Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: SC&A, Inc.

File: B-270160.2

Date: April 10, 1996

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David S. Cohen, Esq., and Carrie B. Mann, Esq., Cohen & White, for A.T. Kearney, Inc., the intervenor.
L. Carol Roberson, Esq., Environmental Protection Agency, for the agency.
Christine F. Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably downgraded the protester's proposal for informational weaknesses stemming from a disorganized proposal format.

2. Agency properly determined that the awardee can successfully avoid a potential organizational conflict of interest posed by one of its [DELETED] subcontractors because it reasonably found that the awardee could perform the limited amount of work involved without using the subcontractor's staff.

DECISION

SC&A, Inc. protests the award of a contract to A.T. Kearney, Inc. (ATK) under request for proposals (RFP) No. D400941M1, issued by the Environmental Protection Agency (EPA) to obtain support for various radiation-related programs.

We deny the protest.

The RFP, issued on April 20, 1995, contemplated a cost-plus-fixed-fee, level-of-effort contract for 1 base year with 4 option years. The RFP estimated that the government would order between 70,000 and 100,000 direct labor hours per year.

The RFP identified various radiation-related programs for which technical support was sought, including: (1) the oversight of the Department of Energy's (DOE) management of the Waste Isolation Pilot Plant (WIPP), a potential transuranic radioactive waste repository in southeastern New Mexico; (2) the development of

radiation clean-up standards (the regulations and implementing guidance) applicable to contaminated Superfund sites; (3) the development of waste management regulations covering the disposal of radioactive waste generated during site remediation; and (4) the support of "other radiation programs" under a variety of environmental statutes.

The RFP statement of work (SOW) established 22 areas of technical support, calling for technical support that could be applied to one or more radiation programs. The SOW did not designate precise tasks for the contractor to perform for any program, but provided that the contracting officer would issue work assignments designating the tasks during contract performance. The RFP did not estimate the number of labor hours that the government might order with respect to any particular radiation program or any SOW technical support area.

The RFP stated a "best value" evaluation scheme, in which technical quality was more important than cost. The cost evaluation included options and considered cost realism. The RFP set forth the following technical evaluation matrix:

(1) Overall Company Experience--10 points

(2) Staff Qualifications, Experience and Availability--45 points

(a) Senior Health Physicists, Nuclear and Environmental Engineers--5 points
(b) Project Manager--5 points
(c) Senior Technical Personnel with Policy, Economic or Legal Skills--5 points
(d) Experience Developing Environmental Rules, Managing Dockets--10 points
(e) Experience in Micro and Macro Economic Theory--2.5 points
(f) Ability to Support Public Outreach Programs--2.5 points
(g) Experience in Radiation and Environmental Measurements--2.5 points
(h) Analytical Capability, Ability to Perform Quality Assurance Tests--5 points
(i) Experience in Arranging Public Meetings, Hearings and Forums--2.5 points
(j) Continuous Availability of Key Personnel--5 points

(3) Management Plan--15 points

(a) Organizational Structure and Staffing Procedures--10 points
(b) Resource Allocation, Scheduling, Reporting Methods, Quality Control, Conflict of Interest, Contingency Plans and Liaison with EPA--5 points

(4) Technical Approach--25 points

(5) Participation in EPA's Small Disadvantaged Business (SDB) Mentor Program--5 points

Like the SOW technical support areas, the technical evaluation criteria were designed to evaluate skills and resources that could be applied to one or more radiation programs specified by the RFP.

The RFP also provided that EPA would evaluate proposals to determine the potential for organizational conflicts of interest on the part of offerors or proposed subcontractors, and advised that an offeror or proposed subcontractor involved in certain specified business activities might have a significant conflict that could prevent award. One of these activities was Superfund Response Action Contractor (RAC) work. A RAC contractor, as defined by the RFP, performs clean-up actions at Superfund sites on the National Priority List, which are contaminated with radioactive waste. This organizational conflict of interest provision was intended to preclude a contractor charged with cleaning up radiation-contaminated Superfund sites from developing the clean-up standards to which it would be subject. The RFP required offerors and their proposed subcontractors to submit disclosure statements, which were to describe whether the firm, its affiliates, or subsidiaries had an actual or potential conflict of interest and, if so, how such conflicts could be avoided, mitigated, or neutralized. If the contracting officer found that an offeror's ability to produce unbiased work would be unavoidably compromised by its own or a subcontractor's corporate activities, the RFP provided for the rejection of the offeror's proposal.

This RFP is for a contract to supplement another radiation support services contract, which was awarded to the protester on August 24, 1992, for a base year plus 4 option years. The base year and first option year under the instant RFP overlap with the final 2 option years under SC&A's contract. Pursuant to its contract, SC&A has supported the same, major radiation programs specified by the instant RFP, including the development of radiation clean-up standards applicable to Superfund sites.

SC&A and ATK submitted proposals on May 30, 1995. Both proposed a team of [DELETED] subcontractors.[1] One of ATK's proposed subcontractors was ICF, Inc., an affiliate of ICF Kaiser Engineering Group. ICF Kaiser is a RAC, which provides radioactive clean-up assistance at various DOE sites where the radiation clean-up standards will apply. Although ICF, Inc. does not itself perform RAC work, in 1993, EPA determined, in connection with SC&A's current radiation support services contract where ICF was a subcontractor, that ICF was a RAC owing to its affiliation with ICF Kaiser. Upon concluding that ICF was a RAC and that SC&A could not mitigate the conflict presented, EPA obtained a new contractor, The Cadmus Group, to perform the policy aspects of the work for which ICF had been proposed. SC&A

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[1]Contrary to SC&A's allegation, ATK did not eliminate one of its subcontractors in its best and final offer (BAFO).

continued to perform the technical aspects of the work. SC&A did not propose ICF as part of its subcontracting team for this procurement. [DELETED]

ATK's and SC&A's proposals were evaluated by a technical evaluation panel (TEP) and included in the competitive range. Discussions were conducted. Because ATK appeared to be "very reliant" on ICF in a discipline relevant to regulatory work [DELETED], the agency asked ATK during discussions what it would do if ICF were precluded from performing this work. [DELETED]

The agency received BAFOs on September 22, 1995. SC&A's BAFO cost was $26,683,485 and ATK's BAFO cost was $29,270,386. SC&A's BAFO cost was about $2.6 million, or 9 percent, less than ATK's BAFO; 12.7 percent less than the government estimate of $30,576,060; and 21 percent less than SC&A's initial proposal cost of $33,784,337.

ATK's technical proposal received a score of 89 out of 100 points, and SC&A's proposal received a score of 73.75 points. The 15.25-point differential was primarily under the 45-point staff qualifications, experience and availability factor, where ATK's proposal received 42 points and SC&A's proposal received 32.75 points. The TEP found that ATK's "assembled team has excellent technical experience and capabilities to support the contract" and rated its staff superior to SC&A's under 8 of the 10 evaluated subfactors and equivalent to SC&A's under 2 of the 10 evaluated subfactors. Although SC&A's proposed staff was considered at least adequate in all subfactors, it never received the maximum number of points under any subfactor, whereas ATK's proposal received a perfect score under 6 subfactors. ATK's proposal also received higher scores under the 15-point management plan factor (12 points compared to SC&A's 10 points), the 25-point technical approach factor (22.5 points compared to SC&A's 20 points), and the 5-point SDB mentor program factor (4.5 points compared to SC&A's 3 points). Both proposals received 8 out of 10 points for overall company experience.

The source selection official (SSO) adopted the TEP's technical findings. Because of ATK's clear superiority under the staff qualifications, experience, and availability factor, as well as its stronger management plan, technical approach, and commitment to the SDB mentor program, the SSO determined that the technical merit associated with ATK's proposal was "well worth" the $2.6 million cost premium. EPA also noted that SC&A had dramatically decreased its BAFO costs by reallocating labor hours from the higher-paid to lower-paid individuals within each labor category, which EPA found increased the likelihood of either poor performance or cost overruns. Although SC&A's cost proposal was considered less realistic than ATK's, the agency did not project SC&A's probable cost or rescore its technical proposal, since ATK's technical superiority was found to justify the $2.6 million cost premium.

When it became apparent that ATK's proposal represented the best value, the TEP and contracting officer evaluated its proposal for possible organizational conflicts of interest, in particular ATK's use of ICF, which EPA considered to be a RAC. At that time, the radiation clean-up regulations, developed by SC&A and Cadmus, were essentially complete and were soon to be submitted to the Office of Management and Budget. Because the agency "anticipated that further work on this regulation will continue to be supported by Cadmus and SC&A in their respective areas," the contracting officer and TEP determined that ICF's RAC status did not preclude award. The contracting officer and TEP also concluded that, "[i]f, however, ATK were tasked with a work assignment to develop further cleanup regulations," ATK was not so dependent on ICF as to preclude award.

SC&A takes issue with numerous aspects of its technical evaluation. SC&A first contends that the TEP unfairly penalized its proposal based upon the erroneous finding that it failed to comply with the RFP proposal preparation instructions. SC&A only specifically discusses two areas of its proposal that were allegedly misevaluated in this manner, namely, its overall company experience and the qualifications of its nuclear engineering staff.

The offeror has the burden of submitting an adequately written proposal, and an offeror's mere disagreement with the agency's judgment concerning the adequacy of the proposal is not sufficient to establish that the agency acted unreasonably. Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530; Complere, Inc., B-227832, Sept. 15, 1987, 87-2 CPD ¶ 254. Here, SC&A demonstrated its staff's qualifications and experience through individual resumes and two matrices, but, unlike ATK, the protester provided virtually no supporting narrative to synthesize this information. Similarly, under the overall company experience factor, SC&A presented project descriptions through matrices and synopses, instead of discussing relevant, detailed examples of its experience according to SOW tasks and RFP programs, as did ATK. Although SC&A is correct that its proposal format did not violate the proposal preparation instructions, it did not enable the TEP to discern all that it needed to know to award the maximum points. Under the circumstances, the TEP could reasonably downgrade the protester's proposal for the informational weaknesses stemming from SC&A's disorganized and superficial presentation. See Cleveland Telecommunications Corp., 73 Comp. Gen. 303 (1994), 94-2 CPD ¶ 105.

In any event, notwithstanding its proposal format, SC&A still received 8 out of 10 points for overall company experience, which represented a "good proposal with some superior features." Although the protester claims that the TEP underrated its radiological experience, which the protester addressed by summarizing 50 projects, EPA reasonably determined that the summaries lacked the detailed information necessary for the TEP to find the proposal superior in this area.

Likewise, although the protester claims that the TEP disregarded evidence of nuclear engineering experience in various personnel resumes, the resumes do not establish the required professional experience in any depth or detail. Notwithstanding the protester's claim that the TEP should have assumed the required experience because its nuclear engineers are employed under SC&A's current radiation support services contract, we note that SC&A did not reference this contract in its resumes and that, even if the TEP knew that the individuals were so employed, it had no legal or factual basis to speculate as to what their responsibilities might have been. See Premier Cleaning Sys., Inc., B-255815, Apr. 6, 1994, 94-1 CPD ¶ 241. In our view, SC&A's rating under the relevant subfactor (4 out of 5 points for senior health physicists, nuclear and environmental engineers) was reasonable.

SC&A alleges that the TEP misevaluated the experience, qualifications andavailability of its proposed project manager. The proposed project manager is also the deputy project manager under SC&A's current radiation support services contract. In this capacity, he has managed 22 WIPP-related work assignments, involving a total of 34,000 labor hours and $2.5 million in costs. The TEP considered this contract management experience to be relatively minimal in relation to the financial and personnel demands of this substantially larger contract, although it acknowledged the proposed individual's good corporate management experience and strong technical skills. Overall, this resulted in a score of 3.5 out of 5 points under the project manager subfactor, representing an "adequate proposal with some good features." The protester has offered no persuasive objection to the TEP's rating, except to reiterate that the proposed individual had significant corporate management experience. While this experience was considered, it was not viewed as interchangeable with contract management experience, a conclusion that we find reasonable in the absence of any reasoned objection by the protester. See DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95.

The TEP also considered the proposed project manager's availability under the continuous availability of key personnel subfactor, where SC&A's proposal earned 3 out of 5 points, representing an "adequate" rating. In its proposal, SC&A represented that its proposed project manager would make 90 percent of his time available to support the instant contract. SC&A never explained how the proposed project manager would fulfill such a commitment in light of his role as deputy project manager under SC&A's ongoing radiation support services contract, despite receiving a discussion question on this matter. SC&A claims that it was not required to address this issue because the instant contract "will subsume the work that could have been performed under the two remaining option years of SC&A's current contract." The protester has offered no evidence to support this proposition; indeed, SC&A knew months before it submitted its BAFO that EPA had exercised the third option of its current contract, extending performance through May 1996. Given SC&A's failure to address how its proposed project manager

would divide his time between the overlapping contracts, we think that the TEP could reasonably downgrade its proposal under the continuous availability of key personnel subfactor.

The protester next claims that the TEP improperly penalized its proposal for offering to use subcontractor staff to perform those policy, legal, and economic aspects of the contract work where SC&A's in-house capabilities were weak. SC&A essentially argues that the TEP should have attached little significance to weaknesses arising from such use of subcontractors because less than 23 percent of the contract work will involve policy, legal, or economic analysis. We disagree.

First, the protester has no way of knowing how much policy, legal, or economic work will be required under this task order contract because this was not estimated in the RFP. Second, even if EPA ultimately orders minimal work in these areas, it is entitled to have confidence in its contractor's ability to perform that work. In this case, SC&A's economic subcontractors had potential organizational conflicts of interest and SC&A did not adequately explain how it would perform the work should such conflicts arise. This weakness reasonably caused the protester's proposal to receive 1.5 out of 2.5 points (an "adequate" rating) under the micro and macro economic theory experience subfactor. In a similar vein, SC&A proposed to use subcontractor staff as task managers under the senior technical personnel with policy, economic, or legal skills subfactor--an arrangement that the TEP considered questionable because EPA can only communicate directly with prime contractor staff. The TEP reasonably assigned an "adequate" rating (3 out of 5 points) under the applicable subfactor to reflect this weakness and other informational weaknesses.

Finally, in its initial protest, SC&A challenged its technical evaluation for a variety of additional reasons, to which the agency report fully responded. In its comments, SC&A never substantively responded to the agency's explanations, although it stated that its failure to respond did not constitute an abandonment of any protest ground. We have reviewed each of these contentions and find them without merit. See J&J Maintenance, Inc., B-244366.2, Mar. 7, 1994, 94-1 CPD ¶ 177; MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367.

The evaluation of proposals is a matter within the discretion of the contracting agency. Our Office will only question the agency's evaluation where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Here, as described above, we find no basis for concluding that the evaluation was unreasonable.

SC&A also challenges the propriety of the cost/technical tradeoff, arguing that its proposal was technically superior to ATK's or at least not so technically inferior as to justify the cost premium associated with selecting ATK's proposal.

Other than the specific contentions discussed above, SC&A has cited no evidence to support its allegation that its proposal should have been rated technically superior to ATK's. As also discussed above, we find reasonable the TEP's evaluation, on which the SSO based his determination that ATK's proposal was significantly technically superior. The SSO, finding that ATK was clearly superior in terms of staff qualifications, experience, availability, and other factors, determined that the difference in technical merit between the two proposals was significant enough to justify the payment of the associated cost premium, even assuming SC&A's ability to perform in accordance with its proposed costs, which was questioned.[2] Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results; cost/technical tradeoffs may be made subject only to the test of rationality and consistency with the established evaluation factors. Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. A protester's mere disagreement with the agency's judgment does not render that judgment unreasonable. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. We see nothing on this record which establishes that the tradeoff decision here was other than reasonable.

SC&A next protests that ATK is ineligible for award because ATK's subcontractor ICF has a significant organizational conflict of interest that can not be mitigated or avoided. SC&A observes that ICF is a RAC contractor and therefore cannot support EPA's radiation clean-up standards. The protester argues that ATK's inability to use ICF to support the standards presents an incurable conflict that should have precluded award to ATK.[3]

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[2]SC&A also challenges EPA's conclusion that its cost proposal was less realistic than ATK's. SC&A's counsel received the Source Selection Document, which discloses this cost evaluation issue, on November 22, 1995, but did not raise the issue until filing report comments on December 19. SC&A's initial protest of the cost/technical tradeoff, which is confined to the allegation that EPA misjudged the relative technical merit of the two proposals, does not encompass SC&A's subsequent challenge to its cost evaluation. To raise this new and independent cost evaluation issue, SC&A was required to protest by December 6. Since it did not, the issue is untimely and will not be considered. See Bid Protest Regulations, section 21.2(a)(2), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995)(to be codified at 4 C.F.R. § 21.2(a)(2)); Metrica, Inc., B-270086; B-270086.2, Feb. 8, 1996, 96-1 CPD ¶ 135.

[3]Counsel for SC&A received ATK's and its proposed subcontractors' proposals, including conflict of interest disclosures, on December 4, 1995. Two days later, on December 6, SC&A filed a supplemental protest regarding ICF's alleged conflict of interest. In the protest, SC&A's counsel advised that "counsel has not completed review of the [conflict of interest] disclosures. . . . It is clear that in the event it is

(continued...)

Contracting officials are to avoid, neutralize, or mitigate significant potential conflicts of interest so as to prevent unfair competitive advantages or conflicting roles that could impair a contractor's objectivity. Federal Acquisition Regulation (FAR) §§ 9.504(a), 9.505. Because conflicts may arise in factual situations not expressly described in the relevant FAR sections, the regulation advises contracting officers to examine each situation individually and to exercise "common sense, good judgment, and sound discretion" in assessing whether a significant potential conflict exists and in developing an appropriate way to resolve it. FAR § 9.505. Inasmuch as the contracting agency has discretion to determine whether an actual or apparent conflict of interest will arise, and to what extent a firm should be excluded from the competition, we will not overturn the agency's determination unless it is shown to be unreasonable. See Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc.; B-254397.15 et al., July 27, 1995, 74 Comp. Gen. ___, 95-2 CPD ¶ 129; Meridian Corp., B-246330.4, Sept. 7, 1993, 93-2 CPD ¶ 129.

The record reflects that ICF's only significant conflict of interest concerned radiation clean-up standards, one of the several programs covered by the RFP. At the time of the cost/technical tradeoff, the contracting officer knew that EPA would obtain support in developing and implementing the radiation clean-up standards predominantly through SC&A's and Cadmus's contracts. The contracting officer found that this would substantially mitigate the potential for any conflict of interest arising from ICF's RAC status. The contracting officer further found that, in the event ATK received a work assignment relating to the clean-up standards, ATK and its remaining [DELETED] subcontractors would have sufficient expertise to successfully perform any work assignment in support of this radiation program without using ICF. Although EPA initially questioned ATK's dependence on ICF staff in one technical support area relevant to regulatory work [DELETED], ATK's BAFO response showed that its staff of 47 [DELETED] analysts included only [DELETED] ICF members, none of whom was needed to serve in a key personnel position. Thus, the contracting officer determined that "there was sufficient depth of experience represented by ATK and its entire team of proposed subcontractors to adequately perform the work in every SOW area without requiring any unique skills resident only in [ICF]." Based on our review of the record, we find reasonable

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[3](...continued)
discovered that there are material misrepresentations and/or omissions in [ATK's] proposal (including that of its subcontractors), SC&A has 14 days" from the December 4 document production to file a protest. On January 18, in its comments to the supplemental agency report, SC&A protested that EPA misevaluated the conflict of interest disclosures of ATK and [DELETED] other subcontractors. These additional conflict of interest allegations should have been raised by December 18 to be considered timely. Bid Protest Regulations, section 21.2(a)(2), supra.

EPA's determination that the potential organizational conflict of interest posed by ICF could be avoided and was not a bar to an award based on ATK's proposal.[4]

SC&A finally protests that the award is invalid because, at the time of the BAFO evaluation, the agency knew that a major RFP program--the development of the radiation clean-up standards--would not be supported via the instant contract and that the RAC conflict of interest restriction associated with that program would not be enforced. That being the case, SC&A claims that EPA should have amended the solicitation by deleting the obsolete program, recalculating the solicited level of effort in light of the program's elimination, and removing the associated RAC conflict of interest restriction. See FAR § 15.606(a).

EPA responds that its requirements have not changed. The agency advises that, although SC&A and Cadmus have substantially developed the radiation clean-up regulations, EPA may require support from ATK under this contract to implement the regulations, which will include such work as evaluating public and agency comments and developing the implementing guidance. The agency advises that "there are no guarantees" that the implementation work will be completed within the time remaining under SC&A's or Cadmus's respective contracts, which is why "the requirement for technical support in the implementation of the regulation . . . is still included in the [ATK] contract."

While it appears that less work relating to the radiation clean-up regulations may be assigned to this contract than the RFP suggests, we cannot find that EPA was required to amend the RFP and obtain revised proposals for this reason. In this regard, we note that the RFP did not describe precise tasks to be performed; did not guarantee that EPA would issue work assignments for the radiation clean-up standards; did not estimate the number of hours that the agency may order with respect to any program; and did not define the evaluation criteria in terms of particular programs, but in terms of broadly applicable technical skills. Moreover, EPA reports that it anticipates that the same total level of effort stated in the RFP

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[4]The record in this case is virtually bereft of contemporaneous documentation on any organizational conflict of interest issue. The contracting officer did not document her findings on the assumption that such findings need be documented only where a significant conflict precludes award. The contracting officer is mistaken. FAR § 9.504(d) requires a contracting officer to document her findings "when a substantive issue concerning potential organizational conflict of interest exists." In our view, the significance of ICF's RAC status and the agency's anticipated need for support in the pertinent RFP program was a "substantive issue" that should have been documented.

will be ordered. In any case, the record does not support SC&A's suggestion that it was somehow prejudiced by EPA's failure to amend the RFP.[5]

The protest is denied.

Comptroller General
of the United States

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[5]SC&A has submitted an affidavit from its president, stating that, but for the RAC restriction, SC&A "would have considered using its prior subcontractor [ICF]" and "would have also considered including as team members certain companies [that] . . . possess outstanding credentials in radioactive waste clean-up." SC&A does not state that it would use a different set of subcontractors if the RAC restriction were lifted, nor has it shown how a new subcontracting team would improve its proposal. For example, it is not apparent how the use of subcontractors with outstanding credentials in radioactive waste clean-up would strengthen SC&A's proposal, if EPA does not intend to acquire support for the radiation clean-up standards, as alleged. Also, the weaknesses in SC&A's proposal were not attributable to its subcontracting team, which the TEP considered "very good," but were attributable to SC&A as a prime contractor. These weaknesses, as well as various informational weaknesses in SC&A's proposal, would not change regardless of which subcontractors SC&A proposed. See, e.g., Hughes Georgia, Inc., B-244936, B-244936.2, Nov. 13, 1991, 91-2 CPD ¶ 457.

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