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United States General Accounting Office  
Washington, DC 20548

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## Decision

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

**File:** B-292165

**Date:** July 11, 2003

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

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

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

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### DIGEST

Protester's proposal was reasonably excluded from the competitive range where the proposal failed to include information requested by the solicitation, was reasonably evaluated as deficient in certain areas, and was relatively high in price.

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### DECISION

Sam Facility Management, Inc. protests the exclusion of its proposal from the competitive range, and subsequent award of a contract to Excell Management Corporation, under request for proposals (RFP) No. N62477-03-R-0509, issued by the Department of the Navy, for grounds maintenance services at the Naval Academy Complex, Annapolis, Maryland. Sam contends that the agency's evaluation of its and Excell's proposals, and the determination to exclude its proposal from the competitive range, were unreasonable.

We deny the protest.

The RFP, issued October 25, 2002 as a section 8(a) set-aside, sought proposals for grounds maintenance services, including mowing, plant maintenance, weeding and fertilization, flower bed planting and maintenance, policing of grounds and leaf removal, street sweeping, snow and ice removal, irrigation, and maintenance of

athletic fields.<sup>1</sup> The RFP provided for the award of a fixed-price contract including indefinite-quantity work for a base period of 1 year with four 1-year options. Award was to be made to the offeror whose proposal was determined to represent the “best value” to the government. The solicitation set forth three evaluation factors: technical/management, past performance, and price. The technical/management factor was comprised of the following equally weighted subfactors: relevant experience; project staffing; corporate management support; and support for small business, women-owned business and small disadvantaged business program. The technical/management and past performance factors were of “equal importance to each other, and considered together, [were] of equal importance to Price.” RFP § M.3. The RFP included detailed instructions regarding the preparation of proposals. The solicitation stated, for example, as follows:

Each technical proposal shall be precise, detailed, and complete as to clearly and fully demonstrate a thorough knowledge and understanding of the requirements. As a minimum, the proposal must contain sufficient detail so that it may be evaluated in accordance with the EVALUATION FACTORS provision, Section M.

RFP § L, FAC 5252.215-9300, Content of Proposals.

Eight offerors, including Sam and Excell, submitted proposals by the November 29, 2002 closing date. The offerors’ technical and cost proposals were forwarded to the cognizant technical evaluation board (TEB) and cost evaluation panel (CEP).<sup>2</sup> Sam’s proposal was evaluated as “unacceptable” under the technical/management factor, “neutral” under the past performance factor, and “unacceptable” overall, at a total evaluated price of \$14,448,733 (the second highest received). Sam’s proposal was rated “unacceptable” under each of the four subfactors comprising the

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<sup>1</sup> Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (2000), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. These subcontracts may be awarded on a competitive or noncompetitive basis. Federal Acquisition Regulation § 19.800. A partnership agreement between the SBA and the Department of Defense permits, as planned here, a direct award by the contracting agency to the selected section 8(a) concern. Defense Federal Acquisition Regulation Supplement § 252.219-7009.

<sup>2</sup> The TEB evaluated technical/management proposals using the following adjectival ratings: exceptional, acceptable, marginal, and unacceptable. In addition, proposals were evaluated under the past performance factor as excellent/low performance risk, good/moderate performance risk, poor/very high performance risk, and neutral/neutral performance risk.

technical/management factor, with the exception of the support for small business subfactor, under which Sam's proposal was rated "acceptable." Agency Report (AR), Tab 5, TEB Report, at 3, 13-14; CEB Report, at 1.

Excell's proposal was evaluated as "marginal" under the technical/management factor, and "good" under the past performance factor, at a total evaluated price of \$10,133,663 (the second lowest received). Excell's proposal was rated as "acceptable" under the relevant experience subfactor of the technical/management factor, "marginal" under the project staffing subfactor, "excellent" under the corporate management support subfactor, and "acceptable" under the support for small business subfactor. AR, Tab 5, TEB Report, at 3, 7-9; CEB Report, at 1.

The agency included Excell's proposal, as well as the proposal submitted by another offeror (that was evaluated as "marginal" overall under the technical/management factor, "neutral" under the past performance factor, at a total evaluated price of \$12,183,045), in the competitive range. Discussions were held with the two competitive range offerors, and final proposal revisions were requested and received. Excell's final revised proposal, which was selected for award, was evaluated as "exceptional" overall under the technical/management factor, and "good" under the past performance factor, at a total price of \$9,344,017. AR, Tab 7, Post-Negotiation BCM, at 2.

Sam contends that the agency's evaluation of its proposal was unreasonable under each of the evaluation factors, and that but for the agency's unreasonable evaluation, its proposal would have been included in the competitive range.

In reviewing an agency's decision to exclude a proposal from the competitive range, we look first to the agency's evaluation of proposals to determine whether the evaluation had a reasonable basis. Although in reviewing an agency's evaluation we will not independently determine the merits of a proposal, we will examine the record to ensure that the evaluation was reasonable and consistent with the evaluation criteria. The judgments involved in the evaluation of proposals are subjective by their nature; nonetheless, the judgments must be reasonable and must bear a rational relationship to the announced criteria upon which competing offers are selected. Essex Electro Eng'rs, Inc., B-284149; B-284149.2, Feb. 28, 2000, 2000 CPD ¶ 72 at 6.

An offeror must submit an initial proposal that is adequately written and that affirmatively states its merits, or run the risk of having the proposal rejected as technically unacceptable. Agencies may exclude proposals with significant informational deficiencies from further consideration whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. Generally, offers that are technically unacceptable as submitted and would require major revisions are not required to be included in the competitive range for discussion purposes. Id.

Sam first challenges the price evaluation. In its protest, Sam “challenges the Navy’s criticism of Sam’s price calculations,” that is, that Sam improperly “rounded down” certain of the quantities set forth in the RFP, asserting that its pricing was correct. Protester’s Comments at 3. Regardless of the merits of this dispute, it is apparent that it has relatively little effect on Sam’s price and does not affect the competitive range determination. The only other point raised in Sam’s protest concerning the price evaluation was that Sam’s proposed price of \$14,448,733 was closer to the Navy’s independent government estimate (IGE) of \$15,227,107, than Excell’s initial proposed price of \$10,133,663. That is, except to compare Excell’s total price to the IGE, Sam’s counsel, despite having access to Excell’s proposal and all of the evaluation documentation including the CEB report and the agency’s price realism analysis, does not otherwise comment on the reasonableness of Excell’s price or take issue with any aspect of the CEB report or other agency findings with regard to the offerors’ proposed prices. As such, the protester’s statements, in our view, only serve to reinforce the agency’s determination that Sam’s proposal (which was approximately 43 percent and 19 percent higher in price than, respectively, Excell’s and the other competitive range offeror’s proposals) was not competitive vis-à-vis either of the competitive range offerors with regard to price.

Sam also protests the evaluation of the relevant experience subfactor of the technical/management factor. With regard to this subfactor, the RFP requested that offerors include in their proposals information regarding five “recurring or fully completed grounds maintenance, and maintenance of athletic fields, projects . . . completed within the past five (5) years or, if the projects are current service contracts, which are at least 50% complete.” The solicitation added, among other things, that an evaluation “[p]reference will be given to those experienced in grounds projects of similar size, staffing requirements, scope, function, complexity and contract duration.” The RFP also requested here that offerors “explain [their] financial capability by providing current credit rating, lines of credit, sources of funds and proposed means for financing any resulting contract, including bank references as applicable.” RFP § M.3.

In evaluating Sam’s proposal under this subfactor, the agency found that the “[p]rojects submitted were not of the size and scope of this solicitation.” For example, the agency noted that the six projects listed by Sam that fell within the time parameters set forth in the solicitation each had an annual value as reported by Sam that ranged from \$25,000 to \$200,000. Additionally, the agency found that two of the projects were for snow and ice removal only. The agency also commented here that Sam’s proposal did not evidence “athletic field maintenance experience,” and that Sam’s proposal failed to provide any “financial figures or references” as requested by the RFP. AR, Tab 5, TEB Report, at 13.

Sam complains that the agency failed to consider one project listed that, according to Sam, had an annual value of approximately \$900,000. The protester adds that

although its relevant experience does not include the maintenance of athletic fields as specified in the solicitation, it has maintained “a golf course which requires a much higher standard and quality of maintenance than any other type of athletic field.” Protester’s Comments at 6.

While it appears that Sam may be correct that the agency failed to consider the project listed by Sam with an annual value of approximately \$900,000, we cannot find, based upon this record, that this omission had any material impact on the agency’s evaluation. The fact remains that neither this nor the other projects listed by Sam had annual values anywhere near Sam’s proposed price of approximately \$2.9 million per year. Additionally, and as noted by the agency, two of the projects listed by Sam involved only snow and ice removal, as opposed to the comprehensive grounds maintenance services to be performed under this RFP. Moreover, although Sam clearly disagrees, we cannot find unreasonable the agency’s view that Sam’s experience in maintaining a golf course does not equate to experience maintaining numerous different athletic fields such as those at the Naval Academy Complex (which include baseball, softball, lacrosse, volley ball, and track fields). Finally, Sam’s proposal simply failed to include the requested information regarding its financial capability. Accordingly, we find reasonable the agency’s evaluation of Sam’s proposal under the relevant experience subfactor as “unacceptable.”

The protester also challenges the agency’s evaluation of Excell’s proposal under the relevant experience subfactor. Specifically, Sam points out that three of the contracts detailed by Excell in its proposal were awarded in October 2001, and had a base period of 1 year with three or four 1-year option periods, depending on the contract. Protester’s Comments at 6; AR, Tab 4, Excell’s Proposal, Relevant Experience. The protester argues that the agency improperly considered these three contracts in evaluating Excell’s proposal because, in the protester’s view, the contracts are not either fully completed or 50 percent complete as required by the RFP. We disagree with the protester’s interpretation of the terms of the solicitation. In our view, because each of these contracts had a base period of 1 year and the base contract period had been completed by the time of Excell’s submission of its proposal, the contracts were appropriate for consideration by the agency.

Sam protests the evaluation of its proposal under the project staffing subfactor. With regard to this subfactor, the solicitation requested that offerors “demonstrate the ability to sustain the loss of key personnel without a loss, temporary of otherwise, of services to the Government.” The RFP also informed offerors that they were to “describe and explain [their] proposed staffing” by full time equivalent numbers, position titles, relative skill levels, types (e.g., tractor operators) to accomplish the work. Additionally, proposals were to “describe and explain [their] proposed staff” for the indefinite quantity work set forth in the solicitation, and “[i]ndicate where these people are on the organization chart.” RFP § M.3

The agency found, in evaluating Sam's proposal under this subfactor, that it did not address loss of key personnel as required, but rather addressed loss of labor positions. The agency also found that Sam's proposed staffing failed to address the "sports field crew, fixed price tree work, and street sweeping," and failed to include on its organization chart the personnel proposed for performance of the indefinite-quantity work. The agency noted that Sam's proposed staffing of [DELETED] full-time equivalents (FTE) including key personnel, and [DELETED] "'working' FTEs to perform the services," was unacceptable. AR, Tab 5, TEB Report, at 13.

Sam argues that, contrary to the agency's determinations, its proposal did in fact address the loss of key personnel as requested. Protester's Comments at 7; see AR, Tab 3, Sam's Proposal, at 13. The protester also contends that the agency's evaluation of its proposal under the project staffing subfactor evidences unequal treatment vis-à-vis Excell's proposal, given that Excell's initial proposed was rated as "marginal" under the project staffing subfactor, even though Excell proposed only 21.52 FTEs. Protester's Comments at 7; see AR, Tab 5, TEB Report, at 8, 13.

With regard to this subfactor, we note that the protester does not challenge or otherwise assert that the agency erred with regard to the other aspects of Sam's proposal for which it was downgraded. Additionally, based on our review, we agree with the agency that Sam's proposal, while addressing the loss of labor positions during the performance of the contract, provided no explanation as to how Sam would "sustain the loss of key personnel without a loss, temporary or otherwise, of services to the Government," as required by the solicitation. RFP § M.3. As to Sam's claim of unequal treatment with regard to the staffing levels proposed by it and Excell, the record reflects that agency also found Excell's initial proposed staffing to be low (as was Sam's), and that Excell's initial proposal's slightly higher rating of "marginal" is attributable to the TEB's finding of significantly more deficiencies with Sam's proposal under the project staffing subfactor, as discussed above. Thus, we find the agency's evaluation under this subfactor to be reasonable.

Sam also challenges its proposal's rating of unacceptable under the corporate support subfactor. Here, the RFP required that proposals include an "on-site organizational chart" that, among other things, "clearly show[s] organizational relationships, lines of authority and responsibility, and span of control." The RFP added that the chart was also to identify by position and title "[f]irst-line supervisors of each organizational component." Proposals were also to include an explanation as to why the offeror felt that it had sufficient experience to perform the contract, as well as "Occupational Safety and Health Act (OSHA) incidents rates for the last five years." RFP § M.3.

The agency found in evaluating Sam's proposal that its on-site organizational chart failed to address "lines of authority and responsibility," as well as first-line supervisors, as required. Additionally, the agency found deficient Sam's explanation

as to why it felt it had the experience to perform the contract, and noted that the proposal failed to include Sam's OSHA incident rates. AR, Tab 5, TEB Report, at 13.

Again, based upon our review of the record, we cannot find the agency's evaluation of Sam's proposal as "unacceptable" under the corporate management support evaluation subfactor to be unreasonable. In this regard, the protester does not dispute the agency's determination that its proposal failed to include OSHA incident rates, or that Sam's explanation as to whether it has adequate experience to perform the contract was deficient. Rather, Sam only asserts that, contrary to the agency's evaluation, the on-site organizational chart it included in its proposal "details the lines of authority, responsibility, and first line supervisor." Protester's Comments at 7. However, based on our review, we agree with the agency that Sam's proposed "lines of authority and responsibility" and "first line supervisors" were, at best, unclear from its chart.<sup>3</sup>

Sam protests the agency's evaluation of its proposal under the past performance factor as "neutral." Here, according to the contemporaneous evaluation record, "[n]o past experience evaluations were submitted on behalf of [Sam]," AR, Tab 5, TEB Report, at 14, and the protester simply contends it has "confirmed that all its questionnaires were submitted and that all of them, including Bethesda, showed a rating of excellent." Protester's Comments at 4. Given that the record does not support the protester's assertion and that the protester has not provided any evidence, or even any explanation, as to how it allegedly "confirmed" that the agency did in fact receive "all [of Sam's] questionnaires," we decline to consider this wholly unsupported argument further.

Sam also challenges the "good" rating assigned Excell's past performance, citing an incident of allegedly poor performance by Excell on a Navy contract. Excell received references ranging from "good" to "excellent" on relevant contracts. It is unclear from the record whether the Excell contract that Sam refers to was considered by the Navy during its evaluation of Excell's past performance, since the contract number provided by Sam does not match any of the contracts referenced by

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<sup>3</sup> The protester also objects to the evaluation of its and Excell's proposals as "acceptable" under the support for small business, women owned business and small disadvantaged business program subfactor. The protester contends here that while both firms are small disadvantaged businesses, only it is also women-owned, and argues that because of this its proposal should have been rated higher than Excell's under this subfactor. Protester's Comments at 5. We need not consider the merits of the agency's evaluation here. In our view, any slight upward adjustment to Sam's rating under this subfactor that may be warranted because it is a women-owned SDB would not require the inclusion of Sam's proposal in the competitive range, given its relatively high price and "unacceptable" ratings under the remaining technical/management evaluation subfactors.

Excell in its proposal. To the extent that it concerns one of the contracts used as a past performance reference, Sam has not shown why the agency evaluators here had reason to question the validity of the past performance references they received regarding Excell's past performance. In this regard, we have held that where the agency has no reason to question the validity of the past performance information it may rely on the information furnished without verifying it.<sup>4</sup> Lynwood Mach. & Eng'g, Inc., B-285696, Sep. 18, 2000, 2000 CPD ¶ 113 at 7; SDA Inc., B-256206; B-256075, May 2, 1994, 94-2 CPD ¶ 71 at 7 n.9.

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. 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 sure" that the firm never got another contract. Protester's Affidavit ¶ 4. In response, the agency small business specialist submitted an affidavit in which she states 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

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<sup>4</sup> To the extent that the Excell contract to which Sam refers was not considered by the agency here, our Office has recognized in certain limited circumstances that an agency evaluating an offeror's past performance has an obligation (as opposed to discretion) to consider "outside information" bearing on the offeror's past performance. International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. Where we have charged an agency with responsibility for considering such outside information, the record demonstrated that the information in question was "simply too close at hand to require offerors to shoulder the inequities that spring from an agency's failure to obtain, and consider, the information." Id., TRW, Inc., B-282162, B-282162, June 9, 1999, 99-2 CPD ¶ 12 at 4-5. However, the "close at hand" information in these cases generally concerned contracts for the same services with the same procuring activity, or at least information personally known to the evaluators. TRW, Inc., supra; see Morrison Knudsen Corp., B-280261, Sept. 9, 1998, 98-2 CPD ¶ 63 at 5-6. Here, the protester has not shown, and the record does not evidence, that the contract on which Excell allegedly had an instance of poor performance was for the same services with the same procuring activity, or involved information personally known to the evaluators. The protester's assertion that the evaluators or contracting officer should have been aware of this contract because it involved the Navy does not establish that the information was so "close at hand" that it should have been obtained or was improperly ignored.



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. Although Sam disagrees with many of the agency's conclusions, it has not shown that the statements upon which the conclusions were based were inaccurate or false, or that the conclusions themselves were unreasonable. Because 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 any such 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.

The protest is denied.

Anthony H. Gamboa  
General Counsel