobra had included [deleted]; the SSP awarded Cobra's BAFO an additional point because of these improvements. SSP Final Report at 3. However, the SSP did not award Cobra's BAFO any additional points for its revisions concerning the proactive issue because the SSP believed that the BAFO still gave little indication that Cobra's management would be proactive. *Id.* In this regard, the evaluators noted that Cobra's BAFO still included statements to the effect that Cobra would [deleted]. *Id.* The evaluators also noted that Cobra had addressed the proactive issue by including a guide from a previous National Aeronautics and Space Administration contract, but provided [deleted]. *Id.*; SSP Final Report, Consensus Scoresheet (Cobra), at Management Plan. While Cobra disagrees with the evaluators' opinion as to whether its management would be sufficiently proactive and about the overall technical quality of its management proposal, it is clear that the SSP did consider Cobra's BAFO revisions before determining that the proposal had only improved slightly and awarding Cobra's BAFO one additional evaluation point. Cobra's mere disagreement with the evaluators' opinion and scoring provides no basis for us to find the evaluation unreasonable. Cubic Applications, Inc., *supra*, at 3.

The second example concerns the agency's awarding HAI-WW's BAFO a higher score on the qualifications of key personnel criterion. Cobra states that HAI-WW's proposal listed seven candidates for seven different positions and included resumes for all of them. Cobra alleges that the SSP improperly considered the qualifications of HAI-WW's entire seven-person staff even though the RFP identified only two positions--project manager and lead supervisor--as key personnel. Second Supplemental Protest at 2-3. Cobra also alleges that its proposal was penalized in the evaluation and received a lower score on this criterion because Cobra followed the RFP rules and included candidates for just the two specified positions as key personnel. RFP § L.3.C.

HAI-WW's initial proposal received [deleted] out of a possible [deleted] evaluation points, while Cobra's initial proposal received just [deleted] points, on the qualifications of key personnel. SSP Initial Report, Consensus Scoresheets (HAI-WW and Cobra, respectively), at Qualifications of Key Personnel. Cobra's proposal was downgraded on this criterion, in part, because GSA's [deleted] provided a [deleted] reference for its proposed [deleted] and, in part, because it was unclear whether the proposed project manager would be on site. SSP Initial Report at 3. After negotiations, Cobra clarified that the project manager would be on site and the SSP upgraded Cobra's BAFO score on this criterion to [deleted] points. SSP

Final Report at 3. HAI-WW's score remained at [deleted] points after BAFO evaluation.

The record shows that some of the individual evaluators' scoresheets do, in fact, make reference to HAI-WW's entire management team. However, in response to the protest, the chairman of the SSP provided a declaration in which he stated that he reminded the evaluators when they met as a panel that the RFP required them to base their evaluation of key personnel solely on the positions of project manager and lead supervisor and that the consensus evaluations of both HAI-WW and Cobra were based solely on the qualifications of the people proposed for those two key positions. Declaration of [deleted] at 1. The agency provided our Office with all of the reference check sheets that were completed by agency personnel when they contacted references for HAI-WW and Cobra and for their proposed key personnel; the check sheets show that references were contacted only for HAI-WW's and Cobra's proposed project managers and lead supervisors, but not for the other staff positions set forth in HAI-WW's proposal. The reference check sheets for HAI-WW's proposed project manager and lead supervisor show ratings across the board of excellent and outstanding. Reference Check Sheets (HAI-WW), Lead Supervisor and Project Manager. On the other hand, while some of the reference check sheets for Cobra's key persons contained good ratings, one of the references for Cobra's proposed [deleted] was generally very negative.

Based upon the above record, we have no basis to conclude that the SSP upgraded HAI-WW's rating by giving it extra credit for including several additional staff positions/resumes or downgraded Cobra's rating because it included resumes/candidates only for the two key positions specified in the RFP. Furthermore, in view of the uniformly excellent references received for HAI-WW's key position candidates and the mixed references received by Cobra's key position candidates (especially, the negative response received regarding Cobra's proposed [deleted]), we cannot find unreasonable the SSP's giving HAI-WW's BAFO a near perfect score of [deleted] points while Cobra's received just [deleted] points in the evaluation of the qualifications of key personnel. Again, Cobra's mere disagreement with the evaluators' consensus does not provide any basis for finding the evaluation unreasonable. Cubic Applications, Inc., supra, at 3.

The protester also contends that GSA awarded the contract to HAI-WW based solely upon HAI-WW's proposal's technical superiority, without considering Cobra's lower proposed price. Cobra argues that, since the RFP stated that price and technical merit would be given equal weight, GSA's selection based solely upon technical merit was not in accord with the RFP's stated scheme. Initial Protest at 4-5.

In a negotiated procurement, a procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and is consistent with the

RFP's evaluation scheme. PW Constr., Inc., B-272248, B-272248.2, Sept. 13, 1996, 96-2 CPD ¶ 130 at 6-7. An agency may properly award a contract to the offeror of a higher-rated technical proposal with a higher proposed cost, where the agency determines that the cost premium is justified considering the significant technical superiority of the selected offeror's proposal. Id. Here, the agency conducted a price/technical tradeoff analysis and reasonably concluded that the premium the agency would have to pay was justified in view of the technical superiority of HAI-WW's proposal.

The SSP's Final Report (with which the contracting officer and SSA concurred) noted the large spread between the technical ratings of HAI-WW's and Cobra's BAFOs ([deleted] and [deleted] points, respectively) and stated that the disparity was the result of HAI-WW's BAFO's technical superiority over Cobra's BAFO in every area of the technical evaluation--management plan, corporate experience, and key personnel.³ SSP Final Report at 4. The SSP Final Report noted the strengths of HAI-WW's BAFO, particularly in its management plan and the superiority of its proposed key personnel. Id. at 4-5. On the other hand, the SSP Final Report noted several weaknesses in Cobra's BAFO, including evidence of Cobra's [deleted] of the BAFO. Id. at 3-5. Accordingly, the SSP specifically determined that HAI-WW's BAFO's technical superiority justified the expenditure of an additional \$[deleted] over the 12-year life of the contract; the contracting officer and SSA concurred. Id. at 5. Moreover, while not specifically cited as a justification for selecting HAI-WW's BAFO, HAI-WW's technical rating was approximately [deleted] percent higher than Cobra's, while HAI-WW's proposed price was only approximately [deleted] percent higher than Cobra's. In view of the fact that technical considerations and price were to be given equal weight in the selection decision, we believe that the SSA reasonably selected HAI-WW's technically superior proposal for award. PW Constr., Inc., supra, at 6-7.

The protest is denied.

Comptroller General
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³As pointed out by the SSP, HAI-WW's technical rating of [deleted] points was a "near perfect score." SSP Final Report at 4. According to the agency's Source Selection Panel Guide, HAI-WW's [deleted]-point rating equated to a very high level of confidence, while Cobra's [deleted]-point rating equated to a moderate level of confidence.