

DECISION



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

FILE: B-202502

DATE: August 12, 1981

MATTER OF: Virginia State University

DIGEST:

- 1. Contracting officials are accorded considerable range of judgment and discretion in carrying out evaluation of proposals and fact that protester disagrees with agency evaluation does not establish that evaluation had no reasonable basis.
- 2. Allegation of unfair evaluation of proposal due to bias of procuring agency is rejected as speculative where record discloses no evidence of bias or unfairness and suggests reasonable basis for agency's actions.
- 3. Allegation that procurement was improperly conducted on noncompetitive basis is dismissed as untimely where format of procurement was apparent from solicitation and protest was not filed until after submission of proposal.

Virginia State University (VSU) protests the exclusion of its proposal from consideration for award of a contract for the performance of a cropping systems research project in Swaziland under request for expressions of interest (REI) No. 6450212 issued by the Agency for International Development (AID).

VSU contends that the Agency evaluation of its proposal was arbitrary and capricious, that AID was biased against VSU, and that the procurement was improperly conducted in a noncompetitive manner.

We find the protest without merit.

The procurement was conducted under the AID collaborative assistance selection procedures set forth in 4 C.F.R. § 7-4.58 (1980). As provided therein, AID

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developed an initial list of sources known to have capability and expertise in the project areas. The list was grouped into categories based on their known capabilities to meet the requirement pursuant to 41 C.F.R. § 7-4.5805(b)(3) (1980), which provides that the source list be evaluated to determine the source or sources considered most capable of performing the project. REI's were sent to the institutions on the source list. VSU, along with six other schools, submitted a proposal. An evaluation panel conducted an initial evaluation under which the top four schools received scores ranging from 83-74. VSU, the fifth-ranked school, received a score of 63. The panel determined to conduct site visits of the top four schools only. As provided in 41 C.F.R. § 7-4.5805(e) (1980), the panel may conduct such onsite evaluations at its discretion as part of the evaluation process. In part as a result of information derived from the site visit, Pennsylvania State University (Penn), which had ranked third with a score of 77 points, eventually was evaluated as first with a score of 93. AID determined to conduct final negotiations with Penn as provided for in the applicable regulation. 41 C.F.R. § 7-4.5805(g).

VSU alleges that its proposal was given an unreasonably low score because of an inadequate evaluation, which it characterizes as arbitrary and capricious. In particular, it points out that the evaluators criticized VSU's proposal for failure to provide any nominations for a long-term implementation team when, according to VSU, its proposal clearly provided for such personnel. VSU also asserts that the evaluators falsely claimed that insights gained and project-specific information collected on a visit to Swaziland by VSU personnel were not reflected in its proposal.

Contracting officials are accorded a considerable range of judgment and discretion in carrying out an evaluation and the fact that the protester disagrees with the agency's evaluation does not establish that the evaluation had no reasonable basis. Moore-Johnson/Shotwell-Anderson, Inc., B-200093, February 11, 1981, 81-1 CPD 92. Further, it is not the function of this Office to evaluate proposals in order to determine which should have been selected for award. The determination of the relative

merits of the proposals is the responsibility of the contracting agency will not be questioned by our Office unless shown to be arbitrary or in violation of procurement statutes or regulations. Tracor, Inc., 56 Comp. Gen. 62 (1976), 76-2 CPD 386.

We are presented with a disagreement between AID and VSU concerning the technical evaluation of the protester's proposal. With respect to the question of whether or not the proposal reflected the information accrued by VSU in its visit to Swaziland, we have merely VSU's disagreement with the agency assessment and its unsubstantiated contention that this insight and information was reflected in its proposal. Regarding the existence of nominations for long-term implementation team personnel, the record discloses that VSU's proposal does not differentiate between long- and short-term personnel, and thus fails to make clear which constitute possible long-term personnel. In addition, at a conference held on this protest under our Bid Protest Procedures, VSU essentially conceded that it was unsure which proposed staff members would constitute the long-term personnel--hence the lack of specific designation in its proposal. Under these circumstances, we believe that it was not unreasonable for the evaluators to conclude that VSU had failed to provide for long-term personnel nominations as required. Thus, we believe that there was a reasonable basis for the evaluation about which VSU complains.

VSU asserts that AID was biased against it, and that this bias affected the selection process. As evidence, VSU points to the fact that it was not included on the initial source list and also to the fact that the source list ranked the offerors in categories. However, the source list is mandated by the applicable regulations. Moreover, VSU has not shown how noninclusion on the initial list resulted from bias or was prejudicial. Its offer was evaluated, as were other offers from schools not on the initial source list. As AID has pointed out, the effect of not being included on the initial list was clearly not prejudicial since Penn, the awardee, also was not included on the original source list. As to the groupings of the original source list, this was simply AID's method of complying with the

requirement to evaluate the source list under 41 C.F.R. § 7-4.5805(b)(3) (1980). We fail to see how this action was prejudicial or indicative of any bias.

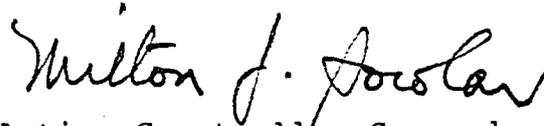
As further indication of the alleged bias, VSU points out that it was not afforded a site visit as were the top four evaluated schools. As noted, the applicable regulations and the terms of the REI both indicate that a site visit is optional in the discretion of the evaluators. AID determined that the top four scores constituted the technically acceptable proposals and afforded those offerors site visits. We have held that where there is a substantial break in scores, this is a valid basis for exclusion of offerors below the cutoff score as technically unacceptable. Joule Technical Corporation, B-197249, September 30, 1980, 80-2 CPD 231. We believe that the scoring array provided a reasonable basis for such exclusion here, given the closeness of the top four scores (separated by a total of 9 points) versus the 11 point dropoff to VSU's fifth high score.

VSU also points to what it characterizes as AID's "callous" method of dealing with it throughout the procurement. However, the examples it cites relate to inquiries which it made which were responded to in full by AID officials. While VSU characterizes the responses by stating that its inquiries were "turned off" by AID, the record discloses that it was given reasonable answers. VSU "speculate[s] that a more dignified response was not forthcoming from the procuring agency because it had no intention of visiting this institution." VSU's allegation is, as VSU characterizes it, purely speculative, and it has no basis in the record. To establish the existence of bias, the record must show that there was no rational basis for an evaluation. Optimum Systems, Inc., 56 Comp. Gen. 934 (1977), 77-2 CPD 165. We will not consider a technical evaluation to be unreasonable merely because bias has been alleged. Peter J.T. Nelson, B-194728, October 29, 1979, 79-2 CPD 302. As indicated above, the evaluation of VSU's proposal made by AID is rationally supported by the record.

Finally, VSU has asserted that the entire procurement procedure employed by AID was noncompetitive and overly discretionary. However, in the REI, the Agency clearly

indicated its intention to utilize negotiated procurement procedures pursuant to 41 C.F.R. subpart 7-4.58, which sets forth the procedures complained about. Under our Bid Protest Procedures, 41 C.F.R. § 21.2(b)(1) (1981), protests of apparent improprieties in a solicitation must be made prior to the closing date for receipt of proposals. In this instance, VSU did not file its protest until after the submission and evaluation of its proposal. Therefore, this aspect of the protest is dismissed as untimely.

The protest is dismissed in part and denied in part.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States