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Comptroller General  
of the United States  
Washington, D.C. 20542

## Decision

**Matter of:** Bannum, Inc.  
**File:** B-248169.2  
**Date:** September 29, 1992

James G. Campbell, Esq., Ogden, Newell & Welch, for the protester.  
Mina Mazaheri Raskin, Esq., Federal Bureau of Prisons, Department of Justice, for the agency.  
M. Penny Ahearn, Esq. and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency properly awarded contract to lower priced offeror where record supports evaluation of proposals as essentially technically equal and, as a result, selection decision was reasonably based and consistent with solicitation's evaluation scheme.

### DECISION

Bannum, Inc. protests the award of a contract to Keeton Corrections, Inc. by the Federal Bureau of Prisons (BOP), Department of Justice (DOJ), under request for proposals (RFP) No. 200-040-SE for residential community correction services. Bannum primarily challenges the contracting agency's evaluation of proposals.

We deny the protest.

The RFP requested offers on a firm, fixed unit price basis for estimated manday requirements, for a 1-year base period and three 1-year options. The statement of work (SOW) required offerors to furnish the necessary facilities, equipment and personnel to provide for the safekeeping and program needs of federal offenders residing at a Jacksonville, Florida facility to be furnished by the contractor, known as a halfway house.

The solicitation advised offerors that award would be made to the offeror whose proposal, conforming to the solicitation, was determined to be in the best interest of the government, price and other factors considered. Technical factors comprised 85 percent of the evaluation

weight and price 15 percent. The technical evaluation was based on the following criteria, listed in descending order of importance: technical excellence, qualifications and experience, past performance, and accreditation. As for the price evaluation, the RFP provided that the lowest price offered would receive the highest point score and that each higher price then would be given a decreasing percentage of the total possible points.

The agency received five initial proposals, including Bannum's and Keeton's. After initial evaluation, discussions, and evaluation of responses, Bannum, Keeton, and a third offeror remained in the competitive range. Best and final offers (BAFO) were received from these three offerors. The BAFOs were evaluated and then ranked for each evaluation criterion; the highest rank of three (since there were three BAFOs) was assigned to the best proposal for each criterion. The rank was then multiplied by the predetermined weight for each element to arrive at a final score. The resulting ranking and scoring of Keeton's and Bannum's BAFOs was as follows:

	Percent Weight/ Available Points	Keeton Rank/score	Bannum Rank/score
<u>Technical</u>			
Technical Excellence	30/90	2/60	3/90
Qualifications and Experience	20/60	2/40	1/20
Facility and Location	15/45	3/45	3/45
Past Performance	15/45	2/30	1/15
Accreditation	5/15	1/5	3/15
Subtotal Technical	255	180	185
<u>Price</u>	15/45	3/45	2/30
Total Score		225	215

Keeton offered the lowest unit price of \$35 per manday, and Bannum offered the next low price of \$39.

In making the award determination, the source selection official (SSO) considered that while Keeton received the highest overall score and offered the lowest price, Bannum had a slightly higher technical score. In light of Bannum's price premium, the SSO examined the basis for the five technical point scoring difference between the proposals.

The SSO considered that the offerors were equal in the area of facility and location; that Keeton exceeded Bannum in the areas of past performance and qualifications/experience (105 available points); and that Bannum exceeded Keeton in the areas of technical excellence and accreditation (105 available points). Although Bannum had American Correctional Association (ACA) accreditation and Keeton did not, the SSO determined that this carried little weight since "despite [ACA] accreditation . . . Bannum [has] not performed within the requirements of the SOW [as the incumbent contractor]; they have received one cure notice and have had 3 integrity issues during FY 1991 at this facility." The SSO concluded that "it seems inconceivable that Bannum's poor performance history at this facility doesn't significantly outweigh the fact that Bannum is ACA accredited." In light of these considerations, the SSO determined Bannum's and Keeton's proposals to be "substantially technically equal" and that, further, Keeton "satisfied the government's requirement at a savings of \$4.[00] per [man]day." Therefore, the SSO selected Keeton for award.

Bannum principally challenges numerous aspects of the technical evaluation. The evaluation of technical proposals is the function of the contracting agency; our review of an allegedly improper evaluation is limited to determining whether the evaluation was reasonable and consistent with the stated criteria. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454; Donald D. Jackson, B-230194 et al., Apr. 29, 1988, 88-1 CPD ¶ 419. We find that the record supports the evaluation. Several of Bannum's arguments are discussed below.

#### PAST PERFORMANCE

Bannum argues that its proposal should have been ranked higher under the past performance criterion. However, there is ample evidence to support the BOF's conclusion that Bannum's past performance was poor. The record indicates a number of problems experienced by the government, including some that were not even mentioned in the evaluation and the SSO's award determination. For instance, at the Jacksonville facility Bannum operated, noncompliant lighting deficiencies were cited on six occasions; unsatisfactory sanitation was cited on seven occasions; and noncompliant safety deficiencies (including non-regulation bedding and fire and/or health hazards) were cited on five occasions. Additionally, the record shows a pattern of repeated noncompliance after assurances of correction. In contrast, the evaluation record indicates no problems discerned with Keeton's past performance; narrative comments describe Keeton's past performance as "highly satisfactory." It was this pattern of Bannum performance problems that led the

agency to conclude that Bannum's past performance had been poor such that it warranted the lowest BAFO ranking.<sup>1</sup>

Bannum argues that it had corrected or undertaken corrective action at the time of issuance of the cure notices. It does not deny, however, that the deficiencies existed at the time of the government inspections. Further, the record indicates that in at least one instance--the lighting deficiency cited in the Jacksonville cure notice--Bannum was still noncompliant at the time of the subsequent April 2-3 1990 government inspection, 2 months after the cure notice was issued. Although the protester complains that it had performed in the same manner for years with regard to lighting, it does not rebut the agency's assertion that the lighting requirements under these contracts changed in February 1989. Additionally, while Bannum attempts to explain why the deficiencies were not its fault, we see nothing unreasonable in the agency's considering the misreporting of contract compliance by Bannum staff as reflecting negatively on the firm's performance, since it was Bannum's obligation to provide competent staff and to oversee and manage them during performance. The evaluation under this criterion thus was reasonable.<sup>2</sup>

#### FACILITIES AND LOCATION

Bannum argues that Keeton's proposal should have been rated lower than (rather than equal to) its own proposal under the facilities and location criterion, since Keeton failed to

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<sup>1</sup>In addition to the performance problems discussed, as indicated above, the SSO also considered "integrity issues" in considering Bannum's past performance. These apparently consisted of such matters as reports of Bannum staff at another facility conducting prohibited personal transactions with inmate residents; prohibited drug use and sale by residents; prohibited consumption of alcohol by staff with residents; and non-resident females engaging in prohibited sexual activities with male residents.

<sup>2</sup>Bannum argues that the fact that it was accredited by the American Correctional Association (ACA) indicates that its past performance in fact must have been satisfactory and that the evaluation in this regard was flawed. However, ACA accreditation is based on national standards concerning basic programs and services required for good correctional practice. Accreditation apparently has nothing to do with deficient performance under specific contracts. In any case, the agency is entitled to evaluate past performance applying its own reasonable standards. We have found that the agency did so here, and that the results were reasonable.

provide evidence of facility ownership or access ("a lease, bill of sale, option to lease or buy, deed, etc.") as required under the RFP (and ultimately, Bannum alleges, did not provide the proposed facility on the contract start date). While we disagree with the agency's conclusion that both firms satisfied the requirement (leading to their both receiving the highest ranking of three), we find that both firms were evaluated fairly, since the record shows that neither satisfied the strict terms of the evidence requirement. Both firms offered the same facility, and included letters of intent from the owner of the facility to make available 19 rooms per day "per our agreement." Keeton's proposal included no agreement, however, and Bannum's proposal included an agreement that covered only the period April 1, 1988 through March 31, 1992, which was not the period of the contract here. There was no evidence in the agreement that Bannum had a binding option to continue leasing the facility, and neither offeror's letter of intent included material terms and conditions for a lease pertinent to the contract period. We conclude that because the offerors were treated equally, i.e., the requirement was essentially waived for both, the evaluation in this area was unobjectionable.<sup>3</sup>

#### QUALIFICATIONS AND EXPERIENCE

Under this criterion, evaluators were to "consider the qualifications and experience of the offeror, primarily center director, key personnel, and line staff." Key personnel were defined in the solicitation as the facility manager, case manager, and counselor, or staff in equivalent positions. Keeton was ranked second highest of the three offerors under this criterion and Bannum was ranked lowest.

Bannum argues that because the awardee failed to name a specific counselor/case manager in its proposal, the BOP unreasonably ranked Keeton higher than Bannum. This argument is without merit. There was no requirement in the RFP that offerors propose a particular individual for the staff positions, including that of counselor/case manager. Rather, the solicitation only required offerors to provide job descriptions for all staff positions performing services under the contract, which were to include the position

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<sup>3</sup>To the extent Bannum contends that Keeton's failure to timely provide the facility after award constituted a failure to perform in accordance with the RFP requirements, this is a matter of contract administration which is not for review by our Office. 4 C.F.R. § 21.3(m)(1); ManTech Field Eng. Corp.--Recon., B-245886.5, Aug. 7, 1992, 92-2 CPD

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duties and the required minimum education and experience. Keeton submitted the required job description, including the duties, education, and experience, for the firm's proposed case manager, which was evaluated and met with the agency's approval. This aspect of the evaluation therefore was consistent with the RFP.

#### PRICE EVALUATION

Bannum alleges that a price evaluation discrepancy noted by the DOJ's Office of Procurement Executive (OPE) improperly reduced its price score. The record confirms that the OPE did note (in granting award approval) that the percentage evaluation formula specified in the RFP had not been applied. He ultimately approved the award to Keeton, however, after determining that correction of the scoring would not affect the outcome. We agree with the OPE's determination. The SSO found Bannum's and Keeton's proposals essentially technically equal, and then made award to Keeton on the basis of its lower price. Since we have determined that the technical evaluation was proper, and Keeton's price will remain lower than Bannum's no matter how many additional price evaluation points Bannum might receive, Keeton will remain entitled to the award based on its low price.

The protest is denied.



James F. Hinchman  
General Counsel