



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Volmar Construction, Inc.

File: B-270364; B-270364.2

Date: March 4, 1996

V. James Adduci II, Esq., and Katherine S. Nucci, Esq., Adduci, Mastriani & Schaumberg, for the protester.

J. Kevin Bridston, Esq., Holland & Hart, for MCC Construction Corp., an intervenor.
Nicholas P. Retson, Esq., and Michael J. O'Farrell, Jr., Esq., Department of the Army, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency conducted meaningful discussions where questions posed were sufficient to direct the protester to the agency's primary areas of concern about its proposal; all-encompassing discussions are not required.
2. Under a solicitation in which technical factors were more important than price, the selection of the awardee on the basis of its overall technical superiority, notwithstanding its higher price, is unobjectionable where the agency reasonably determined that the awardee's higher-priced proposal, which evidenced in particular superior relevant contract experience and past performance, was worth the additional cost, and the cost/technical tradeoff was consistent with the evaluation scheme.

DECISION

Volmar Construction, Inc. protests the award of a contract to MCC Construction Corporation under request for proposals (RFP) No. DAKF29-95-R-0001, issued by the Department of the Army for small to medium repair and minor construction projects at Fort Dix, New Jersey and at various other installations throughout New Jersey and New York. The protester contends that the agency failed to conduct meaningful discussions and that the award determination reflects an improper cost/technical tradeoff.

The protests are denied.

The RFP contemplated the award of an indefinite delivery/indefinite quantity job order contract (JOC) for a base year with 2 option years, dividing the work to be

completed into six geographic zones. Offerors were requested to submit a technical proposal addressing the technical/management evaluation areas and a pricing proposal. The RFP advised that award would be made on the basis of the best overall value in terms of management, technical, quality control, and price. Technical excellence was slightly more important than price, and consisted of a management factor, including eight subfactors; a technical factor, including five subfactors; and, a quality control factor, including five subfactors. Within the technical excellence area, management was slightly more important than technical or quality control, which were of equal importance.

Ten firms, including Volmar and MCC, submitted initial proposals by the closing date. After the initial evaluation, the source selection evaluation board (SSEB) concluded that all 10 firms were within the competitive range. In its evaluation, the SSEB provided numerical scores and corresponding adjectival ratings to express the merit of the technical proposals, as follows:

<u>Percentage Point</u>	<u>Score Adjectival Rating</u>
90 to 100	Excellent
70 to 89	Satisfactory
50 to 69	Marginal

The ratings were supported by detailed narrative technical findings by the SSEB of the strengths and weaknesses of each offeror's proposal in each evaluation area.

Following its initial proposal evaluation, the SSEB assigned Volmar's technical proposal the following percentage scores under the management factor: 93 for subcontractor coordination; 95 for general management; 93 for purchasing system; 91 for management staff list; 91 for management plan; 30 for payroll/labor plan; 94 for response time; and 50 for subcontracting plan. The summary narrative for this factor listed no strengths but six weaknesses for Volmar's payroll/labor plan. The evaluation of its subcontracting plan indicated that Volmar was judged deficient on one factor.

Under the technical factor, the SSEB assigned Volmar's proposal a percentage score of 93 for its ability to deal with a number of small construction projects simultaneously; 78 for experience; 94 for technical staff; 97 for project managers; and, 96 for its subcontractors. No specific strengths or weaknesses were listed in the narrative concerning Volmar's experience/past performance.

Finally, under quality control, the SSEB assigned Volmar's initial proposal 87 percent for its inspection techniques; 87 percent for its corrective action program; 72 percent for its customer complaint program; 97 percent for its accident prevention program; and, 87 percent for documentation and reports. The summary narrative listed one weakness in Volmar's inspection techniques.

Volmar's overall technical score on its initial proposal was 86 percent.

Written discussions were initiated with all offerors in the competitive range. The agency addressed eight questions to Volmar concerning its proposal: two questions concerning price and six questions concerning management, including Volmar's proposed plan to administer payroll and labor relations functions and its proposed subcontracting plan. Specifically, as to its payroll/labor plan, the protester was advised that its proposal (1) did not contain a plan for compliance with equal opportunity provisions; (2) did not contain a plan for compliance with Affirmative Action for Handicapped Workers; (3) did not address Special Disabled and Vietnam Era Veterans provisions; (4) did not address a Special Employee program; and (5) did not provide procedures for reporting, investigating, and resolving Equal Employment Opportunity complaints. As to Volmar's subcontracting plan, the protester was informed that its plan did not contain a policy statement or evidence of internal guidance to company buyers recognizing commitment to specified public laws. In response, in its best and final offer (BAFO), the protester described its plans for each of these special employee programs and addressed the weakness cited in its subcontracting plan.

Following receipt of BAFOs, the SSEB completed its final technical evaluation of proposals. The SSEB rescored Volmar's payroll/labor plan, giving Volmar's revised proposal a percentage score of 95 on this subfactor and raising its overall technical score to 89. Volmar's subcontractor's plan, however, was not reevaluated or rescored and Volmar's percentage score of 50 on this subfactor was left unchanged. The overall scores, adjectival ratings and BAFO prices for the 5 highest-ranked proposals were as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>BAFO</u> <u>Adjectival Rating</u>	<u>Price</u>
MCC	93	Excellent	\$5,705,580
Offeror A	93	Excellent	\$7,912,786
Offeror B	90	Excellent	\$6,822,573
Offeror C	90	Excellent	\$6,780,000
Volmar	89	Satisfactory	\$5,094,710

Of these five proposals, the agency determined that MCC, with the highest rated technical proposal (scoring in the excellent range for all 3 technical excellence factors) and the second-lowest price represented the best value to the government and MCC was awarded the contract. Volmar was given a written debriefing, dated October 25, and this protest followed.

Volmar argues that the Army failed to conduct meaningful discussions. Specifically, Volmar contends that the Army should have raised concerns regarding its quality control–customer complaint plan and its quality control–inspection system. To

support its position, Volmar points to its percentage score of 72 for its customer complaint plan and the Army's statement in its cost/technical tradeoff determination that Volmar's low rating for its customer complaint program was one reason for selecting MCC's higher-priced proposal for award. As to its inspection system, Volmar argues that the weakness cited by the agency, its failure to specify acceptable quality levels of performance for each major element, was easily correctable and would have undoubtedly raised its overall rating. The protester alleges that "it is clear that the quality control plan weaknesses had a significant adverse impact on Volmar's technical rating" and therefore the Army was obligated to discuss these weaknesses with Volmar. Again, Volmar points to its overall rating of 86 percent (compared to MCC's overall rating of 94 percent on this factor) to support its position. The protester alleges that had the Army discussed its quality control weaknesses, its subfactor scores and its overall rating score would have increased.

Agencies are not required to afford offerors all-encompassing discussions. They must point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award, Department of the Navy--Recon., 72 Comp. Gen. 221 (1993), 93-1 CPD ¶ 422, and need only lead offerors generally into the areas of their proposals that require amplification. TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573. Where a proposal is considered to be acceptable and in the competitive range, an agency is not required to discuss every aspect of the proposal that offers a relatively less desirable approach or more limited experience than other proposals. Data Sys. Analysts, Inc., B-255684; B-255684.2, Mar. 22, 1994, 94-1 CPD ¶ 209; Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530.

The record indicates that the Army had no significant concerns with the protester's customer complaint program or its inspection system. As noted, the primary flaws in Volmar's initial proposal related to its payroll/labor and its subcontracting plans. Indeed, while Volmar's proposal received a score of 30 percent for its payroll/labor plan and a score of 50 percent for its subcontracting plan, it received scores of 72 percent and 87 percent for the customer complaint and inspection system, respectively. Moreover, the agency's evaluation narrative listed no weaknesses for Volmar's customer complaint program and one weakness for Volmar's inspection system, which the agency found fully acceptable.

An agency is not required during discussions to discuss elements of a proposal that are not deficient and need not conduct discussions in an area where an offeror is acceptable in order to bring the proposal up to the level of other proposals. See Biloxi-D'Iberville Press, B-243975.2, Sept. 27, 1991, 91-2 CPD ¶ 301; Martin Advertising Agency, Inc., B-225347, Mar. 13, 1987, 87-1 CPD ¶ 285. Nor is an agency required to advise an offeror of a minor weakness that is not considered significant, even where it subsequently becomes the determinative factor when two closely-

ranked proposals are compared. Booz, Allen & Hamilton, Inc., B-249236.2 et al., Mar. 5, 1993, 93-1 CPD ¶ 209; Training and Management Resources, Inc., B-220965, Mar. 12, 1986, 86-1 CPD ¶ 244. Here, the Army's discussion questions, noted above, led Volmar into the areas of its proposal that the Army considered weak, specifically, its payroll/labor program and its subcontracting plan. Since the protester's customer complaint plan and its inspection system were never considered meaningful weaknesses, the Army was not obligated to discuss them, and the Army's conduct of discussions with Volmar was unobjectionable.

Volmar also argues that the Army did not perform a proper cost/technical tradeoff. The protester argues that the Army relied almost exclusively on the adjectival ratings given to the offerors and failed to qualitatively distinguish between Volmar's and MCC's proposals.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; Mevatec Corp., B-260419, May 26, 1995, 95-2 CPD ¶ 33. Agencies may make cost/technical tradeoffs in deciding between competing proposals and the propriety of such tradeoffs turns not on the difference in technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of that difference was reasonable and adequately justified in light of the RFP evaluation scheme. See Wyle Labs., Inc.; Latecoere Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107.

Contrary to the protester's allegation, the record shows that the contracting officer reviewed the full technical evaluation record (including the strengths, weaknesses, and concerns cited for the proposals), as well as the resulting point scores, adjectival ratings, and cost evaluation results. While the contracting officer's award determination statement concluding that MCC offered the best value to the government focuses on the adjectival ratings, the determination provides a reasoned analysis for the selection. The determination points out, for example, that, although the contractors were technically capable of performing the work, MCC was the only contractor receiving excellent ratings in every technical factor. The award determination statement also notes Volmar's less satisfactory subcontracting and customer complaint programs.

Because its subcontracting plan was not reevaluated or rescored after BAFOs, as noted above, Volmar argues that the agency's reliance on its allegedly less

satisfactory subcontracting plan is improper.¹ However, the record shows that the protester's score on its proposed subcontracting plan was inconsequential in the overall scoring scheme and the cost/technical tradeoff. While Volmar's overall percentage score could have increased to as much as 90 percent had Volmar's subcontracting plan been properly evaluated, the source selection official, in the agency's supplemental report filed after Volmar raised this issue, makes it clear that this differential had no impact on her cost/technical tradeoff, stating explicitly that relevant contract experience and past performance were the important discriminators in comparing MCC's proposal with Volmar's lower-priced proposal. In this regard, the record shows that MCC had completed 17 JOC contracts with past performance quality ratings from its four references of primarily 8 to 10 on a scale of 10; Volmar had completed only one JOC contract with a past performance quality rating from its reference of 3 to 6 on this 10-point scale. MCC's JOC experience and its high performance ratings from references were regarded by the agency as determinative, since the most important subfactors under both the management and the technical factors related to the contractor's ability to manage and coordinate multiple projects, as required by JOC contracts.² The agency

¹Volmar first argued that the agency improperly failed to reevaluate and rescore its subcontracting plan after submission of BAFOs in a supplemental protest to our Office. Additionally, in this supplemental protest, the protester also argued for the first time that the agency improperly evaluated proposals and that the cost/technical tradeoff was based upon a flawed technical evaluation. Specifically, Volmar argues that the Army improperly evaluated its subcontracting plan and customer complaint program, improperly evaluated MCC's past performance, and was biased in favor of MCC. As noted above, however, the protester was debriefed by letter dated October 25. In that debriefing, the protester was advised that its proposal was less adequate than the awardee's in terms of its subcontracting plan and its quality control plan, which includes the customer complaint program, and that it had less extensive experience than the awardee. If the protester believed that it or MCC had been improperly evaluated on these factors or on subfactors within these factors, to be timely it was required to protest to our Office within 14 days of receipt of the debriefing letter. Bid Protest Regulations § 21.2(a)(2), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(2)) (protests not based upon alleged improprieties in a solicitation must be filed no later than 14 calendar days after the protester knew, or should have known, of the basis of protest, whichever is earlier). Since Volmar did not raise these issues until December 20, its protest on these issues is untimely.

²Volmar argues that the agency is placing improper emphasis on JOC experience since the RFP did not state that JOC experience was required or would be rated more favorably than performance of other maintenance/repair contracts. Although
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indicates that the difference in JOC experience alone would warrant award to MCC at its slightly higher--approximately 12 percent--price.

Finally, the award determination statement specifically states that while Volmar offered the lowest price, the cost savings were not significant given the technical advantages of MCC's proposal. The Army states that this is the most important contract at Fort Dix because the base must complete various construction and renovation jobs to meet its changed mission under the Base Realignment and Closure Commission's 1991 recommendations and still be prepared to meet its reserve training and special training obligations. In order to meet these requirements with its reduced work force, the Army cannot as carefully oversee the contracts but must rely on the quality performances of its contractors. The Army reasonably assessed MCC's proposal as establishing that MCC is the more proven, reliable contractor for this critical requirement. Under these circumstances and given that technical factors are more important than price, we have no basis to object to the award selection.

The protests are denied.

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²(...continued)

the RFP did not expressly require previous JOC experience, the Army's consideration of whether an offeror had substantially similar experience was proper. The consideration of such relevant experience was directly encompassed by the RFP's technical evaluation subfactors for subcontractor coordination, the ability to manage multiple projects simultaneously, and past performance history. These evaluation subfactors, and the importance assigned to them by the RFP, clearly put offerors on notice that the agency intended to consider factors--such as the degree of relevance and similarity in the projects--that would demonstrate the offeror's understanding of and ability to perform the current requirement. See AWD Technologies, Inc., B-250081.2; B-250081.3, Feb. 1, 1993, 93-1 CPD ¶ 83.