



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aumann, Inc.

File: B-251585.2; B-251585.3

Date: May 28, 1993

John A. Howell, Esq., Ross & Hardies, for the protester, J. Hatcher Graham, Esq., for Robins Maintenance, Inc., an interested party.
John A. Dodds, Esq., and Bradley S. Adams, Esq., Department of the Air Force, for the agency.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting officer improperly influenced technical evaluation--resulting in the downgrading of protester's initially higher scored proposal and upgrading of the awardee's lower scored proposal--is denied where the record does not reflect any bias; rather, it shows that the contracting officer provided appropriate input to assure that the proposals were evaluated in accordance with the evaluation criteria set forth in the solicitation.

2. Agency properly awarded contract to higher priced offeror which had a higher rated technical proposal where the solicitation evaluation scheme gave greater weight to technical merit than to price, and the agency reasonably concluded that the technical superiority of the awardee's proposal represented the best value to the government.

DECISION

Aumann, Inc. protests the award of a contract to Robins Maintenance, Inc. (RMI) under request for proposals (RFP) No. F09650-92-R-0054, issued by the Department of the Air Force, for grounds maintenance services at Robins Air Force Base, Georgia. Aumann raises a number of issues, alleging primarily that the contracting officer improperly influenced the evaluators and that the agency improperly awarded the contract to a higher priced offeror.

We deny the protests in part and dismiss them in part.

The RFP, a small business set-aside, contemplated award of a fixed-price contract for a base year with 4 option years. The successful offeror will provide all personnel, equipment, tools, materials, supervision, and other items and services necessary to perform grounds maintenance as set forth in the RFP's performance work statement (PWS). Each offeror was required to submit a technical proposal to be evaluated on the basis of the following factors/subfactors: production/manning, personnel plan, contractor-furnished equipment, training, vendor management, pre-production planning; management/qualifications of management personnel, experience, program surveillance, organization, labor relations; quality/procedures, organization, personnel qualifications; and safety/safety program management, inspection procedures. While each factor was scored on the basis of 100 points, they were weighted differently. Production and management were equal and approximately six times more important than the equal factors of quality and safety.

Overall, the technical and price factors were weighted, respectively, 70 percent and 30 percent. Under the RFP, award was to be made to the offeror with the highest weighted combined technical and price score.

In conducting the technical evaluation, the evaluators were to determine the degree to which each aspect of a proposal met the standards set forth in the RFP and assign an appropriate score using a percentage weight scale. On this scale, a score below 20 percent was unacceptable; below 40 percent, susceptible to being made acceptable; above 40 percent, acceptable; and above 50 percent up to 100 percent, "slightly," "significantly," or "greatly" exceeded the minimum requirements. Evaluators also provided a narrative assessment of the proposals under each subfactor.

Eleven offerors, including Aumann and RMI (the incumbent), submitted proposals by the June 30, 1992, closing date. A technical evaluation team reviewed the proposals in July and August and provided its evaluations to the contracting officer, who was the source selection authority (SSA). When the contracting officer reviewed the evaluators' worksheets, she found numerous instances where the narrative assessments were inconsistent with the numerical scores and the proposals. The contracting officer prepared detailed comments on the affected factors and subfactors, explaining the inconsistencies and failures to follow the stated evaluation criteria. Thereupon, the evaluators again reviewed the proposals, and provided the contracting officer with a revised assessment.

The contracting officer still perceived inconsistencies in the evaluators' use of the scoring scale. Therefore, she used the narrative assessments to select a competitive range of five proposals, including the proposals submitted by Aumann and RMI. The evaluators prepared deficiency reports (DRs) and clarification requests (CRs) based on their evaluations and these were used in the course of discussions with the offerors. At the close of discussions, the agency requested best and final offers (BAFOs) from the five competitive range offerors. Aumann submitted a BAFO evaluated at \$7,572,956.50 and RMI submitted a BAFO evaluated at \$8,571,592.90.

Upon completion of their review of the offerors' responses to the CRs and DRs, the evaluators rescored the proposals. RMI's proposal received a combined score of 94 points (70 points for technical (highest ranked) and 24 points for price (fourth ranked). Aumann's proposal received a combined score of 79.36 (52.06 points for technical and 27.30 points for price (both second ranked)). In making her award decision, the contracting officer considered the high score of RMI's proposal and, in comparison to the other proposals, found that it offered the best overall value to the government. The Air Force awarded RMI the contract on December 1, 1992. After a debriefing, Aumann filed this protest.

Aumann first contends that the contracting officer improperly influenced the evaluators by effectively instructing them to draft the technical report to show that RMI submitted the highest scoring technical proposal. According to Aumann, the contracting officer's comments, which led to the reevaluation before discussions, demonstrated a bias towards RMI.¹

¹Aumann also complained that the contracting officer's input was inconsistent with her responsibilities under Air Force Logistics Command Supplement to the Federal Acquisition Regulation (AFLC FAR) § 15.602-90 and the Air Force Material Command (AFMC) FAR Appendix BB. These supplemental regulations generally do not affect the contracting officials' responsibilities under the FAR. See, e.g., Systems & Processes Eng'g Corp.--Recon., B-234142.2, Aug. 30, 1989, 89-2 CPD ¶ 191. While Aumann contends that the contracting officer "usurped" the role of the technical evaluators under these regulations, we find no impropriety in the contracting officer's actions. Under AFLC FAR § 15.602-90(e), the contracting officer is responsible for the proper and efficient conduct of the entire source selection process, and under AFMC FAR, App. BB, ¶ 63, as SSA, the contracting officer leads the source selection evaluation team.

In reviewing an agency's selection decision, we will examine the underlying evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Contel Fed. Sys., 71 Comp. Gen. 11 (1991), 91-1 CPD ¶ 325. The source selection official is not bound by the recommendation of lower-level evaluators. Verify, Inc., 71 Comp. Gen. 158 (1992), 92-1 CPD ¶ 107. In determining whether the award decision was proper, it is the ultimate evaluation by the source selection official, which is governed by the tests of rationality and consistency with the RFP evaluation criteria, not the assessment by working-level evaluators, that will be primarily considered. Contel Fed. Sys., supra.

We find no evidence of bias and nothing improper in the contracting officer's actions here. The contracting officer simply reviewed the proposals and the initial technical evaluation and identified inconsistencies between the narrative assessments and numerical scores applied by the cognizant evaluators to the various proposals. In fact, the contracting officer is to be commended for her diligence and initiative in reviewing the evaluations and taking steps to ensure that the evaluators performed their assessments consistently and in accordance with the stated evaluation criteria.

Under the production factor, the contracting officer found that the evaluation failed to allot some of the proposals more than the minimum number of points for certain subfactors even though the affected proposals appeared to exceed the minimum standards. With regard to the management factor, the contracting officer found that even though the evaluation standard called for consideration of an offeror's minimum requirements for management personnel, in some instances, the evaluation had instead assessed the qualifications of specific proposed management personnel.² For the quality factor, the contracting officer found that the evaluation did not reflect an understanding of the necessity for detail in offerors' proposals. For example, the evaluation reflected a better than acceptable score for one offeror, while the specific information necessary to support such a score was not in the proposal. For the safety factor, the contracting officer observed that the evaluation failed to recognize any varying degrees of acceptability despite the apparent superiority of some proposals over others. In addition to these general observations, the contracting officer compared the treatment of the various offerors, and specifically identified certain factor and subfactor evaluations which she found

²The rationale for this standard was to ensure that the agency would know the minimum qualifications of any replacement management personnel.

inconsistent or unsupported. While Aumann identifies various instances where the contracting officer compared RMI's evaluation with other offerors' evaluations, it does not identify any comment by the contracting officer which it argues is incorrect or not reasonably based.

We have reviewed the awardee's and protester's proposals, the technical evaluations, and the contracting officer's comments and find no evidence that the evaluators' independent judgment was improperly swayed by the action of the contracting officer. In some instances, the evaluators followed the contracting officer's comments and increased or decreased scores accordingly. In other instances, the evaluators disagreed with the contracting officer's assessments and either left the scores the same or changed them in a manner inconsistent with the contracting officer's comments. For example, on the program surveillance subfactor, the contracting officer felt that a 60 percent score for RMI's proposal was too low; yet, the evaluators lowered RMI's score to 20 percent based on their review. In fact, of some 15 subfactors, the evaluators lowered RMI's subfactor scores in 5 instances and only raised 2 of them. They lowered only two of Aumann's subfactor scores and raised one. Further, while the evaluators lowered the overall proposal scores for both Aumann and RMI, Aumann's proposal was scored higher than RMI's proposal in both pre-discussion evaluations.

The contracting officer's review of the technical evaluators' findings and her written identification of various inconsistencies in the initial evaluation do not indicate bias. As the contracting officer bore the ultimate responsibility for the procurement, her communications with the evaluators were appropriate and unobjectionable. See Latecoere Int'l, Inc.--Advisory Opinion, B-239113.3, Jan. 15, 1992, 92-1 CPD ¶ 70. Neither does the fact that there were multiple evaluations provide evidence of bias; subsequent evaluations at the behest of contracting officials are appropriate where, as here, they are necessary to correct errors, misconceptions, or inconsistencies with evaluation criteria. L&E Assocs., Inc., B-224448, Nov. 17, 1986, 86-2 CPD ¶ 568. Our conclusion is unaffected by the fact that Aumann's final proposal evaluation score was lower than RMI's final score. The final evaluation was based upon a review of the competitive range proposals as revised during the discussion process. From our review of the record, we find that this evaluation constituted an accurate assessment of the competing proposals, which were reasonable and consistent with the evaluation criteria. We find no evidence that the contracting officer's earlier comments improperly influenced this evaluation.

Aumann next contends that the evaluation was flawed in that the Air Force gave RMI's proposal too much credit in one instance, and Aumann's too little credit in another. Aumann first argues that RMI, a company incorporated in 1991, was inappropriately given credit for the corporate experience of a large business, Everett Dykes Grassing, Inc.³

Under the experience subfactor (management), offerors were required to submit performance data on their relevant experience within the last 5 years. In its proposal, RMI explained that it was a newly formed business with 8 months of actual experience under the name RMI. It had performed the predecessor contract which it had assumed from Dykes pursuant to a novation agreement in November 1991. According to RMI, 100 percent of the management and labor personnel performing the contract with Dykes were transferred to RMI. RMI provided this explanation to justify its listing of other Dykes contracts performed with the same management team as that which was transferred to RMI. Based upon the "exceptional performance history" of RMI on the predecessor contract, the evaluators awarded RMI 100 percent of the available points for the experience subfactor.

We find the agency's evaluation reasonable and consistent with the evaluation criteria. Since the management team and labor personnel from Dykes, which had successfully performed the predecessor contract, were transferred to RMI, the agency appropriately credited RMI with the "Dykes" experience.⁴ An agency properly may evaluate the corporate

³Aumann also challenged RMI's connection with Dykes before the Small Business Administration (SBA). At the regional level and on appeal, the SBA denied Aumann's challenge to RMI's status as a small business.

⁴In a related issue, Aumann contends that RMI improperly took credit for certain equipment allegedly belonging to Dykes. Aumann's protest is based on its March 1, 1993, discovery of an October 6, 1992, Uniform Commercial Code financing statement filed by Dykes listing nine pieces of equipment which appeared to be equipment proposed by RMI for this contract. We find this protest ground untimely. 4 C.F.R. § 21.2(a)(2). A protester has an obligation to diligently pursue the information that forms the basis for its protest. Horizon Trading Co., Inc.; Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86. The protester learned in January what equipment RMI proposed to use on this contract, yet did not obtain the financial statement until March. We do not find that this represents diligent pursuit of its protest. In any event,

(continued...)

experience of a new business by reference to the experience of its principal officers, or a parent company. See J.D. Miles & Sons, Inc., B-251533, Apr. 7, 1993, 93-1 CPD ¶ ____; Allied Management of Texas, Inc., B-232736.2, May 22, 1989, 89-1 CPD ¶ 485.

Further, contrary to the arguments of the protester, we do not find that the agency provided undue credit to RMI based upon its incumbency. Incumbent contractors with good performance records can offer real advantages to the government, and proposal strengths flowing from a firm's prior experience properly may be considered by an agency in proposal evaluation. See Sabreliner Corp., B-242023; B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326.

Aumann next argues that its proposal should have received extra credit for proposing additional staffing to maintain "enhanced grounds," since the agency had expressed a preference for such staffing.⁵ In this regard, Aumann notes that it proposed a quality control inspector specifically for enhanced grounds. The Air Force explains that maintenance of enhanced grounds is an important aspect of contract performance, but that it did not express any preference in the solicitation for additional staffing for these areas. Under the RFP, offerors were required to submit a detailed manning proposal including a manning chart, a narrative description of each production element of work indicated on the chart, and a plan explaining the rationale used to determine the manpower requirements. According to the agency, the purpose for this was to ascertain the offerors' understanding of the scope and complexity of the work involved and to determine the feasibility of each offeror's proposed approach, and the RFP did not express any "preference" for additional staffing.

We find no error in the agency's scoring of Aumann's proposal. After the initial evaluations, the agency issued

⁴(...continued)

RMI has submitted affidavits and statements from Dykes and RMI representatives which establish that the equipment in question has belonged to RMI since the novation agreement was signed in 1991, and that Dykes listed the equipment on its financial statement in error.

⁵Under the RFP, the various plots to be maintained are denominated "enhanced," "improved," and "semi-improved." Enhanced grounds are defined as those "which are important to the Air Force and base image for visits of important guests and off-base public. Selected and highly visible grounds on which intensive development and maintenance measures are performed."

a DR to Aumann concerning its submission of two manning charts, neither of which evidenced a full understanding of the scope and magnitude of the requirements. While Aumann's DR response established that Aumann had met the standard, the evaluators concluded that Aumann had a weak understanding of the requirements. As a result, Aumann received 40 percent of the available points for the "manning" subfactor, under "production." With regard to Aumann's proposing a full-time inspector for enhanced grounds, the evaluators acknowledged that this "slightly exceeded" the minimum requirements and awarded it 60 percent of the available points for the "organization" subfactor under "quality." The evaluators' did not give Aumann's proposal any additional credit because enhanced grounds represent only 5 percent of the contract effort. Aumann's mere disagreement with the amount of credit it received for its enhanced grounds inspector does not establish that the evaluation was unreasonable. See Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. We find these evaluations to be reasonable and in accordance with the stated evaluation criteria.'

Aumann next contends that the Air Force improperly awarded the contract to RMI at a higher price than that offered by Aumann. In a negotiated procurement, award may be made to a higher rated, higher priced offeror where the decision is consistent with the RFP's evaluation factors and the agency reasonably determines that the technical superiority of the higher cost offer outweighs the price difference.

'Aumann claims that its interpretation of a "preference" for additional staffing represents a latent ambiguity in the RFP. We disagree. A party claiming a latent ambiguity must necessarily show that its interpretation of a solicitation, when read as a whole, is at least reasonable. See Ruska Instrument Corp., B-235247, Aug. 7, 1989, 89-2 CPD ¶ 111. Aumann has not identified any statement of preference for additional staffing and we have found none in our review. We do find that the RFP makes plain the offerors' responsibility to propose necessary levels of management, supervision, and personnel to perform all services in the PWS. The RFP also makes plain that maintenance of enhanced grounds, while important, represents a minority of the contract. For example, of 107 listed plots to be maintained, only 19 are listed as "enhanced" and only 13 acres of enhanced grounds require mowing while there are 1,257 acres of "improved" and "semi-improved" grounds to be mowed. The fact that "enhanced" grounds of necessity require "intensive development and maintenance" does not lead to a reasonable interpretation that extra credit will be awarded for proposing sufficient manning to accomplish the task.

Instrument Control Serv., Inc., B-247286, Apr. 30, 1992, 92-1 CPD ¶ 407. Agency officials have broad discretion in making price/technical trade-offs and the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. In this case, the record supports the contracting officer's decision to award the contract to RMI as the technically superior offeror, even though RMI proposed a higher price than Aumann.

In making her award decision, the contracting officer considered that RMI's proposal had the highest weighted combined score. She also considered that the other four proposals in the competitive range were adequate when measured against the evaluation criteria, but that RMI's proposal presented the Air Force with the best overall value for the requirement. For example, Aumann had a lower price, but it scored lower technically than RMI in a number of areas. In addition to weaknesses in its proposed manning and organization (see above), Aumann's proposed equipment and number of available vendors was minimally acceptable. While Aumann possessed strengths in several areas (e.g., preproduction planning, experience, and program surveillance), its score for these areas was generally less than RMI's score. In other areas (e.g., management qualifications and organization), Aumann's score was evaluated as neither a strength nor a weakness.

By contrast, the contracting officer found that RMI's proposal offered low program risk, and sound, feasible production, management, quality, and safety approaches. She specifically found that RMI's proposed manhours were more than adequate; its proposed manning exceeded that proposed by any other offeror; its proposed equipment was superior to that proposed by other offerors; and its proposal identified numerous established vendors. In addition, she found that RMI's proposed qualifications of management personnel and its experience/past performance were ideally suited for the requirement, and that the proposed quality control program was detailed, comprehensive, and well organized. Overall, she found that RMI's proposal demonstrated an exceptional understanding of the scope and complexity of the requirement. Accordingly, while the price difference between the offerors is substantial, the contracting officer

had a reasonable and amply documented rationale for her trade-off assessment, and for the resulting award determination. See Dynamics Research Corp., B-240809, Dec. 10, 1990, 90-2 CPD ¶ 471.

The protests are denied in part and dismissed in part.



for James F. Hinchman
General Counsel