



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: NAHB Research Center, Inc.

File: B-278876.2

Date: May 4, 1998

Thomas L. Howard, Esq., Baker, Donelson, Bearman & Caldwell, for the protester.
Charlene Barton for Ernst & Young, an intervenor.
William T. K. Dolan, Esq., General Services Administration, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where protester does not demonstrate that agency's evaluation of experience/performance was unreasonable so as to result in competitive prejudice to the protester.

DECISION

NAHB Research Center, Inc. protests the General Services Administration's (GSA) award of contracts to Hawkins, Delafield and Wood (HDW), Ernst & Young (EY), Deloitte & Touche (DT), Price Waterhouse (PW), KPMG Peat Warwick, and Arthur Anderson (AA), under request for proposals (RFP) No. GS11P97MMD970011, for professional consulting services. NAHB challenges GSA's evaluation of experience and past performance.

We deny the protest.

The solicitation contemplated award of multiple indefinite-delivery/indefinite-quantity contracts for a 1-year base period, with 4 option years, for the professional services of project managers, budget analysts, financial analysts, architect/planners, market analysts, management consultants, and attorneys in support of the Department of Defense's housing privatization program. Awards were to be made to the responsible offerors whose conforming offers were most advantageous to the government, with price significantly less important than technical considerations. The solicitation listed the following four technical factors: (1) experience and past performance on similar projects, which was equal in importance to the remaining factors combined; and (2) key and operating personnel and (3) capabilities of the offeror, which were nearly equal in weight and were each of greater importance than (4) management plan.

GSA received timely proposals from 16 offerors and selected 6 for award. The evaluation of the proposals submitted by the awardees and NAHB was as follows:

	<u>TECHNICAL</u> (experience + personnel + capabilities + management) = overall technical	<u>PRICE</u>
EY	$(1.85 + .86 + .65 + .16) = 3.52$	\$9.679 million
AA	$(1.43 + .85 + .62 + .16) = 3.06$	\$6.703 million
PW	$(1.55 + .78 + .59 + .12) = 3.05$	\$11.098 million
KPMG	$(1.38 + .83 + .64 + .17) = 3.02$	\$3.943 million
HDW	$(1.90 + .66 + .34 + .11) = 3.01$	\$10.677 million
DT	$(1.47 + .76 + .56 + .14) = 2.93$	\$7.072 million
NAHB	$(1.37 + .61 + .48 + .12) = 2.58$	\$6.146 million

The RFP provided that the evaluation of experience and past performance "will be based on the extent, depth and quality of recent experience in performing the same or similar work," with "[p]articular emphasis [to] be placed on the degree to which the offeror's management can demonstrate a relationship between their past performance experience and the requirements of the proposed contract." Section M.3(a). The RFP required that "[t]he offeror . . . submit seven (7) references for projects performed by the offeror within the last five (5) years that are most similar to the requirements of this contract. The government will randomly select five (5) of these references for evaluation." Section L.13c(1)(B). The solicitation required the offerors to "ensure that each reference shall be willing to complete . . . a questionnaire" asking for "ratings of the Offeror's timeliness of performance, cost control, quality of the product, business relationships, design excellence, and qualification/continuity of personnel." Section M.3(a). NAHB and each of the awardees furnished the required seven references. However, while all of NAHB's references responded by furnishing a completed questionnaire, only some of the awardees' references responded; six references responded for one awardee (AA) (but only two of the responses were timely and were evaluated), five for another (KPMG), and only two (EY) or three (DT, HDW¹ and PW) for the remaining awardees. GSA evaluated experience/past performance based on the responses received, up to a maximum of five responses for any offeror.

¹As noted by the protester, and discussed below, one of HDW's references evaluated HDW's performance in a letter rather than by completing a questionnaire.

NAHB maintains that the evaluation of experience/performance was inconsistent with the evaluation approach set forth in the solicitation, which provided that the experience/past performance evaluation would be based on five references. NAHB asserts that evaluating the awardees based on fewer than five references worked to its competitive disadvantage. In this regard, NAHB notes that two of its favorable references were not selected when the agency chose five of the seven references at random; some of its references were scored low because the experience described in the response was not relevant to the RFP; and those references whose scores had been reduced for a lack of relevance were averaged with its high scores on the very relevant projects that were selected at random. NAHB contends that its proposal would have been selected for award had its experience/performance been evaluated only on the basis of the two or three that were most relevant.

In reviewing an agency's evaluation of proposals and source selection decision, our review is confined to a determination of whether the agency acted reasonably and in a way consistent with the stated evaluation factors. Main Bldg. Maintenance, Inc., B-260945.4, Sept. 29, 1995, 95-2 CPD ¶ 214 at 4. Further, we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126.2, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

The agency apparently did not contemplate the possibility that fewer than seven references would submit completed questionnaires for an offeror--precluding the random selection of five questionnaires for use in the evaluation--and this scenario therefore was not expressly addressed in the RFP. However, even if the manner in which the agency proceeded when this eventuality arose--i.e., evaluating each offeror based on the responses actually received--were deemed a change in the evaluation approach, it did not result in competitive prejudice to NAHB because there is no indication that knowledge of the approach would have led NAHB to alter its proposal to its competitive advantage. In this regard, it is important to recognize that the agency's actions in no way relaxed the manner in which the awardees were required to respond to the RFP--all offerors still were required to submit seven references--and did not eliminate the randomness inherent in the experience/past performance factor by allowing the awardees discretion over which references were included in the evaluation (the awardees did not select which reference questionnaires would be used but, rather, were evaluated based on whatever questionnaires happened to be submitted). Thus, even under the agency's arguably altered evaluation approach, NAHB still would have been required to furnish seven references, and still would not have been permitted to select the

questionnaires to be evaluated.² We conclude that the manner in which the agency conducted this aspect of the evaluation does not provide a basis for sustaining the protest.

NAHB objects to GSA's evaluation of the responses from some references for the awardees on the basis that the references were for firms that were "a member of the offeror's proposed team" and not for the offeror itself. Comments of February 25, 1998 at 2. NAHB specifically notes that three of KPMG's references--representing three of the five references whose responses were evaluated--were for contracts performed by the architectural firm or law firm that was part of its proposed team, while four of PW's references--representing one of the three references whose responses were evaluated--were for contracts performed by the architectural, law, real estate/financial or engineering/construction firms that were part of its proposed team.

As we noted in ST Aerospace Engines Pte. Ltd., B-275725, Mar. 19, 1997, 97-1 CPD ¶ 161 at 3, in determining whether one company's performance should be attributed to another, an agency must consider the nature and extent of the relationship between the two companies--in particular, whether the work force, management, facilities, or other resources of one may affect contract performance by the other. In this regard, while it would be inappropriate to consider a company's performance record where that record does not bear on the likelihood of successful performance by the offeror, it would be appropriate to consider a company's performance record where it will be involved in the contract effort or where it shares management with the offeror. Id. at 3-5; Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241; Macon Apparel Corp., B-253008, Aug. 11, 1993, 93-2 CPD ¶ 93. Here, the solicitation requested a wide range of services, including those of program managers, financial analysts, architect/planners, market analysts, management consultants, and attorneys. The references challenged by NAHB were for members of KPMG's and PW's teams which were to contribute personnel and expertise in those areas towards performing any tasks which the agency might assign under the contemplated contract. Since the team members will be involved in the likely contract effort, we conclude that the agency could reasonably determine that the

²There is no basis in the record for concluding that the awardees, in selecting the references to be furnished, failed to comply with the requirement in section M.3(a) of the solicitation that offerors "ensure that each reference shall be willing to complete . . . a questionnaire" with respect to the offeror's performance. Return of the questionnaires was in the control of the references, not the offerors, and even the agency itself, despite contacting both the offerors and their references, was unsuccessful in obtaining responses from all of the references that had not returned a questionnaire. Contracting Officer's Statement of February 13, 1998 at 2.

records of the team members would bear on the likelihood of successful performance by the offeror such that it would be reasonable to consider them in the evaluation.

NAHB also objects to GSA's evaluation of the response that the agency received from the Texas Department of Housing and Community Affairs, one of HDW's references, on the basis that the response was in the form of a brief letter that furnished little of the specific information requested in the agency's questionnaire and for that reason did not provide a basis for the generally favorable scoring given the response--3.5, 3.5, and 3.9 of 4 possible points--by the evaluators. In addition, NAHB questions the fact that in scoring responses on the questionnaires, one of the three evaluators divided the total point score (obtained by assigning each answer a score of 1 to 4) by the total number of questions in a section of the questionnaire even when references did not answer one or more questions because they were not applicable to the contract in question.

These arguments do not furnish a basis for sustaining NAHB's protest. Eliminating the Texas reference would improve HDW's overall average score because, however favorable the scoring of that response, the responses from HDW's remaining two responding references were scored more favorably. Further, although we agree with the protester that the inclusion of "not applicable" answers in the scoring of one evaluator was unreasonable, since it effectively penalized an offeror for lack of experience in a particular area in violation of the requirement that firms lacking relevant past performance history shall receive a neutral evaluation for past performance, Federal Acquisition Regulation § 15.608(a)(2)(iii) (June 1997); see C.W. Over and Sons, Inc., B-274365, Dec. 6, 1996, 96-2 CPD ¶ 223 at 6-7; Excalibur Sys., Inc., B-272017, July 12, 1996, 96-2 CPD ¶ 13 at 3-4, we note that not only the protester, but also four of the awardees--KPMG, AA, PW, and HDW--likewise were adversely affected in this manner. When the response of HDW's Texas reference is eliminated from the evaluation, and the one evaluator's "not applicable" answers are corrected, NAHB's ranking does not change significantly and NAHB does not move into line for award.

The protest is denied.

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