

M. Eaton

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-191421

DATE: September 13, 1978

MATTER OF: American Appraisal Associates, Inc.

DIGEST:

1. GAO will not evaluate proposals or make independent judgment as to precise numerical scores which should be assigned to them. Procuring agency's determination will be questioned only upon clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes and regulations, and fact that protester disagrees with evaluation does not make it arbitrary or unreasonable.
2. Procuring agency may reasonably rate offeror whose employees have experience which is considered directly applicable to project higher than one with employees whose experience is only peripherally related to it.
3. Decision as to which of two fundamentally different scientific/technical approaches is better, and determination of realism of proposed costs for cost-plus-fixed-fee contract, are matters within discretion of procuring agency, and GAO will not disturb unless discretion is abused. Nor would it be appropriate for another Federal agency to evaluate scientific/technical proposals.
4. Agency's failure to estimate costs on unit basis, and to provide specific information on relative weights of evaluation factors, are apparent on face of solicitation. Under GAO Bid Protest Procedures, such alleged improprieties must be protested before closing date for receipt of initial proposals or they will not be considered on the merits.
5. Delay in submission of agency report to GAO does not provide a basis for disregarding substantive information in report or for sustaining protest.

American Appraisal Associates, Inc. (American) has protested award of a contract under solicitation No. YA-517-RFP7-127, issued June 3, 1977, by the Denver, Colorado, Service Center of the Bureau of Land Management, Department of the Interior.

The agency sought proposals for an inventory of all pipelines used for transportation of oil, natural gas, synthetic liquids, gaseous fuels, or any refined product produced from these fuels which have rights-of-way through Federal lands administered by two or more Federal agencies. Under Public Law 93-153, amending § 18(c)(2) of the Mineral Leasing Act of 1920, 30 U.S.C. 185 (1976), the Secretary of the Interior is to grant or renew applications for rights-of-way or permits through such Federal lands. This procurement was the first step in implementing the statute.

According to the request for proposals (RFP), an estimated 250,000 miles of oil and petroleum product pipelines, 275,000 miles of natural gas pipelines, and 760 million acres of Federal lands, administered by 64 agencies, were to be considered; an unknown proportion of these are subject to § 18(c)(2).

The contractor selected by BLM was to provide, in computerized form, 23 specific items of information for each pipeline, including names and addresses of companies, products transported, authority for and effective dates of rights-of-way, granting agencies, rental fees, and dimensions of pipelines and rights-of-way. In addition, the contractor was to deliver one copy of an existing map or other documentation which specified the location of each right-of-way.

Ten firms responded to the solicitation by the amended closing date of July 14, 1977; seven of these, including American, were found in the competitive range. Discussions were held and each offeror was given an opportunity to revise its proposal. Award of a cost-plus-fixed-fee contract for \$1,088,254 was made to Universal Field Services, Inc. (Universal) on December 9, 1977; performance is expected to be completed by March 9, 1979.

After obtaining a copy of Universal's proposal under the Freedom of Information Act, American protested to our Office. American challenges the comparative numerical ratings of its own and the successful proposal, 530 and 773 respectively, with regard to the four evaluation categories listed in the RFP--experience, management capability, scientific/technical approach, and cost realism. It requests that we reevaluate the proposals, then set aside the award to Universal.

As we have often stated, it is not the function of our Office to evaluate proposals or to make an independent judgment as to the precise numerical scores which should have been assigned to them. A procuring agency's determination will be questioned only upon a clear showing of unreasonableness, abuse of discretion, or a violation of procurement statutes and regulations, and the fact that a protester does not agree with an evaluation does not make it arbitrary or illegal. Management Information Technology, B-190453, March 15, 1978, 78-1 CPD 205, and cases cited therein; K-MCC, Inc., Consultants, B-190358, March 10, 1978, 78-1 CPD 194.

In this case, it appears that Universal and American offered two fundamentally different approaches to the pipeline inventory. Universal proposed to use pipeline companies as its primary source of information and, through questionnaires, to eliminate those which did not have Federal rights-of-way and to determine which of the remainder had rights-of-way through land under the jurisdiction of two or more Federal agencies. Federal agencies would be contacted to obtain lists of permits, if available, and for cross checking where necessary. Universal intended to use its own employees, who routinely act as right-of-way agents, to gather information. Universal proposed to subcontract its data processing.

American, on the other hand, proposed to identify Federal lands and administering agencies by use of a detailed mapping system, then to record the coincidence of pipelines with these lands. American's primary source of information would be the Federal agencies issuing rights-of-way or permits, with pipeline companies to be contacted if agency records were inadequate. American

proposed to use a subcontractor, whose employees were primarily experienced in land surveying, to gather information; it proposed to do its data processing in-house.

We have reviewed American's numerous allegations with regard to evaluation of the competing proposals and, for the following reasons, are unable to conclude that BLM was unreasonable, abused its discretion, or violated statutes or regulations in selecting Universal.

First, American argues that Universal's experience is primarily in doing right-of-way acquisitions for private clients, and that this experience is not applicable to the BLM project, which covers existing permits on public lands. American contends that its own experience in records gathering, analysis, and data processing is superior.

BLM responds that the project involves more than mere data gathering, and that gatherers must make judgments as to whether or not data is needed. BLM states that Universal's field agents, who are familiar with all facets of easements, permits, and rights-of-way, and who have experience in negotiation with property owners and public agencies, "have qualifications much more closely aligned with BLM expectations" than those proposed by American, who are experienced in surveying, drafting, and photogrammetry.

The computer processing for this project, BLM adds, is relatively straightforward and does not require any unique programming techniques; moreover, American's in-house approach is not known to be any more economical, efficient, or accurate than Universal's subcontract arrangement.

We find that BLM reasonably could rate an offeror whose employees have experience in rights-of-way acquisition, which the agency believes is directly applicable to this project, higher than one with employees whose experience is only peripherally related to it. In view of BLM's assertion that data collection is critical, but processing is routine, we cannot conclude that the agency's evaluation of experience is unreasonable. See Ads Audio Visual Productions, Inc., B-190488, March 30, 1978, 78-1 CPD 249.

In the second evaluation category, management capability, American argues that, unlike Universal, it provided detailed organization and work flow charts. In addition, American states, it routinely uses a WATS telephone system as a management tool and included this in its initial proposal, but that Universal did not propose this until its final submission.

BLM responds that Universal's organization and work flow charts were adequate for purposes of evaluating that firm's management capability. As for use of a WATS system, BLM indicates that Universal's proposed telephone costs were considered high, but realistic, in view of the number of field personnel proposed. Universal's inclusion of a WATS system in its best and final offer, BLM states, was recognized as reflecting a desire to reduce and control costs.

BLM indicates that it questioned whether American's proposed mapping system would insure a complete pipeline inventory, particularly in cases where rights-of-way are granted by Federal agencies which share jurisdiction but are not themselves major landholders. "This leads us to believe American Appraisal Associates' management does not have a full understanding of the reliability of the map basis on which they are establishing their technical proposal." American objects to downgrading of its management capability on the basis of its technical approach.

We note that no evaluation subfactors were listed under management capability. However, offerors were instructed that their management proposals were to describe or identify, among other things, management organization structure; key personnel, by name, title, and responsibility; lines of communication; proposed methods for establishing and maintaining cost schedules; procedures for budgeting, tracking, and controlling costs; integration of cost and schedule control; and progress reporting.

Whether Universal's proposal included sufficient information on these facets of its management, or whether any questions which BLM had were adequately answered during negotiations are also, we believe, primarily matters of agency discretion.

The contracting officer's report, as noted above, indicates that American's scientific/technical approach was used as a basis for evaluating its management capability, a separate evaluation category. This interpretation is not supported by the record. The second technical evaluation of American, dated August 26, 1977, indicates that the firm's rating was based on a relatively low commitment of management to the project; the failure to develop a firm plan until three months into the project; the possibility that additional time and money would be required to complete the project; and the selection of an approach indicating a lack of overall understanding, underscoring the need for more management direction and control.

We believe that, for the scientific/technical approach proposed by American, the evaluators felt that a greater commitment of management, and more direction and control than that offered by American, would be required. American's final score was "increased slightly" due to greater commitment of management, according to the Technical Evaluation Committee report dated December 1, 1978. On the other hand, the report states, Universal's best and final offer included documentation which eliminated concerns regarding management lines of communication. "They have presented graphic evidence of the management system which appears viable and adequate," the report concludes. On the basis of these findings, we cannot conclude that BLM abused its discretion in evaluating management capability.

With regard to use of a WATS line, there is no evidence in the negotiation memorandums included in the record that Universal was advised of American's proposed telephone system. We therefore cannot conclude that any "technical transfusion" occurred. Since, in a negotiated procurement, submissions are considered in their entirety, we do not believe it is otherwise relevant that American was the first of the two offerors to propose this system.

In the third evaluation category, scientific and technical approach, American protests because Universal proposes to go through records of pipeline companies, trade associations, and public service-type commissions, when the "offices of record" for purposes of the pipeline inventory are the Federal agencies which issue rights-

of-way or permits. American argues that because there are fewer agencies than pipeline companies, its time, effort, and cost of obtaining information would be less than Universal's.

BLM responds that by relying on qualified field agents to determine whether or not a pipeline involves two or more Federal agencies, and by using questionnaires, Universal will eliminate the need to search hundreds of company records. BLM argues that this approach will be more likely than American's to reveal or confirm the identity of small Federal agencies and small pipelines. Universal does plan to use maps, BLM states, but only to identify geographic areas where the majority of Federal lands and pipelines are located.

American also objects to Universal's proposed use of questionnaires on grounds that 44 U.S.C. 3509 and Office of Management and Budget (OMB) Circular A-40 require a Federal agency to obtain approval by the director of OMB before collecting or sponsoring the collection of information on identical items from 10 or more persons. Evaluation of Universal's proposal without such approval was deficient, American argues.

However, the Technical Evaluation Committee, report states that as the result of discussions with BLM personnel experienced in this area, the evaluators' concerns were eliminated. There was no requirement in the RFP that OMB approval be obtained before award. Since the need for approval was considered during evaluation of Universal's proposal, and we are advised that it was granted on April 5, 1977, we do not believe American has a valid protest on this ground.

As noted above, BLM criticizes American's mapping approach and contends that American has not clearly demonstrated how all rights-of-way qualified for inclusion in the inventory will be identified. BLM states that the maps which American proposes to use as a data base are on several scales, that some may not exist, and that others do not show Federal ownership in sufficient detail. BLM also appears concerned that, under the sequence of tasks proposed, American will have to

collect information on every existing pipeline right-of-way before it isolates those through lands administered by two or more Federal agencies. The "office of record" concept argued by American does not necessarily require that Federal agencies be contacted first, BLM states, since both agencies and pipeline companies must be contacted to verify information.

In its comments on the agency report, American argues that as stated in its proposal, the General Services Administration (GSA), will provide an individual listing of every parcel of every agency's land, and that pipeline maps also are available. American suggests that we submit its proposal to the U.S. Geological Survey for reevaluation on this point.

We believe that the decision as to which of two scientific and technical approaches is better suited to this project is one of the type which is uniquely committed to the discretion of the procuring agency, and we find nothing in the technical evaluation which warrants disturbing BLM's selection. See generally GTE/IS Facilities Management Corporation, B-186391, September 7, 1977, 77-2 CPD 176 at 12. Nor do we believe it would be appropriate for another Federal agency to evaluate proposals submitted to BLM.

Finally, American argues that costs for the pipeline inventory should be estimated in terms of the number of units which are to be handled by the contractor. American estimates that it will cost approximately \$1,330,000 to process 73,000 permits and states that if fewer permits are involved, costs will be less. American argues that Universal's proposal is open-ended and does not contain any means of judging or controlling costs.

BLM responds that it is impossible to accurately estimate the number of permits which may be involved in this inventory or to determine how many hours will be required to process each one, so that costs could not possibly be evaluated on a unit basis. For this reason, BLM points out, offerors were told at the preproposal conference that 1/2 to 3/4 man-years of effort would be required for each of the 50 states to be inventoried. Moreover, BLM states, even if American had received the maximum possible score in this category, its proposal would not have been selected due to technical deficiencies.

To the extent that American is protesting BLM's failure to evaluate proposed costs on a unit basis, rather than for realism, the criterion stated in the RFP, the protest is untimely. Our Bid Protest Procedures, 4 C.F.R. 20.2 (1977) require that alleged improprieties which are apparent on the face of a solicitation be protested before the closing date for receipt of initial proposals. However, American also appears to be arguing that Universal's costs are not realistic. We have stated that the determination of the realism of proposed costs for a cost-plus-fixed-fee contract is a matter of agency judgment and will not be objected to unless there is no rational basis for it. Educational Computer Corporation, B-187330, November 30, 1976, 76-2 CPD 460. We do not find that to be the case here.

In its comments on the agency report, American argues for the first time that BLM did not properly respond to questions raised in November 1977 regarding specific weights of evaluation criteria. Since the RFP merely listed the four evaluation categories in descending order of importance, this alleged deficiency also was apparent on the face of the solicitation, and we will not consider it now.

Finally, American points out that BLM delayed in submitting its report to our Office. Our Procedures, supra at 20.3(c), state that we shall request an agency to submit a report on a bid protest as expeditiously as possible, generally within 25 working days. We note that nearly four months elapsed between our March 15, 1978 request and July 12, 1978 receipt of BLM's report. Nevertheless, late receipt does not provide a basis for disregarding the substantive information contained in the report or for sustaining the protest. J. H. Rutter Rex Manufacturing Co., Inc., B-190905, July 11, 1978, 78-1 CPD

Accordingly, the protest is denied.



Acting Comptroller General
of the United States