



G A O

Accountability * Integrity * Reliability

**United States General Accounting Office
Washington, DC 20548**

**Comptroller General
of the United States**

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: North American Military Housing, LLC

File: B-289604

Date: March 20, 2002

Ross L. Crown, Esq., Jontz Dawe Gulley & Crown, for the protester.

Matthew R. Keiser, Esq. and Robert M. Andersen, Esq., Department of the Army, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly applied unstated evaluation criteria in rejecting the protester's submission because it did not indicate appropriate leasing and capital improvements experience is denied where this experience was reasonably and logically encompassed by the property management experience criterion stated in the solicitation.

DECISION

North American Military Housing, LLC (NAMH) protests its exclusion under request for qualifications (RFQ) No. DACA31-01-R-0017, issued by the Army Corps of Engineers, to select a developer to improve the military housing at four Army installations, pursuant to the Military Housing Privatization Initiative.

We deny the protest.

Congress enacted legislation authorizing the Military Housing Privatization Initiative, as a 5-year pilot program, with the goal of improving Department of Defense military family housing more economically and more quickly than if the traditional military construction approach were used. This initiative allows private sector financing, ownership, operation and maintenance of military housing. National Defense

Authorization Act for Fiscal Year 1996, Pub. L. No. 104-06, § 2801 *et seq.*, 110 Stat. 186 *et seq.*, codified at 10 U.S.C. §§ 2871-2885 (2000).¹ The Army's pilot program under this initiative is the Residential Communities Initiative (RCI).

Under the RCI, the Army selects a private-sector developer to build, renovate, manage, and maintain family housing communities on Army posts. The developer provides the capital necessary to accomplish these tasks, as well as its expertise in operating successful private-sector communities. The developer is to assume ownership of the family housing units and will be provided a long-term housing interest in the underlying land. The developer's return on the project is expected to come from developing, operating, and managing these housing units, and its main source of revenue will be rents in the amount of the soldier's basic allowance for housing (BAH) paid by each soldier living in a privatized unit. The stated goal of this program is "to bring private sector resources and market-based incentives to bear in improving the quality of life for soldiers and their families." RFQ ¶ 1.0.

The RFQ sought private-sector partners for the improvement of Army family housing at Fort Bragg, North Carolina; Fort Campbell, Kentucky; Fort Stewart/Hunter Army Airfield, Georgia; and Fort Polk, Louisiana (four projects constituting the Southeast Group). Under the RFQ's first step offerors were required to list projects that meet stated "administrative minimum experience requirements." Offerors were also requested to submit statements of qualifications, which, for the offerors determined to satisfy the administrative minimum experience requirements, would be evaluated to identify the highly qualified offerors under the RFQ's evaluation criteria. The highly qualified offerors would be included in a "competitive range."² During step two of the RFQ, each RCI project would be competed individually, in sequence, among the offerors in the competitive range, and a contractor will be selected for each project. During the first phase of the awarded contracts, the selected contractors, working with the Army, will craft Community Development and Management Plans (CDMP), which are business plans for the specific installation RCI project and which contain the terms of the contractor's long-term relationship with the Army. During the second phase, the contractors would implement the CDMPs.

The agency received 16 submissions by the November 27 closing date. The RFQ listed three administrative minimum experience requirements. The second administrative minimum experience requirement, which is the subject of this protest, states:

2. The offer[or] has within the past ten (10) years provided property management including operations, leasing, repairs and maintenance, and capital improvements as well as asset management for three (3) completed

¹ These authorities were extended from February 2001 to December 2004 by the National Defense Authorization Act for Fiscal Year 2001, Pub L. No. 106-398, § 2806.

² We do not address the more general question of the propriety of this procurement approach, since that is not at issue in the protest.

major residential projects, each of which included a rental residential component of at least 300 units.

RFQ ¶ 4.2.

The RFQ instructed offerors to “submit a list of projects with sufficient detail to demonstrate that it meets the following administrative minimum experience requirements,” and warned that “[a]n offer that fails to satisfy the administrative minimum experience requirements will not be eligible for further consideration and will be eliminated from [the] competition.” *Id.* This submission was limited to five single-spaced pages and was to “stand alone” in determining an offeror’s ability to satisfy the minimum experience requirements. RFQ ¶ 4.1.2. The RFQ (at appendix H) included a “Glossary of Selected Terms,” which contained the following:

Operated or Managed: Includes without limitation--leasing, marketing, lease renewals, rent collection, payment of expenses, cash receipts and disbursements, funding reserve accounts, performance of repairs and routine maintenance as well as scheduled capital improvements, establishment of community governance structures, adherence statutory and regulatory requirements, and promotion of a pleasant living environment.

Property Management: Operation, administration and superintendence of existing real estate properties.

In its submission, NAMH listed three projects to satisfy the second minimum experience requirement: (1) Military Family Housing Property Management, [DELETED]; (2) Military Family Housing Property Management, [DELETED]; and (3) Military Family Housing Property Management, [DELETED]. In describing these projects, NAMH states that it provided property management, maintenance and repairs, and asset management services. The property management services included, among other items, move-out inspection, tenant orientation, and administration of tenant satisfaction surveys. NAMH Submission, part 1A, at 2-4.

A subset of the Source Selection Evaluation Board (SSEB) evaluated whether NAMH’s submission met the requirements. The pertinent SSEB members completed an individual checklist and narrative evaluation and completed a consensus memorandum. These SSEB members concluded that NAMH met the first and third minimum experience requirements, but it failed to meet the second. The SSEB concluded that, while NAMH had provided “aspects of property management, including repairs and maintenance and assets management,” the following “requirements [were] not met:”

1. Project[s] 1 and 3 at [DELETED] do not demonstrate provision of the operations, leasing and capital improvement elements of property management. . . . Based on contact with the housing offices at [DELETED] there are no leasing functions performed at those

installations. Government employees within the Army Family Housing Office assign military families to family housing units. Funding to support capital improvements and assets management at [DELETED] are programmed, funded, and managed by government employees.

2. Project 2 in [DELETED] does not demonstrate provision of the operations and leasing elements of management.

Agency Report, Tab 9, Consensus Minimum Experience Requirement Report for NAMH (Dec. 12, 2001).³

In its agency report, the Corps states that none of the three listed projects constituted “rental housing,” as mandated by the second minimum experience requirement, because the listed properties are all owned by the government, and occupied by soldiers at no cost to the soldier and all costs associated with the operation, maintenance, and capital improvements of this housing are paid out of military appropriations.⁴ Contracting Officer’s Statement at 11. Because the agency determined that NAMH’s submission failed to meet the second minimum experience requirement, it eliminated NAMH from the competition. This protest followed.

NAMH contends that the agency applied unstated evaluation criteria in determining that its submission failed to satisfy the minimum experience requirements. The protester contends that the solicitation’s definition of “property management” is too broad to put offerors on notice of the particular type of leasing and capital improvements experience required by the

³ The record shows that each of the three evaluators individually found that NAMH did not meet the second minimum experience requirements for the same reasons reflected in the consensus report. Agency Report, Tab 7, Individual Evaluator’s Rating Sheets for Minimum Experience Requirements. This evaluation was consistent with the source selection plan, which stated with regard to the second experience requirement:

The offeror . . . should demonstrate residential asset and/or property management experience. This includes, but is not limited to:

-- **Leasing** includes the performance of marketing, tenant credit checks and other references, lease renewals, rent collection, and payment of expenses and funds into reserve accounts, if applicable.

Agency Report, Tab 3, Source Selection Plan, attach. 3, RFQ Rating Methodology, at 7.

⁴ “Compare this . . . with private sector rental residential units where the tenant pays rent to the owner for the right to occupy the unit. Compare this also with the privatized Army housing where the soldier pays rent in the amount of his [BAH]. In privatized housing, the BAH funds are the property of the soldier when paid to the privatization developer.” Contracting Officer’s Statement at 11.

evaluators, and that the terms that were discriminators in the evaluators' deliberation, "leasing" and "capital improvements," were not defined in the RFQ, so that it was unfair for the agency to isolate and rely on these terms to disqualify NAMH. The protester argues that it was extensively involved in the owner-tenant relationship at each of the three projects, as identified in its submission, but the agency's evaluation employed a narrow definition of leasing. NAMH also states that its submission showed capital improvements experience involving renovation and repair and upkeep tasks under its listed projects, and it was not aware that it had to discuss any experience in the management and funding of capital improvements.

Where an agency evaluation is challenged, we will examine the evaluation to ensure that it was reasonable and consistent with the evaluation criteria. The determination of the relative merits of a proposal is primarily the responsibility of the agency, and we will not disturb that determination unless it is shown to be unreasonable. Farnham Sec., Inc., B-280959.5, Feb. 9, 1999, 99-1 CPD ¶ 100 at 3. In evaluating a proposal, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. TESCO, B-271756, June 24, 1996, 96-1 CPD ¶ 284 at 2; Bioqual, Inc., B-259732.2, B-259732.3, May 15, 1995, 95-1 CPD ¶ 243 at 4.

The firms' experience with leasing and capital improvements as aspects of property management was clearly encompassed under the second minimum experience requirement. Property management is defined under the property management experience requirement as including "operation, leasing, repairs and maintenance, and capital improvements." RFP ¶ 4.2 (emphasis added). Further, the RFQ included a definition of "operated and managed," which not only mentioned capital improvements and leasing, but also expressly mentioned specific aspects of the leasing relationship, such as marketing and rent collection, for which NAMH's submission did not indicate experience. RFQ, app. H, Glossary of Selected Terms.

As described by the agency in its report, the projects listed by NAMH to satisfy the second minimum property management experience requirement were military housing projects where the contractor was not responsible for leasing space and collecting rents, or for planning or making capital improvements on rental properties. However, the RFQ for the privatization of military housing (as compared to operating and maintaining the military housing as it now exists) sought firms having experience performing such responsibilities. We find integral to these responsibilities the attributes that the agency found lacking in NAMH's leasing and capital improvements experience (that is, marketing/advertising for and collecting rents under leases and managing and funding capital improvements). Therefore, we do not think these attributes had to be specifically defined in the RFP. Under the circumstances, we find the type of leasing and capital improvements experience required by the agency here were reasonably and logically encompassed in the property management experience requirement as stated in the solicitation. The record shows, and NAMH does not deny, that, for the projects listed, NAMH simply does not have that type of experience in leasing and capital improvements; nor does NAMH claim that it could identify other projects where it does have such experience.

NAMH nevertheless contends that its three projects met the leasing requirement because the consensus evaluation for the property management minimum requirement states that NAMH's three relevant projects "included a rental residential component of at least 300 units."⁵ Agency Report, Tab 9, Consensus Minimum Experience Requirement Report for NAMH (Dec. 12, 2001) (emphasis added). While this is true, this does not establish that the evaluators determined that NAMH had the required leasing experience. Indeed, the consensus evaluation specifically found that NAMH did not provide any leasing functions at [DELETED], and that NAMH's project in [DELETED] did not "demonstrate provision of the operations and leasing elements of management." *Id.* The apparent discrepancy in the consensus sheets has been explained in affidavits from each evaluator in which they state that they were solely focused on the number of units in each one of NAMH's projects and not whether they were rental units.⁶ When the consensus evaluation report documenting the evaluators' specific concerns about NAMH's lack of leasing and capital improvements experience is read as a whole, we cannot find the confusion about the rental component renders the evaluators' key determination, that NAMH did not have appropriate leasing and capital improvements experience, unreasonable. Although NAMH argues, through its own narrow reading of the evaluation report, that the agency is essentially barred from finding that NAMH lacks rental management experience, NAMH does not contest the accuracy of the evaluators' specific comments concerning the experience it lacked on these projects.

⁵ The quoted phrase is also contained in the second administrative minimum experience requirement.

⁶ The individual evaluator checklists bear this same discrepancy with the same comments indicating that NAMH did not have the required leasing and capital improvements experience.

Finally, NAMH points out that a subsequent RCI solicitation from the same activity, issued for various locations in California, was, subsequent to this protest, modified by an amendment which expanded the definition of property management to explain leasing and capital improvements consistent with the manner the agency interpreted those requirements here. NAMH contends that the agency's modification of the subsequent solicitation establishes that the agency did not adequately disclose evaluation criteria in this present solicitation. We disagree. Each solicitation stands alone and an amendment of a subsequent solicitation does not establish that the prior solicitation was incorrect or incomplete. See Holiday Inn; Baymont Inn & Suites, B-288099.3, B-288099.4, Sept. 20, 2001, 2001 CPD ¶ 166 at 2 n.1.

The protest is denied.

Anthony H. Gamboa
General Counsel