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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:** Dismas Charities, Inc.

**File:** B-289513.3

**Date:** March 26, 2004

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Alex D. Tomaszczuk, Esq., and Daniel S. Herzfeld, Esq., Shaw Pittman, for the protester.

Joseph A. Camardo, Jr., Esq., and Kevin M. Cox, Esq., for Bannum, Inc., an intervenor.

Christopher J. Van Horne, Esq., Department of Justice, Federal Bureau of Prisons, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest of agency's evaluation of proposals and source selection is denied where evaluation and award decision were reasonable and consistent with solicitation's evaluation terms.

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### **DECISION**

Dismas Charities, Inc. protests the award of a contract to Bannum, Inc. under request for proposals (RFP) No. 200-0665-SE, issued by the Department of Justice, Federal Bureau of Prisons, for Community Corrections Center services for federal offenders in Tupelo, Mississippi. Dismas generally challenges the agency's determination that the Dismas and Bannum proposals were substantially technically equal. Dismas argues that notwithstanding its higher price, it should have been selected for award based on its proposal's slightly higher evaluation point score.<sup>1</sup>

We deny the protest.

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<sup>1</sup> This protest relates to a re-evaluation of proposals conducted as corrective action in response to an earlier protest filed by Dismas against the agency's initial award to Bannum under the RFP.

The RFP contemplated the award of a fixed-price requirements contract for a 2-year base period and 3 option years. The RFP provided for award to the offeror whose proposal was determined to be most advantageous to the agency under four evaluation factors: past performance, technical, management, and price. Past performance was the most important factor (worth 325 points), and the remaining three factors were equal in importance (worth 225 points each). The RFP advised offerors that the evaluation of past performance would be a subjective assessment that would be highly influential in determining the relative merits of the proposals, as past performance was the most important evaluation factor. The RFP also provided that if proposals were close in terms of technical merit, cost could become the determining factor for award.

Two proposals were received in response to the RFP, Bannum's and Dismas's. Numerous strengths and weaknesses were noted for each proposal under each non-cost factor, including past performance. Dismas's proposal received 292.50 points for past performance (of the available 325 points); Bannum's proposal received 263.25 points. Under the technical factor, Dismas's proposal received 144 points (of the available 225); Bannum's proposal received 137.25. Both proposals received 141.75 points under the management factor (of the available 225 points).<sup>2</sup> Overall, the Dismas proposal received 75 percent of the available 775 points for the technical evaluation; Bannum's received 70 percent of them. Bannum proposed a lower price (at \$2,792,250) and received the 225 points available under the cost factor; Dismas's price proposal (at \$3,149,585) received a proportionate point score of 200.25 under the cost factor. Out of the possible 1,000 overall evaluation points, Bannum's proposal received 767.25 points and Dismas's received 778.50 points.

In determining which of the proposals offered the "best value" to the agency, the source selection authority (SSA) sought to determine if the Dismas proposal, which received the most technical evaluation points, had "perceived benefits which merit the additional cost" associated with the proposal. Source Selection Decision at 2. Noting that the point/adjectival ratings were only guides to his source selection decision, the SSA reports that he reviewed the strengths and weaknesses of both proposals. As to past performance, 17 prior contracts were reviewed for each offeror; Bannum's past performance references rated 7 contracts as excellent, 6 as good, and 4 as fair, and Dismas's references rated 11 contracts as excellent, 5 as good, and 1 as fair. The SSA confirmed that the differences were reasonably reflected in the past performance point scores assigned to the proposals. High past performance ratings were received by both firms for overall contract compliance, customer satisfaction and business relations. The SSA then noted specific strengths identified by the evaluators relating to each contractor's past performance.

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<sup>2</sup> The number of points received under each factor determined an adjectival rating assigned to the proposal for each evaluation factor.

Having considered the overall technical evaluation findings, the SSA determined that the proposals were substantially technically equal. Noting his review of the strengths and weaknesses of both proposals, and finding that the offerors met or exceeded the requirements, the SSA concluded that either of the firms could satisfactorily perform the services. Given his determination that the proposals were substantially technically equal, the SSA concluded that payment of the cost premium of \$357,335 associated with Dismas's proposal was not warranted. Bannum's proposal was selected for award as the most advantageous to the agency. This protest followed.

Dismas challenges the agency's determination that the proposals were substantially technically equal, in light of its higher past performance rating. In this regard, Dismas argues that, since past performance was the most important evaluation factor, it should have been determinative for award. Dismas, however, does not challenge the numerous strengths noted for Bannum's past performance, nor does the firm point to any particular aspect or noted strength in its own past performance proposal to support its general contention that its past performance is substantially superior to Bannum's. Rather, the protester only generally argues that the agency failed to give appropriate weight to the evaluation of past performance.

In reviewing protests of allegedly improper evaluations, our Office will examine the record to determine whether the agency's judgment was reasonable, consistent with the stated evaluation scheme, and in accordance with applicable procurement statutes and regulations. Merdan Group, Inc., B-231880.3, Feb. 28, 1989, 89-1 CPD ¶ 210 at 2. Source selection officials are vested with a very broad degree of discretion to determine the manner and extent to which they will make use of evaluation results. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 7. Point scores are useful as guides but do not mandate automatic selection of a particular proposal. Id. at 12. Whether a given point spread between two competing proposals indicates a significant superiority of one proposal over another depends on the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency; factors to be considered include effect on performance and what it would cost for the government to take advantage of any perceived superiority. Where proposals reasonably have been considered substantially technically equal, cost may properly become the determining factor for award notwithstanding that the evaluation criteria assigned cost less importance than technical factors. The Parks Co., B-249473, Nov. 17, 1992, 92-2 CPD ¶ 354 at 4. Even if one proposal receives a higher technical evaluation score in a procurement where technical factors are more important than cost, the award to the lower-priced offeror is proper where the cost premium is not justified given the level of technical competence available at the lower cost. PRC, Inc., supra, at 12.

Dismas has provided, and we see, no basis to question the reasonableness of the agency's selection of Bannum for award. As Dismas contends, past performance was the most important evaluation factor, and we think that the importance of the

factor is reasonably reflected in the agency's assignment of 325 points to the past performance factor and only 225 points for each of the remaining factors. Further, despite Dismas's 30-point advantage under the past performance factor, the record shows that, overall, the Dismas technical proposal was scored only 5 percent higher than Bannum's overall technical proposal (considering past performance, technical and management scores), as Dismas's proposal received 75 percent of the available 775 technical points, and Bannum's proposal received 70 percent of those points. Most important, however, is that, as stated above, point scores and adjectival ratings are only guides to assist in the evaluation of proposals and selection for award; they do not mandate automatic selection of a particular proposal. The question ultimately is whether the record supports the agency's conclusions regarding the relative merits of the proposals. SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 9.

In this regard, the protester does not challenge any of the strengths and weaknesses cited by the evaluators for each proposal; rather, Dismas only generally argues that the SSA failed to conduct an analysis of the relative merits of the proposals, particularly under the past performance factor, and instead made his source selection based solely upon the point scores assigned to the proposals.<sup>3</sup> Our review of the record, however, does not support the protester's contention. Rather, the record shows that the evaluators and the SSA conducted a detailed review of the proposals, listing many strengths and weaknesses for each proposal and noting similarities in approaches and experience. Both offerors were credited for their substantial successful experience performing similar services, and both offerors received many highly favorable reports from past performance references. Our review confirms the reasonableness of the evaluation as the greater number of ratings of excellent received from Dismas's past performance references appears to be reasonably reflected in the point differential between the proposals under the past performance factor.<sup>4</sup>

The record also shows a comparative list of past performance strengths for each offeror. For example, while Dismas was noted for strengths in its food service

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<sup>3</sup> Dismas focuses its protest upon the evaluation under the past performance factor, as it reflects the greatest point score disparity between the proposals under any factor. Although Dismas notes that its proposal also received a score almost 7 points (out of 225 available points) higher than the Bannum proposal under the technical factor, we see no basis to question the reasonableness of the agency's determination of substantial technical equality under that factor.

<sup>4</sup> The overall importance of that past performance point score differential, however, necessarily lessens when the scores from the other evaluation factors are also considered, since the offerors' overall point scores relate to the total 775 technical evaluation points available.

program, landscaping, staff morale, volunteer recruitment, improved living conditions, community relations, and a juvenile offenders program, Bannum was commended for its exceptional filing system, its facility sanitation and life safety, staff morale, compliance documentation, inmate accountability, resident morale, employment placement, facility improvements, community relations, and professional staff. Contrary to the protester's contention that the SSA failed to conduct a comparative evaluation of the proposals, the record shows that the SSA considered the particular underlying merits of the proposals, reasonably considered them to be substantially technically equally, and reasonably concluded that in light of Bannum's lower price, that firm's proposal was the most advantageous to the agency. Specifically, in light of the level of technical competence reflected in the Bannum proposal, the SSA reasoned that the cost premium associated with the Dismas proposal was not warranted. The protester's general challenges provide no basis to question the propriety of the evaluation or the source selection determination.

The protest is denied.

Anthony H. Gamboa  
General Counsel