



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: Basic Overnight Quarters, LLC

File: B-406964; B-406964.2

Date: October 9, 2012

Jonathan T. Williams, Esq., Alexander O. Levine, Esq., and Peter B. Ford, Esq., PiliroMazza PLLC, for the protester.

Dennis J. Gallagher, Esq., Department of State, for the agency.

Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably evaluated protester's proposal is sustained where agency failed to evaluate proposals in accordance with the evaluation criteria listed in the solicitation.

DECISION

Basic Overnight Quarters, LLC (BOQ), of Wormleysburg, Pennsylvania, protests the Department of State's award of contracts to Worldwide Corporate Housing, of Falls Church, Virginia, and National Corporate Housing, Inc. (NCH), of Herndon, Virginia, under request for proposals (RFP) No. SAQMMA12R0126, for long and short term temporary housing. BOQ asserts that the agency unreasonably and unequally evaluated its and NCH's proposals.

We sustain the protest.

The solicitation provided for award of multiple fixed-price, indefinite-quantity contracts, for a base year plus four 1-year options, to the offerors whose proposals represented the "best value" considering price and the following non-price factors, listed in descending order of importance: corporate experience; past performance; plan of operation and management structure; key personnel; quality control plan; and subcontracting and small business participation. RFP §§ M.2, M.3. With respect to price, offerors were required to offer a percentage discount to be applied against the General Services Administration daily lodging rate for the Washington, D.C. area. RFP § B.5. The solicitation required offerors to provide a minimum of 20,000 room nights and a maximum of 200,000 room nights, including 1, 2 and

3 bedroom apartments. RFP § B.5.1. Elsewhere, the solicitation indicated that the “contractor will be expected to fill a daily average, including potential growth, of up to 650-700 apartments per room night during the initial year of this contract.” RFP, Statement of Work (SOW), § C.3.6.

Eight offerors responded to the solicitation. Four proposals ultimately were evaluated as noncompliant with the solicitation requirements. Two proposals, including Worldwide’s and NCH’s, were rated exceptional overall for the non-price factors. Worldwide received exceptional ratings for all non-price factors; NCH received exceptional ratings for all non-price factors except for small business subcontracting plan, for which it was rated acceptable. Consensus Evaluation Reports. In contrast, BOQ was rated marginal overall, with ratings of marginal for corporate experience; acceptable for past performance; marginal for plan of operations; acceptable for quality control plan; and not applicable for small business subcontracting. Regarding price, Worldwide and NCH both offered a discount of **[DELETED]** percent, while BOQ offered a discount of **[DELETED]** percent. Source Selection Decision at 12, 13. Worldwide’s and NCH’s proposals were determined to represent the best value based on their exceptional ratings for non-price factors. *Id.* at 14. The agency thereupon awarded contracts (with an overall contract ceiling of \$105 million) to Worldwide and NCH. This protest followed.

BOQ challenges the evaluation of its technical proposal. In reviewing challenges to the agency’s proposal evaluation, we do not reevaluate proposals, but, rather, review the agency’s evaluation to ensure that it was reasonable, consistent with the terms of the solicitation, and consistent with applicable statutes and regulations. Phillips Med. Sys. of N. Am. Co, B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. We have considered all of BOQ’s allegations and, as discussed below, find that several are meritorious such as to warrant sustaining BOQ’s protest against the evaluation.¹

Under corporate experience, offerors were required to provide information on at least one contract performed in the past five years where they managed more than one building. RFP §§ L.13, M.5.1. Regarding past performance, offerors were required to provide information on up to 3 recent contracts for similar services to demonstrate the offeror’s capability to meet the solicitation’s performance requirements. RFP §§ L.13, M.5.2. Under plan of operations, offerors were required to demonstrate their approach to providing the required housing. RFP §§ L.13, M.5.3.

¹BOQ raised a number of additional issues which we have reviewed and find without merit.

BOQ was assigned a weakness under the corporate experience, past performance and plan of operation evaluation factors because two of the organizations that BOQ partnered with to provide rooms indicated in letters that they would provide accommodations **[DELETED]**. BOQ Proposal, C-15, C-18. The agency was concerned that this indicated the team members were not committed to supplying the apartments, and thus created a risk that BOQ would not have apartments available when they were required.

BOQ protests that it was unreasonable to assign its proposal a weakness under the corporate experience and past performance factors based on its subcontractors' alleged lack of commitment to supply rooms. Specifically, BOQ asserts that concerns regarding an offeror's commitment to providing apartments under the current solicitation are unrelated to corporate experience and past performance. We agree.

Clearly, in evaluating experience and past performance, the government is looking at whether the offeror has successfully performed similar services in the past. Thus, here, the solicitation provisions regarding the past performance and corporate experience factors required offerors to list prior contracts, and indicated that the contractor's performance on those contracts would be considered. RFP §§ L.13, M.5.1, M.5.2. As asserted by the protester, it was unreasonable and inconsistent with the solicitation, for the agency to downgrade BOQ under two retrospectively focused evaluation criteria, corporate experience and past performance, based on whether the proposed team members committed to providing apartments in the future under the current solicitation.

BOQ also challenges its rating under the quality control plan evaluation factor. In this regard, the solicitation required offerors to submit a preliminary quality assurance plan which addressed:

A description of the inspection system that covers all services in the statement of work.

Samples of inspection forms, checklists, customer satisfactions forms.

A description of the records to be kept to document inspections and corrective or preventive actions taken.

RFP §§ L.13, M.5.5.

BOQ was rated marginal under the quality control factor. The agency assigned BOQ weaknesses because, among other things, it appeared that **[DELETED]**. BOQ Consensus Evaluation.

While agencies are not required to identify all areas of each listed factor and significant subfactor that they will evaluate, the unidentified evaluated areas must be reasonably related to or encompassed by the stated criteria. MCA Research Corp., B-278268.2, Apr. 10, 1998, 98-1 CPD ¶ 129 at 8. Here, the evaluation criteria clearly notified offerors that quality assurance was concerned with the offerors' inspection systems. There was nothing in the evaluation criteria under quality assurance that would have put an offeror on notice that the agency intended to evaluate **[DELETED]** procedures utilized by the offeror. Nor has the agency explained how the **[DELETED]**. Accordingly, consideration of this concern under the quality control plan evaluation factor was improper.

BOQ also challenges the evaluation of its proposal under the plan of operation evaluation factor. In this regard, BOQ asserts that the agency unreasonably assigned a weakness on the basis that BOQ was not ready to fill all requirements, that is, BOQ **[DELETED]**.

We agree that the evaluation in this regard was unreasonable. As noted by the protester, it is unclear from the solicitation when the agency expected the full number of offered rooms to be available. In this regard, the solicitation provided not only that the contractor will be expected to fill "up to 650-700 apartments per room night during the initial year of the contract," RFP, SOW, § C.3.6, and that "[h]ousing units needed for the base year is anticipated at estimated 500-650 corporate style apartments per night," but also that the "[c]ontractor shall provide about 20,000 minimum room nights per year with the ability to grow as program demands increase." RFP, SOW, § C.3.7. The solicitation does not indicate how many of these rooms must be available when the contract begins, and the agency has indicated in its report that it expected full performance within 6 months. Agency Report Supplement at 2. More importantly, **[DELETED]**. NCH's proposal, however, was not assigned a weakness on the basis that **[DELETED]**. Proposals must be evaluated on an equal basis. Tipton Textile Rental, Inc., B-406372, May 9, 2012, 2012 CPD ¶ 156 at 9. Here, by assigning a weakness to BOQ's proposal, but not to NCH's proposal, for **[DELETED]**, the agency has failed to treat offerors equally.

BOQ also protests that the agency improperly assigned NCH a strength because the "[c]ontracts presented were large and very similar to our needs. They provide good evaluations from large contracts". NCH Technical Evaluation at 3. BOQ asserts that NCH's proposal does not demonstrate that its past performance was on contracts that were large or otherwise similar in scope to the solicitation.

We agree with BOQ that the information in NCH's proposal does not demonstrate that the contracts listed were large or similar in size to the solicitation. Specifically, the requirements as defined by the solicitation are for a minimum of 20,000 room nights and a maximum of 200,000, RFP § B.5.1, or between 500 and 700 apartments per night. RFP, SOW, §§ C.3.6, 3.7. For two of the contracts listed to support NCH's past performance (one with the Federal Reserve Board and one

with Lexicon Relocation), however, the proposal did not indicate how many room nights or apartment nights NCH provided. For a third contract (one with the Federal Emergency Management Agency contract), the proposal indicated that NCH provided 60 apartments for 90 days, and 200 rooms for an undisclosed amount of time, NCH Proposal at B-1, B-2, a number of rooms which does not approach the number contemplated by the solicitation. Accordingly, based on the information in its proposal, it was unreasonable to award NCH a strength on the basis that it performed large contracts.

We recommend that the agency reevaluate proposals consistent with this decision, and make a new award determination. We also recommend that the State Department reimburse BOQ's costs of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2012). BOQ's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel