



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Bannum Inc.

File: B-405548

Date: November 8, 2011

Joseph A. Camardo Jr., Esq., Camardo Law Firm, for the protester.
Alex D. Tomaszczuk, Esq., Daniel S. Herzfeld, Esq., and Nicole Y. Beeler, Esq., Pillsbury Winthrop Shaw Pittman, LLP, for Dismas Charities, Inc., an intervenor.
Christine M. Ciccotti, Esq., Department of Justice, Bureau of Prisons, for the agency.
Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly considered firm's inability to accept sex offenders at its proposed residential reentry center is denied where solicitation contemplated consideration of an offeror's proposed site and the impact that the location would have on satisfying the requirements of the solicitation and complying with the requirements of state and local law.

DECISION

Bannum, Inc., of Odessa, Florida, protests the award of a contract to Dismas Charities, Inc., of Louisville, Kentucky, under request for proposals (RFP) No. 200-1100-NCR, issued by the Department of Justice, Federal Bureau of Prisons (BOP) for residential reentry center services. Bannum maintains the agency applied an unstated factor in evaluating its proposal.¹

¹ In its initial protest, Bannum asserted that Dismas had an improper organizational conflict of interest (OCI), and that the agency improperly failed to consider seven specific strengths in Bannum's proposal. By letter dated September 2, 2011, Bannum withdrew its OCI allegation. With respect to the seven specific strengths that Bannum claimed the agency had not evaluated, the agency provided a detailed response to each of Bannum's assertions in its report responding to the protest. In its comments responding to the agency's report, Bannum makes no further mention of the seven alleged strengths. Under the circumstances, we find that Bannum has

(continued...)

We deny the protest.

The RFP contemplated the award of a contract on a “best value” basis, considering, in descending order of importance, past performance, technical/management and price.² RFP at 34-35. Past performance and technical/management collectively were deemed more important than price, but the solicitation further provided that, as proposals were found to be closer in comparative merit under the non-price factors, price would become more important for award purposes. Id. The RFP provided that the technical/management factor included five equally-weighted subfactors: site location; accountability; programs; facility; and personnel. RFP at 35. The RFP further provided that the site location subfactor was comprised of two equally-weighted subelements, including (1) site validity and suitability, and (2) community relations program. Id.

In response to the solicitation, the agency received proposals from Bannum, Dismas and a third concern. AR, exh. 26, at 1. After evaluating proposals, conducting discussions and soliciting and obtaining three final proposal revisions, the agency assigned both Dismas’s and Bannum’s proposals a rating of blue/very good under the past performance factor; assigned Bannum’s proposal a green/acceptable rating for the technical/management factor; and assigned the Dismas proposal a rating of blue/very good under the technical/management factor. AR, exh. 27, at 39. Bannum’s total price was \$4,363,646, while Dismas’s total price was \$4,630,295. Id. Based on these evaluation results, the agency made award to Dismas, concluding that the firm’s proposal offered the best value to the government. After being advised of the agency’s source selection decision and receiving a debriefing, Bannum filed this protest.

Bannum asserts that the agency applied an unstated factor in evaluating its proposal under the site location subfactor of the technical/management factor. According to the protester, the agency improperly gave consideration to the fact that, because its proposed location was within 2,000 feet of one or more schools, it was precluded under applicable state law from housing sex offenders. According to the protester, nothing in the site location subfactor (or its subelements) provided for the agency to consider this limitation in evaluating its proposal.

(...continued)

abandoned these aspects of its protest. Calnet, Inc., B-402558.2, et al., June 3, 2010, 2010 CPD ¶ 130 at 3.

² For evaluation purposes, the agency assigned the proposals color/adjectival ratings of either blue/very good, green/acceptable, yellow/poor, or red/unacceptable in the non-price areas. Agency Report (AR), exh. 3 at 3.

We find no merit to Bannum's assertion. While agencies are required to evaluate proposals based solely on the factors identified in the solicitation, Intercon Assocs., Inc., B-298282, B-298282.2, Aug. 10, 2006, 2006 CPD ¶ 121 at 5, an agency properly may apply evaluation considerations that are not expressly outlined in the RFP where those considerations are reasonably and logically encompassed within the stated evaluation criteria. Global Analytic Info. Tech. Servs., Inc., B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 4.

Here, we find that the agency properly considered Bannum's inability to house sex offenders in its evaluation of the firm's proposal under the site location subfactor. In this connection, the RFP provided that the agency would consider the suitability of the offeror's proposed site for, among other things, the responsiveness of the site to the statement of work's (SOW) proximity requirements, as well as whether the site was appropriately zoned and whether the site's zoning posed any potential risk to the government. RFP at 45. The RFP also included a "compliance matrix" that identified the documentation that offerors were required to submit with their proposals. Among other things, offerors were required to provide the following information relating to their proposed site:

The offeror shall complete and submit the Local Area Concerns Within a Half-Mile Radius attachment identifying facilities whose closeness to the RRC [residential reentry center] may raise public concern. For those public concerns identified, the offeror's approach for mediating any potential community issues must be included in the space provided.

RFP at 67.

The SOW, in turn, provided that, during contract performance, the contractor was required to accept all offenders for placement at the facility or, alternatively, provide a written justification for denying a referral so that the agency could determine whether the denial was in compliance with the contractor's technical proposal. RFP at 139. The RFP gave, as an example of a justification for refusing a referral, that placement of an offender would violate local or state law. Id.

Here, the record shows that the underlying reason that Bannum cannot accept sex offenders is because its facility is located within 2,000 feet of seven different schools or daycare centers that it identified in its "Local Area Concerns Within a Half Mile Radius" attachment to its proposal, and because Iowa state law prohibits the acceptance of sex offenders at facilities located within 2,000 feet of a school or child care facility. AR, exh. 6, at 9-10, 16-17; exh. 14 at 1-2.

While the RFP did not expressly provide that the agency would take into consideration whether an offeror's facility could accept sex offenders, read as a whole, it did provide for evaluation of the location of the facility and the potential

impacts a facility's location would have on the suitability of the site in terms of meeting the agency's requirements and complying with state and local law. Indeed, the protester's proposal, by including information on its inability to accept sex offenders at its facility in that portion of its proposal relating to site suitability, implicitly recognized that the RFP contemplated evaluation of these considerations. In these circumstances, we find the evaluation to be consistent with the terms of the solicitation.

The protest is denied.

Lynn H. Gibson
General Counsel