



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Alcan Environmental, Inc.

File: B-275859.2

Date: April 11, 1997

Erling T. Johansen, Esq., Davison & Davison, for the protester.

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DIGEST

Protest of technical evaluation based upon alleged consideration of improper information by evaluators is denied where there is no evidence of impropriety and record fully supports the evaluation of protester's proposal. In view of reasonableness of evaluation, protester's bias allegations are denied as there is no basis to conclude that agency acted with intent to injure the protester.

DECISION

Alcan Environmental, Inc. protests the award of a contract to Harding-Lawson Associates/Wilder Construction Company, Joint Venture (HLA/Wilder) under request for proposals (RFP) No. 1422-N660-R96-3005, issued by the Bureau of Land Management (BLM), Department of the Interior. Alcan challenges the agency's evaluation based on its allegation that evaluators were biased against the protester.

We deny the protest.

The RFP sought proposals for hazardous materials disposal in Alaska (the Hazmat Program) under a requirements contract for a base year with two 1-year options. Award was to be made to the offeror whose proposal was most advantageous to the government based upon consideration of the stated evaluation criteria.

Proposals were evaluated on the basis of three factors, listed in descending order of importance: technical, cost/price, and business management. Offerors' technical proposals were evaluated on the basis of two factors with related subfactors: technical approach (eight subfactors) and key personnel and past performance (five subfactors). Each subfactor was evaluated on a scale of zero (unsatisfactory) to 10 (excellent) and multiplied by the subfactor's weight. Thus, a perfect score of

10 on each subfactor would result in a weighted total score of 3,800 points. The cost/price proposals were not point scored, but were evaluated for reasonableness and an assessment of the offerors' understanding of requirements and validity of approach. The business management proposals also were not point scored, but were evaluated to determine whether offerors had adequate project management systems, subcontracting management and plans, and financial resources. Evaluations were conducted by a technical proposal evaluation committee (TPEC). The contracting officer served as source selection official (SSO).

Five offerors, including Alcan and HLA/Wilder, submitted proposals by the July 10, 1996, closing date. The TPEC performed an initial evaluation in which HLA/Wilder's proposal received the highest score (3,170 points) and Alcan's the lowest (1,400 points). All offers were placed in the competitive range and written discussions were conducted. After review of the offerors' responses to the discussion questions, the agency rescored the proposals. Alcan, which proposed the lowest estimated price, had its proposal score increased to 2,090 points with a business management ranking of "good." HLA/Wilder's score increased to more than 3,400 points with a business management ranking of "very good." Since HLA/Wilder's proposal had the strongest technical score and the second lowest estimated price, the contracting officer determined that it represented the best value to the government.

On December 2, prior to making his award determination, the contracting officer received a letter from Alcan which enclosed a memorandum written by a Hazmat Program specialist. The memorandum, dated September 6, discussed pending task order 008, under the incumbent contract being performed by AQE, Inc., which included Alcan as a team member. The memorandum was critical of AQE's written response plan to perform the task order. Alcan believed the document contained false statements and misrepresentations and had been widely circulated at BLM. Alcan requested an investigation of the matter and postponement of the award determination until Alcan and AQE could respond to the memorandum. The contracting officer, who was listed as an addressee on the memorandum, had never seen the document before and could not find it in the agency's records. He investigated the matter and determined that the memorandum had no impact on the evaluation of Alcan's past performance. Accordingly, he awarded the contract to HLA/Wilder on December 6. After receiving notice of the award and a debriefing, Alcan filed this protest. Performance of the contract has been stayed pending this decision.

Alcan proposed the lowest estimated price and, thus, argues that its proposal represented the best value. In Alcan's view, the agency's "subjective" evaluation of its proposal was flawed through the bias of evaluators who based their evaluation on untrue negative information about the firm.¹

In reviewing an evaluation, it is not the function of our Office to evaluate the proposals de novo. Rather, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203; Advanced Technology and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230. From our review of the record, we find neither evidence of any specific intent to injure the protester nor any other basis to object to the agency's evaluation.

Alcan relies on various documents, including the September 6 memorandum discussed above, which it believes reflect negatively on Alcan. These include the September 6 memorandum; notes of an August 30 telephone call from the same specialist; an August 30 follow-up memorandum to the call; and two memoranda which discussed three BLM personnel and their potential bias against AQE. Alcan argues that the TPEC and contracting officer saw these documents and took them into consideration in evaluating Alcan's proposal. Nothing in the record before us indicates that these documents were considered in the evaluation or had any adverse impact on the evaluation of Alcan's proposal.

A co-chairman of the TPEC explains that, in accordance with the RFP, no outside information was considered by the TPEC in evaluating Alcan's or the other offerors' proposals. All judgments were made on the basis of the proposals submitted and discussion responses, without consideration of personal knowledge of the offerors. Further, the evaluation score sheets contain no references to the supposed negative information in these documents, nor do they appear to be based on them. In this regard, the majority of the panel members had never seen the documents relied upon by the protester. While some TPEC members had seen the documents, there is no basis for finding that the documents were considered and counted against Alcan.

¹The protester submitted a number of arguments in support of these and other protest grounds; the agency responded to each argument, justifying its actions. We have reviewed the entire record, considered all of the arguments, and find no basis for sustaining the protest. However, we will discuss only the more significant arguments in this decision.

For example, the September 6 memorandum was seen only by two TPEC members and one of the co-chairmen and then only after the initial evaluations had been conducted and discussion questions sent to the offerors. Since Alcan's proposal scores increased after the TPEC reviewed its discussion responses, the memorandum and its related documents appear to have had no adverse effect on Alcan. In any event, the September 6 memorandum and the related August 30 documents reflect a single BLM employee's concerns with AQE's plans to perform task order 008. There is nothing improper about an agency employee responsible for drawing-up task orders expressing concerns with the way a contractor performs its work. In this case, the concerned employee did not serve on the TPEC and her personal viewpoints were not considered.² Moreover, the agency explains, without contradiction from Alcan, that task order 008 was awarded to AQE and was completed to the government's satisfaction.

The remaining documents also had no discernable effect on the evaluation. One of the documents, dated in 1994, identifies two BLM inspection personnel who apparently held negative views of Alcan and its team member AQE. The memorandum sought to ensure that these employees were not involved in reviewing Alcan's performance. The other document, dated in May 1996, explains one BLM employee's difficulties with another BLM employee in negotiating a task order with Alcan. It also expresses concern about future work, since Alcan had bid on part of the job as a prime contractor. None of these BLM employees identified as having negative views of Alcan were in any way involved with the evaluation of its proposal. Further, Alcan's failure to obtain the job as prime was due to its submission of one of the highest bids, not because of agency bias.³

²Notwithstanding Alcan's views, we find no evidence of bias in the August 30 documents. The telephone notes simply discuss other methods of obtaining the services covered by task order 008 if Alcan declined to accept the task order. While the notes also state that the incumbent contract "expires end of Sept.," this simple statement of fact does not, as argued by Alcan, indicate that the agency has no intention of dealing with Alcan again. The August 30 memorandum reflects the BLM specialist's plans to postpone task order 008 negotiations with AQE. To the extent this memorandum is viewed as negative to Alcan, we note that a marginal note from one of the memorandum recipients disputes the specialist's viewpoints.

³In any event, even if the evaluators had considered the documents at issue, Alcan has not shown how the documents adversely affected its evaluation. Moreover, in evaluating proposals, contracting agencies properly may consider any evidence, even if that evidence is entirely outside the proposal, so long as the use of the extrinsic evidence is consistent with established procurement practice. Intermagetics Gen. Corp.-Recon., B-255741.4, Sept. 27, 1994, 94-2 CPD ¶ 119.

Alcan also contends that its low consensus score is evidence of the evaluators' consideration of negative information.⁴ However, the record establishes otherwise. The individual evaluators reviewed the proposals against the stated evaluation criteria without input from other TPEC members. Only after all individual evaluations were completed did any member learn how another had scored a proposal. They then met as a group to arrive at a consensus score. In their discussions, the evaluators pointed out information in the proposals on which they based their individual scores and all scores were based on the proposals submitted.⁵

Alcan's proposal received the lowest consensus score of all proposals on the initial evaluation. However, through discussions, Alcan was provided the opportunity to improve its score by submitting additional information. Alcan availed itself of this opportunity and increased its score significantly from 1,400 to 2,090 points. In this regard, Alcan's score was increased in 10 of the 13 subfactors, while the other scores remained the same. One of these was already scored as "very good" (160 points out of a possible 200 points). The other two were scored as "fair" and "poor." While Alcan asserts that some of its scores and evaluator comments were unfair, it fails to explain why its proposal score was undeserved in those areas.

For example, Alcan's proposal was rated "poor" on subfactor II C under the key personnel and past performance factor. As stated in the RFP, this subfactor concerned the offeror's record of jobs of different sizes and variety performed over the past 2 years, including information to show adherence to regulatory permits and contractual time schedules and budgets. In its proposal, Alcan listed a number of

⁴Alcan asserts that one of the evaluators exerted an undue influence over the other members of the TPEC causing them to match his score which was lower than all the others. The co-chairmen of the TPEC explain that the evaluators arrived at their consensus ratings on their own, without strong influence by any one member on the others. We also note that the score on which Alcan relies was the initial consensus score and not the final where its score significantly increased.

⁵To the extent Alcan is arguing that the consensus ratings were unfair, there is nothing inherently objectionable in an agency's decision to develop a consensus rating. Appalachian Council, Inc., B-256179, May 20, 1994, 94-1 CPD ¶ 319. The fact that some of the evaluators individually rated Alcan's proposal more favorably on some subfactors than they did on a consensus basis for those subfactors does not, by itself, warrant questioning the final evaluation results. See Syscon Servs., Inc., 68 Comp. Gen. 698 (1989), 89-2 CPD ¶ 258; Dragon Servs., Inc. B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151. A consensus score need not be the score of the majority the evaluators initially awarded—the score may properly be determined after discussions among the evaluators. GZA Remediation, Inc., B-272386, Oct. 3, 1996, 96-2 CPD ¶ 155 (note 3).

projects it had completed, along with the budgets and start/stop dates. The proposal did not identify how Alcan had met the schedule and annual cost of work figures it had identified in the proposal. In discussions, the agency specifically asked Alcan to clarify the size, contractual time schedules, and budgets of its past performances. In its response, Alcan stated that it had regularly met its past contractual time schedules and listed some of the same past contracts as in its initial proposal. However, as noted by the TPEC in the final evaluation, Alcan had not furnished information on its compliance with contractual schedules; its estimated charges were not shown to be within budgetary constraints; and some information was missing from new and old projects. An offeror must demonstrate affirmatively the merits of its proposal and runs the risk of a lower evaluation score if it fails to do so. See InterAmerica Research Assocs., Inc., B-253698.2, Nov. 19, 1993, 93-2 CPD ¶ 288. While Alcan believes the evaluators' comments evidence consideration of outside, negative information about its past performance, the record indicates that the assessment simply reflects a reasonable evaluation of its proposal.⁶

Alcan also challenges the composition of the TPEC, arguing that it was improper to use BLM personnel from the Alaska office who were familiar with Alcan's performance under the incumbent contract. The composition of a technical evaluation panel is within the discretion of the contracting agency. In the absence of evidence of bad faith, conflict of interest, or actual bias, we have no reason to question the composition of the panel. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588; Johns Hopkins Univ., B-233384, Mar. 6, 1989, 89-1 CPD ¶ 240.

Alcan has identified nothing which establishes any reason to question the composition of the TPEC. The mere fact that evaluators have worked with or are otherwise familiar with one or more of the offerors in a procurement is no basis for disqualifying them from service. Here the agency sought balance in its panel by selecting five evaluators, only three of whom were regular Hazmat Program personnel. The fourth member had only recently transferred to the Alaska office from the Bureau of Mines and the fifth worked in a division outside the Hazmat Program. While Alcan argues that its low evaluation scores resulted from the Alaska employees' familiarity with it, we note that on the initial evaluation, a regular

⁶Since we find no error in the evaluation of Alcan's proposal, we have no basis to conclude that the agency acted with a specific intent to injure Alcan or that the evaluation unfairly affected the protester's competitive position. Hill's Capitol Sec., Inc., B-250983, Mar. 2, 1993, 93-1 CPD ¶ 190.

Hazmat Program employee gave Alcan its highest proposal score, while the new Hazmat employee gave Alcan one of its lowest scores, even though the regular employee presumably knew more about Alcan than did the new one.⁷

The protest is denied.

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⁷Alcan contends that one of the TPEC members had a conflict of interest which should have disqualified her from service. According to a deposition excerpt from Alcan's state lawsuit against a former BLM employee, the former employee had dinner with the evaluator in February 1996, 5 months prior to the receipt of proposals and the commencement of evaluations. The excerpt reflects that they did not talk about ongoing BLM projects and only briefly discussed the lawsuit. We see nothing remotely indicative of a proposed conflict of interest from such a casual meeting between a future evaluator and a person unrelated to the procurement.