



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: F2M-WSCI

File: B-278281

Date: January 14, 1998

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Scott Riback, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably found proposal technically compliant with solicitation requirements relating to installation of road and parking facilities at military housing project; protester's interpretation that provision requires particular configuration is not supported by the language of the solicitation.
2. Protest that awardee's proposal drawings for design and construction of military housing project indicated noncompliance with solicitation requirement relating to provision of sidewalks is denied where record shows that proposal drawings were only preliminary drawings, subject to revision in final design, and that, in any case, any deviation was de minimis and did not affect the competitive standing of protester.
3. Agency source selection of higher-priced offeror was unobjectionable where record shows that agency's evaluation conformed to evaluation scheme stated in solicitation, and agency has articulated adequate reasons to support its decision.

DECISION

F2M/WSCI protests the Department of the Navy's award of a contract to HND/Hawaiian Dredging, a Joint Venture, under request for proposals (RFP) No. N62742-96-R-1373, for the design and construction of bachelor enlisted quarters at the Marine Corps Base in Kaneohe Bay, Hawaii. F2M argues that Hawaiian Dredging's proposal did not conform to various requirements of the RFP, and that the source selection decision was not reasonable or consistent with the evaluation scheme set forth in the solicitation.

We deny the protest.

The solicitation requested fixed, lump-sum offers to design and construct a base quantity of up to 170 housing units¹ (base portion) with an option quantity of up to an additional 170 units (option portion). The RFP provided that the Navy would initially award at least the base quantity and would determine whether to exercise the option within 180 days of contract award.

Award was to be made to the responsible offeror whose conforming offer was most advantageous to the government under technical and price factors, with technical and price considerations given equal weight. The technical factor was comprised of the following subfactors: building design; quality of past performance; site design and engineering; building engineering, material, quality, and maintenance; and subcontracting plan. (The agency scored proposals under the technical factor using adjectival ratings of highly acceptable, acceptable, marginal, or unacceptable.) The RFP's statement of work (SOW) provided that the agency was interested in the design and construction of a facility that had a "residential" as opposed to a "barracks-like" atmosphere, and included detailed information regarding both design and construction requirements (such as quality of building materials and spatial parameters) and subjective design criteria (such as aesthetics). The SOW further identified numerous features described as "desirable," as opposed to required, and advised offerors that favorable consideration would be given to offers including one or more of the desirable features.

The Navy received three proposals, all of which were found technically acceptable. Following discussions with all offerors, the agency requested best and final offers (BAFO). F2M's and Hawaiian Dredging's proposals received the same adjectival ratings under each subfactor, and both proposals were rated highly acceptable overall. (The third proposal, not relevant here, was rated lower than F2M's and Hawaiian Dredging's.) Hawaiian Dredging's price for the base and option requirements was \$34,399,540, while F2M's price was \$33,489,000 for one of two alternate proposals and \$33,520,000 for the other. The agency's source selection board (SSB) found that Hawaiian Dredging's proposal offered the best overall value to the government despite its higher price. Upon learning of the resulting award to Hawaiian Dredging, F2M filed this protest with our Office.

HAWAIIAN DREDGING'S COMPLIANCE WITH RFP REQUIREMENTS

F2M maintains that Hawaiian Dredging's proposal failed to conform to the requirements of the RFP with respect to streets, parking, sidewalks, water mains, and project phasing.

¹For both the base and option portions, the solicitation contemplated the construction of 160 units with an additive quantity of an additional 10 units during each portion.

Contracting agencies are responsible for evaluating information or data submitted by an offeror to determine whether the offer complies technically with the requirements of the RFP, and our Office will not disturb the agency's technical judgment unless it is shown to be unreasonable. AlliedSignal, Inc., B-272290, B-272290.2, Sept. 13, 1996, 96-2 CPD ¶ 121 at 5. Further, even where the record shows that the agency has relaxed a solicitation requirement for one offeror, our Office will not sustain a protest unless it also is established that the agency's actions were prejudicial to the protester. Kasco Fuel Maintenance Corp., B-274131, Nov. 22, 1996, 96-2 CPD ¶ 197 at 4. Based upon our review of the record, including testimony taken at a hearing our Office conducted with respect to this protest, we find that the Navy reasonably determined that Hawaiian Dredging's proposal met the RFP requirements and was acceptable.

Street and Parking Design

F2M contends that Hawaiian Dredging's street and parking design fails to conform to the requirements of the RFP. The solicitation stated that the street and parking system should provide safe and convenient access within the housing development area. The RFP further provided minimum widths for streets and parking lots as follows: a main collector street--defined as a street that connects the external street system with parking lots--was required to have a minimum width of 7.3 meters (with no parking on either side), and parking lots were required to have a minimum width of 7.3 meters where no parking is permitted on either side of the lot, 12 meters where parking is permitted on one side of the lot, and 16.8 meters where parking is permitted on both sides of the lot.

In Hawaiian Dredging's site design, the housing is located in a central area surrounded by a street and parking system on its perimeter. The street and parking system proposed for the base portion is a continuous loop of street interspersed with parking lots. For the option portion, Hawaiian Dredging's design does not include a street, but instead includes a series of connected parking lots around the perimeter of the central housing development area. Because of the system's design, cars traveling around the development may enter and exit several parking lots on the way to the exterior street system. When a car travels through a parking lot, it must pass through parking areas where other cars may pull directly into the flow of traffic from a parking spot.

F2M argues that this approach is inconsistent with the specifications, which the protester reads as requiring that the parking lots be segregated from the collector street. According to F2M, the agency was interested, for safety reasons, in having cars exit the parking lots and enter the collector street from a single ingress/egress point connecting each parking lot with the street system so that cars would not be driving directly from parking spots into the flow of traffic. (F2M's design, which involves discrete parking lots that are segregated from its collector street, conforms to this interpretation.) F2M maintains that the acceptance of the awardee's

allegedly noncompliant approach resulted in competitive prejudice because the awardee's parking and street system saves room and makes a large central area available for constructing the housing, resulting in a concededly better site design.

Hawaiian Dredging's design is consistent with the RFP. First, although the solicitation specified minimum widths for parking lots and collector streets, and stated that parking was prohibited on collector streets, it did not require that the design include a collector street or that parking spaces or lots be segregated from the flow of traffic passing through the development. Further, the record shows that, where Hawaiian Dredging's design does include a street (primarily on the western side of its base portion design), the roadway is depicted as being approximately 7.3 meters wide, and no parking is shown on either side of the street, in accord with the solicitation.² Elsewhere, Hawaiian Dredging's design drawings show parking lots that are the appropriate width in light of the proposed parking arrangement (*i.e.*, parking on one or both sides of the lot).³ Since Hawaiian Dredging's design otherwise met the dimensional requirements and use restrictions specified in the RFP, there is no basis to question the Navy's determination that Hawaiian Dredging's parking and street design were acceptable. In sum, the record shows that F2M simply made certain assumptions about the government's requirements as they relate to the street and parking system--that parking lots had to be segregated from collector streets, and that the flow of traffic around the development could not pass through parking lots--which were not dictated by language in the RFP.⁴

²F2M argued during the hearing that the awardee's drawings show that in one or two places, its roadway system does not meet the requirement that it be a minimum of 7.3 meters wide; the protester elicited testimony from a witness for the awardee that the roadway at particular places on its drawings appeared to measure only 7.2 meters wide. As discussed above, however, the proposal drawings are merely preliminary drawings; accordingly, and since the record indicates that there is sufficient room within the site to accommodate the required roadway width, any such minor discrepancies on the drawings did not require the agency to conclude that Hawaiian Dredging would not comply with the specifications relating to roadway width.

³During the course of the hearing, extensive testimony was offered regarding whether or not the street on the western side of Hawaiian Dredging's base portion design constituted a street or part of a larger parking lot. However, whether it is defined as a collector street or parking area, it nonetheless meets the dimensional requirements and use restrictions specified in the RFP. Consequently, the term used to describe this area is immaterial.

⁴F2M also maintains that Hawaiian Dredging's base portion design lacks
(continued...)

Sidewalks

The RFP generally required continuous sidewalks throughout the development to permit pedestrian circulation between all development elements such as housing units, parking lots, streets and recreational areas, and specifically required sidewalks on both sides of new streets. F2M maintains that Hawaiian Dredging's design fails to meet the requirement for sidewalks on both sides of new streets because there is an incomplete sidewalk on the western side of the street on the west side of the development for the base portion design. In this regard, the drawing shows a partial sidewalk on the west side of the road that is described by the parties as "petering out"; the area where a sidewalk is not depicted measures approximately 100 meters in length. F2M also argues that Hawaiian Dredging's option portion design lacks a sidewalk in the southwest corner of the development (this area measures approximately 30-35 meters in length).

This argument does not provide a basis for sustaining F2M's protest. Hawaiian Dredging's option portion design is compliant with the requirements of the RFP. The area identified by the protester as not having a sidewalk is the exterior perimeter of a parking lot, not a street; consequently, there is no requirement that sidewalks be provided in this area. As for Hawaiian Dredging's base portion design drawing, although a sidewalk is not depicted along part of the west side of the street, the record shows that the drawing is only a preliminary or proposal drawing that is only approximately 25 percent complete. Hearing Transcript (Tr.) at 274. (The RFP does not require complete design or construction drawings until several months after award and notice to proceed.) Further, the record shows that the way in which this sidewalk is depicted in the drawing (*i.e.*, a walkway that essentially "peters out") is a drafting technique used by architects to indicate "continuation." Tr. at 220. In addition, the record indicates that there is adequate room within the base portion project boundaries to place the sidewalk. Tr. at 274-75. Thus, the mere fact that the firm's proposal drawing does not specifically show a sidewalk in this area does not demonstrate that the firm's final design will lack the required walkway.

In any case, F2M does not contend that it was prejudiced by the agency's alleged waiver of this requirement, and any deviation from the specifications in this regard

⁴(...continued)

"convenient" parking for one of its buildings because some of the associated parking spaces are not located within a lot that is adjacent to the building. However, the record shows that the maximum distance from the building's parking spaces is 120 meters. Given that the RFP did not define the term "convenient," and considering that this is a Marine Corps barracks facility, we are not persuaded that this distance warranted downgrading Hawaiian Dredging's proposal.

would appear to be de minimis, offering no competitive advantage to Hawaiian Dredging. This deficiency therefore did not warrant rejecting Hawaiian Dredging's offer. Kasco Fuel Maintenance Corp., supra.

Water Mains

F2M asserts that Hawaiian Dredging's design fails to properly locate the water mains for the project. In this regard, F2M reads the RFP as requiring that the water mains be located underneath the proposed streets; since the awardee's design contemplates a continuous system of parking lots, F2M argues that locating the water mains under these areas is impermissible. This argument is without merit; the RFP required only that the water mains be located "within the roadway systems." Hawaiian Dredging's proposal to place the water mains underneath its proposed parking lot system meets this requirement.⁵

Complete and Useable Base Portion Design

F2M maintains that Hawaiian Dredging's base portion design, standing alone, does not present a complete and useable facility, as required by the RFP, because a part of its base portion construction (the street on the west side of the development and one of the parking lots) would have to be demolished in order to construct the option portion of the project should the agency elect to exercise the option. F2M alleges that the necessary demolition will disrupt use of the base portion facility, and that this is inconsistent with the RFP requirements.

This allegation is without merit. As noted above, the agency is required to exercise the option within 180 days of award. The record indicates that construction for the base portion will not begin until final approval of all post-award design and construction drawings, which is likely to take approximately 165 days. Tr. at 161-69. In this regard, the RFP provides for a 135-day period during which various drawings must be submitted and up to an additional 30 days for the government to approve the drawings. Further, after the drawing submittal process, the RFP provides for an additional 355 days for construction of the base portion (and an additional 420 days after notice to proceed for construction of the option portion). Consequently, the agency reasonably determined, as a representative of Hawaiian Dredging testified, that the awardee could easily delay construction of the identified parts of the project (the roadway and parking lot) until after the 180-day period, and thereby avoid the necessity for any demolition of the base portion construction. Id.

⁵We note that the agency states that the object of this requirement is to have water mains underneath paved areas for easier access in the event repairs are needed. This objective is satisfied by Hawaiian Dredging's design.

Building Orientation

F2M argues that the awardee's buildings--arranged in a "quadrangle" design which clusters the housing units around several courtyards--are not oriented to take advantage of the prevailing tradewinds, as required by the RFP. (In contrast, the protester's units are organized in a horizontal configuration that faces the direction of the oncoming tradewinds.)

This argument is without merit. According to the unrebutted testimony of Hawaiian Dredging's architect, the courtyard design creates "micro-environments" that provide adequate ventilation to the units by having the courtyard structures open at the "corners" and by taking advantage of swirling winds created as air passes over the top of the forward-facing portion of the structure. Tr. at 187-90, 203-04. The architect further testified that he had previously designed similar types of structures in Hawaii that had successfully been ventilated without air conditioning through use of these design concepts. The architect stated that he had considered and rejected the possibility of orienting all the building facades toward the oncoming winds because of a concern that in this location, on the windward side of the island of Oahu, this would create the potential for excessive wind forces. *Id.* In light of the architect's unrebutted testimony, we conclude that the agency reasonably determined that the awardee's design met the tradewinds requirement.

SOURCE SELECTION

F2M challenges the award decision on the basis that the agency relied on unstated evaluation criteria in finding that Hawaiian Dredging's proposal was most advantageous to the government. According to F2M, since both proposals were rated highly acceptable, the agency was required to make award to the lower-priced offeror, that is, to F2M.

Agencies are required to evaluate proposals consistent with a solicitation's stated evaluation criteria, including considerations reasonably and logically encompassed by the stated factors. Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 et al., Dec. 6, 1996, 97-1 CPD ¶ 41 at 6-7.

F2M's protest identifies several elements that it maintains amount to unidentified award discriminators. However, we find that these discriminators fell within the scope of the stated evaluation criteria. For example, in making its source selection, the agency noted that Hawaiian Dredging's site grading exceeded the RFP requirements and that its proposed quadrangle design was preferable to the essentially linear design offered by F2M. The RFP specifically provided for consideration of site planning and engineering, and building configuration and exterior appearance. The protester maintains that the RFP does not provide for more favorable consideration of an offer that exceeds the solicitation's minimum requirements, or permit a subjective judgment relating to a preference for one

design concept as compared to another. However, such considerations are the essence of any best value source selection decision; agencies distinguish between proposals on the basis of judgments about the relative value of the particular features offered by one or another proposal, and this is especially true in acquisitions such as this, where a part of the requirement involves the preparation of a unique response--in this case the design of a housing development--to an agency's requirements. See Innovative Logistics Techniques, Inc., B-275786.2, Apr. 2, 1997, 97-1 CPD ¶ 144. There is no basis to conclude that the agency improperly considered elements outside of the scope of the evaluation criteria.

As for the propriety of the source selection itself, the record shows that, although both proposals received the same adjectival ratings, the Navy found several aspects of Hawaiian Dredging's design to be advantageous, and that these features essentially rendered that firm's offer slightly technically superior. This is unobjectionable. Adjectival ratings, like point scores, are merely guides for intelligent decision-making by source selection officials; agencies are not bound to make source selection decisions based solely on such ratings, and may properly distinguish between offers regardless of the closeness of the scoring. AlliedSignal, Inc., *supra*, at 7.

Among the factors that led the agency to find Hawaiian Dredging's offer somewhat superior was the geometry of the rooms in Hawaiian Dredging's design (including the location of the door and the length and width dimensions of the room), which the agency found preferable to F2M's because Hawaiian Dredging's room "symmetry" made the room more easily divisible into equal living quarters for two people. Tr. at 407-08.⁶ The record also shows that the Navy found Hawaiian Dredging's design to be advantageous because (as discussed) the proposed site grading exceeded the requirements of the RFP and resulted in the buildings being placed at a slightly higher elevation than F2M's buildings. Tr. at 409-10. According to the agency, this was preferable because the area where the development is being constructed is subject to flooding, and the higher building elevation provided an added measure of safety against damage in the event of such flooding. Tr. at 409-10. Also as discussed, the agency found Hawaiian Dredging's proposed quadrangle building configuration to be advantageous because it conveyed a more residential feeling and sense of community than F2M's design. Tr. at 412-14. Finally, the agency found that Hawaiian Dredging's proposal offered more of the RFP's identified "desirable features," such as ceramic tile wainscoting in the hallways and at the base of the buildings, and stainless steel guardrails.

⁶Although F2M disagrees with the agency's conclusion regarding the advantages of Hawaiian Dredging's proposed room geometry, testimony from one of the technical evaluators responsible for this aspect of the evaluation persuades us that, in fact, Hawaiian Dredging's room geometry is more flexible and offers a more "divisible" space for two occupants. Tr. at 317-26.

Tr. at 416-17.⁷ The agency concluded that these aspects of the Hawaiian Dredging offer made it slightly superior from a technical standpoint, and found that award to that firm, despite its price premium, offered the best overall value to the government. This conclusion was both rational and consistent with the stated evaluation criteria.

The protest is denied.

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⁷F2M maintains that its proposed acrylic wainscoting and concrete guardrails are equivalent to Hawaiian Dredging's ceramic tile wainscoting and stainless steel guardrails and that it should have received similarly favorable consideration. However, the RFP specified wainscoting of either ceramic tile, quarry tile or similar substance, and also steel guardrails, not acrylic wainscoting and concrete guardrails, as the "desirable features." Thus, Hawaiian Dredging's offer was reasonably viewed as preferable in this area.