



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED DECISION

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: Holmes & Narver, Inc.

File: B-266246

Date: January 18, 1996

William A. Roberts III, Esq., Lee Curtis, Esq., and Karen L. Manos, Esq., Howrey & Simon, for the protester.

Capt. Robert L. Ballenger, and Richard P. Castiglia, Jr., Esq., Department of the Air Force, for the agency.

Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Under a negotiated procurement for the design and construction of military family housing, the agency was not required to raise during discussions that an offeror's price exceeded the solicitation's stated cost objective, which was not an absolute limit, where the offeror's price was evaluated as realistic, reasonable, complete, and low risk.
2. Under a solicitation for the design and construction of military family housing, which encouraged offerors to propose enhancements to the specifications as part of their offer to obtain additional technical credit, the agency was not required to advise an offeror during discussions of those enhancements evaluated as only marginally beneficial so that the offeror could delete those enhancements and lower its price, since those enhancements, which contributed to the offeror's high technical rating, were neither deficiencies, weaknesses, nor excesses.

DECISION

Holmes and Narver, Inc. protests the award of a contract to Harper/Nielsen-Dillingham under request for proposals (RFP) No. F04684-94-R-0027, issued by the Department of the Air Force for the second phase of a military family housing construction project at Vandenberg Air Force Base, California.

We deny the protest.

The RFP sought offers to raze 128 units of existing military family housing, prepare the site for new construction, and design and build 128 units of replacement single-family homes as well as common areas for family and community recreation. As issued, the RFP's schedule contained a basic contract line item number (CLIN) 0001 for a lump-sum price to design and construct the housing development, a deductive line item, CLIN 0002, for the amount to be paid to the Air Force by the contractor to dispose of debris at the base's landfill, and a number of option CLINs for various upgrades of materials and features.

The RFP informed offerors that proposals would be evaluated in two areas: technical/management and price. The technical/management area was most important, although "cost was still significant and would be a substantial factor in determining the proposal most advantageous to the government." The evaluation factors in the technical/management area were (1) design experience, (2) construction experience, (3) construction methodology/materials, (4) management approach, and (5) design/construction schedule. The first three evaluation factors were equally weighted and of greatest importance, followed by management approach and then design/construction schedule.

Technical/management proposals were to be evaluated under a color/adjectival rating scheme,¹ as well as for proposal risk to assess the risk associated with an offeror's proposed approach and for performance risk to assess the probability of successful performance based on the offeror's past and present performance.²

Under the design experience and construction experience factors, corporate experience and personnel experience, which had the same weight, were to be separately assessed. Under the construction methodology/materials factor, offerors were encouraged to propose enhancements to the materials and methods of construction specified by the RFP, which would be evaluated to "determine the offeror's understanding of the requirement and compared to the specifications and drawings to determine the value added"; the CLIN 0001 price was to include the proposed enhancements, which could be incorporated into the contract by the government. The management approach factor contained four equally weighted subfactors: team organization, internal controls, quality control approach, and safety approach.

¹The color/adjectival ratings were blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable.

²The evaluation ratings for proposal risk and performance risk were high, moderate, and low.

Price proposals were to be evaluated for realism, reasonableness, completeness, and risk. The RFP stated that "[t]he government had budgeted \$14,859,000 for the basic contract award; this amount is expected to cover contract line item 0001 and some but perhaps not all of the options." Regarding the price evaluation, the RFP stated that:

"The Government will evaluate the total price for the basic requirement CLIN 0001, less the reduction proposed in CLIN 0002. The Government will then consider how many of the option upgrade features CLINS . . . can be purchased within the stated basic contract cost objective. For purposes of evaluation and contractor selection, the Government will hold its basic contract cost objectives fixed, and will consider how many, if any, options an offeror proposes to perform within the cost objective. However, after Contractor selection on this basis, the Government reserves the right to award or not to award options causing the contract price to be greater or lesser than the contract cost objective."

Holmes, Harper, and a third offeror submitted proposals.³ Holmes priced the basic design and build item, CLIN 0001, at \$[DELETED] and the deductive landfill item, CLIN 0002, at \$[DELETED]. Harper priced CLIN 0001 at \$[DELETED] and CLIN 0002 at \$[DELETED]. Both offerors included enhancements in their initial evaluated prices (CLIN 0001 less CLIN 0002), which were still below the government's cost objective.

After the source selection evaluation team (SSET) evaluated the technical and price proposals, it conducted written and oral discussions with each offeror. In addition, the Air Force issued amendment 0005 to the RFP to redesignate the basic design and build item, CLIN 0001, as SubCLIN 0001AA, and to add SubCLINs 0001AB through 0001AF to the schedule for the removal of underground storage tanks, soil remediation, and the removal and mitigation of asbestos coated pipes and contaminated soil discovered at the site.⁴ The amended schedule requested a total dollar amount for CLIN 0001, which now encompassed SubCLINs 0001AA through 0001AF. In amendment 0006, offerors were requested to complete all sections of the schedule as revised by amendment 0005.⁵

³The third offeror later withdrew from the competition.

⁴Amendment 0005 also made corresponding changes to the price proposal worksheets and the specifications/drawings.

⁵Neither amendment 0005, adding the environmental remediation SubCLINs, nor
(continued...)

Holmes in its revised proposal included prices only for the added environmental remediation SubCLINs 0001AB through 0001AF, totaling \$[DELETED], and left blank the spaces for the prices for SubCLIN 0001AA (formerly CLIN 0001) and the option upgrade CLINs priced in its initial proposal. Harper's revised proposal separately priced the new SubCLINs for a total of \$[DELETED] and significantly increased the \$[DELETED] lump-sum price it had initially proposed for CLIN 0001 to \$[DELETED] for SubCLIN 0001AA. With the additional pricing, both Holmes's and Harper's evaluated prices apparently exceeded the government's cost objective. In requesting best and final offers (BAFO), the Air Force "reiterate[d] that the Government's cost [objective] is \$14,859,000 for CLIN 0001." (Emphasis in original.) Just before BAFOs were due, in response to a request to clarify how the revised schedule should be completed, the Air Force discovered that Harper's revised pricing for CLIN 0001 had double-counted the environmental remediation SubCLINs. Thus, the Air Force verbally requested both Holmes and Harper to

"transfer the amounts from the proposal worksheet for SubCLINs 0001AB through 0001AF to the SubCLIN blanks in [the schedule]. The rest of the cost of the worksheet, which would be the cost excluding the environmental SubCLINs, would be inserted in the blank for SubCLIN 0001AA at the top. [Offerors] were then to total the SubCLINs 0001AA through 0001AF and insert the total in the blank at the bottom of the CLIN 0001 portion. After that, they were to complete [the schedule] by inserting the amount for the deductive credit (CLIN 0002) and also the upgrade options."

The agency states that, as a result of the telephone clarification, Holmes "said they . . . understood how to fill out [the schedule] from the revised cost proposal worksheet."

Holmes's BAFO included the same prices for the environmental remediation SubCLINs and the landfill deductive item, CLIN 0002, as earlier proposed. The BAFO also reduced the price previously offered for CLIN 0001 from \$[DELETED] to \$[DELETED] for SubCLIN 0001AA to account for the deletion of three proposed enhancements, which the SSET had previously advised Holmes were unacceptable. Holmes's evaluated BAFO price (CLIN 0001 less CLIN 0002) of \$[DELETED] was evaluated as realistic, reasonable, complete, and low risk; however, it exceeded the stated \$14,859,000 cost objective, which in turn would not allow for the exercise of any of the option upgrades within the cost objective.

⁵(...continued)

amendment 0006, requesting the revised schedule, changed the government's cost objective or the evaluation factors for award.

Although Harper's BAFO also included the same prices for the environmental remediation SubCLINs and landfill deductive item, it significantly decreased the revised price offered for SubCLIN 0001AA from \$[DELETED] to \$[DELETED] by deleting the double-counted environmental remediation items. Harper's BAFO price of \$[DELETED] was evaluated as realistic, reasonable, complete, and low risk, and was sufficiently below the stated cost objective to allow the Air Force to exercise six of the option upgrades within the cost objective.

The final technical ratings were

EVALUATION FACTOR	HOLMES	HARPER
Design Experience: Corporate Personnel	Green Blue	Blue Blue
Construction Experience: Corporate Personnel	Green Green	Blue Green
Construction Methods/Materials	Blue	Blue
Management Approach: Team Organization Internal Control Quality Control Safety Approach	Blue Green Green Green	Green Green Green Green
Schedule	Green	Green

Both Holmes's and Harper's proposals received low performance risk and low proposal risk ratings in all relevant factors.

Based on its evaluation of the BAFOs, the SSET presented the source selection authority (SSA) with an evaluation briefing and a proposal analysis report summarizing the strengths, weaknesses, and proposal risks of each proposal as well as the performance risks and prices. Based on an integrated assessment of the findings of the SSET, the SSA determined that Harper's superior technical proposal and lower price was more advantageous to the government.

Holmes first contends that the Air Force failed to conduct meaningful discussions because the Air Force must have known that Holmes's prices for the environmental remediation SubCLINs submitted in response to amendment 0006 resulted in a price exceeding the government's cost objective, but failed to inform Holmes of this

problem during discussions. Holmes also argues that it was misled by the Air Force during discussions because although the SSET advised Holmes that [DELETED] of Holmes's [DELETED] proposed enhancements were unacceptable under the construction methodology/material factor, only [DELETED] of Holmes's remaining [DELETED] enhancements were rated as beneficial to the Air Force, with the remaining rated as "neutral." Holmes alleges that had it been given the opportunity to delete these [DELETED] "neutral" enhancements from its proposal, it could have reduced its price accordingly, making it the low priced offeror.

Agencies are required to conduct meaningful discussions with all competitive range offerors. Microeconomic Applications, Inc., B-258633.2, Feb. 14, 1995, 95-1 CPD ¶ 82. In order for discussions to be meaningful, contracting officials must advise offerors of weaknesses, excesses or deficiencies in their proposals that require amplification or correction and afford offerors an opportunity to revise their proposals to satisfy the government's requirements. Miltope Corp.; Aydin Corp., B-258554.4 et al., June 6, 1995, 95-1 CPD ¶ 285. This does not mean that offerors are entitled to all-encompassing discussions or that an agency must "spoon-feed" an offeror as to each and every item that must be revised, added, deleted, or otherwise addressed to improve a proposal; rather, an agency must only lead offerors into the areas of their proposals considered deficient. Id. Additionally, an agency may not mislead an offeror during discussions into responding in a manner that does not address the agency's concerns. Price Waterhouse, B-254492.2, Feb. 16, 1994, 94-1 CPD ¶ 168.

Here, the agency was not required to specifically mention to Holmes during discussions that its revised price exceeded the government's cost objective because this was not a deficiency, weakness, or excess. In this regard, the RFP expressly informed offerors that the cost objective, which was clearly stated in the RFP and repeated in the BAFO request,⁶ was not an absolute limit and, given the relative importance of technical merit over price, "[a]n award higher than the cost objective is possible if the offeror is most advantageous to the government." Moreover, Holmes's total price for CLIN 0001, proposed in response to the added environmental remediation SubCLINs, was determined by the Air Force to be reasonable, realistic, complete, low risk, and below the government estimate.

⁶Holmes's contention that the Air Force's stated cost objective was unreasonable since it was not increased to account for the environmental remediation work is untimely under section 21.2(a)(1) of our Bid Protest Regulations. Protests based on alleged improprieties in the solicitation, incorporated, as here, after the initial submission of offers, must be filed prior to the next closing date after the change was made to the solicitation. 4 C.F.R. § 21.2(a)(1) (1995); ASAP Serv., a div. of ACM, Inc., B-260803, July 18, 1995, 95-2 CPD ¶ 36.

In addition, contrary to Holmes's contention, the oral clarification given the two offerors to prevent double-counting of the environmental remediation SubCLINs in the BAFO prices should not have misled Holmes. Offerors were not instructed to simply add their prices for the environmental remediation SubCLINs to their initial price for CLIN 0001 as Holmes implies, but rather were instructed to take their prices from their revised price proposal worksheets. Given that the request for BAFOs reiterated that the government's cost objective remained at \$14,859,000, Holmes, like Harper, could have adjusted its CLIN 0001AA price to compensate for the increase in price associated with the added environmental remediation SubCLINs, so that its BAFO would not exceed the government's cost objective.

Moreover, the Air Force was not required to advise Holmes of the enhancements rated as "neutral" since those enhancements also were not considered deficiencies, weaknesses, or excesses. To the contrary, the proposal analysis report prepared for the SSA shows that Holmes was rated blue/exceptional for the construction methods/materials factor specifically due to its extensive list of enhancements, and the Air Force explains that, although the [DELETED] enhancements were rated as "neutral" because their value was negligible, the SSET still considered these enhancements desirable.

Holmes next protests that the evaluation of the price proposals by the agency did not properly account for the significant enhancements included in its price, as compared to the "trivial" enhancements included in Harper's price, and that the agency only mechanically compared Holmes's price against the government's cost objective. However, the RFP contemplated that offerors, in their business judgment, would choose whether to include enhancements within their CLIN 0001 price to improve their technical evaluation. Contrary to Holmes's contention, there was no mechanical comparison of Holmes's price, which included a variety of enhancements, to the government cost objective (although this was certainly considered as was specifically contemplated by the RFP); instead, the SSET, in evaluating Holmes's and Harper's price proposals, estimated the cost of the respective proposed enhancements and assessed the enhancements' relative value. The SSA was advised of the government's estimate of Holmes's beneficial enhancements before he made his award decision. Thus, the evaluation of the price proposals with respect to the offerors's proposed enhancements was reasonable and consistent with the RFP evaluation scheme.⁷

⁷Although Holmes also contends that it was disadvantaged by "absorbing" some of the costs for its option CLIN upgrades in its CLIN 0001 price, the Air Force raised this issue with Holmes during discussions, and the record evidences that Holmes's underpricing of option upgrades was the result of its own business decision to make its proposal more attractive, which advantage was considered by the Air Force in evaluating Holmes's price.

Holmes also objects that the SSET gave Harper's proposal, containing [DELETED] assertedly "trivial" enhancements, the same blue/exceptional rating under the construction methods/materials evaluation factor as Holmes's proposal, which contained [DELETED] enhancements, [DELETED] of which were considered beneficial. While Holmes's proposal contained more enhancements than did Harper's proposal, the record does not indicate that the SSET underrated Holmes's proposal or overrated Harper's proposal. Rather, both offerors were rated blue/exceptional for the construction methodology/material factor because the proposed enhancements of both offerors exceeded the specification in a manner beneficial to the Air Force with no significant weaknesses—which was the standard for a blue/exceptional rating under the RFP. While Harper only proposed [DELETED] enhancements, the SSET considered these enhancements [DELETED] to be of particular value to the Air Force. Moreover, the record shows that the SSA was informed in the SSET briefing of the number and nature of the beneficial enhancements proposed by both offerors, and the SSA reached his own conclusions regarding the value of the enhancements. We see nothing unreasonable with the SSET's action.

Holmes also objects to the green/acceptable rating for its proposal, as compared to Harper's proposal's blue/exceptional rating, under the corporate experience assessment criterion of the design experience factor, since Holmes's design team member, [DELETED], has more design experience than Harper's team member, [DELETED]. However, according to this evaluation criterion, "lack of experience on projects where the proposed design team and the proposed construction team worked together will be considered weaknesses unless the offeror submits an approach which can be expected to overcome or mitigate weakness or deficiencies in its experience." Although the SSET recognized [DELETED] extensive housing design experience, the SSET also found that Holmes had not previously teamed with [DELETED]. In contrast, the SSET noted that Harper had successfully worked with [DELETED] on six similar family housing projects over the past 10 years. Based on this evaluation, the SSET reasonably found that Harper's proposal warranted a higher blue/exceptional rating and Holmes's newly formed team only a green/acceptable rating.

Holmes also complains that the SSET, in rating corporate experience under the construction experience factor, improperly noted that Holmes had never previously teamed with [DELETED] (Holmes's subcontractor for the construction aspect of the project) in assigning Holmes's proposal a green/acceptable rating, as compared to Harper's proposal's blue/exceptional rating. While Holmes claims that this consideration represented an unstated evaluation criterion, the RFP stated with regard to this evaluation consideration that experience demonstrating sufficient corporate knowledge to successfully complete the "construction team's" portion of the contract was to be evaluated, and we find that the agency could therefore consider Holmes's failure to have previously worked with [DELETED] under this

factor. See Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16. In contrast, Harper and its construction team member were responsible for six fast-track housing design/build projects of similar scope over 10 years, which the SSET reasonably found warranted a blue/exceptional rating.

In sum, the Air Force reasonably determined that Harper's higher-rated and lower-priced proposal represented the best value to the government.

The protest is denied.

Comptroller General
of the United States