

DECISION



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

FILE: B-208824

DATE: January 17, 1983

MATTER OF: Zuni Cultural Resource Enterprise

DIGEST:

Procuring agency has presented evidence, although disputed by the protester, which establishes a reasonable basis for exclusion of protester from competitive range for weaknesses in technical proposal.

The Zuni Cultural Resource Enterprise (Zuni) protests the rejection of its proposal as technically unacceptable under request for proposal (RFP) No. 30-X0250, issued by the Department of the Interior, Bureau of Reclamation. We deny the protest.

The RFP was for a Cultural Resources Survey for the Upper Gila Water Supply Study in Arizona and New Mexico. Fourteen archaeological groups submitted proposals. Following an initial evaluation, the contracting officer determined that two offerors would be requested to submit best and final offers. Zuni and other offerors were advised that their proposals had been found technically unacceptable and outside the competitive range. The Bureau subsequently awarded a contract for the work to Deuel & Associates, Inc., in October 1982.

In the RFP the following four technical criteria were set out for evaluation:

- (1) Technical quality of the preliminary research design.
- (2) Understanding of scope and objectives of the required work as indicated by a proposed plan of work.
- (3) Professional qualifications, experience, and capability of the personnel to be assigned to the project.
- (4) Quality and extent of organizational support.

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Specifically, the RFP required each offeror to discuss its methods of gathering and analyzing data, such as "sample survey strategies," and to describe a realistic strategy for dealing with questions of interest and significance to disciplines of archaeology and history. Further, the RFP required that each offeror submit a plan of work which would reflect an understanding of the scope and objectives of the required work. To be acceptable, the plan of work had to provide a description of personnel organization and division of work responsibilities for field work, laboratory analysis, report preparation, technical review and administrative requirements.

Zuni argues that its work plan was not given an adequate review. Zuni also questions the acreage figures cited by the Bureau as not reflecting the actual linear milege surveyed by Zuni in prior years or as failing to take into account other Zuni archaeological "mitigation projects." Zuni challenges the Bureau's characterization that Zuni is engaged in "cottage industry archaeology" and states that this characterization inaccurately describes the Zuni Archaeology Program. Finally, Zuni states that it is willing to negotiate any terms in its proposal which the Bureau found to be unacceptable.

The determination of the relative merits of a proposal, particularly with respect to technical considerations, is primarily a matter of administrative discretion. Dynamic Science, Inc., B-188472, July 20, 1977, 77-2 CPD 39. Our function is not to evaluate anew proposals submitted and make our own determinations as to their relative merits. Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380. That function is the responsibility of the contracting agency which must bear the burden of any difficulties resulting from a defective evaluation. Macmillan Oil Company, B-189725, January 17, 1978, 78-1 CPD 37. In light of this, we have repeatedly held that procuring officials enjoy a reasonable degree of discretion in evaluation of proposals and that this will not be disturbed unless shown to be arbitrary or in violation of the procurement laws and regulations. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10.

Additionally, the protester has the burden of affirmatively procuring its case. C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448. The fact that the protester does not agree with the agency's evaluation of its

proposal does not in itself render the evaluation unreasonable. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117.

With these principles in mind, we will now examine Zuni's arguments.

Work Plan Evaluation

At the outset, we note that a copy of the relevant sections of the Technical Proposal Evaluation Committee (TPEC) report was sent to Zuni along with the letter which advised Zuni that its proposal was found not to be within the competitive range. The TPEC report stated that Zuni's work plan was confusing, particularly in the area of personnel organization. In fact, the contracting officer, in his Determination of Competitive Range Report, stated that a major rewrite of the Zuni proposal would be necessary in order to bring it into the competitive range. Thus, it appears that the Zuni proposal did not fully satisfy the RFP requirement that the plan of work clearly provide for personnel organization and division of work responsibilities.

Acreage Analysis

The contracting officer found the Zuni proposal to be technically unacceptable with regard to the quantitative sample survey aspects of the project. Specifically, the Bureau's report on the protest states that Zuni had performed a total of approximately 11,000 acres of survey in the last 7 years. Thus, Zuni had been averaging approximately 1,500 acres of surveying per year; by contrast, Zuni's proposed contract effort (to be completed 11 months after contract award) was approximately 10 times that average figure. Further, we see no evidence that the Bureau failed to evaluate Zuni's prior survey efforts as reported by the organization to the Bureau. In this circumstance, Zuni's proposal was not considered to be competitive.

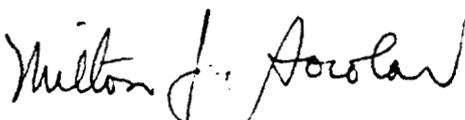
While it is unfortunate that TPEC used the phrase "cottage industry archaeology" in connection with this analysis, we do not believe that Zuni was prejudiced thereby based upon the above calculations.

Conclusion

Thus, notwithstanding the fact that Zuni may not agree with the determination, we believe that, based upon the above-discussed reasons, the contracting officer acted within his administrative discretion in determining that the Zuni proposal was not within competitive range.

Nevertheless, Zuni states that it is willing to negotiate the terms of its proposal. However, we have consistently held that if a proposal is determined to be technically unacceptable and therefore not within the competitive range, the agency has no duty to hold discussions with the offeror. Jekyll Towing and Maintenance Services Corp., B-200313, July 23, 1981, 81-2 CPD 57.

We deny the protest.

for 
Comptroller General
of the United States