



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Naho Construction, Inc.

**File:** B-244226

**Date:** September 12, 1991

Edwin P. Carpenter, Esq., Carpenter, Weir & Myers, for the protester.  
Herbert Kelly, Jr., Esq., and Captain Peter F. Gedraitis, Department of the Army, for the agency.  
Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Agency is generally not required to consult protester's references listed in its technical proposal in order to obtain for evaluation purposes additional information not provided by protester in its technical proposal. Further, even if agency had consulted protester's references and given protester perfect scores for specifically challenged technical areas, protester would not be entitled to award since awardee still would be the highest technically rated offeror with the lowest price.

2. Where solicitation advises offerors of the possibility that award may be made without discussions, agency does not conduct discussions with any offeror, and acceptance of the most favorable initial proposal without discussions will result in the lowest overall cost to the government at a fair and reasonable price, there is no legal requirement that agency conduct discussions with any offeror.

### DECISION

Naho Construction, Inc. protests the award of a contract to Kansas Building Systems, Inc. (KBS) under request for proposals (RFP) No. DAHA14-91-R-4001, issued by the National Guard, Departments of the Army and the Air Force, for maintenance, repair, and minor construction services at Forbes Field, Topeka, Kansas. Naho essentially alleges that the agency's evaluation of its proposal was flawed because the agency did not consult the references it listed in its technical proposal.

We deny the protest.

The RFP, issued on an unrestricted basis on February 20, 1991, contemplated the award of an indefinite delivery/indefinite quantity, fixed-price job order contract for the base period and four option periods. The RFP stated that the award would be made to the responsible offeror whose proposal conformed to the requirements of the solicitation and was most advantageous to the government. The RFP advised that the government could award a contract on the basis of initial proposals without discussions of such proposals. For this reason, the RFP warned all offerors that initial proposals should be submitted on the most favorable terms from a technical and price standpoint and that an offeror's initial proposal would be presumed to represent its best and final offer (BAFO) in response to the solicitation.

The RFP stated that proposals would be evaluated on the basis of the following technical factors listed in descending order of importance: project management ability, subcontracting support capability, and company experience. The project management ability factor, worth a maximum of 36 points, included the following four subfactors, each of equal value: key project management staff, quality control plan, financial capability, and technical support staff. The subcontracting support capability factor, worth a maximum of 27 points, included the following three subfactors, each of equal value: subcontract management, identification of key subcontractors, and purchasing system. The company experience factor, worth a maximum of nine points, included no subfactors.

The RFP further stated that in evaluating an offeror's price, which was secondary to an offeror's technical merit, the agency generally would assume that 98 percent of the work would be performed during standard work hours and the remaining 2 percent would be performed during nonstandard work hours. The RFP required offerors to propose a price percentage coefficient for standard and nonstandard work hours. (The price percentage coefficient could be "net," "decrease from," or "increase to" the unit prices listed in a unit pricing guide.) The price percentage coefficient was worth 28 points for evaluation purposes. The agency determined an offeror's combined technical/price score out of a possible 100 points by adding together an offeror's respective points for technical merit and price.

Seven firms, including Naho and KBS, timely submitted initial technical and price proposals by the closing date of April 4. The agency's three-member technical evaluation board evaluated initial technical proposals, while other contracting officials independently evaluated price proposals. Of the seven initial technical proposals received, KBS received the highest technical score of 62.5 out of 72 points, while Naho received the fifth highest technical score of 46.5 out of 72 points. KBS's price percentage coefficient of 1.122 received a score of 22 out of 28 points, while Naho's price percentage coefficient of 1.1924 received a score of 18 out of 28 points. Thus, KBS' combined technical/price score was 84.5 out of 100 points, while Naho's combined technical/price score was 64.5 out of 100 points.

On May 15, on the basis of initial proposals without conducting discussions with any offeror, the agency awarded a contract to KBS, the firm which offered the lowest price (the lowest price percentage coefficient) and received the highest technical score. On May 28, Naho filed this protest.

Naho contends that the evaluation of its technical proposal was flawed because the agency did not consult the references it listed in its technical proposal for additional information to be used by the agency in evaluating its bonding capacity, experience with subcontractors, and previously completed projects. Naho believes that if the agency had consulted these references, it would have received a higher technical score.

We will examine an agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. Research Analysis and Maintenance, Inc., B-239223, Aug. 10, 1990, 90-2 CPD ¶ 129. Here, after reviewing the record, we conclude that the agency's evaluation of Naho's proposal was fair and reasonable and in accordance with the RFP's stated evaluation criteria.

The record shows that the RFP did not require the agency to consult an offeror's references in order to obtain for evaluation purposes additional information not explicitly provided by the offeror in its technical proposal. Rather, the RFP specifically required an offeror to include in its technical proposal the information necessary for the agency to determine its performance capability. Thus, it was incumbent upon Naho to include in its technical proposal all information which it wanted the agency to consider in evaluating its

bonding capacity, experience with subcontractors, and previously completed projects. There was no duty on the agency to consult Naho's listed references for such information. See, e.g., Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715.


The record also shows that even if the agency had consulted Naho's references and given Naho perfect scores for the respective evaluation factors and/or subfactors related to its bonding capacity, experience with subcontractors, and previously completed projects, Naho's technical score would have increased by only 11.5 points, for a technical score of 58 out of 72 points and a combined technical/price score of 76 out of 100 points. Even with these scores, Naho would not have displaced KBS. Since KBS still would be the highest technically rated offeror and it submitted the lowest price, we find the agency properly awarded the contract to KBS. See Visucom Prod., Inc., B-240847, Dec. 17, 1990, 90-2 CPD ¶ 494; Sunstrand Data Control, Inc., B-237020.2, Jan. 23, 1990, 90-1 CPD ¶ 95.

Next, Naho challenges the agency's decision to make the award to KBS on the basis of initial proposals without conducting discussions, particularly with respect to price, and requesting BAFOs.

A contracting agency may make an award on the basis of initial proposals and not conduct discussions or allow offerors to revise their proposals where the solicitation advises offerors of that possibility and the competition or prior cost experience clearly demonstrates that acceptance of the initial proposal will result in the lowest overall cost to the government at a fair and reasonable price. Federal Acquisition Regulation (FAR) § 15.610(a)(3); Rentfrow, Inc., B-243215, July 5, 1991, 91-2 CPD ¶ \_\_\_\_; American President Lines, Ltd., B-236834.8; B-236834.9, May 15, 1991, 91-1 CPD ¶ 470. Here, the RFP specifically advised offerors to submit in their initial proposals the most favorable technical and price terms since award could be made on the basis of initial proposals without conducting discussions. The RFP also advised that an offeror's initial proposal would be presumed to represent its BAFO in response to the solicitation. The record shows that after evaluating initial proposals, the agency did not conduct discussions with any offeror. The record also shows that adequate competition existed and that the award to KBS resulted in the lowest overall cost to the

government. Thus, we have no reason to question the agency's award to KBS on the basis of initial proposals without conducting discussions.1/

Accordingly, the protest is denied.

  
for James F. Hinchman  
General Counsel

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1/ Naho, a Native-American small business concern, also argues that the agency's decision to make an award to KBS, a non Native-American small business concern, was improper. However, this solicitation was issued on an unrestricted basis. Also, Naho's allegation that KBS improperly failed to submit a subcontracting plan for the use of minority and Native-American small business concerns is misplaced because KBS, a small business concern, is exempt from submitting such a plan. See FAR § 52.219-9(a).