

DECISION



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

FILE: B-211117.3

DATE: October 24, 1983

MATTER OF: ADC Ltd., Inc.

DIGEST:

1. An agency's adjustment to an offeror's cost proposal changing the offeror's 12-month estimated costs to match the 9-month initial performance period specified in the solicitation is unobjectionable, since the adjustment resulted in the evaluation of proposals on an equal basis and no offeror was prejudiced.
2. While the record suggests that all offerors may not have been given the same information regarding the evaluation of travel costs, the record also makes clear that no prejudice accrued to any offeror as a result.
3. Contention that offerors were not competing on an equal basis because the awardee was allegedly allowed to exclude two regions from coverage under a property management services contract is not supported by the record.
4. Unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition; therefore, where a protester merely alleges undue influence and conflict of interest, but offers no evidence of actual bias, special treatment, or other improper conduct on the part of agency officials, the protester has not satisfied its burden of proof.
5. A protester's disagreement with an agency's evaluation of its proposal does not of itself render the evaluation objectionable in the absence of a showing that the evaluation was unreasonable, arbitrary or unlawful. Where review of the evaluators' worksheets indicates that the evaluators

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regarded the limited relevant experience of some of the protester's staff as a weakness, the protester has not shown that the agency's evaluation of its proposal was without a rational basis.

6. Contention that awardee may have enjoyed a competitive advantage in the procurement because of its incumbency under a prior interim contract is not supported in the absence of proof that the awardee's alleged advantage was the result of a preference or unfair action by the contracting agency.
7. Allegation of possible improper use by awardee of other competitors' proprietary data presents a dispute among private parties and is not a basis for GAO to object to an otherwise valid award.

ADC Ltd., Inc. protests the award of a contract to Consulting and Program Management Services, Inc. (CPMS) under request for proposals (RFP) No. ETA-0C-83-01 issued by the Employment and Training Administration, Department of Labor. For the reasons indicated, we deny the protest. Two other firms also protested the award; by decisions of today, United Food Services, Inc., B-211117 and Technical Assistance Group, B-211117.2, we have denied these protests.

I. BACKGROUND

The agency issued the RFP to obtain, on a labor-hour basis, personal property management services, training, and technical assistance for U.S. Department of Labor Job Corps centers and regional offices. A labor-hour type contract basically provides for the procurement of services at specified fixed hourly rates that include direct and indirect labor, overhead, and profit. See Federal Procurement Regulations § 1-3.406-1 and -2. The RFP stated that the performance period would be 9 months from the date of award, with two 1-year option periods. For each labor category, the RFP listed the minimum and maximum number of hours that would be required. The RFP provided further that the contractor would be reimbursed

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actual transportation costs and per diem for those of its employees required to travel.

Seven offerors submitted proposals in response to the RFP. An agency technical panel reviewed and ranked each proposal and indicated that the three highest ranked proposals, which included those of CPMS and ADC, were substantially equal technically. The agency reports that during discussions with these three firms determined to be within the competitive range, each was advised that the agency would add a lump sum for travel to the best and final offer of the successful firm, the amount to depend on the availability of funds at the time of award. After receipt of best and final offers, the contracting officer awarded a contract to CPMS, whose final proposal was ranked highest technically and whose cost proposal was evaluated the lowest. The agency initially informed the unsuccessful offerors that the award to CPMS was for \$334,837. The agency later informed the unsuccessful offerors that this figure was incorrect and that the correct figure was \$269,878. We note that \$269,878 is merely a ceiling price and does not necessarily represent the amount the contractor will actually receive for performing the contract, since that depends on the number of billable hours actually expended.

II. ANALYSIS

A. Amount of Award

The protester is concerned primarily with how the agency calculated the amount of the award to CPMS. It complains that the agency has not explained adequately why its initial notice to the unsuccessful offerors advised them incorrectly of the amount of award. The agency reports that the \$334,837 figure reflected a 12-month calculation, even though the solicitation had provided for an initial performance period of only 9 months. CPMS' final offer for 9 months, says the agency, was \$194,878, to which the agency added a lump sum of \$75,000 for travel, resulting in an award for an amount not to exceed \$269,878.

We reviewed the "Revised Cost and Price Analysis" submitted by CPMS as part of its best and final offer and we find no reason for objecting to the award. CPMS proposed separate hourly rates for each category of labor for

each of three performance periods. These rates included base labor, overhead, general and administrative expenses, and profit, in accordance with the terms of the solicitation. On page one of this cost proposal, CPMS showed a "total estimated cost" of \$259,837. Because the summary of staff costs on the second page of CPMS' proposal indicated that the \$259,837 figure was based on a 12-month period, the agency evidently calculated CPMS' 9-month price by taking 75 percent of the indicated "total estimated cost" ($\$259,837 \times 75\% = \$194,878$).

We believe the agency's adjustment to CPMS' cost proposal was reasonable. In order to evaluate all proposals on an equal basis, it was necessary for the agency to reduce CPMS' total estimated cost to correspond to the 9-month initial performance period which the solicitation specified and which the other offerors used in their calculations. We see no prejudice to any other offeror resulting from this adjustment.

B. Lump Sum for Travel

ADC disputes the agency's statement that all offerors were informed during discussions that a lump sum would be added for travel, pointing out that its best and final offer did provide for travel in the hourly rate and suggesting that the offer of CPMS did also. The protester suggests alternatively that the agency may have disclosed only to CPMS the exact amount that would be added for travel.

Regarding the protester's contention that offerors were not informed of the agency's intention to add a lump sum for travel, the record indicates that the proposed hourly rates included in CPMS' best and final offer did not provide for travel, but that the cost proposal of the third offeror in the competitive range did so provide. The fact that two of the three finalists provided for the costs of travel supports the protester's contention; however, even if we assume that the agency did not inform all offerors of its intention to add a lump sum for travel, we fail to perceive how any offeror was prejudiced by this omission, since, when the amounts for staff and consultant

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travel are removed from the protester's and the third finalist's best and final offers, their offers still exceed the best and final offer of CPMS.¹

The protester's suggestion concerning a possible improper disclosure to CPMS is based, in part, on the protester's belief that CPMS' best and final offer was in the amount of \$334,837. As indicated above, however, CPMS' total estimated cost for a 12-month period was actually \$259,837, to which the agency, not CPMS, added \$75,000 for travel to arrive at the figure of \$334,837.

The protester's suggestion of an improper disclosure apparently is based also on its reading of a copy it obtained of a cover letter from CPMS to the agency. This letter accompanied an addendum to CPMS' proposal consisting of an amplification of its travel management plan and its "Revised Cost and Price Analysis." The letter stated that the addendum responded to questions raised during discussions and "complie[d] with the financial guidelines discussed." Although the protester may infer from this letter that the agency informed CPMS during discussions that it would add a lump sum of \$75,000 for travel, we believe this inference is strained at best and hardly provides convincing support for an allegation of improper agency conduct. Freund Precision, Inc., B-209785, January 24, 1983, 83-1 CPD 83.

C. Number of Regions

The protester contends that the agency allowed CPMS to exclude two regions from coverage under the contract. The apparent basis for this contention is a statement contained in the amplification of CPMS' travel management plan. The amplification stated that CPMS planned to base all but one of its staff members in Washington, D.C., and justified this approach by indicating that its staff would thus be within 1,000 miles of 80 percent of the property to be managed under the contract. The amplification went on to say,

¹This is the case even though CPMS' rates were calculated on a 12-month basis and the protester's rates were calculated on a 9-month basis.

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"If we exclude the \$7 million in property in regions 8 and 10 which have indicated no need for support (and which contain some of the most distant centers), we find that CPMS staff will be based within 1,000 miles of approximately 90 percent of the property at the centers which will be supported under the contract."

Although the protester apparently reads this letter as a proposal to exclude regions 8 and 10 from contractual coverage, we believe the only reasonable view of the statement is that CPMS was merely attempting to illustrate the efficiency of its plan for basing its staff. Moreover; there is no indication in the contract actually awarded to CPMS that any region was excluded.

D. Allegations Concerning Agency Personnel

The protester contends that the agency's National Property Officer had an undue influence on the evaluation of technical proposals. ADC also contends that the Assistant to the National Property Officer who, ADC says, "served on the panel which made the award," had a conflict of interest because CPMS employs his son-in-law. The agency reports that neither the National Property Officer nor his assistant served as members of the evaluation panel, although both were members of the agency's negotiation team.

Regardless of the actual nature and extent of the participation of these individuals in the award process, the protester has the burden of affirmatively proving actual bias on the part of any agency official. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. See A.R.F. Products, Inc., 56 Comp. Gen. 201, 208 (1976), 76-2 CPD 541. The protester has offered no evidence of actual bias, special treatment, or other improper conduct resulting from the participation in this procurement of either the National Property Officer or his assistant. The protester thus has failed to satisfy its burden of proof on this issue. See National Service Corporation, B-205629, July 26, 1982, 82-2 CPD 76.

E. Evaluation of Staff Experience

The protester states that its personnel "have held more qualified positions relating to DOL-ETA work requirements for a greater number of years than those offered by C.P.M.S." The agency acknowledges the experience of the protester's proposed staff, but notes that proposals were evaluated against the requirements of the RFP and not against each other. The agency reports that under the evaluation criterion "Individual staff experience," the evaluation panel awarded ADC an average of 30.7 out of a possible 35 points. CPMS received an average score for this criterion of 33.2.

In deciding protests of an agency's evaluation of proposals, our Office does not rescore the proposals or otherwise substitute our judgment for that of evaluation team members. Because the evaluation of proposals is largely subjective, it is primarily the responsibility of the procuring agency, and not subject to objection by our Office unless shown to be unreasonable, arbitrary or in violation of law. Credit Bureau Reports Inc., B-209780, June 20, 1983, 83-1 CPD 670. The fact that a protester does not agree with an agency's evaluation of its proposal does not itself render the evaluation unreasonable. Frank E. Basil, Inc.; Jets Services, Inc., B-208133, January 25, 1983, 83-1 CPD 91.

From our review of the evaluators' worksheets and summaries, it appears that while the evaluators generally recognized the experience of ADC's senior staff, some evaluators noted that other ADC personnel had only limited property management experience. On the other hand, the evaluators noted that the staff of CPMS met the requirements of the solicitation and were currently working as part of the property management system. We cannot say from this record that the agency's evaluation was not rationally based.

F. Other Issues

The protester also raises a number of other issues, all of which either are without merit or concern matters outside the scope of our Bid Protest Procedures, 4 C.F.R. Part 21 (1983).

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Prior to the award of this contract, the agency had awarded CPMS an interim sole-source contract for property management services. The protester suggests that CPMS thus may have enjoyed a competitive advantage in this procurement. The government has no obligation to eliminate a competitive advantage that a firm may enjoy because of its own particular circumstances or because it gained experience under a prior government contract unless such advantage results from a preference or unfair action by the contracting agency. Systems Engineering Associates Corporation, B-208439, January 31, 1983, 83-1 CPD 97. The protester has presented no evidence showing unfair action by the agency.

The protester contends that the president of CPMS unduly influenced the format and content of the RFP through his close association with the agency's National Property Officer. The agency reports that the RFP was prepared independently by ETA employees and was issued prior to the date CPMS began performance under the interim contract. Given the agency's response, and because the protester has provided no further detail concerning the alleged undue influence of the president of CPMS, we see no merit to the protester's argument.

The protester alleges that several CPMS employees may have had access to proprietary information in other offerors' proposals. In addition to being mere speculation, the protester's allegation of possible improper use of competitors' proprietary data presents a dispute among private parties that does not provide a basis for our objecting to an otherwise valid award. SETAC, Inc., B-209485, July 25, 1983, 62 Comp. Gen. ____, 83-2 CPD 121.

Finally, the protester makes a number of allegations concerning the poor performance of CPMS under the interim contract for property management support and another contract with the Department of Labor. In support of these allegations, the protester contends that individuals employed by the agency and others have complained of CPMS' poor performance. The agency report contains signed statements from the agency employees specifically indicating that they did not make the statements attributed to them by the protester and the agency's denial that it received complaints from the others. Since the protester

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has made no attempt at rebutting the agency report in this regard, we must conclude that these allegations are baseless.

The protest is denied.

for *Milton J. Acosta*
Comptroller General
of the United States



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

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October 24, 1983

The Honorable Joe Skeen
New Mexico Congressional
Projects Office
405 B Senate Courts
Washington, D.C. 20510

Dear Mr. Skeen:

We refer to your letters dated May 26 and July 14, 1983, written jointly with the Honorables Jeff Bingaman, Pete V. Domenici, and Manuel Lujan, Jr., regarding the protest of ADC Ltd., Inc. concerning the award of a contract under solicitation No. ETA-OC-83-01, issued by the Department of Labor.

By decision of today, copy enclosed, we have denied the protest. Also enclosed are copies of our decisions of today regarding two other protests filed under this solicitation.

Sincerely yours,

for 
Comptroller General
of the United States

Enclosures



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

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October 24, 1983

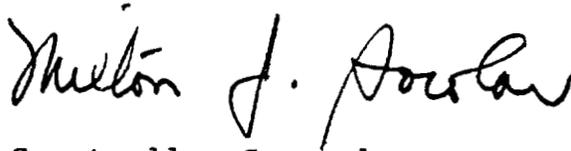
The Honorable Manuel Lujan, Jr.
New Mexico Congressional
Projects Office
405 B Senate Courts
Washington, D.C. 20510

Dear Mr. Lujan:

We refer to your letters dated May 26 and July 14, 1983; written jointly with the Honorables Jeff Bingaman, Pete V. Domenici, and Joe Skeen, regarding the protest of ADC Ltd., Inc. concerning the award of a contract under solicitation No. ETA-OC-83-01, issued by the Department of Labor.

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for 
Comptroller General
of the United States

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

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October 24, 1983

The Honorable Bill Richardson
House of Representatives

Dear Mr. Richardson:

We refer to your letters to our Office dated May 6, and June 30, 1983 regarding the protest of ADC Ltd., Inc. concerning the award of a contract under solicitation No. ETA-OC-83-01, issued by the Department of Labor.

By decision of today, copy enclosed, we have denied the protest. Also enclosed are copies of our decisions of today regarding two other protests filed under this solicitation.

Sincerely yours,

for Milton J. Fowler
Comptroller General
of the United States

Enclosures



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

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October 24, 1983

The Honorable Pete V. Domenici
New Mexico Congressional
Projects Office
405 B Senate Courts
Washington, D.C. 20510

Dear Senator Domenici:

We refer to your letters dated May 26 and July 14, 1983, written jointly with the Honorables Jeff Bingaman, Manuel Lujan, Jr., and Joe Skeen, regarding the protest of ADC Ltd., Inc. concerning the award of a contract under solicitation No. ETA-OC-83-01, issued by the Department of Labor.

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Sincerely yours,

Milton J. Fowler
for
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of the United States

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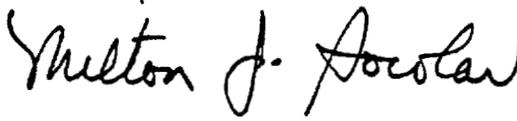
The Honorable Jeff Bingaman
New Mexico Congressional
Projects Office
405 B Senate Courts
Washington, D.C. 20510

Dear Senator Bingaman:

We refer to your letters dated May 26 and July 14, 1983, written jointly with the Honorables Manuel Lujan, Jr., Pete V. Domenici, and Joe Skeen, regarding the protest of ADC Ltd., Inc. concerning the award of a contract under solicitation No. ETA-OC-83-01, issued by the Department of Labor.

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