



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: UNICCO Government Services, Inc.

File: B-277658

Date: November 7, 1997

Michael P. Morizio, Esq., Friedman & Atherton, for the protester.
Michael A. Gordon, Esq., Holmes, Schwartz & Gordon, for Meridian Management Corporation, an intervenor.
Seth Binstock, Esq., U.S. Social Security Administration, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In a negotiated procurement for facility management services, the awardee's good performance reports for facility management at an "extremely similar" federal building reasonably led the agency to assign it a high rating in the level of confidence assessment; the protester's mere disagreement with an agency's evaluation of the awardee's experience and past performance does not demonstrate that the agency's evaluation was unreasonable.
2. An agency's site visit to a facility/building identified by the awardee as an experience/past performance reference does not constitute discussions where no information was obtained from the awardee that was essential for determining the acceptability of the awardee's offer or that modified or revised the awardee's proposal; information received by the agency from other government personnel during the site visit does not constitute discussions.

DECISION

UNICCO Government Services, Inc. protests the award of a contract to Meridian Management Corporation under request for proposals (RFP) No. SSA-RFP-97-2660, issued by the U.S. Social Security Administration (SSA) for consolidated facility management services at the Harold Washington Social Security Center (HWSSC) in Chicago, Illinois. UNICCO challenges the SSA's evaluation of Meridian's and UNICCO's proposals and failure to conduct discussions with UNICCO.

We deny the protest.

The RFP provided for the award of a fixed-price, requirements contract for consolidated facilities management services at the HWSSC building for a base with 4 option years. These services include mechanical equipment operation and

maintenance, elevator maintenance, sustaining maintenance, custodial services, security (armed guard services), and utilities.

Proposals were to be submitted in two volumes: an experience/past performance information volume and a price proposal volume. Offerors were to include in the experience/past performance information volume an "Experience Reference Matrix," on which they were to identify contracts that had either been awarded or completed within the last 3 years. Offerors were admonished to include a sufficient number of "citations/references" to demonstrate their relevant experience and past performance. The RFP requested 19 items of information that offerors were to provide for each citation; for example, offerors were to identify, among other things, the client name and address, provide the name and location of the contracting officer and contracting officer's technical representative, describe the services rendered, including information on the building/facility size and population. In addition, offerors were required to indicate and describe the extent to which the work required under the listed citation was applicable to the work sought by the RFP and to "[i]nclude any additional information which will further describe the activities/functions performed and demonstrate the relationship of such experience to the requirements of this solicitation." Offerors were cautioned that they should demonstrate that the contracts identified were similar in size, scope, and/or complexity to the RFP work.

The RFP provided for a best value basis for award and stated that price was less important than the agency's evaluated level of confidence in an offeror. Level of confidence was to be ascertained by first evaluating each offeror's experience and past performance.

In judging experience, the RFP stated that the agency would numerically rate how similar in size, scope, and complexity the offeror's experience was to the solicitation's requirements: a score of 1.00 reflected extremely similar experience; .75, very similar; .50, somewhat similar; .25, slightly similar; and .00, not similar. Experience of similar size, scope, and complexity was defined by the RFP to be:

a building/facility near or approximately 750,000 square feet in size with a population near or approximately 2,300; and where facility management included, but is/was not necessarily limited to, Operations and Maintenance of Mechanical Equipment, Elevator Maintenance, Custodial and Related Services, Sustaining Maintenance, Utilities, and Armed Guard Services.

In assessing past performance, offerors were informed that the agency would subjectively judge how well the offeror had satisfied its customers, obeyed applicable federal, state and local laws and regulations, and conducted its business in an ethical manner. The RFP stated that past performance would be numerically scored as follows: 1.00, entirely favorable past performance; .75, more favorable

than unfavorable past performance; .50, neutral, inconclusive, or no past performance; .25, more unfavorable than favorable past performance; .00, entirely unfavorable past performance. In assessing past performance, the agency would evaluate the quality of service, cost control, timeliness of performance, business relations, management, and subcontract management. The RFP provided that in determining the offeror's overall past performance rating the agency would evaluate the narrative information provided by the offerors as well as information obtained by the agency from other sources. In addition, the RFP informed offerors that the agency reserved the right to conduct site visits at any or all referenced buildings.

The RFP provided that, taking into account the offeror's experience and past performance ratings, the agency would determine a "level of confidence assessment rating" (LOCAR) on the basis of the following scale:

- 1.00 Completely confident -- The offeror received the highest possible rating for both experience and past performance (entirely favorable reports of past performance were received). Offeror has also been found to be in the best possible financial condition.
- .50 None or neutral -- The offeror's experience is somewhat similar to the requirement; the offeror's past performance is neither predominately favorable or unfavorable; and the offeror's financial condition while presently stable, does not demonstrate that offeror will have financial resources to meet all contract requirements.
- .00 Completely not confident -- The offeror received an extremely low rating for both experience and past performance (almost entirely unfavorable reports of past performance were received). Offeror is on the brink of bankruptcy.

The RFP provided that:

[t]he process of determining a LOCAR for any offeror is an inherently subjective one. The purpose of the LOCAR is to facilitate the Government's comparison of offerors' experience and past performance. Thus, in comparing offerors' LOCARs, the Government is seeking the optimal combination of experience (similar, relevant, timely, and of sufficient depth and [breadth]) and past performance[;]

and that:

[t]he Government intends to evaluate offers, and reserves the right to award a contract, without discussions. Therefore, the offeror's initial offeror should contain the offeror's best terms in assenting/agreeing to

comply with the terms and conditions of the solicitation, and reflecting the offeror's best price for performance in accordance with [the] same. The Government reserves the right to conduct discussions if later determined . . . necessary. The Government may reject any or all offers if such action is in the public interest; and waive informalities and minor irregularities in offers received.

SSA received offers from eight firms, including Meridian and UNICCO (the incumbent contractor at the HWSSC building), by the April 11, 1997, closing date for receipt of proposals. Meridian's proposed price of \$13.5 million was the second lowest-priced offer received, while UNICCO's offer of \$14.5 million was sixth lowest priced.

A technical evaluation review panel (ERP), consisting of four evaluators, who were involved with the operation and management of the HWSSC building, reviewed the experience/past performance information proposals. Hearing Transcript (Tr.) at 10, 177.¹ Between April 15 and May 8, the proposals were individually assessed by the evaluators, who then met as a group to agree on a consensus score for the experience and past performance factors. The experience scores were based upon the information provided in the proposals, including the experience reference matrix. After arriving at the consensus experience score, the ERP met as a group to conduct telephone reference calls to the government points of contact identified for offerors' contracts. Tr. at 14. Based upon information learned in these telephone calls, information obtained from the proposals, and the evaluators' own personal knowledge, the ERP agreed upon a consensus past performance score for each offeror. Tr. at 21. The ERP multiplied each offeror's experience score against its past performance score to obtain a total experience/past performance score; the ERP then calculated what percentage of the maximum possible points the offerors had attained for experience/past performance. Tr. at 25.

After the ERP's initial calculations, as described above, the ERP conducted site visits of some offerors' facilities. Tr. at 27, 29-30. Specifically, the ERP visited the Peachtree Summit Federal Building in Atlanta, Georgia, for which Meridian was providing facility management services, and another building at which the lowest-priced offeror was providing such services. Tr. at 161. The ERP did not conduct a site visit of any of the buildings UNICCO identified because the ERP was familiar with UNICCO's performance at the HWSSC building.

After the site visits, the ERP met as a group to arrive at a consensus LOCAR for each offeror. Tr. at 29-30. On May 9, the ERP informed the contracting officer that

¹A hearing was conducted to obtain testimony from the chief of the ERP regarding the calculation of Meridian's and UNICCO's LOCAR scores and the site visit at a building where Meridian was providing facility management services.

all offers were found to be technically acceptable and identified four offerors, including Meridian and UNICCO, whose proposals demonstrated experience similar in nature, size, and complexity to the HWSSC building and should be included in the competitive range. The ERP also identified additional information regarding staffing and mobilization that the ERP wanted to review. On May 12, letters were sent to Meridian, UNICCO, and two other offerors requesting additional information. Prior to receiving any information from the four offerors, the contracting officer decided not to conduct discussions and rescinded the May 12 request for additional information. A May 19 evaluation report was provided to the contracting officer, providing the ERP's final evaluation findings for Meridian and UNICCO, as follows:

| | Experience | Past Perf. | Total Pts. | Percentage of Max. Pts. | LOCAR |
|----------|------------|------------|------------|-------------------------|-------|
| Meridian | 5.25 | 6.25 | 32.8 | 67 | .85 |
| UNICCO | 6.50 | 5.0 | 32.5 | 66 | .65 |

The contracting officer rejected this evaluation report because the mathematical formula applied by the ERP to arrive at its evaluation determination was inconsistent with the stated RFP scoring scheme. Tr. at 42-43. In addition, the contracting officer was concerned that the ERP had been too "tough" on offerors in its subjective LOCAR scoring. Tr. at 158. The ERP reconvened to rescore offerors' proposals, based on the information it had reviewed, in accordance with the RFP scoring scheme and to reconsider their LOCAR score for each offeror. The ERP's June 20 report rescored Meridian's and UNICCO's proposals, as follows:²

| | Experience | Past Performance | LOCAR |
|----------|------------|------------------|-------|
| Meridian | 1.0 | 1.0 | .95 |
| UNICCO | 1.0 | .75 | .75 |

Meridian's evaluation scores reflected the evaluators' determination that Meridian's experience was extremely similar to the services required at the HWSSC building and that all of Meridian's past performance reports were entirely favorable, which was confirmed by the site visit to the Peachtree Summit Federal Building. UNICCO's scores reflected the evaluators' determination that UNICCO, as the incumbent contractor, had specific and extensive knowledge of the HWSSC building but that UNICCO's past performance at the HWSSC building had not been entirely

²All of the offerors' LOCAR scores went up in the ERP's rescoring. Tr. at 158.

favorable. Specific complaints regarding UNICCO's performance at the HWSSC building included concerns with UNICCO's management at the building, which was viewed as not proactive with problems regarding the failure to train engineers and subcontract management. Tr. at 35, 37-38, 175, 186.

A price analysis was performed of the offers received, and a financial audit of the two lowest-priced offeror's (Meridian and another offeror) capability to perform was also conducted. The lowest-priced offeror's offer was found to be unreasonably low; Meridian's proposed price was determined to be fair and reasonable. In addition, SSA found that Meridian was in "good financial condition" and fully capable of performing the contract work.

A best value analysis was documented, which compared Meridian's offer with that of the lowest-priced offeror, the sixth lowest-priced UNICCO, and all the remaining offerors. Regarding the lowest-priced offeror, Meridian's superior LOCAR score was found to reflect superior value that outweighed the other offeror's lower price, particularly since the SSA was concerned that the lowest price might not be realistic. Regarding UNICCO's offer, Meridian's offer was also found to be a better value than UNICCO's offer, given Meridian's significantly lower price (approximately \$1 million lower) and higher LOCAR score (.95 compared to .75). Award was made to Meridian, and this protest followed.

UNICCO challenges the SSA's evaluation of Meridian's experience and past performance, complaining that Meridian did not identify a sufficient number of contracts of similar size, scope, and complexity to the RFP work to justify Meridian's high evaluation ratings.³

In considering protests of an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was rational and consistent with stated evaluation criteria and applicable statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Such judgments are by their nature often subjective; nevertheless, the exercise of these judgments in the evaluation of proposals must be reasonable and bear a rational relationship to their

³UNICCO also complained in its post-hearing comments that Meridian had not provided information in response to each of the 19 items for which the RFP had requested information. Our Bid Protest Regulations require protests of other than apparent solicitation improprieties to be filed within 10 days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1997). The basis of UNICCO's protest was apparent from the documents provided in the agency's report. Its post-hearing challenge, which is more than 10 days from its receipt of the report, is untimely and is dismissed. In any event, the record shows that the information provided by Meridian in response to the RFP was sufficient to allow the SSA to evaluate Meridian's experience and past performance.

announced criteria upon which competing offers are to be selected. Southwest Marine, Inc.; Am. Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. A protester's mere disagreement with the agency's evaluation determination does not demonstrate that the evaluation was unreasonable. Brunswick Defense, B-255764, Mar. 30, 1994, 94-1 CPD ¶ 225 at 9. From our review of the record, including the hearing testimony and the parties' protest arguments, we conclude that the agency's evaluation of Meridian's proposal was reasonable.

The RFP required offerors to identify a "sufficient number" of contracts to allow the agency to evaluate the similarity of the offerors' experience to the RFP work. In judging the similarity of offerors' identified references to the RFP work, the solicitation provided a standard for determining comparability; that is, a building of approximately 750,000 square feet, with a population of approximately 2,300, at which the offeror provided the same services sought by the RFP. Contrary to the protester's belief, the RFP did not require that offerors identify any minimum number of contracts that exactly met or exceeded the size and population identified for a comparable building. Rather, as confirmed by the testimony of the ERP chief, this solicitation language provided a guide by which the evaluators could judge how similar or dissimilar an offeror's reference was to the work to be performed at the HWSSC building. Tr. at 97-98. Although size of the building was important in determining the similarity of an offeror's experience to the RFP work, the types of services were also important. Tr. at 167.

Here, Meridian listed seven different buildings/facilities on its Experience Reference Matrix that ranged in size from 850,000 square feet (the Peachtree Summit Federal Building) to 247,000 square feet. Only the Peachtree Summit Federal Building and the services performed there by Meridian was viewed by the ERP as being experience "extremely similar" to the RFP work, although other referenced buildings/facilities were judged as being "very similar" experience. Tr. at 167-68. Nevertheless, the ERP found that based upon Meridian's two contracts, dating back to 1989, to provide facilities management services at the Peachtree Summit Federal Building that Meridian's offer had demonstrated extremely similar experience that justified its experience score of 1.0.⁴ Tr. at 180.

We find no basis on this record to question the SSA's judgment in this regard. The Peachtree Summit Federal Building meets or exceeds the comparability standards stated in the RFP; that is, the Peachtree Summit Federal Building is a federal office

⁴The evaluators recognized that Meridian was not presently providing armed guard services at the Peachtree Summit Federal Building, but these services had been provided during Meridian's performance under the prior contract. Tr. at 73-74.

building, larger than 750,000 square feet and has a population of at least 2,300,⁵ and is a building at which Meridian has performed the services that will be required under the RFP. In our view, the evaluators reasonably found that Meridian's provision of facility management services at the Peachtree Summit Federal Building for more than 8 years was extremely similar experience that justified a score of 1.0.⁶ UNICCO's disagreement with this determination does not demonstrate that the agency's evaluation conclusion was unreasonable in this regard. Brunswick Defense, supra, at 9.

UNICCO also challenged Meridian's 1.0 past performance score because Meridian assertedly had not listed a sufficient number of contracts that satisfied the RFP comparability standard. The RFP's evaluation scheme, however, provided for the use of this comparability standard only in judging the similarity of offerors' experience to the RFP work and not in assessing each offeror's past performance. Tr. at 117. Moreover, the record supports the reasonableness of the agency's judgment regarding Meridian's past performance. The ERP received entirely favorable past performance reports from Meridian's references. Tr. at 31. The site visit to the Peachtree Summit Federal Building, which was chosen because of its relevance and outstanding past performance report, and discussions with government personnel at that building confirmed the favorable performance report the evaluators had received regarding Meridian's performance at the Peachtree Summit Federal Building. Tr. at 106-109. Again, UNICCO's mere disagreement with the SSA's evaluation of Meridian's past performance does not demonstrate that the agency's judgment was unreasonable. Brunswick Defense, supra, at 9.

UNICCO also complains that the agency did not evaluate the offerors' financial condition, as required by the RFP, in determining each offerors' LOCAR score. Specifically, UNICCO asserts that if the agency had considered financial capability in determining Meridian's and UNICCO's LOCAR scores, Meridian's score would have been lower and UNICCO's score would have been higher.

⁵It is true, as alleged by the protester, that the ERP did not attempt to determine the population of any of Meridian's referenced buildings/facilities. Nevertheless, the chair of the ERP testified that given the size of the Peachtree Summit Federal Building the ERP assumed that the building would exceed the population identified in the RFP. Tr. at 190-94. Documents provided with Meridian's post-hearing comments evidence a population of 4,000 at the Peachtree Summit Federal Building. We do not find that the ERP's failure to ascertain the population of any of the offerors' referenced buildings/facilities provides any basis to object to the SSA's determination that Meridian's experience was extremely similar.

⁶Although UNICCO complains that Meridian received credit for two contracts at the same building, the RFP does not limit consideration to contracts at different buildings.

The record shows that the offerors' financial condition was not considered by the ERP, which was not provided with access to the offerors' financial information. Rather, the contracting officer requested and received an audit of the financial condition of the two lowest-priced offerors, which included Meridian. The contracting officer considered this audit information in conjunction with the offerors' LOCAR scores and proposed prices to determine which offeror represented the best value to the government. While Meridian's financial condition was not specifically considered in determining the LOCAR score, the score and financial condition were considered together by the contracting officer in making her award selection. Given Meridian's evaluated good financial condition and ability to perform the contract, we find nothing in the contemporaneous record to support UNICCO's allegation that Meridian's financial condition would or should have any negative impact in the contracting officer's consideration of Meridian's proposal for award.

Similarly, we find nothing in the record to suggest that UNICCO's financial condition could have resulted in such positive consideration in the contracting officer's source selection decision that it would have resulted in UNICCO's higher-priced, but lower-rated, proposal being selected for award. Rather, the record shows that the evaluated discriminator between Meridian's and UNICCO's proposals was UNICCO's comparatively poorer past performance, which would not be affected by UNICCO's financial strength. The ERP was comprised of evaluators who were all involved in the operation and management of the HWSSC building and who were all personally aware of UNICCO's performance as the incumbent contractor. Tr. at 10, 177. The ERP identified a number of problems in UNICCO's performance at the HWSSC building that caused the ERP to assess UNICCO's past performance as not entirely favorable. In fact, UNICCO's past performance reasonably received an evaluated score of .75, which the RFP indicated was appropriate for offerors that had past performance that was more favorable than unfavorable, but that was less than entirely favorable.

UNICCO also protests that the SSA improperly failed to conduct discussions with UNICCO prior to selecting Meridian for award. Specifically, UNICCO argues that the RFP did not reasonably inform offerors that the agency intended to make award on the basis of initial proposals and therefore the agency was required to conduct discussions here. UNICCO also complains that the agency's site visit to the Peachtree Summit Federal Building constituted discussions with Meridian, requiring the agency to conduct discussions with UNICCO and request best and final offers.⁷

⁷UNICCO asserted for the first time in its post-hearing comments that the agency's requests for financial information from Meridian and the lowest-priced offeror to support its financial capability review constituted discussions. This allegation, based upon documents provided in the agency's report, was not timely protested
(continued...)

We disagree with UNICCO that the RFP did not adequately inform offerors of the agency's intent to make award on the basis of initial proposals. The Federal Acquisition Regulation (FAR) § 15.610(a)(3) provides that the requirement for discussions need not be applied in acquisitions in which the solicitation notified offerors that the government intends to evaluate proposals and make award without discussions, unless the contracting officer determines that discussions are considered necessary. As noted above, the RFP stated that the agency intended to evaluate offers without conducting discussions, that offerors should submit their best terms and conditions and best price for performance, and that the government reserved the right to conduct discussions if later determined to be necessary. This adequately informed offerors that the agency intended to make award without discussions.

We also disagree with the protester's contention that the ERP's site visit to the Peachtree Summit Federal Building constituted discussions with Meridian that required the agency to conduct discussions with competitive range offerors and to obtain best and final offers.⁸ Discussions occur when information requested from and provided by an offeror is essential for determining the acceptability of the offeror's proposal, or where the offeror is given an opportunity to revise or modify its proposal. FAR § 15.601 (FAC 90-45); The Hotel San Diego, B-260971, July 7, 1995, 95-2 CPD ¶ 4 at 3-4 (discussions conducted during site visit).

Here, the record establishes that the SSA did not obtain any information from Meridian during the site visit that was essential for determining the acceptability of its proposal or that revised or modified its proposal. The ERP visited the Peachtree Summit Federal Building for the purpose of reviewing the building and discussing Meridian's past performance with government personnel. The ERP chief testified that there were no discussions between the ERP and Meridian personnel regarding Meridian's proposal under this RFP. Tr. at 30. Rather, the ERP chief testified that the only conversations between the ERP and Meridian personnel were confined to ERP requests to be shown various parts of the Peachtree Summit Federal Building, identifying equipment contained within the building (e.g., elevators), and seeing

⁷(...continued)

within 10 days of the date that UNICCO learned the basis of the allegations as required by our Regulations, 4 C.F.R. § 21.2(a)(2), and is dismissed.

⁸UNICCO also argued that the SSA's May 12 letter to offerors requesting various information constituted discussions. This contention is without merit, given that the contracting officer rescinded the letter prior to obtaining any information from offerors in response to the letter.

maintenance records.⁹ Tr. at 28, 109. None of the information provided by Meridian to the agency modified or revised Meridian's proposal; that is, the information provided by Meridian was not considered by the agency in its evaluation of experience/past performance. Rather, the condition of the building, as viewed by the evaluators, and information obtained from government personnel at the building merely confirmed the agency's experience/past performance scores and entered into the ERP's LOCAR score assessment. In any case, the discussions between government personnel at the Peachtree Summit Federal Building and the ERP (and not between Meridian and the ERP) regarding Meridian's past performance at the building do not constitute discussions. See Contrack Int'l, Inc., B-270102, B-270102.2, Feb. 8, 1996, 96-1 CPD ¶ 53 at 5.

UNICCO also complains that the agency's Peachtree Summit Federal Building site visit provided Meridian with an unfair competitive advantage. We disagree. The RFP informed offerors that the agency might conduct a site visit to a building referenced by an offeror. The ERP decided to conduct site visits at what appeared to be the most comparable buildings of the offerors that were determined to have a reasonable chance of being selected for award. None of UNICCO's referenced buildings were visited because UNICCO's most comparable building at which it was providing similar facility management services was the HWSSC building, with which the ERP was intimately familiar. Because the ERP was already familiar with UNICCO's past performance at the very building for which the contract was to be let, the evaluators had no need to visit another of UNICCO's buildings to ascertain or confirm UNICCO's past performance.

The protest is denied.

Comptroller General
of the United States

⁹This testimony is consistent with the ERP chief's contemporaneous, handwritten notes of the ERP's visit to the Peachtree Summit Federal Building.