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**Comptroller General  
of the United States**

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

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## **Decision**

**Matter of:** Sam Facility Management, Inc.

**File:** B-292237

**Date:** July 22, 2003

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Charles E. Saunders, Esq., for the protester.

Michael A. Gordon, Esq., Holmes, Schwartz & Gordon, for Superior Landscaping Co., Inc., an intervenor.

Damon A. Martin, Esq., and Javier E. Gonzalez, Esq., Department of the Navy, for the agency.

Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that agency improperly evaluated proposals of both the protester and the awardee is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria.

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### **DECISION**

Sam Facility Management, Inc. protests the award of a contract to Superior Landscaping Co., Inc. under request for proposals (RFP) No. N62477-03-R-0007, issued by the Department of the Navy, Engineering Field Activity Chesapeake, for grounds maintenance and management services. Sam primarily argues that the Navy improperly evaluated proposals and that a member of the technical evaluation panel is biased against the firm.

We deny the protest.

The solicitation, issued as a section 8(a) set-aside, contemplated the award of a fixed-price contract including indefinite-quantity work to provide grounds maintenance and management services to several Navy installations in the Washington, D.C. metropolitan area over a 1-year base period, with up to four 1-year option periods. The services to be provided include grass cutting and trimming; edging; weed control; turf fertilization; aerating; trenching and mulching planting beds; maintaining planting beds and tree rings; pruning; leaf pickup and disposal; and operating and maintaining irrigation systems. The government-estimated value of

the contract for the 5-year period was \$5,620,899, or between approximately \$1 and \$1.2 million per year. Price Evaluation Report at 1.

Award was to be made based upon initial proposals, without conducting discussions, to the firm whose offer was evaluated as most advantageous to the government, considering technical/management factors, past performance, and price. The technical/management factors—relevant experience, project staffing, and support for small business, women-owned business and small disadvantaged business program—were all equally important. The combined technical/management factors and past performance were equal in importance to each other, and considered together, were of equal importance to price.

The Navy received proposals from five offerors. The technical evaluation panel (TEP) report shows the following relevant evaluation results:

	Offeror A	Superior	Sam
Technical/Management	Excellent	Acceptable	Marginal
Experience	Excellent	Acceptable	Marginal
Project Staffing	Excellent	Acceptable	Marginal
Support for Small Business	Acceptable	Acceptable	Acceptable
Past Performance	Good	Excellent	Good
Total Price	\$5,473,763	\$3,665,005	\$3,809,640

The contracting officer, who served as the source selection authority (SSA),<sup>1</sup> reviewed these evaluation results, along with the TEP’s narrative findings, and determined that Superior offered the best value to the government. She determined that, although Offeror A received higher ratings, the value represented by those ratings did not support selection at its substantially higher price. She explained that the other offerors, including Sam, had weaknesses or deficiencies that would require discussions before they could be considered; proposed higher prices than that of Superior; and received good past performance ratings as opposed to Superior’s excellent past performance rating. SSA Decision Document at 1. Award was made to Superior and this protest followed.

Sam argues that the Navy improperly evaluated its proposal under all of the evaluation factors, particularly the relevant experience and past performance factors;<sup>2</sup> that the Navy improperly evaluated Superior’s proposal under the relevant

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<sup>1</sup> Sam’s views notwithstanding, it is neither uncommon nor inherently improper for a contracting officer to also serve as a source selection authority. See, e.g., AllWorld Language Consultants, Inc., B-291409, B-291409.2, Dec. 16, 2002, 2003 CPD ¶ 13 at 3; Aumann, Inc., B-251585.2, B-251585.3, May 28, 1993, 93-1 CPD ¶ 423 at 2.

<sup>2</sup> Sam argues that it was “prejudiced in pricing” because its price for the fixed-price work was closer to the government estimate for such work than was Superior’s, and  
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experience and past performance factors; and that a member of the TEP is biased against the firm.

Where an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Sterling Servs., Inc., B-286326, Dec. 11, 2000, 2000 CPD ¶ 208 at 203; Lear Siegler Servs., Inc., B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 7. The fact that the protester disagrees with the agency does not render the evaluation unreasonable. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. Where a solicitation requires the evaluation of offerors' past performance, an agency has the discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Honolulu Shipyard, Inc., B-291760, Feb. 11, 2003, 2003 CPD ¶ 47 at 4.

Sam's principal challenge to the reasonableness of the Navy's evaluation of proposals concerns the relevant experience and past performance factors. We will discuss both together since Sam has commingled its arguments concerning these two separate factors.

The RFP gave the following instructions concerning the relevant experience factor:

- a. The offeror shall provide at least two recurring or fully completed projects within the past five (5) years that demonstrate similarity to size, scope, function, complexity and value of this project. The offeror shall identify the contract number, title, locations serviced, contract term and annual value. Projects should indicate whether your firm was the prime contractor or subcontractor.
- b. Explain any previous Phase-In and Mobilization experience and how your experience will help you successfully phase-in and mobilize your resources by the performance start date of this contract. Explain your financial capability to ensure successful phase-in of this contract by providing current credit rating, lines of

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because its price for the fixed-price work in the base year was only \$[DELETED] higher than that of Superior. Despite the fact that its attorney had access to the entire price evaluation report and business clearance memorandum, under a protective order issued by our Office, Sam challenges no aspect of the agency's determination that Superior's price was reasonable and realistic. Absent such specific challenges, the firm's complaints do not show that the price evaluation was unreasonable.

credit, sources of funds and proposed means for financing any resulting contract.<sup>3</sup>

RFP § M.2.

Sam began the “Relevant Experience” section of its proposal with a figure entitled “Matrix of Services by Contract.” Protester’s Technical Proposal at 2. This matrix lists various types of work performed under 12 contracts that are generally referred to by no more identification than the name of the contracting agency. In response to the RFP’s stated requirements for details of projects submitted under the relevant experience factor, Sam listed three projects. The first project was described as a recently-completed, fixed-price [DELETED] contract for various grounds maintenance services performed over 5 years, with an “initial yearly value” of \$355,000. *Id.* at 3. The second project was described as an [DELETED] contract for various grounds maintenance services with the listed dates “199902” to “199909”<sup>4</sup> and a listed “initial value” of \$153,000. *Id.* at 4. The third project was described as a [DELETED] contract for various grounds maintenance services with no listed dates and a value of \$125,000. *Id.* In addition to its descriptions of these three projects, Sam included sections on its phase-in and mobilization experience and its finances.

The Navy rated Sam’s proposal marginal under the relevant experience factor. The agency found that the firm listed two significant grounds projects that were performed by a firm with which Sam had worked for some years and had acquired in 2001. The Navy stated that these two projects demonstrated similarity in function, but fell short in size, scope, complexity, and value. The Navy also found that the phase-in and mobilization information provided was not sufficiently detailed, and that Sam failed to provide any specific financial information. TEP Report at 6.

Sam argues that the Navy improperly limited its consideration of the firm’s relevant experience to the three projects “blocked off” in the relevant experience section of its proposal, and characterizes these three projects as “the least” of its contracts. Protester’s Comments at 4. Sam contends that the Navy should have considered four other contracts referenced in its “Matrix of Services by Contract” since details on these four contracts were included in past performance questionnaires received by the agency.

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<sup>3</sup> As is evident from this language, Sam is incorrect when it argues that the solicitation required any recurring projects to be more than 50 percent complete, Protester’s Comments at 5, and incorrect (and inconsistent) when it argues that the solicitation required that projects considered under the relevant experience factor be completed. Protester’s Supplemental Comments at 4.

<sup>4</sup> We assume that these dates are February 1999 to September 1999.

As an initial matter, it was Sam, not the Navy, that decided to list “the least” of its contracts as those most representative of its relevant experience in the relevant experience section of its proposal. The proposal’s mere reference to other contracts in its “Matrix of Services of Contract” figure did not include any of the detail required under the relevant experience factor. While Sam’s proposal did include information about other contracts in the past performance section of its proposal, offerors bear the burden for failing to submit an adequately written proposal and contracting agencies evaluating one section of a proposal are not obligated to go in search of needed information which the offeror has omitted or failed adequately to present. Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 8.

In any event, we have reviewed the past performance questionnaires Sam argues should have been considered in evaluating its relevant experience and find no basis to conclude that their consideration would have altered the Navy’s evaluation of the firm’s proposal. Again, the work required here involved multiple sites and was valued at approximately \$1.1 million per year. The basis for Sam’s marginal rating was the Navy’s concern that, while its projects were similar in function to the work required here, they were not similar in size, scope, complexity, and value. One questionnaire, which concerned an [DELETED] contract for grounds maintenance services, indicates that the total value of the 4-year contract was less than \$1 million, and another questionnaire, which concerned the [DELETED] contract discussed above, indicates that the annual value of the contract was only \$20,000. At a minimum, both of these contracts are substantially smaller in size and value than the one at issue here. A third questionnaire concerns a contract performed between May 1992 and May 1997 but, under the relevant experience factor, the agency could only consider projects that were ongoing or completed within the past 5 years. The fourth questionnaire, which concerned the [DELETED] contract discussed above, was identified as a fixed-price contract with a dollar value far in excess of the \$355,000 value Sam listed in the relevant experience section of its proposal. Given the discrepancy in the value of this fixed-price contract, and Sam’s apparent lack of knowledge as to the actual value of the contract,<sup>5</sup> we cannot fault the agency for basing its evaluation of Sam’s relevant experience on the information Sam provided in the relevant experience portion of its proposal. Taking these conclusions together with the fact that Sam has failed to rebut the agency’s detailed response to its allegations concerning the evaluation of its phase-in and mobilization experience and its financial information, we conclude that the protester has not shown that the Navy’s evaluation of its relevant experience was unreasonable.

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<sup>5</sup> In its protest, Sam states that it “is likely and very possible” that the contract is worth more than \$355,000 today given increases in labor and other costs. Protest at 5. It is unclear how, if this was a fixed-price contract, it could increase in value over time (the contract is not included in the record), or why Sam would not know the value of its own contract.

Sam also alleges that the Navy unreasonably evaluated Superior's proposal under the relevant experience factor.

Superior listed two projects in the relevant experience section of its proposal. The first project was for grounds maintenance and landscaping services at an Air Force Base. Superior stated that it was currently performing the second year of this 5-year contract, which was valued at approximately \$1.1 million per year or a total of approximately \$5.6 million. The second project was as a subcontractor providing grounds maintenance services under a larger Navy contract in Philadelphia. Superior stated that this contract was valued at \$260,000 annually, with a total value of \$78 million.

The Navy rated Superior's proposal acceptable under the relevant experience factor, finding that it listed two relevant grounds projects that showed strong similarities in size, scope, function, complexity, and value to the solicitation. The Navy also found that Superior showed an acceptable level of phase-in experience, with clear start-up planning for the project, and a \$[DELETED] line of credit for start-up costs.

Sam first argues that Superior has overstated the value of its Air Force contract. According to Sam, in the past performance section of Superior's proposal, the reference for the firm's Air Force contract indicated that the total value of the contract over 2 years was only \$2,563,261, and not the approximately \$5.6 million indicated by Superior. As the record makes clear, however, this discrepancy is explained by the fact that the total value indicated by Superior was for the entire 5-year period--the reference listed the value of the contract based upon the 2 years already performed.

Sam also argues that Superior's Philadelphia contract cannot have a total value of \$78 million if the annual value of the contract is \$260,000. As the Navy explains, however, the \$78 million figure represents the total value of the prime contract, and Superior noted that it was a subcontractor whose subcontract was valued at \$260,000 per year. The TEP chair states that his evaluation was based upon his understanding that the value of the work performed by Superior under the contract was, in fact, \$260,000 annually. TEP Chair Statement ¶ 5.

Sam appears to argue that the Navy improperly failed to consider whether Superior's projects were similar in value to the work here in evaluating Superior's proposal. The Navy denies this charge. The Navy explains that Superior's Air Force contract was of similar size, scope, function, complexity, and value to the prospective contract; since Superior's Philadelphia contract was dissimilar to the prospective contract in terms of size, complexity, and value--but similar in function--its proposal received a lower overall rating of acceptable under the relevant experience factor instead of the highest rating of excellent. Supplemental Agency Report at 3. The RFP does not state that a contract would not be considered if it were not equivalent to the anticipated contract under all of the relative experience criteria. Roy F.

Weston, Inc., B-274945 et al., Jan. 15, 1997, 97-1 CPD ¶ 92 at 8. In our view, the Navy's application of the RFP's relevant experience criteria, whereby it gave more credit for projects that met all criteria and less credit for projects that did not, reflects an appropriate weighing and balancing of the listed experience criteria. M. Erdal Kamisli, Ltd., B-291522, Dec. 23, 2002, 2003 CPD ¶ 19 at 4. As a result, we have no basis to find that the Navy unreasonably evaluated Superior's proposal as acceptable under the relevant experience factor.

The RFP stated that the evaluation of proposals under the past performance factor would be based on "review of previous Federal, State, and Local Government, and private contracts similar in size, scope, and complexity to this requirement" to determine the offeror's relative capability. RFP § M.2. The Navy planned to review each offeror's record of conforming to specifications and standards of good workmanship, adherence to contract schedules, subcontractor management, and quality control programs by reviewing questionnaires submitted from references "from similar projects performed with[in] the last five years." Id. Offerors were responsible for ensuring that the references submitted completed questionnaires to the Navy.<sup>6</sup>

Sam alleges that the Navy's evaluation of its proposal as good under the past performance factor was unreasonable because it did not receive such a "low" rating on any of its past performance questionnaires. Protester's Comments at 6. A review of those questionnaires shows that Sam is incorrect. In addition to excellent and very good ratings, the firm received a poor rating for contract administration/management under one contract and a good rating for the quality of its work under another contract. As a result, we have no basis to conclude that the agency's evaluation of the firm's past performance was unreasonable.

Sam also alleges that, since most of Superior's past performance questionnaires concern ongoing contracts, the Navy could not consider them because the RFP required that contracts considered under the past performance factor must have been completed within the last 5 years. We do not agree. The solicitation does not require that contracts considered here must have been completed within the last 5 years, only that they must have been "performed with[in] the last five years." RFP § M.2. In our view, this language encompasses ongoing contracts. Sam's argument that the Navy improperly failed to consider whether these contracts were similar in value to the work required here overlooks the fact that the solicitation did not list value as a criterion to be considered under the past performance factor. Sam has given us no basis to question the Navy's evaluation of Superior's proposal as excellent under the past performance factor.

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<sup>6</sup> The Navy explains that it did not receive any questionnaires concerning Sam's past performance, but took it upon itself to contact some of Sam's prior clients to solicit such questionnaires. Agency Supplemental Report at 4.

We now turn to Sam's remaining challenges to the evaluation of its proposal under the technical/management factors. The Navy rated Sam's proposal as marginal under the project staffing factor because the firm's staffing plan lacked sufficient on-site supervision; its number of full-time equivalents seemed to be low; the organizational chart provided was vague and very limited, and did not provide for any crew or team leaders; and the firm did not "present a good grasp of the requirements of the spec, and instead offer[ed] essentially [its] own spec at the end of the submittal, which does not speak to the requirements of the solicitation." TEP Report at 6. In its protest, Sam challenged the Navy's evaluation as unreasonable because its proposal named an experienced project manager and quality control manager and showed that the firm had substantial and successful experience with this plan and organizational chart. Protest at 7. The agency report fully addressed these allegations, pointing out that some were factually inaccurate or misrepresented the contents of the proposal, and providing legal and factual support for the TEP's findings. Sam's comments do not rebut the agency's position, but simply state that the firm has been "proven" over 18 years. In our view, this response is insufficient to show that the Navy's evaluation was unreasonable.

In response to Sam's protest allegation that the Navy unreasonably evaluated its proposal as marginal under the small business and subcontracting efforts factor, the Navy pointed out that it had rated the proposal as acceptable, not marginal. The Navy based its rating on the fact that award to the firm would permit the Navy to meet its goals because the firm was a small disadvantaged woman-owned business. The Navy explained that the proposal was not rated higher because the firm provided an inadequate response to the RFP requirement to provide a brief narrative of how it would determine what work would be subcontracted and set aside for such entities for this project. In its comments, Sam does not address the Navy's position except to argue that this "damaging" acceptable rating is an "utter obvious abuse of discretion." Protester's Comments at 8. We do not think that this charge constitutes a basis to find the evaluation unreasonable.

Finally, Sam argues that one of the TEP members, who also serves as the contracting activity's small business specialist, is biased against the firm.<sup>7</sup> In this regard, the son of Sam's president submitted an affidavit in which he states that he overheard this individual state that he "almost caused her to lose her job" and "was going to make

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<sup>7</sup> In addition, citing errors it alleges existed in this procurement, the protester argues that two members of the TEP are not qualified to evaluate proposals. While the record shows that this was not a model procurement, Sam's allegations of errors have largely been found to be without basis and we cannot conclude that the TEP members were unqualified. Sam also argues that the TEP chairperson was not listed in the source selection plan as a TEP member; the source selection plan does include this individual as a member of the TEP. SSP ¶ 2.2.1.



sure” that Sam never got another contract. Protester’s Affidavit ¶ 4. In response, the agency small business specialist submitted a statement in which she asserts that she “never stated” she would see to it that the firm never got another contract and “never made any statement” that could be reasonably construed as the protester is alleging. Agency Small Business Specialist’s Affidavit ¶¶ 2, 3, 4.

Our review of the record leads us to conclude that we need not resolve this dispute because, even if the protester is correct, we do not find any possible prejudice to the protester. As is the case in all protests, where the record does not demonstrate that, but for the agency’s actions, the protester would have a reasonable chance of receiving award, we will not sustain a protest, even if a deficiency in the procurement is found. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, as noted above, the materials that formed the basis of this decision were provided to Sam’s counsel, under a protective order issued by our Office, and Sam was given every opportunity to point out inaccuracies or errors in those materials. While Sam disagrees with many of the conclusions in the record, it has not shown that statements provided there were inaccurate or false, or that the conclusions themselves were unreasonable. Since we generally presume that contracting officials act in good faith, Indian Affiliates, Inc., B-243420, Aug. 1, 1991, 91-2 CPD ¶ 109 at 5, and since Sam has been given every reasonable opportunity to demonstrate that it was harmed by unfair or improper bias—and has failed to make that showing—we have no basis to conclude that the protester was not treated fairly by the Navy in this procurement. IGIT, Inc., B-275299.2, June 23, 1997, 97-2 CPD ¶ 7 at 9-10; see also IT Facility Servs.—Joint Venture, B-285841, Oct. 17, 2000, 2000 CPD ¶ 177 at 5 n.13.

The protest is denied.

Anthony H. Gamboa  
General Counsel