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**Comptroller General
of the United States**

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

Decision

Matter of: MarLaw-Arco MFPD Management

File: B-291875

Date: April 23, 2003

Gloria Lawlah-Walker and Anthony J. Savarese for the protester.
Bruce M. Kasson, Esq., Department of Housing and Urban Development, for the agency.
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DIGEST

1. Discussions were meaningful where agency provided the offeror with written questions that specifically identified the areas of concern with the offeror's technical proposal and provided the offeror with an opportunity to revise its proposal.
 2. Where offeror's price was reasonable based on the agency's price analysis, the agency was not required to inform the offeror during discussions that its price was significantly higher than competing offerors' prices.
 3. Protest that incumbent's specific experience in property disposition inventory for the Department of Housing and Urban Development (HUD) should have resulted in its proposal being rated superior to proposals from offerors with extensive property management service experience but not HUD property disposition inventory experience, is denied, where the solicitation considered property management experience of the type and purpose of these offerors to be comparable to experience managing HUD's property disposition inventory, and the protester's advantages as the incumbent were offset by other aspects of its proposal.
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DECISION

MarLaw-Arco MFPD Management, a joint venture, protests the awards to National Housing Group (NHG) and Pinnacle Realty Management under request for proposals (RFP) No. R-OPC-22253, issued by the Department of Housing and Urban Development (HUD), for property management services for the agency's property disposition inventory for HUD's Multifamily Property Disposition Centers.

We deny the protest.

The RFP, issued August 5, 2002, contemplated the award of multiple, fixed-price indefinite quantity contracts (with some cost reimbursement items), for a 2-year base period with 3 option years, in five geographic areas covering all 50 states, Puerto Rico and the U.S. Virgin Islands.¹ The RFP, as amended on September 12, provided for a price/technical tradeoff for selecting proposals for award, and listed the following eight technical evaluation factors in descending order of importance:

1. Property Management Experience
2. Past Performance
3. Management Capability and Quality of Proposed Management Plan
4. Experience With and Knowledge of Federal Laws and HUD Regulations
5. Experience in Contract Administration (Purchasing and Subcontracting)
6. Experience in Managing Major Repair/Rehabilitation Programs
7. Qualifications of Proposed Key Personnel
8. Subcontracting Plans/Commitment.

The combined weight of the technical factors was significantly more important than price. Price was to be evaluated based on a weighted unit price, with unit prices for different services receiving different weights based on a formula contained in the RFP. In addition, the agency was to evaluate proposed prices to consider whether they were reasonable, reflected a clear understanding of the requirements, and were consistent with the offerors' proposed technical approaches.

The agency received a number of proposals for each geographic area. After the technical evaluation panel (TEP) evaluated the proposals, the agency established a competitive range for each area consisting of three proposals for Area 1, and two proposals for each of the remaining areas. MarLaw's proposals were included in the competitive range in each of the five areas. NHG's proposals were in the competitive range for each of the first four areas, and Pinnacle's proposal for Area 5 was in the

¹ The RFP stated that the award of the contracts would follow a cascading procedure under which any awards would first be made on the basis of competition considering only eligible section 8(a) small business concerns. If adequate competition between section 8(a) concerns did not exist, awards would then be made on the basis of competition considering all small business concerns. If adequate competition between small business concerns did not exist, award would then be made on the basis of unrestricted competition. The RFP also contained the clause at Federal Acquisition Regulation (FAR) § 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, and stated that the agency would add an evaluation factor of 10 percent to the price of all offerors except those of qualified small disadvantaged business concerns (or other offerors covered under the clause).

competitive range for that area.² The agency conducted written discussions and requested final proposal revisions. The TEP's final evaluation results for the proposals of MarLaw, NHG and Pinnacle were as follows:³

Factor	NHG	MarLaw	Pinnacle
Property Management Experience	Excellent	Good	Good
Past Performance	Excellent	Good	Good
Management Capability/Plan	Good	Fair	Good
Experience (Laws/HUD Regulations)	Good	Excellent	Fair
Experience (Contract Administration)	Fair	Good	Fair
Experience (Repair/Rehab./Maint.)	Good	Good	Fair
Qualifications of Key Personnel	Good	Good	Good
Small Business Participation	Good	Poor	Good
Overall	Good	Good	Good

Agency Report, exh. 13, Final TEP Report, at 3-12, 21-29, 32-50, 53-68.

The evaluated weighted unit prices for the proposals of these three offerors for each geographic area were:⁴

² Area 5 was the only one where the competition was not between small disadvantaged business concerns. Pinnacle is a large business concern.

³ The TEP prepared a separate initial evaluation report for each of the five areas, and a final evaluation report with three separate sections--one for Area 1, one for Areas 2 through 4, and one for Area 5. The only obvious difference between these sections is the composition of offerors whose proposals were being considered for these areas; the technical ratings for any given offeror's proposal were identical across the geographic areas for which each offeror competed. We present the technical ratings here without regard to area. Technical ratings (and corresponding proposal risk ratings) were assigned using the following scale: excellent (very low to no risk), good (low risk), fair (moderate risk), poor (high risk), and unsatisfactory (unacceptably high risk). Since the TEP assigned proposal risk ratings corresponding to the adjectival ratings under this scale without exception, the evaluation ratings presented here state only the adjectival ratings.

⁴ The RFP split Areas 2 and 5 to permit separate unit prices for additional costs that may be associated with work performed in Puerto Rico and the U.S. Virgin Islands (Area 2b), and in Alaska and Hawaii (Area 5b). The RFP stated that a single contract would be awarded for each area in total.

Geographic Area	Government Estimate	NHG	MarLaw	Pinnacle ⁵
1	\$165.95	\$131.98	\$197.02	
2	(2a) 165.95 (2b) 193.94	(2a) 131.98 (2b) 156.18	(2a) 197.02 (2b) 197.02	
3	165.95	131.98	197.02	
4	165.95	131.98	206.42	
5	(5a) 165.95 (5b) 193.94		(5a) 206.42 (5b) 231.19	(5a) \$109.14 (5b) 109.14

Agency Report, exh. 14, Negotiation Summary, attach. 1, Price Evaluation Worksheets.

The TEP determined that the proposals under each area were technically equivalent overall, and recommended that award in each area be based on the lowest price. Agency Report, exh. 13, Final TEP Report, at 31, 52, 70. The source selection official concurred with the recommendation. *Id.* at 71. On December 31, HUD awarded contracts to NHG for each of Areas 1 through 4, and a contract to Pinnacle for Area 5. Following a debriefing, MarLaw protested all five awards.

MarLaw first protests that discussions were inadequate, arguing that the content of discussions was not sufficiently extensive and did not identify all weaknesses found in MarLaw's proposals.

Although discussions must address at least deficiencies and significant weaknesses identified in proposals, the scope and extent of discussions are largely a matter of the contracting officer's judgment. In this regard, we review the adequacy of discussions to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. An agency is not required to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score, and is not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. Northrop Grumman Info. Tech., Inc., B-290080 *et al.*, June 10, 2002, 2002 CPD ¶ 136 at 6; *see* FAR § 15.306(d).

Here, contrary to the protester's allegations, the record shows that the discussions were extensive and specifically identified areas of concern in the offerors' proposals. For example, under factor 1, the TEP evaluated significant weaknesses in MarLaw's proposals for all geographic areas because: (1) the proposals did not adequately

⁵ Since Pinnacle was not a small disadvantaged business concern, the agency included the price evaluation adjustment in Pinnacle's evaluated price.

demonstrate the offeror's experience in managing or subcontracting the management of specialized facilities; (2) the proposals did not identify experience with "section 8" vouchering or tenant certifications, which are integral to the proper management of low- and moderate-income multifamily housing; and (3) the proposals did not identify current rental practices and relocation experience. Agency Report, exhs. 7A-7E, Initial TEP Reports, at 2-3. HUD's discussion letters sent to MarLaw stated several questions related to the evaluation under factor 1, including the following:

1. What is the offeror's experience with Section 8 vouchering for certificates/vouchers?
.....
2. What is the offeror's experience in managing or subcontracting the management of specialized facilities during the last 3 years?
.....
4. What is your relocation experience since 1996?
.....
6. What is the offeror's current experience with rental practices for the establishment of rents?

Agency Report, exh. 9, Discussion Questions, at 1. For the other factors, the agency's discussions with MarLaw stated numerous questions of similar specificity, which identified not only all significant evaluated weaknesses and deficiencies, but also some minor evaluated weaknesses. Based on our review, we find the technical discussions with MarLaw were meaningful.⁶

The protester also alleges that HUD should have advised MarLaw that its prices were high in comparison to the awardees' prices. HUD responds that MarLaw's prices were found to be reasonable for the proposed technical approach, and thus discussions identifying MarLaw's prices as high were not required. We agree with the agency.

Where, as here, an offeror's price is high in comparison to competitors' prices, the agency may, but is not required to, address the matter during discussions. Hydraulics Int'l, Inc., B-284684, B-284684.2, May 24, 2000, 2000 CPD ¶ 149 at 17;

⁶ While MarLaw argues that oral discussions should have been conducted, the agency's selection of written discussions versus oral discussions does not provide a basis for protest. See Accurate Mech. Inc., B-227847.2, June 22, 1988, 88-1 CPD ¶ 595 at 3 (oral discussions are not required where agency conducts meaningful written discussions); Serv-Air, Inc., B-189884, Sept. 25, 1978, 78-2 CPD ¶ 223 at 28 (same).

see FAR §§ 15.306(d)(3), (e)(3). Accordingly, if an offeror's price is not so high as to be unreasonable and unacceptable for contract award, the agency may reasonably conduct meaningful discussions without advising the higher-priced offeror that its prices are not competitive. See Hydraulics Int'l, Inc., supra.

Here, the agency compared MarLaw's proposed prices to the government estimate, the prices of other offerors, and the historical average of prices. While MarLaw's prices are significantly higher than the awardees' prices (ranging from 26 percent (Area 2b) to 112 percent (Area 5b)), MarLaw's prices were relatively close to the government estimate (2 to 24 percent higher). The agency relied on the government estimate to establish that MarLaw's prices were reasonable for the technical approach proposed. The protester does not challenge the determination that its prices were reasonable, and the record does not otherwise provide a basis for disturbing the agency's price reasonableness determination. Therefore, the agency's decision not to raise the issue of MarLaw's high prices during discussions does not provide a basis to sustain the protest.

MarLaw also argues that the agency's evaluation of the proposals was unreasonable with respect to all eight evaluation factors.

In reviewing an agency's evaluation, we will not reevaluate the proposals; we will only review the evaluation to determine whether the evaluation was reasonable and consistent with the stated evaluation criteria, and with applicable procurement laws and regulations. Gemmo Impianti SpA, B-290427, Aug. 9, 2002, 2002 CPD ¶ 146 at 3. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Microcosm, Inc., B-277326 et al., Sept. 30, 1997, 97-2 CPD ¶ 133 at 4.

The protester's primary allegation here is that the agency's evaluation failed to reasonably differentiate between MarLaw's specific experience managing HUD's property disposition inventory, through one of its joint venture partners,⁷ and the property management experience of the other offerors. MarLaw alleges that, since the RFP concerns management only of HUD's property disposition inventory, all other property management experience and capabilities are less relevant than MarLaw's incumbent property disposition experience.

The agency responds that nothing in the evaluation plan states that incumbent experience will be given preference over other similar experience. For example, under Factor 1, "Property Management Experience," the RFP stated the following:

⁷ Arco Management of Washington, D.C., Inc., one of the concerns comprising the MarLaw joint venture, was the incumbent contractor for one of the areas covered by the RFP.

The offeror's proposal demonstrates knowledge and prior and current experience in managing low to moderate income multifamily properties (including the physical, economic, social, and security conditions) of the type and purpose anticipated to be assigned under the contract resulting from this RFP.

RFP, amend. 2, § M.6. The RFP's proposal preparation instructions state that "type," as referenced in the evaluation factor "refers to size, building type (e.g., garden, mid-rise, high-rise, etc.)," and stated that examples of "purpose" are "residential, retirement, assisted living, nursing home [and] hospital." Those instructions also stated the following other relevant characteristics, "geographic setting (e.g., urban, rural, sparsely or densely populated, etc.), and condition (e.g., ranging from good to deteriorated, inhabitable, units failing [decent, safe and sanitary and in good repair (DSS/GR)], etc.)." RFP, amend. 2, § L.9(c)(1).

The agency evaluation is reasonable here. As the agency has demonstrated, the RFP did not indicate that specific experience in managing properties in HUD's property disposition inventory was a criterion for demonstrating relevant, similar property management experience. All offerors have significant property management experience of the type and purpose stated in the RFP, and this was reflected in the high ratings under the property management experience factor for the proposals of MarLaw, NHG, and Pinnacle.

Beyond its general argument that the experience of an incumbent property disposition inventory contractor must be rated superior to all other property management experience, MarLaw asserts that only an incumbent can have experience with a long list of management tasks allegedly unique to HUD's property disposition inventory. Thus, MarLaw contends that there can be no reasonable basis for any evaluation that does not rate MarLaw's proposal superior to that of a non-incumbent offeror. We disagree.

While MarLaw may have had an incumbent advantage under certain factors, for example, the fourth evaluation factor concerning experience/knowledge of federal laws and HUD regulations for multi-family project management (where its proposal received the highest rating), this advantage could reasonably be overcome by a firm with other positive features to offer. Here, not only were the awardees well qualified, but the record suggests that the protester's heavy reliance on its incumbent experience in its proposal, which frequently relied on general statements or references to incumbent experience, rather than addressing specific agency concerns, led to some of its lower ratings.

For example, MarLaw proposed as program manager a person lacking relevant property management experience or education. Following discussions on this

matter, MarLaw continued to propose the same person for program manager.⁸ Although the TEP evaluated his lack of property management experience as a deficiency, it rated MarLaw's proposal "good" under the key personnel qualifications factor due to the strengths of other proposed key personnel, including a project manager with experience under the joint venture partner's incumbent contract. Agency Report, exh. 13, Final TEP Report, at 48-49. MarLaw did not use the opportunity provided by discussions to reasonably address this agency concern. While MarLaw's protest now essentially contends that the proposed program manager will benefit from mentoring and assistance provided by the incumbent personnel proposed for project manager, and that its rating under the qualifications of key personnel factor should therefore be higher, the record shows that the rating for MarLaw's proposal under the factor already reflects the qualifications of other proposed key personnel, including the project manager. By continuing to propose a program manager with little relevant experience, MarLaw weakened any advantage it may have had by proposing other experienced staff from an incumbent contract.

Another example concerns the last factor, subcontracting plans/commitment, where MarLaw's proposal received a poor rating. Contrary to explicit instructions in the RFP, MarLaw's proposal did not state specific goals or commitments. During discussions, the agency asked MarLaw for the specific nature and level of commitment for small business subcontracting. Agency Report, exh. 9, Discussion Questions to MarLaw, at 2. MarLaw's response merely stated that it "will be fully committed to subcontracting work to small business concerns" and that the incumbent joint venture partner has exceeded the subcontracting goals under its incumbent contract. Agency Report, exh. 10, MarLaw's Proposal Revisions, at 15. The TEP rated MarLaw's proposal "poor" under this factor because, in contrast to the other offerors, it did not commit to a specific goal for subcontracting to small businesses or address the substantive nature of work to be subcontracted. Agency Report, exh. 13, Final TEP Report, at 50. We see nothing unreasonable in the agency's judgment in this matter.

In sum, MarLaw's proposal had some inherent strengths related to the incumbent experience of its joint venture partner, and the agency evaluation reflects these strengths. However, MarLaw's reliance on this experience in its proposal may have

⁸ The program manager's resume described his property management expertise as "supplying cabinetry and implementing design initiatives for an extensive array of property management companies." Agency Report, exh. 3A, MarLaw Initial Proposal, Item 7, Resume for Program Manager. Following discussions on the issue, MarLaw stated that the person "helped manage properties" and "received significant training" from various trade associations, asserting that "his work experience supplying cabinetry and implementing design initiatives for an extensive array of property management companies will provide valuable working knowledge." Agency Report, exh. 10, MarLaw Proposal Revisions, at 15.

detracted from those strengths, because it often did not provide the specific information requested by the RFP or by the agency during discussions. Under the circumstances, we find the agency's evaluation of MarLaw's proposal to be reasonable.

Finally, the protester alleges that the agency did not perform a cost/technical tradeoff analysis as contemplated by the RFP, but awarded the contracts on the basis of lowest price by virtue of determining that the proposals of the protester and the awardees were technically equivalent. However, the protester has not shown that its proposal was technically superior to the awardees' proposals. In fact, the ratings would indicate that NHG's proposal, which was rated higher than MarLaw's under the three most important evaluation factors, could have been considered technically superior to MarLaw's. While MarLaw's ratings under some of the lower weighted factors were higher than Pinnacle's, it has not shown that the agency's determination that these two firms' proposals were technically equivalent was unreasonable. Where, as here, selection officials reasonably regard proposals as being essentially equal technically, price can become the determining factor in making award, notwithstanding that the evaluation criteria assigned price less importance than technical factors. DevTech Sys., Inc., B-284879, B-284879.2, June 16, 2000, 2000 CPD ¶ 200 at 7.

The protest is denied.

Anthony H. Gamboa
General Counsel