



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: New Breed Leasing Corporation

File: B-259328

Date: March 24, 1995

Donald P. Arnavas, Esq., and Phillip H. Harrington, Esq., Wiley, Rein & Fielding, for the protester., for the protester.

Cynthia S. Guill, Esq., and David J. Rowland, Esq., Department of the Navy, for the agency., for the agency.

Henry J. Gorczycki, Esq., John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's decision to award to a higher-priced, higher-rated offeror is unreasonable where the information concerning the cognizant technical evaluation board's conclusions regarding relative merits of the proposals provided to the source selection official on which he based his award decision was inaccurate and the discriminators used to differentiate proposals were not supported by the evaluation record.

DECISION

New Breed Leasing Corporation protests the award of a contract to LBM, Inc. under request for proposals (RFP) No. N68931-93-R-9618, issued by the Department of the Navy for transportation operations and maintenance services. New Breed argues that the agency's award selection was unreasonable and not in accord with the evaluation criteria.

We sustain the protest.

The RFP, issued on April 15, 1994, provided for the award of a combination firm, fixed-price award fee/indefinite quantity contract for a 5-year period. The awardee will provide, among other things, motor pool and dispatch services, bus and taxi service, fuel operations, vehicle maintenance and repair, towing services, road and runway sweeping, and related environmental and administrative support services at three Navy installations in the Jacksonville, Florida area.

The RFP stated that award would be made to the responsible offeror whose offer, conforming to the solicitation, was determined most advantageous to the government, price and other factors considered. The RFP listed the following evaluation factors:

- a. Proposer's Past Performance in Transportation Operations and Maintenance;
- b. Management and Administration;
- c. Method of Operation
- d. Price

The RFP stated that the three technical evaluation factors were "essentially equal in importance," and that "[t]he cumulative rating of the technical evaluation factors is of more importance than the price factor. However, price becomes more significant as technical evaluations become similar."

The RFP provided detailed instructions for the preparation of proposals. Among other things, technical proposals were limited to 150 pages of text using 10 pitch type or larger.

The Navy received 14 proposals, including the proposals submitted by New Breed and LBM, by the RFP's closing date of May 25. The proposals were evaluated by a technical evaluation board (TEB), which found that several proposals, including New Breed's and LBM's, did not comply with the page and/or type size restrictions. However, the TEB evaluated all of the proposals submitted in their entirety, regardless of their length or the type size used, or whether they adhered to the required organizational structure.

The TEB recommended that the proposals of nine offerors, including those of New Breed and LBM which received overall "very good" ratings, be included in the competitive range. The source selection board (SSB) reviewed the TEB report, and found it deficient because one of the four voting members of the TEB had not fully participated in the evaluation of proposals, and because the adjectival ratings assigned the various proposals were inconsistent with the evaluators' narrative comments. The SSB reconvened the TEB and directed it to review its evaluation and develop technical discussion questions for all offerors, except those whose proposals were rated unacceptable.

On June 29, the TEB issued a revised report, which included the following statement:

"The Board members reviewed their individual ratings and after much discussion, it was determined that the narrative portion of each individual's rating accurately described the contractor's proposal.

Each evaluator reread his narrative rating and compared that rating to the rating guide in the Source Selection Plan [SSP]. Each evaluator adjusted the factor ratings by marking their original sheets in green pen to align more closely with the rating descriptions in the [SSP] guidance. . . ."

With regard to LBM's proposal, the revised TEB report raised each factor and the overall rating from "very good" to "excellent." Although factor ratings were also raised for New Breed's proposal, New Breed's overall rating continued to be stated as "very good." The TEB submitted its revised report to the SSB, recommending discussions with nine competitive range offerors.

After requiring revisions in the recommended discussion questions, the SSB and subsequently the source selection authority (SSA), accepted the TEB report. The SSA authorized discussions on the condition that a tenth offer be included in the competitive range.

The Navy conducted telephonic discussions with the 10 offerors whose proposals were in the competitive range and sent each offeror written copies of the questions asked during discussions. On August 15, the Navy requested best and final offers (BAFO) and received BAFOs from all competitive range offerors on August 29. New Breed's BAFO offered the lowest price of \$20,078,453, and LBM's BAFO offered the third lowest price of \$20,370,430.

The TEB evaluated the offerors' discussion responses. Two proposals were determined to be technically unacceptable and eliminated from further consideration. Since no technical discussions had been conducted with regard to LBM's "excellent" proposal, no changes were made to its ratings. The TEB found that New Breed's discussion responses addressed all of the agency's concerns, commenting that New Breed presented an "excellent rationale" and had "enhanced" its proposal; nevertheless, the TEB did not increase New Breed's ratings under any of the three technical evaluation factors. Indeed, except for eliminating the proposals of two other offerors from further consideration for award, the TEB did not recommend changes to any of its initial consensus ratings.

The SSB reviewed and adopted the TEB report on the BAFOs, and documented its findings for the SSA in the Post-negotiation Business Clearance Memorandum dated September 20, wherein the relative benefits of the three lowest-priced proposals were discussed.¹ The SSB stated that the second lowest-priced BAFO and

¹There is no evidence that the SSB independently evaluated the proposals; rather the record indicates that it adopted what it understood to be the TEB's ratings and findings.

New Breed's lowest-priced BAFO were both rated "very good."² The SSB noted that LBM's price was \$291,977 higher than New Breed's price, but stated that this price difference:

"is insignificant when considering the excellent technical rating given to [LBM]. [LBM] and their major subcontractor offered vast experience in transportation services of similar size and complexity, and had excellent past performance references. Additionally, [LBM] provided detailed phase-in plans, fully developed flow charts, and environmental expertise which provides a clear technical difference between [LBM] and [New Breed]."

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"Based on the above analysis and comparisons, consensus was reached that [LBM's] offer provides the government with the best value when price and technical factors are considered."

On September 28, the SSA accepted the TEB's evaluation findings and the SSB's recommendation as submitted. Award was made to LBM on November 1. After being debriefed, New Breed filed this protest. The agency has suspended contract performance pending resolution of the protest.

Where an agency chooses between a higher-priced, higher-rated proposal and a lower-priced, lower-rated proposal, we will review the agency's source selection decision to determine whether it is consistent with the stated evaluation criteria and whether the agency's price/technical tradeoff is reasonable. Central Texas College, 71 Comp. Gen. 164 (1992), 92-1 CPD ¶ 121. A source selection decision based on inconsistent or inaccurate information concerning the technical evaluation or the relative merits of the offerors' technical proposals is not reasonable. SDA, Inc., B-248528.2, Apr. 14, 1993, 93-1 CPD ¶ 320.

Here, the source selection of LBM for award was flawed because the SSA was provided information that contained uncorrected errors concerning New Breed's ratings, failed to accurately represent LBM's past performance record, and provided conclusions about the two proposals' technical differences that were inconsistent with the evaluation record and the offerors' proposals.

First, the record shows that when compared to the evaluators' ratings, the final technical ratings for New Breed, as provided to the SSA, were understated with regard to both the Past Performance and Management and Administration

²The SSB did not further reference the second lowest-priced BAFO.

evaluation factors. Specifically, while both factors' ratings were reported to the SSA as "very good," the record shows that they should have been reported as "excellent."

With regard to the Past Performance evaluation factor, the TEB's revised report assigned New Breed's proposal a rating of "very good" and requested New Breed to clarify its maintenance experience. Notwithstanding New Breed's response, the TEB's concerns remained because a contract specialist was initially unsuccessful in contacting a reference cited by New Breed in its proposal to confirm New Breed's motor vehicle maintenance experience on a multi-million dollar contract with the United States Postal Service. Subsequent to discussions, the contract specialist contacted references at the Postal Service who confirmed that New Breed's contract with the Postal Service covered motor vehicle maintenance and described New Breed's performance as "very good." Although the contract specialist's memorandum to the file documenting these interviews was apparently unavailable to the TEB members during their consideration of New Breed's BAFO, the TEB chairman stated in the TEB's summary evaluation form that:

"Had this information been available to the board members the rating [of very good for past performance] would be raised to excellent. (Please see [contract specialist's] memo to file.)"

The record shows that the SSB accepted the TEB report as filed, that is, with New Breed's rating under the past performance factor remaining "very good," rather than "excellent" as it should have been, and did not otherwise discuss in its report the past performance of New Breed or any other offeror, with the exception of LBM.³

Similarly, the TEB's consensus rating for New Breed's BAFO under the Management and Administration factor was also incorrectly reported to the SSA as "very good," although the record indicates that it was actually considered "excellent" by the TEB. As discussed above, the revised ratings were recorded on the original worksheets in green ink, and the consensus rating sheet for New Breed's proposal, as revised in green ink, shows that the TEB increased its consensus rating for New Breed's initial proposal on the Management and Administration evaluation factor from "very good" to "excellent." However, the consensus rating sheet for New Breed that was submitted by the TEB to the SSB incorrectly showed the ratings for all three factors as "very good."⁴ That is, the revised consensus rating was inaccurate as it failed to

³SSB's report did include the TEB documentation in attachments to the report.

⁴The TEB increased New Breed's rating under the Past Performance evaluation (continued...)

show that the TEB had increased New Breed's rating under the Management and Administration factor to "excellent."⁵ There is no indication that TEB intended to lower New Breed's rating as a result of discussions; to the contrary, the record indicates that the TEB was generally satisfied by New Breed's responses. Because of this, the SSB, and ultimately the SSA, were not informed that the TEB had rated New Breed's proposal under the Management and Administration evaluation factor as "excellent."

Thus, for two of the three technical evaluation factors, the SSB and SSA relied on an erroneous report that the TEB had rated New Breed's proposal as "very good," when in fact the record shows the proposal had been rated under these evaluation factors as "excellent."

Additionally, the award selection, as documented in the SSB report and accepted by the SSA, does not appear to otherwise accurately document any meaningful technical differences between LBM's and New Breed's proposals; to the contrary, the stated reasons for asserted technical superiority are not supported by the evaluation record.

For example, a major justification given for finding LBM's proposal technically superior to New Breed's with regard to past performance was LBM's reported experience on transportation contracts of "similar size and complexity" with "excellent" past performance references. However, while this RFP is valued at more than \$20 million for 5 years, LBM's prior contracts, as described in its BAFO (except for one valued at more than \$1 million), are all valued at less than \$1 million per year.⁶ Also, except for a single reference on a small contract⁷, all of LBM's contacted references described LBM's performance as "satisfactory." Thus, contrary to the report received by the SSA, LBM had not performed any contracts of similar size to the proposed contract, and its references generally described

⁴(...continued)

factor from "acceptable" to "very good" while the rating for the third factor remained "very good."

⁵The record provides no evidence to suggest that this was anything other than a transcription error. Indeed, the evaluators' rating sheets and narratives suggest that an "excellent" rating was what was intended.

⁶[DELETED.]

⁷This one reference described LBM's performance as "excellent" on a contract valued at more than \$100,000.

LBM's past performance as satisfactory.⁸ In contrast, the record indicates that New Breed has performed several relevant multi-million dollar contracts, and all of New Breed's references described its performance as "very good" or "excellent."

The other qualitative differences between LBM and New Breed, as reported by the SSB, were LBM's "detailed phase-in plans, fully developed flow charts, and environmental expertise." However, the evaluators' narratives do not show the superiority of LBM's proposal in these areas and there is no indication that the stated differences were the result of an independent evaluation by the SSB or SSA.

For example, regarding the detail of phase-in plans, the TEB evaluators who commented on the plans stated that New Breed had a "good" or "very good" phase-in plan, and that the proposal "clearly indicates time frame for phase-in procedures to be on-line by contract start date." Similarly, LBM was found by several evaluators to have a "good" phase-in plan, and another evaluator commented that LBM's plan also was "in line with contract start date and appear[s] to cover all aspects of contract conversion."⁹

Likewise, the record shows that both proposals contained complete and understandable flow charts. Again, the TEB evaluators' who commented on this area stated that New Breed "indicates clear line of management, control and accountability of all aspects of [the] RFP," and that LBM showed "a complete and sufficient manner in which support is to be provided, controlled and accounted for."

As for environmental expertise, New Breed was found to have "an extensive knowledge of storage, handling, accountability, and disposal relative to [the environmental area]," and also to have proposed a subcontractor which the Navy

⁸Although LBM's large business subcontractor's past performance was reported as "excellent," the subcontractor's performance on only one contract was checked for reference and this contract was not for transportation services.

⁹During the course of this protest, the Navy suggested that LBM's phase-in plan was better than New Breed's because it was based on a shorter time frame. However, both offerors' plans met the time frames specified in the RFP, and the RFP did not indicate that a shorter phase-in time frame was an evaluation consideration. Moreover, LBM proposed an unspecified "transition period" prior to the start of its phase-in plan, which does not permit determining the exact length of time for completion of the phase-in under LBM's proposal. Finally, New Breed states that it could and would have reduced its phase-in time frame if the agency had indicated this was desirable. In any event, the record does not show that the length of the phase-in was considered of any import to the TEB, the SSB, or the SSA during the evaluation and source selection process.

considered to have "excellent" environmental experience. LBM was found to meet or exceed RFP requirements in this area and was credited with "a very good knowledge of regulations."

In sum, New Breed's actual ratings were not accurately communicated to the SSA, and the stated technical discriminators between LBM's and New Breed's proposals, as represented by the SSB, are not supported by the TEB evaluation.

Finally, the record suggests that the evaluation scheme stated in the RFP was not what was desired by the agency. For example, LBM did not follow the detailed proposal information requirements of the RFP and New Breed did. However, LBM received no evaluation penalty for ignoring the instructions, whereas New Breed received negative evaluator comments for providing repetitive information which the RFP proposal instructions apparently require.

We recommend that the Navy amend the solicitation to clarify the proposal preparation instructions. The Navy should then reopen discussions and evaluate proposals in a manner consistent with the amended solicitation. If an offeror other than LBM is found to offer the best value, the Navy should terminate the contract awarded to LBM and make award under the new source selection decision. The protester is entitled to the costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1995). The protester should file its claim for costs directly with the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

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of the United States