



United States General Accounting Office
Washington, DC 20548

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Decision

Matter of: Simborg Development, Inc.

File: B-283538

Date: December 7, 1999

Michael H. Payne, Esq., and Timothy A. Sullivan, Esq., Starfield & Payne, for the protester.

Gary F. Davis, Esq., General Services Administration, for the agency.

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DIGEST

Protest that source selection decision was unreasonable on the basis that there was inadequate information in the record to support the agency's rationale for the decision is denied where, notwithstanding the lack of contemporaneous documentation supporting the source selection itself, contracting officer furnished a post-protest narrative explanation of the rationale for her decision, which was consistent with contemporaneous evaluation documentation and otherwise credible.

DECISION

Simborg Development, Inc. protests the award of a lease to Highwoods Properties, Inc. under solicitation for offers (SFO) No. 8FL0209, issued by the General Services Administration (GSA) for office and related space in Jacksonville, Florida. Simborg principally argues that there is inadequate documentation in the record to support the reasonableness of the source selection.

We deny the protest.

As amended, the SFO sought offers to enter into an initial lease term of 10 years, with two renewal options of 5 years each, for 76,000 to 78,280 net usable square feet (nurf) of space to be used by the Internal Revenue Services (IRS) Customer Service Centers. SFO at 4-5; Contracting Officer's Statement (COS) at 1. Award was to be made on a best value basis, with price significantly less important than the technical factors. SFO at 48.

The evaluation was to be conducted in two phases. Five proposals were received and were evaluated initially by the three-member source selection evaluation board (SSEB) to determine whether they met various SFO minimum requirements. COS at 3; Agency Report, Tab 23, Letter from Contracting Officer to Awardee 1 (Aug. 20, 1999). Following written discussions and oral presentations, the proposals were evaluated under the following phase I factors (weighted on a 100-point scale): (1) quality of the site (35 percent); (2) security (35 percent); and (3) building amenities (30 percent). SFO at 48; COS at 2; Agency Report, Tab 6, Discussions with Highwoods, at 1-2, and Tab 14, Discussions with Simborg, at 1-16. Highwoods's proposal received 97.06 points, while Simborg's received 89.42 points.¹ Agency Report, Tab 21, Evaluations of Phase I Proposals, at 1, 17; GAO Telephone Conference, Nov. 12, 1999. Three of the proposals were included in the competitive range, including those of Simborg and Highwoods. Agency Report, Tab 23, Letter from Contracting Officer to Awardee 1 (Aug. 20, 1999). These proposals then were evaluated under the following phase II factors (weighted on a 100-point scale): (1) building configuration and efficiency of space layout (50 percent); and (2) past performance (50 percent). SFO at 50; COS at 2. Highwoods's proposal received 92.15 points and Simborg's 83.15 points. Agency Report, Tab 22, Evaluations of Phase II Proposals, at 1, 20. The phase I and II points were combined and divided by two to arrive at an overall technical ranking. SFO at 48; GAO Telephone Conference with Parties, Nov. 12, 1999. These rankings were as follows:

Offeror	Technical Score	Price (net present value per nusf)	Price per year for 10-year lease term
Highwoods	94.61 points	\$11.05	\$1,400,871.90
Simborg	86.29	[deleted]	1,709,635.20

COS at 3; Declaration of Contracting Officer (DCO), Nov. 17, 1999, at 1; GAO Telephone Conference, Nov. 12, 1999; Agency Report, Tab 20, Abstract of Revised Offers, at 3.

Highwoods and Simborg then submitted revised proposals. The SSEB evaluated these, but did not change the scores. COS at 2. The SSEB concluded that Highwoods's proposal was technically superior to Simborg's under the quality of site, security, building amenities, and building configuration and efficiency of space layout factors, while Simborg's was superior to Highwoods's under only the past performance factor. COS at 4-5; Agency Report, Tab 21, Evaluation of Phase I Proposals, at 1, 17. Based on Highwoods's technically superior proposal and lower

¹ During the course of this protest, the agency discovered minor scoring errors, the correction of which resulted in slightly decreased scores for both offerors. Simborg does not dispute the corrected scores or the agency's conclusion that the correction did not affect the award decision. Declaration of Contracting Officer (DCO), Nov. 17, 1999, at 1; GAO Telephone Conference, Nov. 12, 1999.

price, the SSEB recommended to the contracting officer, who also served as an evaluator and as the source selection authority (SSA), that award be made to that firm. COS at 4, 8. Based on this recommendation and her own evaluation conclusions, the SSA selected Highwoods for award. Id. at 4-8. This award decision was not contemporaneously documented by the SSA. Rather, the SSA has explained her rationale in a post-protest statement prepared in connection with this protest. Id.; Agency Report at 2-3.

EVALUATION DOCUMENTATION

Simborg argues that there is no basis to conclude that the source selection was reasonable, since there is no contemporaneous documentation showing the SSA considered the strengths and weaknesses of the proposals in making the decision. Simborg claims the SSA's post-protest explanation "is the same, if not worse, than not documenting the evaluation at all."² Protester's Comments at 2; Protester's Supplemental Comments at 2.

In reviewing an agency's evaluation of proposals and source selection decision, we examine the record to determine whether the agency acted reasonably and consistent with the stated evaluation factors. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶115 at 4. Implicit in the foregoing is that the evaluation must be documented in sufficient detail to show that it was not arbitrary. Federal Acquisition Regulation (FAR) §§ 15.305(a), 15.308; ACS Government Solutions Group, Inc., B-282098 et al., June 2, 1999, 99-1 CPD ¶ 106 at 13.

The protester's position is based on the incorrect view that post-protest documentation can never constitute adequate support for an award decision. While we generally accord greater weight to contemporaneous evidence, we will consider post-protest explanations that provide a rationale for contemporaneous conclusions,

² Simborg also asserts that the SSEB failed to adequately document its phase I and II evaluations. Comments at 2. The protester argues, for example, that there is no evaluation documentation from one of the evaluators. These allegations are incorrect. In fact, the record contains extensive evaluation documentation of the proposals under phases I and II, including the three SSEB members' narrative summary statements explaining the strengths and weaknesses of each proposal under each evaluation factor; scores for each proposal under each factor; and consensus score sheets for each offeror, in which the individual scores were averaged and the average scores for each evaluation factor totaled to determine a final overall consensus score. Agency Report, Tab 21, Evaluations of Phase I Proposals, at 1-27, and Tab 22, Evaluations of Phase II Proposals, at 1-54. While only two of the three evaluators' narrative summaries are signed, the third evaluator has submitted a declaration and statement that the unsigned narrative summaries were completed by him. Declaration of Evaluator, Nov. 16, 1999, at 1.

so long as those explanations are credible and consistent with contemporaneous record. Jason Assocs. Corp., B-278689 et al., Mar. 2, 1998, 98-1 CPD ¶ 67 at 6-7; PRC, Inc., supra, at 4-5.

Here, the SSA's post-protest statement provides adequate support for the award decision. This statement shows that she considered the scores and the SSEB findings, and is consistent with the narrative summaries documenting her own evaluation (as one of the evaluators) of the strengths and weaknesses in the offerors' proposals under each technical factor. COS at 3-8.

For example, under the security factor, a proposal was to be rated as excellent for proposing a building with (1) a 24-hour-a-day guard service and surveillance systems; or (2) a 24-hour-a-day electronic key card perimeter security system; (3) secured parking; and (4) two sources of power and few power outages. SFO at 49. The SSA states that she rated Highwoods's proposal excellent, since it offered these and additional features, including a central station command center and experienced security staff. In contrast, Simborg's proposal was rated lower as it did not offer all the features required for an excellent rating. COS at 6. These same strengths and weaknesses were noted in the SSA's own evaluation summaries. Agency Report, Tab 21, Evaluation of Phase I Proposals, at 11, 26. As another example, under the building amenities factor, a proposal was to be rated excellent for offering (1) on-site full service cafeterias; (2) food service amenities; and (3) banks or ATMs. SFO at 49. The SSA rated Highwoods's proposal excellent, since it again proposed many amenities in addition to those listed above, including more than 25 retail stores; a special events meeting place; photography, copy, and mail centers; a 350-seat auditorium; a smoker's room; a shoe repair; a florist; a hair and nail salon; and a health food restaurant. In contrast, Simborg's proposal was rated lower because it did not offer all the features required for an excellent rating. COS at 6-7. These differences were also noted in the SSA's own narrative summaries. Agency Report, Tab 21, Evaluation of Phase I Proposals, at 12, 27. Since nothing in the record casts doubt on the credibility of the SSA's statement, and the statement is consistent with the contemporaneous evaluation record, the record is sufficient to establish the reasonableness of her decision; the absence of contemporaneous documentation of the award decision is not a basis for questioning the award.³

SECURITY FACTOR

Simborg argues that Highwoods's proposal should not have been included in the competitive range and selected for award, since it did not meet a setback requirement and prohibition against underground parking under the security factor;

³ We note that, while Simborg complains about the adequacy of documentation supporting the source selection, it nowhere asserts that its proposal should have been rated superior to Highwoods's under any evaluation factor.

Simborg claims it was told by the agency that these were security requirements. Protest at 4; Protester's Comments at 4. Simborg further asserts that the agency encouraged Simborg during its oral presentation to include even more stringent security measures in its proposal than those mentioned above, Protester's Comments, Affidavit of Protester, Oct. 7, 1999, at 1-2, such that the firm offered concrete planters, an additional security measure, in its revised proposal. Protester's Comments at 6.

The agency responds that, although it initially considered including these security requirements in the SFO, it decided prior to issuance of the solicitation not to include them. Agency Report at 2; Supplemental Agency Report at 2. Further, the agency denies informing Simborg that the stringent security measures were SFO requirements, stating that it in fact reminded Simborg at its oral presentation that they were not part of the SFO. Supplemental Agency Report at 2-3.

Simborg's argument is without merit. In this regard, the agency is correct that the SFO contained no requirement for a setback or a prohibition against underground parking, SFO at 22-23, 49; the agency thus could not reject Highwoods's proposal on this basis. To the extent Simborg believed these requirements were included in the SFO on the basis of alleged agency representations, since this information was inconsistent with the written solicitation, it did not serve to amend the SFO absent a written amendment or confirmation. See Materials Management Group, Inc., B-261523, Sept. 18, 1995, 95-2 CPD ¶ 140 at 3-4. Further, even assuming that the agency advised Simborg to include more stringent security measures in its proposal (in fact, there is no support for this conclusion beyond the protester's own uncorroborated statements), Simborg has not shown, and it is not apparent, how the addition of planters, or any other changes it made to its proposal in response to the advice, negatively affected its competitive position. As indicated, Simborg's price was about \$308,763 higher than Highwoods's, and its technical rating was lower than Highwoods's, an evaluation result Simborg has not challenged. Agency Report, Tab 20, Abstract of Final Offers, at 3. We conclude that Simborg was not prejudiced by the agency's alleged actions. See Sytel, Inc., B-277849.2, B-277849.3, Jan. 8, 1998, 98-1 CPD ¶ 21 at 11; see Statistica, Inc. v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

The protest is denied.

The Comptroller General
of the United States