GAO
Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: DTH Management JV

File: B-283239

Date: October 6, 1999

Benjamin N. Thompson, Esq., Grady L. Shields, Esq., and Jennifer E. McDougal, Esq., Wyrick Robbins Yates & Ponton, for the protester.
Alan Dickson, Esq., and Paul C. Burkholder, Esq., Epstein Becker & Green, for Ameriko, Inc., an intervenor.
Richard G. Welsh, Esq., Department of the Navy, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that it should have received the highest-possible rating under each evaluation factor and subfactor because its proposal was evaluated as having no weaknesses or deficiencies is denied because the argument is based upon an alleged deviation from an internal source selection plan rather than on information disseminated to offerors as part of the solicitation, and where there is no evidence in the record that the agency's evaluation criteria were applied unequally or unreasonably.

2. Upon consideration and denial of protester's blanket contention that its proposal should have received the highest-possible rating under each evaluation factor and subfactor, its remaining issues are dismissed, since protester would not be in line for award even if all its remaining issues were sustained; protester thus lacks the direct economic interest necessary to be an interested party under General Accounting Office's Bid Protest Regulations.

DECISION

DTH Management JV protests the award of a contract to Ameriko, Inc. pursuant to request for proposals (RFP) No. N63387-98-R-8020, issued by the Department of the Navy for maintenance and repair services for military family housing in West San Diego, California. DTH argues that the evaluation of its proposal is inconsistent with the ratings scheme set forth in the agency's source selection plan, that proposals were rated unequally, that its past performance rating was unreasonable, and that the Navy performed a flawed analysis of Ameriko's lower price.

We deny the protest.

The RFP for these maintenance and repair services was issued on August 11, 1998, and limited the competition to small business concerns. The RFP contemplated the award of a mixed fixed-price and indefinite-quantity contract, with a 1-year base period followed by 3 option years, to the offeror whose proposal presented the best value to the government. RFP §§ B, L.3, M.3. To determine the best value, the RFP identified three evaluation factors (management and administration, experience, and past performance) and explained that the three factors combined were equal in weight to price. RFP § M.3. In addition, the RFP identified several subfactors under each of the three technical factors, and set forth detailed instructions regarding the relative weights of the factors and subfactors.

The evaluation factors and subfactors identified in the RFP were:

A. Management and Administration
- Subfactor A1: Management Plan for Work Accomplishment
- Subfactor A2: Administration Plan
- Subfactor A3: Quality Control
- Subfactor A4: TQL/Partnering Plan
- Subfactor A5: Approach to Subcontracting

B. Experience
- Subfactor B1: Specific Housing Maintenance Experience
- Subfactor B2 General Experience

C. Past Performance
- Subfactor C1: Specific Housing Maintenance Past Performance
- Subfactor C2: General Past Performance

Id. In addition, the RFP provided the following guidance about these factors and subfactors:

> Factor A is more important than Factor B, and Factor B is equal in importance to Factor C. Subfactors A1, A2, A3 and A4 are of equal importance. Subfactors A1, A2, A3 and A4 are each more important than subfactor A5. Subfactors B1 and B2 are listed in descending order of importance. Subfactors C1 and C2 are listed in descending order of importance.

Id. The RFP was silent on how proposals would be evaluated under these factors and subfactors; however, the agency's source selection plan--not provided to offerors or incorporated into the RFP--anticipated that proposals would be evaluated as exceptional, very good, acceptable, marginal, or unacceptable. Source Selection Plan at 13-14.

The Navy received 11 proposals in response to the RFP, and ultimately concluded that 7 of those proposals--including the one submitted by DTH--should be considered within the competitive range for award. As described above, proposals were given an adjectival rating under each factor and subfactor, and these ratings were summarized with an overall rating for each proposal. After the Navy held discussions with the seven offerors whose proposals were included in the competitive range, and evaluated proposal revisions, DTH's proposal was ranked third highest technically with the highest overall price. The overall technical rating and ranking, as well as the total price and price ranking, for the competitive range offerors is set forth below:

OFFEROR	TECH. RATING/ RANKING	PRICE RANKING	TOTAL PRICE
Offeror A	Exceptional / 1st	6th	$24.2 million
Offeror B	Very Good / 2nd	4th	$23.3 million
DTH	Very Good / 3rd	7th	[deleted]
Offeror C	Very Good / 4th	5th	$24.0 million
Ameriko	Very Good / 5th	2nd	$20.6 million
Offeror D	Acceptable / 6th	1st	$20.5 million
Offeror E	Acceptable / 7th	3rd	$21.2 million

Contracting Officer's (CO) Statement, Aug. 18, 1999, at 6.

The agency first selected Offeror B for award, after concluding that Offeror B's proposal (with its second-highest technical rating and fourth lowest price) offered the best value to the government. Business Clearance Memorandum, May 7, 1999, at 10. For reasons not relevant here, however, Offeror B was ultimately found ineligible for award upon review of its status as a small business.

With Offeror B ineligible, the source selection board (SSB) performed a series of new price/technical tradeoffs. First, the SSB performed a detailed subfactor-by-subfactor comparison of each of the remaining proposals rated very good overall (DTH, Offeror C, and Ameriko) and determined that the second-lowest priced Ameriko proposal presented the best value among the proposals rated very good. Memorandum from the SSB to the Source Selection Authority (SSA) 2-5 (June 7, 1999). Next, the SSB determined that the Ameriko proposal was a better value to the government than the lower-priced, but lower-rated Offeror D proposal. Id. at 5. Finally, the SSB determined that higher-priced, higher-rated (exceptional) proposal of Offeror A offered no benefits sufficient to justify paying the difference in price between its proposal and Ameriko's. Accordingly, the SSB and SSA concluded that the Ameriko proposal offered the best value to the government. Id. at 5-6. This protest followed.

DTH's first argument is that it should have received an exceptional rating under each and every evaluation subfactor because there were no weaknesses noted in its proposal. This argument is based on the ratings definitions in the Navy's source selection plan. Specifically, the plan sets forth the following definitions for the top two ratings:

> Exceptional (E) - Comprehensive in details; no weaknesses noted; meets all of the requirements and objectives with an outstanding probability of success.
>
> Very Good (V) - Comprehensive in details; minimal weaknesses noted; meets all of the requirements with a very good probability of success.

Source Selection Plan at 13. Although the evaluation materials include a list of the evaluated strengths of the DTH proposal, the corresponding list of weaknesses and deficiencies contained the comments "[n]one noted" under each subfactor. Memorandum from the Technical Evaluation Board to the SSB attach., Narrative Report for DTH Management, JV (Apr. 27, 1999). Thus, DTH argues that the ratings plan required a rating of exceptional under every subfactor.

We disagree. As an initial matter, the requirements stated in evaluation and source selection plans--such as the ratings definitions set forth above--are internal agency instructions, not disclosed to offerors in the solicitation, and thus, do not give outside parties any rights. Mandex, Inc.; Tero Tek Int'l, Inc., B-241759 et al., Mar. 5, 1991, 91-1 CPD ¶ 244 at 7. Instead, we look to the solicitation that was disseminated to the offerors as the touchstone for whether those offerors were treated fairly in an evaluation. ENMAX Corp., B-281965, May 12, 1999, 99-1 CPD ¶ 102 at 5. In addition, we are aware of no requirement that an offeror be given the highest available ratings simply because its proposal is not evaluated as having weaknesses. Pannesma Co. Ltd., B-251688, Apr. 19, 1993, 93-1 CPD ¶ 333 at 4.

In further support of its contention, DTH argues that the Navy did not treat offerors equally in applying its evaluation scheme. In this area, DTH suggests that the Navy was more lenient in awarding exceptional ratings to Offeror A's proposal than to DTH's proposal. Thus, DTH argues that its ratings should be higher, so that it, not Offeror A, would be the offeror with the highest technical rating. Again, we disagree. Our review of the evaluation materials provides no basis for our Office to conclude that the Navy was more lenient in its evaluation of Offeror A's proposal than it was of DTH's proposal. In addition, even though DTH's counsel was provided all of the evaluation materials here (under the terms of a protective order issued by our Office), it has raised no specific area where it contends Offeror A's higher ratings were in error. Further, under at least one subfactor (and arguably, a second one), Offeror A, too, received a rating of very good, despite having no weaknesses or deficiencies noted. In sum, we are aware of no unequal treatment of DTH, and have no basis to disturb the relative evaluation assessments it received.

As a result of our conclusions above, we do not reach DTH's remaining contentions that the agency misevaluated its past performance and failed to properly analyze Ameriko's lower price. As set forth below, since DTH did not prevail in its general contention that all of its ratings should be raised to exceptional, DTH would not be in line for award even if both of its remaining arguments were sustained.

The evaluation results at the subfactor level for the top four offerors, after Offeror B's removal, are set forth below (we have omitted the results for the two competitive range proposals rated acceptable overall):

	Offeror A	**DTH**	**Offeror C**	**Ameriko**
Subfactor A1	Exceptional	Exceptional	Exceptional	Exceptional
Subfactor A2	Exceptional	Exceptional	Very Good	Acceptable
Subfactor A3	Exceptional	Very Good	Acceptable	Exceptional
Subfactor A4	Exceptional	Very Good	Exceptional	Exceptional
Subfactor A5	Very Good	Exceptional	Exceptional	Acceptable
Subfactor B1	Very Good	Exceptional	Acceptable	Exceptional
Subfactor B2	Very Good	Very Good	Acceptable	Very Good
Subfactor C1	Exceptional	Acceptable	Exceptional	Acceptable
Subfactor C2	Exceptional	Very Good	Acceptable	Acceptable
Overall Rating/ Ranking	Exceptional 1st	Very Good 2nd	Very Good 3rd	Very Good 4th

Business Clearance Memorandum, supra, at 5.[1] As discussed above, the RFP provided that subfactors A1 through A4 were equal in weight and more important than subfactor A5. As shown above, Offeror A received ratings of exceptional under subfactors A1 through A4, and a rating of very good under subfactor A5. DTH, on the other hand, received two ratings of exceptional and two ratings of very good under subfactors A1 through A4, respectively. These ratings, despite DTH's advantage under the more lightly weighted subfactor A5 (DTH was rated exceptional, Offeror A was rated very good), mean that Offeror A outranks DTH under the most heavily weighted evaluation factor.

None of DTH's remaining arguments address Offeror A's superior standing under the Management and Administration evaluation factor, or raise issues of sufficient

---

[1]During the course of this protest, DTH pointed out, and the Navy agreed, that the Business Clearance Memorandum and the Memorandum of Law incorrectly indicated that DTH received a rating of acceptable under subfactor C2. In fact, DTH received a rating of very good, as shown above. Protester's Comments, Aug. 30, 1999, at 6.

magnitude to offset Offeror A's advantage under subfactor A. Specifically, DTH's challenges to its past performance ratings under subfactors C1 and C2, even if successful, could only result in raising those ratings from acceptable and very good, respectively, to exceptional, which is the same rating Offeror A received under both subfactors. In addition, DTH's challenge to the agency's price analysis is an argument that can only be brought by a party that is otherwise in line for award. Simply put, since there is no reason to conclude that the agency would fail to select Offeror A's proposal over DTH's lower-rated (or at very best, nearly equal rated), significantly higher-priced proposal, DTH lacks the direct economic interest necessary to pursue its remaining arguments. Young Sales Corp., B-249336, Oct. 26, 1992, 92-2 CPD ¶ 280 at 3.

The protest is denied.

Comptroller General
of the United States