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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Cornell Companies, Inc.

File: B-310548

Date: December 3, 2007

Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester.
Alex D. Tomaszczuk, Esq., Orest J. Jowyk, Esq., and Daniel S. Herzfeld, Esq., Pillsbury Winthrop Shaw Pittman, LLP, for Dismas Charities, Inc., an intervenor.
Tracey L. Printer, Esq., Department of Justice, for the agency.
Eric M. Ransom, and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Assessment of a weakness against the protester's proposal was not improper where the considerations on which the assessment was based were encompassed by the evaluation criteria.
 2. Assessed weakness was not required to be raised in discussions where the weakness was not considered significant, and did not prevent the proposal from meeting the solicitation requirements or having a reasonable chance of award.
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DECISION

Cornell Companies, Inc. protests the award of a contract to Dismas Charities, Inc. by the Federal Bureau of Prisons (BOP) under request for proposals (RFP) No. 200-0953-SC, for Residential Reentry Center (RRC) services in El Paso County, Texas. Cornell asserts that the agency failed to follow the evaluation criteria set forth in the solicitation, failed to hold meaningful discussions, and made a flawed source selection decision (SSD).

We deny the protest.

The BOP issued the RFP on December 21, 2006, requesting proposals to provide RRC services for male and female Federal offenders. The RFP contemplated award of a fixed-price requirements-type contract with a base period of 2 years and 3 option years. Award was to be made to the offeror whose proposal was determined to represent the best value to the government under three evaluation factors: past performance, technical/management, and price. RFP § M.5. The RFP stated that

technical/management and past performance, when combined, were significantly more important than price, and that in the non-price areas past performance was more important. Id. Proposals were to be evaluated using a color/adjectival rating system: blue/very good; green/acceptable; yellow/poor; and red/unacceptable. Id.

Timely proposals were received from Cornell and Dismas. In accordance with the solicitation, technical/management proposals were submitted to a three-person source selection evaluation board (SSEB), which was to review the proposals under the technical/management factors stated in the solicitation: site location,¹ accountability, programs, facility, and personnel. RFP §§ M.3, M.5, at 2.0. After initial review, the SSEB chairperson requested that the contracting officer conduct discussions with the offerors based on needed clarifications and deficiencies identified in the proposals. Agency Report (AR), Tab 5, Request to Open Discussions. Written discussions were then conducted with both offerors. AR, Tab 6, Discussions with Offerors.

After discussions, the SSEB evaluated the revised technical/management proposals and the contracting officer performed the past performance and price evaluations. After these evaluations, Cornell's revised proposal received a rating of blue/very good under the past performance factor, green/acceptable under the technical/management factor, and had an evaluated price of \$14,794,571.88. AR, Tab 11, SSD, at 17. Dismas' revised proposal received a rating of blue/very good under the past performance factor, blue/very good under the technical/management factor, and had an evaluated price of \$16,140,846.48. Id.

In the SSD, the source selection authority (SSA) summarized the past performance evaluation and reviewed the SSEB's technical/management evaluation. The SSA concurred with the SSEB that, although both offers met the requirements of the statement of work (SOW), the technical/management proposal submitted by Dismas was most advantageous to the government. Id. at 19. The SSA then concluded that "[f]rom the business point of view, the value of Dismas' program (non-cost factor) warrants the payment of a premium of \$1,346,274.60 over the lower price offered by Cornell." Id. The SSA selected Dismas' proposal as the best value to the government and Dismas received the award on September 17, 2007. Cornell received a debriefing on September 21 and filed this protest on October 1.

Cornell first contends that its proposal was improperly rejected based on an unstated requirement that proposed site locations be within 1 mile of public transportation. The agency argues that Cornell's proposal was not "rejected" for its site location, but that Cornell's proposed site location was properly considered to be a weakness in its proposal.

¹ The site location factor had two subfactors, site validity and suitability and community relations program.

The record shows that Cornell's proposed facility was located approximately 13 miles outside of El Paso and 10 miles from public transportation. AR, Tab 8, SSEB Evaluation at 3. It was located in an isolated area, near an operating secure jail facility. Id. Due to the facility's distance from public transportation, and in accordance with the solicitation, Cornell proposed to provide offenders with no-cost transportation to and from a main El Paso bus terminal. AR, Tab 17, Cornell Technical Proposal, at 20.

From the first site inspections, the SSEB evaluators noted that the proposed facility's distance from town and public transportation, and its isolated location, represented a weakness under the site location factor/site validity and suitability subfactor. See, e.g., AR, Tab 5, Working Papers of Evaluator Kristen Brown, at 2. These concerns were adopted in the technical/management evaluation and in the SSD. AR, Tab 8, SSEB Evaluation, at 3; Tab 11, SSD, at 13. However, from the SSEB consensus evaluation through to the SSD, Cornell's proposal was found to meet the requirements of the solicitation, and was assigned a green/acceptable, low risk rating from the first stages of the evaluation.

In reviewing a protest of an agency's evaluation and SSD, we will not re-evaluate proposals; we will only review the record to determine whether the evaluation was reasonable and consistent with the stated evaluation criteria, and with applicable procurement laws and regulations. Raytheon Co., B-291449, Jan. 7, 2003, 2003 CPD ¶ 54 at 7.

The record reflects that, contrary to Cornell's assertion, its proposal was never evaluated against an absolute public transportation requirement, and was at no point found deficient or unacceptable. Throughout the evaluation process, Cornell's proposed site location was found to meet all solicitation requirements, and its proposal was included in the competitive range and received a green/acceptable rating under the technical/management factor. The record shows that Cornell's proposal was merely assessed a weakness based on concerns about its proposed facility's distance from El Paso and public transportation routes, and isolation from the community. As such, Cornell's protest on the ground that its proposal was rejected for its site location is factually mistaken.

Cornell also makes the argument that, to the extent its proposal was downgraded, it was improperly downgraded on the basis of a site location criterion not stated in the solicitation, namely, proximity to public transportation. The agency argues that it followed the stated evaluation criteria in assessing a weakness for Cornell's proposed site location. We agree.

A solicitation must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors and significant subfactors set forth in the solicitation. Federal Acquisition Regulation (FAR) § 15.304. However, while

agencies are required to identify evaluation factors and significant subfactors, they are not required to identify all areas of each factor or subfactor which might be taken into account, provided that the unidentified areas are reasonably related to or encompassed by the stated criteria. MCA Research Corp., B-278268.2, Apr. 10, 1998, 98-1 CPD ¶ 129 at 8.

The solicitation here included “site location” as an evaluation factor under the general technical/management factor, and “site validity and suitability” as a subfactor that “evaluates the proposed site location and considers the validity of the offeror’s Right-To-Use and Zoning approval.” RFP § M.5, at 2.1.1. The solicitation also stated that the evaluation under this subfactor would consider “the suitability of the site location with regards to . . . responsiveness to proximity requirements defined in the SOW. . . .” Id. In this regard, the SOW stated the requirement that “the contractor shall locate the facility within one mile of public transportation, or the contractor shall provide transportation for offenders to seek employment, work, and participate in program activities at no cost to the offender.” RFP, SOW, at 25.

The solicitation thus clearly anticipated an evaluation of the proposed site locations, and we think the proximity considerations evaluated by the agency are both reasonably related to, and encompassed by, the site location evaluation factor in the solicitation. As such, the agency was not required to individually identify those proximity concerns as areas of evaluation, see MCA Research Corp., supra; Bank Street College of Educ., B-213209, June 8, 1984, 84-1 CPD ¶ 607, and the agency’s assessment of a weakness in Cornell’s proposal under the site location technical/management factor was reasonable.

Cornell next argues that, because the agency had “serious concerns about the location offered by Cornell from the time that the site visit was performed,” Comments at 7, the agency was required by the FAR to raise those concerns in discussions. When discussions are held they must at least address deficiencies and significant weaknesses in the proposals. FAR § 15.306(d)(3). However, the agency is not required to discuss every area where a proposal could be improved, and the scope and extent of discussions is a matter within the contracting officer’s discretion. Id. 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 of award. Brown & Root, Inc. and Perini Corp., a joint venture, B-270505.2, B-270505.3, Sept. 12, 1996, 96-2 CPD ¶ 143 at 6.

As discussed above, the record demonstrates that Cornell’s site location was never considered to be a significant weakness or deficiency, and never prevented Cornell from having a reasonable chance for award. Nowhere in the SSEB working papers, the SSEB consensus papers, the technical/management evaluation memorandum, or the SSD was the weakness of Cornell’s site location characterized as significant or as

a deficiency.² Further, Cornell's proposed site location was found to meet the requirements of the solicitation at every stage of the evaluation. Because there is no evidence to suggest that Cornell's site location ever kept its proposal from being rated acceptable under the site location or technical/management factor, or otherwise prevented Cornell from having a reasonable chance of receiving award, the agency was not required to raise the issue in discussions. See Northrop Grumman Info. Tech. Inc., B-290080 et. al., June 10, 2002, 2002 CPD ¶ 136 at 6; Brown & Root, Inc. and Perini Corp., a joint venture, supra.

Cornell's final argument is that the SSD is flawed, in that the SSA had an incorrect understanding of the technical/management evaluation's results. Cornell bases this argument on the SSA's statement, in the SSD, that "Dismas' higher rating and strengths in the factors of Site Location, Accountability, and Programs justifies paying a premium." AR, Tab 11, SSD, at 19. Cornell interprets this statement to suggest that the contracting officer understood Dismas' proposal to be higher rated under the site location, accountability, and programs factors when, in fact, the two proposals were equally rated under the programs factor.

In our view, the SSA's statement simply reflects her determination that the Dismas proposal's higher rating in the overall technical/management factor, and its strengths in site location, accountability and programs, justified the payment of a premium over Cornell's lower-priced, lower technically rated proposal. While reliance on erroneous information in the SSD is a basis for reevaluation of proposals, see Ashland Sales and Serv. Co., B-291206, Dec. 5, 2002, 2003 CPD ¶ 36 at 7, we fail to see any erroneous information in the SSA's statement here. The record reflects that Dismas' proposal was higher rated in the technical/management factor, and was found to have more strengths than Cornell's proposal under the site location, accountability, and programs factors. AR, Tab 11, SSD, at 13-17. In addition, the SSD explicitly recognized that Cornell's proposal was regarded as exceeding the solicitation requirements under the programs factor. Id. at 13. Accordingly, we see no basis to conclude that the SSD relied on erroneous information, and we see nothing unreasonable about the selection of Dismas' proposal as the best value to the government.

The protest is denied.

Gary L. Kepplinger
General Counsel

² The contracting officer, in the debriefing, disclosed the site location weakness in response to Cornell's request for "the government's evaluation of significant weaknesses or deficiencies in Cornell's proposal." AR, Tab 14, Debriefing Request and Written Debriefing at 1, 5. However, the issue was referred to simply as a "weakness" in the debriefing, as it was in all other documentation in the record. Id.