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# Decision

**Matter of:** Hogar Crea, Inc.

**File:** B-311265

**Date:** May 27, 2008

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Volunteers of America, Inc., an intervenor.  
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Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging agency's evaluation of offerors' technical proposals is denied where record supports reasonableness of the evaluations.
2. Protest challenging the reasonableness of the agency's source selection decision is denied where the record supports the agency's determination that protester's high-priced proposal did not merit award despite offering certain strengths as compared to awardee's proposal.

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## DECISION

Hogar Crea, Inc. (HCI) protests the award of a contract to Volunteers of America, Inc. (VOA) under request for proposals (RFP) No. 200-0951-SE, issued by the Bureau of Prisons (BOP) for residential reentry center (RRC) services for federal offenders in the San Juan, Puerto Rico metropolitan area. HCI contends that the BOP's evaluation of the offerors' proposals was unreasonable, and that the source selection decision was flawed.

We deny the protest.

## BACKGROUND

The RFP sought proposals to provide RRC services through a comprehensive community-based program for offenders who are in the custody of the BOP, the U.S.

Attorney General, or under the supervision of the U.S. Probation Office. The RRC program seeks services to provide employment, residence development, and other self-improvement opportunities to assist federal offenders in becoming law-abiding citizens. Offerors were required to propose all personnel, management, equipment, supplies, and services to operate an RRC, along with the facility where the RRC will be located. The RFP anticipated award of an indefinite-delivery/requirements-type contract with fixed unit prices, with a 2-year base term and three 1-year options.

Offerors were advised that proposals would be evaluated on the basis of the following factors: past performance, technical/management, and price. The technical/management evaluation factor had the following equally-weighted subfactors: site location (which had two sub-criteria: site validity and suitability, and community relations program), accountability, programs, facility, and personnel. The RFP stated that for purposes of award, the past performance factor was more important than the technical/management factor, and that those two factors, when combined, were “significantly more important than price.” RFP § M.5. As relevant here, offerors were required to submit plans demonstrating their ability to provide an RRC facility within 120 days of contract award. *Id.* § J, Compliance Matrix, at 9. Offerors were also required to submit letters of support from members of the community where the RRC will be located, to notify local government and law enforcement officials of the proposed location, and to document any known concerns or potential opposition from the community to the placement of the RRC. *Id.* at 5-6.

HCI and VOA were the only offerors to submit proposals by the closing date of April 6, 2007. As relevant here, HCI proposed to perform the contract at a location owned by the company, where it currently provides RRC services to the BOP. VOA proposed to perform the contract at a site that required renovations to comply with the solicitation requirements.

The agency sent discussions notices to each offeror on July 19, 2007, to address deficiencies and concerns regarding their proposals. Among the concerns identified for VOA were its lack of a final lease agreement, and its lack of evidence that it had received zoning approval for its proposed facility. Agency Report (AR), Tab 3, VOA Discussions Questions, July 19, 2007, at 1-2. Among the concerns identified for HCI were deficiencies in its response to various elements of the compliance matrix, including under the technical subfactors of programs, facility, and personnel. AR, Tab 4, HCI Discussions Questions, July 19, 2007, at 2-3.

Following discussions and requests for final proposals, the BOP concluded that both offerors’ proposals were technically acceptable, and that all concerns and deficiencies had been addressed. The agency’s final evaluation of the offerors’ proposals was as follows:

	HCI	VOA
<b>Past Performance</b>	<b>Blue</b>	<b>Blue</b>
<b>Technical Management</b>	<b>Green/Low Risk</b>	<b>Green/Low Risk</b>
– Site Location	Green / Low Risk	Green / Low Risk
– Accountability	Blue / Low Risk	Blue / Low Risk
– Programs	Green / Low Risk	Green / Low Risk
– Facility	Green / Low Risk	Green / Low Risk
– Personnel	Green / Low Risk	Green / Low Risk
<b>Price</b>	<b>\$12,287,492</b>	<b>\$11,266,261</b>

AR, Tab 8, Source Selection Decision (SSD), at 1-5.<sup>1</sup>

In its award determination, the BOP recognized that although the offerors' proposals had received equal adjectival ratings, HCI's proposal "has several strengths that VOA does not (such as a fenced-in facility, and back-up generator), and has fewer and less significant weaknesses in their past performance." *Id.* at 5. Despite these differences between the proposals, the agency concluded that the additional strengths provided in HCI's proposal "were not considered significant, and . . . do not warrant paying a premium of \$1,021,230.50 over the potential 5 year contract period." *Id.* The agency therefore selected VOA's proposal for award.

The agency advised HCI on January 31, 2008, that VOA's proposal had been selected for award. HCI filed an agency-level protest with the BOP on February 6. The agency denied the protest on February 11, and HCI timely filed this protest with our Office on February 19.

## DISCUSSION

HCI argues that the BOP's evaluation of the offerors' technical proposals was unreasonable, and that the agency's source selection decision was flawed based on the results of the technical evaluation and an unreasonable tradeoff determination.

As a preliminary matter, the protester raised several new protest issues in its comments on the agency report. Under our Bid Protest Regulations, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2008). This 10-day rule applies to

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<sup>1</sup> The agency used an evaluation scheme of Blue/Very Good, Green/Acceptable, Yellow/Poor, and Red/Unacceptable. The technical management factor and subfactors were also evaluated for proposal risk.

all supplemental protest grounds arising from the agency report. See Exelon Servs. Fed. Group, B-291934, Apr. 23, 2003, 2003 CPD ¶ 86 at 7 n.4. An extension of time to file comments does not toll our timeliness requirements for the filing of new protest grounds. Id.

Here, after receiving the agency report on March 24, HCI requested an extension of time for filing its comments. We granted an extension of time, but advised the protester that while we could grant an extension to file comments, we could not waive the requirement that all supplemental protest grounds be timely filed. Letter from GAO to parties, Apr. 1, 2008, at 2. The protester subsequently filed its comments on the agency report, along with several new arguments not raised in its initial protest, on April 10–17 days after receiving the agency report. Therefore, all protest arguments that were first raised in the protester’s comments on the agency report are untimely.

#### Evaluation of HCI’s Technical Proposal

HCI first argues that the BOP’s evaluation of its proposal was unreasonable because the (1) the assignment of evaluation ratings for HCI’s proposal was not in accordance with the terms of the solicitation, and (2) the agency unreasonably assigned HCI and VOA equal adjectival ratings, despite recognizing that HCI’s proposals had strengths in areas where VOA’s proposal either lacked the same strength, or had no identified strengths.

The evaluation of an offeror’s proposal is a matter within the agency’s discretion, since the agency is responsible for defining its needs and the best method for accommodating them. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. In reviewing a protest against an agency’s evaluation of proposals, including technical evaluations, our Office will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester’s mere disagreement with the agency’s judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

First, HCI argues that because the agency recognized certain strengths in its proposal, the solicitation required the agency to assign its proposal a rating of “blue.” We think that the protester’s argument is based on an incorrect interpretation of the solicitation. In this regard, the RFP explained that only those proposals that have “significant strengths” would be eligible for a rating of “blue,” whereas acceptable proposals without significant strengths would be rated “green”:

BLUE -- Very Good: Offeror’s proposal meets and exceeds the requirements of the solicitation. Their proposal shows that they have a

very good solution for meeting the needs and objectives of the program. One or more significant strengths exists. Weaknesses may exist, but none are considered significant and are easily correctable.

GREEN – Acceptable: Offeror’s proposal meets the [] minimum requirements of the solicitation. Their proposal shows they have an acceptable solution for meeting the needs and objectives of the program. Strengths and weaknesses may exist. The weaknesses are correctable.

RFP § M.5.

The BOP’s evaluation of HCI’s proposal under the site location, programs, facilities, and personnel subfactors concluded that although HCI’s proposal had several strengths, they were not “significant strengths” that merited a rating of blue/very good. For example, under the site location evaluation subfactor, HCI argues that its proposal should have received an adjectival rating of “blue” rather than “green.” The agency determined that HCI’s proposal had no weaknesses, and had strengths based on its proposal to provide a backup generator. AR, Tab 8, SSD, at 2. The agency did not, however, identify any “significant strengths” that would warrant a “blue” rating.

HCI does not address why its proposal provided significant strengths that exceeded the minimum requirements of the solicitation and thereby merited a higher rating. Rather, the protester merely argues that the BOP was required under the terms of the solicitation to assign a higher rating based on the identification of any strength. Protester’s Comments on AR, at 6. On this record, we find no basis to question the reasonableness of the agency’s evaluation.

Second, the protester challenges the BOP’s assignment of ratings to VOA’s proposal that were equal to those assigned to HCI’s proposal, despite differences recognized by the agency between those proposals. For example, HCI’s and VOA’s proposal were each rated “green” under the programs evaluation subfactor. The agency recognized that HCI’s proposal had a strength for proposing a good ratio of monitors and case managers to inmates, and that it had no weaknesses. AR, Tab 8, SSD, at 3. In contrast, VOA’s proposal had no strengths or weaknesses. *Id.* at 4. The agency’s assignment of a “green” rating to VOA’s proposal was consistent with the solicitation, which stated that “green” is an “acceptable” rating, where “[s]trengths and weaknesses may exist,” and that therefore the rating reasonably encompassed a proposal that was technically acceptable, but had no strengths or weaknesses under the evaluation criterion. RFP § M.5. Thus, contrary to HCI’s arguments, the solicitation clearly anticipated that the agency could, as it did here, assign the same adjectival ratings to proposals that had differing numbers of strengths and weaknesses. On this record, we find no basis to conclude that the BOP’s evaluation of offerors’ proposals under this evaluation criterion was unreasonable.

Moreover, as discussed below, the BOP's source selection determination did not rely solely on the adjectival scores assigned to each offerors' proposal; rather, the agency noted that HCI's proposal offered more strengths and fewer weaknesses as compared to VOA's proposal, but concluded that HCI's proposal was ultimately not worth the price premium of over \$1 million, or 8.3 percent. In this regard, agencies' use of evaluation ratings for offerors' proposals, whether numeric, color or adjectival, are but guides to, and not substitutes for, intelligent decisionmaking; they do not mandate automatic selection of a particular proposal. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 31.

### Evaluation of VOA's Technical Proposal

The protester argues that the BOP's evaluation of VOA's technical proposal was unreasonable because the agency failed to recognize several areas where VOA's proposal was unacceptable or had weaknesses. As discussed below, we conclude that the agency's evaluation of VOA's proposal was reasonable and consistent with the solicitation.

The protester first argues that VOA's proposal should have received a lower rating under the site location and facilities subfactors because, while HCI currently owns and operates an RRC facility, VOA does not own a site, and instead proposed to lease and renovate an unoccupied building that is not currently operating as an RRC. The RFP, however, did not require offerors to propose to locate their RRC in an occupied or completed building, nor did the RFP require offerors to propose a site that was currently operating as an RRC. Rather, the solicitation required only that the successful offeror submit documentation showing that it has the right to use its proposed facility, and that the facility would be ready for contract performance within 180 days from contract award. RFP § J, compliance matrix, at 5, 9. The BOP determined that VOA's proposal was acceptable because it had "submitted a Final Lease Agreement [and], documentation stating a residential reentry center was an allowable use of the proposed site." AR, Tab 5, Technical Management Evaluation, Dec. 3, 2007, at 3. We think the record shows that the agency reasonably evaluated VOA's proposal and concluded that it met the solicitation requirements.<sup>2</sup>

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<sup>2</sup> HCI also raises an untimely protest ground here, alleging in its comments on the agency report that VOA's proposed facility will be located in an area that does not have the proper zoning. HCI's argument concerning the zoning of VOA's proposed site is untimely because it was not raised within 10 days of when the protester knew or should have known of the basis for this argument. 4 C.F.R. § 21.2(a)(2). In this regard, HCI's protest identified the building proposed by VOA for its RRC, arguing that it was not an adequate facility; HCI did not, however, challenge the zoning of the area in which the building was located. In any event, the record shows that VOA submitted adequate documentation showing that the zoning was acceptable for the proposed RRC use, and that the agency reasonably relied upon these documents.

(continued...)

HCI next argues that the agency's evaluation of VOA's proposal under the site location subfactor failed to consider a letter from a member of the Puerto Rico House of Representatives which expressed concern regarding the placement of an RRC in the area proposed by VOA. The agency states, however, that it was unaware of this letter at the time it conducted its evaluation. Supp. AR at 2. Furthermore, HCI does not allege that either the BOP or VOA knew or should have known of the letter. In this regard, the letter itself does not indicate that it was provided to either the BOP or VOA, or was otherwise made public. On this record, we find no merit to HCI's argument that the agency's evaluation was defective for not considering this letter.<sup>3</sup>

Finally, HCI argues that the BOP should have assigned a lower rating to VOA's proposal because of alleged asbestos problems in VOA's proposed facility. The record here, however, shows that VOA addressed the asbestos concerns in its proposal by providing for an assessment of lead and asbestos issues for the building. AR, Tab 3, VOA Response to Discussions Questions, Aug. 8, 2007, attachs. 8-11; Tab 5, Technical Evaluation Consensus Working Papers, at 12. The protester does not explain why the agency's evaluation here was unreasonable. On this record, we conclude that HCI's arguments lack merit.

#### Source Selection Decision

HCI argues that the BOP's source selection decision was flawed based on the agency's evaluation of the offerors' technical proposals. For the reasons discussed

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(...continued)

AR, Tab 3, VOA Response to Discussions Questions, Aug. 8, 2007, attach. 2; Tab 5, Technical Management Evaluation, Dec. 3, 2007, at 3.

<sup>3</sup> HCI also raises two untimely protest arguments regarding this evaluation criterion: (1) the letters submitted by VOA from the community did not show sufficient support for VOA's proposal, and (2) VOA did not submit letters of support from local government officials. Both of these allegations are untimely because they were raised for the first time in HCI comments on the agency report, which were filed more than 10 days after the protester received the report. In any event, HCI's arguments concerning the required letters of support from community members submitted by VOA merely express disagreement as to whether they were sufficiently strong or independent in their support of VOA, and thus provide no basis to sustain the protest. HCI's second argument, that VOA did not submit letters of support from local government officials, lacks merit because this was not an RFP requirement. In this regard, the RFP required offerors to notify local government officials of their plans to run an RRC, but did not require letters of support from those officials. RFP §§ L.6, J, Compliance Matrix, at 5.

above, we conclude that the BOP's evaluations of the offerors' proposals were reasonable, and that they provide no basis to challenge the reasonableness of the source selection decision.

HCI also argues that its proposal was superior to VOA's, and that the difference in the offerors' proposed price should not have been the basis for the award to VOA. Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results; price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation criteria. Atteloir, Inc., B-290601, B-290602, Aug. 12, 2002, 2002 CPD ¶ 160 at 5. Even where, as here, cost is the least important evaluation factor, an agency may properly select a lower-cost, lower-rated proposal if it reasonably decides that the cost premium involved in selecting a higher-rated, higher-cost proposal is not justified. Yang Enterprises, Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., April 1, 2005, 2005 CPD ¶ 65 at 11-12.

Here, the record shows that the BOP assigned the same adjectival ratings to the offerors' proposals, but also recognized that HCI's proposal provided several strengths and advantages as compared to VOA's proposal. AR, Tab 8, SSD, at 5. The agency concluded, however, that the strengths in HCI proposal "were not considered significant, and . . . they do not warrant paying a premium of \$1,021,230.50 over the potential 5 year contract period." Id. The protester's disagreement with agency's judgment that the additional strengths in HCI's proposal did not merit its higher price provides no basis to sustain the protest.

The protest is denied.<sup>4</sup>

Gary L. Kepplinger  
General Counsel

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<sup>4</sup> The protester raises numerous collateral arguments in its protest that we do not address here. For example, HCI argues that VOA's initial proposal did not include letters of support from community members that were required under the site location subfactor of the technical evaluation factor. This argument lacks merit because the record shows that both offerors were provided an opportunity during discussions to correct weakness and deficiencies in their proposals, and that VOA subsequently provided the required letters. We have reviewed all of the protest grounds raised by HCI and find that they are all either untimely or lack merit.