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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Carmon Construction, Inc.

File: B-292387; B-292387.3

Date: September 5, 2003

David J. Taylor, Esq., Tighe Patton Armstrong Teasdale, for the protester.
Gary L. Brooks, Esq., National Archives and Records Administration, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly awarded contract to large business offeror with higher evaluated price than that of protester, a Historically Underutilized Business Zone small business concern, where request for proposals provided for award on a “best value” basis and agency determined that technical superiority of awardee’s proposal outweighed price differential.

DECISION

Carmon Construction, Inc., a Historically Underutilized Business Zone (HUBZone) small business concern, protests the award of a contract to Batson-Cook Company, a large business, under request for proposals (RFP) No. NAMA02SEM0009, issued by the National Archives and Records Administration for construction of an archives facility in Morrow, Georgia. Carmon contends that its offer should have been selected for award because it represents no significant risk to the government and is lower in price than Batson-Cook’s after application of the 10 percent HUBZone price evaluation preference provided for in the RFP.

We deny the protest.

The RFP, which was issued on an unrestricted basis on November 15, 2002, contemplated the award of a fixed-price contract to the offeror whose proposal represented the best value to the government, with technical factors significantly more important than price. Technical factors and their corresponding weights were as follows: experience (20 percent), past performance (20 percent), key personnel (20 percent), management plan and schedule (35 percent), and subcontracting plan (5 percent).

The RFP incorporated both Federal Acquisition Regulation (FAR) § 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business (SDB) Concerns, and § 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns. Pursuant to the former clause, the price of each non-SDB offeror was to be evaluated by adding a factor of 10 percent to the actual price offered, while pursuant to the latter, the price of each non-HUBZone small business, with the exception of “[an] otherwise successful offer[] from [a] small business concern[],” was to be evaluated by adding a factor of 10 percent to the actual price offered. RFP, Part II, § I, at 48, 49; Part IV, § K at 10. FAR § 52.219-4(b)(3) further states that “[a] concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment.”

The RFP at §§ M3.3 and M3.4 furnished additional guidance with regard to the application of the SDB price evaluation adjustment and the HUBZone price evaluation preference, as follows:

M3.3. Price Evaluation Adjustment (PEA)

The PEA will be used in the event that a small disadvantaged business (SDB) meets the following three criteria:

- a. The SDB must be located within the following regions: middle atlantic, east south central, east north central and west south central.
- b. The SDB must perform work in the following (formerly) SIC Major Group: 15.
- c. The SDB has not waived the right to a PEA.

If a SDB meets the above criteria and its price is fair and reasonable, a PEA factor of 10% will be added to the prices of non-qualifying contractors.

M3.4. HUBZone Price Evaluation Preference (PEP)

The Hub Zone PEP will be used in the event that a company is certified to be a Hub Zone by the Small Business Administration and its price is fair and reasonable. A PEP factor of 10% will be added to the prices of non-qualifying contractors.

Nine proposals were received by the January 24, 2003 closing date. The evaluators rated the proposals of Batson-Cook and Offeror A as technically excellent; the proposals of Offerors B, C, and D as technically very good; and the proposals of

Carmon and Offerors E, F, and G as technically good.¹ The evaluators adjusted offerors' prices by adding to them the following factors: the six large businesses (Batson-Cook and Offerors A, B, C, D, and G), 10 percent plus 10 percent; Carmon, which represented itself as a HUBZone small business, but not as an SDB, 10 percent; and Offerors E and F, which claimed both SDB and HUBZone small business status, 10 percent. With regard to the final adjustment, the agency explains that the evaluation board believed that it had discretion to deny the benefit of both the SDB PEA and the HUBZone PDP to Offerors E and F because their base offers exceeded the low base offer by more than 10 percent and could therefore "be determined to be not fair and reasonable." Agency Report at 2. Based on the foregoing adjustments, the board evaluated Carmon's price as approximately 5 percent lower than Batson-Cook's and the lowest overall. The evaluators determined that the greater technical merit of Batson-Cook's proposal was worth the additional 5 percent in price, however, and that the Batson-Cook proposal represented the best value to the government. On May 23, the agency awarded a contract to Batson-Cook.

Upon receipt of protests from Carmon and two other offerors, the contracting officer reviewed the price analysis and determined that it contained errors. The contracting officer concluded that the adjustment to the large businesses' prices had been improperly calculated and that Offerors E and F, which claimed both SDB and HUBZone small business status, "may have been entitled to the benefit of both SDB and HUBZone adjustments." *Id.* at 3. After correcting the price adjustments, the source selection evaluation board reconvened to review its award recommendation. The evaluation board again determined that the proposal of Batson-Cook, which was essentially equal technically to, and lower in price than, Offeror A's, and which had received a technical score "considerably higher" than the other seven proposals, represented the best value to the government. *Id.* at 7. The source selection authority affirmed the board's determination.

The protester argues that the agency has failed to justify adequately the selection of a proposal higher in evaluated price than its own. Carmon contends that it "has clearly demonstrated, on very similar projects, a high level of competence, integrity and on-time, on-cost performance," and that "[t]here is therefore no reason for the government to pay more, unless it clearly demonstrates that it has significant, clearly justifiable reasons to do so." Protester's Comments at 7. Carmon further maintains that "[t]o say that the 10% PEP applies, but then to fail to really apply the PEP, but rather to justify on 'best value' grounds, without rigorous analysis, flies in the face of the entire Congressional intent of the [HUBZone] program." *Id.*

¹ In accordance with the source selection plan, point scores of 90-100 received adjectival ratings of excellent; point scores of 80-89 received adjectival ratings of very good; and point scores of 70-79 received adjectival ratings of good.

The record does not support the protester's assertion that the agency has failed to justify its selection of Batson-Cook's proposal for award. The RFP provided that technical factors would be "significantly more important" than price in the selection process, and Batson-Cook's proposal received a technical score considerably higher than Carmon's (90 versus 77.43). Moreover, the evaluators found that Batson-Cook's proposal represented a "very high" probability of success, whereas Carmon's represented only a "good" probability. In addition, the SSEB report establishes that the evaluators had a basis for—and the protester has not challenged—the scoring of proposals. Under the most important technical evaluation factor, management plan and schedule, for example, the evaluators assigned Batson-Cook's proposal a score of 90 and Carmon's proposal a score of 76.67, noting that Batson-Cook's management plan narrative was excellent and that it had provided a project schedule shorter than that required by the RFP, while Carmon's management plan narrative was merely "pretty good," its project schedule met (but did not exceed) the RFP's requirement, and its plan to have the project manager run the project from the home office 2 days per month constituted a significant weakness. SSEB Report at 31, 43.

The protester argues that the agency's trade-off determination is not sufficiently detailed because it does not explain on a point-by-point comparative basis why Batson-Cook's proposal is worth a higher evaluated price than Carmon's. The SSEB explained in its supplemental report that in its view, "Batson-Cook's proposal represents the best opportunity for NARA to complete the project on time and with a minimum of risk," and that, because "[Batson-Cook's proposal] represents the highest probability of a successful project[,] . . . its selection is worth the difference of [sic] lower priced proposals that were evaluated only Good and Very Good." Supplemental SSEB Report at 11. While the evaluators did not engage in a point-by-point comparison of proposals in their trade-off analysis, it is clear from the initial evaluation report, which summarized the evaluators' assessment of each proposal under each evaluation factor, that the evaluators were aware of the technical strengths and weaknesses of each offeror's proposal. In this connection, while the selection official's judgment must be documented in sufficient detail to show it is not arbitrary, a failure to discuss every detail regarding the relative merit of the proposals in the selection decision document does not affect the validity of the decision where, as here, the record shows that the agency's award decision was reasonable. Science Application Int'l Corp., B-290971 et al., Oct. 16, 2002, 2002 CPD ¶ 184 at 20.

The protest is denied.

Anthony H. Gamboa
General Counsel