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DECISION

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

FILE: B-218424 , B-218424.2, B-218424.3

DATE: August 1, 1985

MATTER OF: Rolen-Rolen-Roberts International; Rathe Productions, Incorporated/Design Production, Inc.

DIGEST:

1. Where offeror submits a proposal and protests the agency's evaluation of proposals and, if successful in its protest, protester would have an opportunity to compete since our Office could recommend that proposals be reevaluated, discussions be reopened or that requirement be recompeted, protester is an interested party notwithstanding the fact that protester has not raised any specific objections concerning the evaluation of the one higher rated proposal.

2. Dismissal of protest for failure to provide agency with a copy of the protest within 1 day of its filing with our Office pursuant to 4 C.F.R. § 21.1(d) (1985) is not warranted where agency was already in receipt of a protest letter by another participant in the procurement which raises essentially the same issues and, despite agency's claim of prejudice, agency acknowledges that both protests raise the same issues and agency responded in a single timely report.

3. Allegation that awardee did not meet definitive responsibility criteria is denied where solicitation provision which allegedly limits the class of prospective contractors does not impose any specific and objective requirements as a precondition to award.

4. Protest alleging that agency's technical evaluation did not conform to the stated evaluation criteria because the agency improperly considered the management

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experience of the team proposed by the awardee, rather than solely the institutional experience of the awardee, is denied since subcontracting was not prohibited and it was not unreasonable for the agency to evaluate the experience of the team proposed by the awardee rather than solely the institutional experience of the awardee.

5. Allegation that solicitation was for management services and that agency's technical evaluation had no reasonable basis because awardee had no experience in this area is denied. Solicitation was not issued solely to obtain management services and record shows that although awardee may not have had institutional experience in all areas, the overall team proposed by the awardee possessed the requisite experience required by the solicitation.

6. Allegation that agency utilized unstated criteria in evaluating proposals is denied since factors not specifically stated in the RFP may be considered where they are reasonably related to the specified criteria. Agency's consideration of "Canadian ties" of low offeror for procurement to be performed in Canada is proper since location of awardee's management and awardee's knowledge of local conditions is sufficiently correlated to the awardee's ability to effectively manage and perform certain functions specified in the RFP.

7. Allegation that agency's technical evaluators were improperly aware of each offeror's cost position when evaluating best and final offers and "leveled" the scores to ensure that the lowest cost offeror was awarded the contract is denied since record does not establish that technical evaluators' scoring reflected anything other than their reasoned judgment concerning the merits of their proposals.

Rolen-Rolen-Roberts International (RRR) and Rathe Productions, Incorporated/Design Production, Inc. (Rathe), protest the award of a contract to Davson, Prichard & Downward, Ltd. (DPD), under request for proposals (RFP) No. 23-23-5-JGP issued by the United States Information Agency (USIA) for a general services contract to provide support for the United States' participation at the 1986 World Exposition on Transportation and Communications to be held in Vancouver, British Columbia, Canada (Expo 86). Both protesters allege that USIA failed to apply definitive responsibility criteria allegedly contained in the solicitation. Also, it is alleged that USIA's evaluation of proposals deviated from the evaluation scheme set forth in the solicitation. In addition, the protesters raise several specific objections concerning the manner in which USIA evaluated their respective proposals.

We deny the protests.

Initially, we note that USIA and DPD request that we dismiss the protests. USIA contends that RRR is not an interested party since RRR ranked third in the overall evaluation and has not complained that the higher ranking Rathe proposal was not properly evaluated. Also, USIA argues that Rathe failed to provide a copy of the protest to the contracting officer within 1 day of its filing with our Office as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1985). Rathe's protest was filed on April 5, 1985, and USIA indicates that it did not receive a copy of the protest until April 8. USIA argues that the delay was prejudicial since the agency would have had an additional weekend to research the issues raised by the protest. Also, USIA complains that Rathe's protest, contrary to our regulations, failed to contain a statement indicating that a copy of the protest was being furnished to the agency.

RRR is clearly an interested party under our Bid Protest Regulations. See 4 C.F.R. § 21.0(a). RRR submitted a proposal in response to the RFP and, in its protest, alleged that USIA failed to properly apply the evaluation criteria set forth in the RFP. Although RRR has not specifically objected to the evaluation of Rathe's proposal, RRR, if successful in its protest, would still have an opportunity for award since our Office could recommend that USIA reevaluate proposals, reopen discussions or recompete the requirement. Under these circumstances, we find that RRR has a direct and substantial economic interest in the outcome of this protest and,

therefore, is an interested party. Engine and Equipment Company, Inc., B-199480, May 7, 1981, 81-1 CPD ¶ 359.

As for the requested dismissal of Rathe's protest, our regulations provide that the failure to comply with the procedural requirements set forth in 4 C.F.R. § 21.1 "may" be cause for dismissal; therefore, dismissal is not required in all circumstances. Despite USIA's claim that it was prejudiced by Rathe's failure to file a copy with the agency within 1 day of its filing with our Office, we note that USIA was already in possession of RRR's protest letter raising essentially the same issues. In this regard, we note that USIA acknowledges in its report that the two protests are essentially the same and that USIA responded to both protests in a single timely report. Since USIA had actual knowledge of RRR's protest, arguing essentially the same grounds raised by Rathe, we do not believe the dismissal of Rathe's protest is required. See Rosemount, Inc., B-218121, May 16, 1985, 85-1 CPD ¶ 556; Sabreliner Corp., B-218033, Mar. 6, 1985, 85-1 CPD ¶ 280. In view of this, the protester's failure to include in the protest a statement that a copy of the protest has been furnished to the contracting agency is a minor procedural irregularity of no consequence. Accordingly, the merits of both protests will be considered.

Background

Section "C" of the RFP (Scope of Work) stated that it was USIA's intention to obtain, "as nearly as possible, a complete 'turn key' operation for all aspects of U.S. Government participation at Expo 86." Section C.2 of the RFP identified the functional requirements which were to be performed or fulfilled by the contractor, as follows:

C.2.A. Construction, fabrication, installation, maintenance, striking, etc.
C.2.B. Logistics
C.2.C. Participation Promotion
C.2.D. Participation Coordination
C.2.E. Public Affairs Support
C.2.F. Staffing Services
C.2.G. Staff Housing
C.2.H. Travel and Transportation Services
C.2.I. Protocol Functions
C.2.J. Administration

A firm, fixed-price contract was to be awarded for all personnel and materials required to perform the "management service" described in section C.2, plus the reimbursement of various subcontractor costs.

Section "M" of the RFP identified the evaluation factors for award. Section M.1, to which no points were assigned, stated that offerors must be regularly engaged in the business of providing the type of service and equipment covered by the solicitation and must have established an acceptable past record for the completion of contracts of a similar character and extent. Offerors were requested to submit a separate performance proposal and price proposal and section M.2.A indicated that the performance proposal should include a statement of the offeror's history with such projects (M.2.A.1), a list of key personnel employed by the firm or professional staff which would be hired (M.2.A.2), a description of existing or proposed facilities (M.2.A.3), and a list of proposed subcontractors and their qualifications and experience (M.2.A.4).

The RFP's evaluation criteria (M.5) stated that "the degree of the firm's successful experience, as evidenced in Section M.2.A.1 . . ., will be evaluated . . . with respect to the functions to be performed." The functions specified in sections C.2.A-C.2.G of the RFP were then listed and each respective category was assigned a point value. Overall, 64 points were assigned to this criterion (M.5.A) and the RFP stated that the point value assigned was intended to indicate the relative difficulty of successful performance of these functions and the need for proven professional success in evaluating the qualifications of the offerors.

The RFP listed three additional evaluation criteria. Section M.5.B stated that the extent to which key personnel are employed by the offeror or are available to the offeror would be considered. Further, the suitability of the offeror's proposed or existing facility would be evaluated as well as the suitability of the qualifications of proposed subcontractors. Each of these three categories was worth 12 points and the maximum point total for the performance proposal was 100 points. The RFP advised offerors that the technical proposal would be given approximately the same weight as the price proposal and that award would be made to the offeror whose proposal, price and performance considered, would be most advantageous to the government.

USIA received seven proposals in response to the RFP. Apparently, there was an initial misunderstanding among the offerors as to what should have been included in each offeror's fixed-price proposal and what was intended to be cost reimbursable. Discussions were conducted and revised

proposals were requested. Thereafter, a competitive range was established comprised of DPD, RRR and Rathe. The original technical scores and revised price proposals of the three firms were as follows:

	Original Technical Score	Revised Price Proposal	Combined Score
DPD	71.63	$1,408,930	88.41
Rathe	93.25	1,999,492	85.23
RRR	84.88	1,812,912	84.37

USIA conducted additional discussions with these firms and best and final offers were requested. The best and final offers were evaluated and the final results were as follows:

	Best/Final Technical Score	Best/Final Price	Combined Score
DPD	85	$1,408,930	97.22
Rathe	90	1,829,554	88.2
RRR	78	812,875	82.19

USIA awarded the contract to DPD on March 20, 1985.

Definitive Responsibility Criteria

Both RRR and Rathe argue that section M.1 of the RFP established definitive responsibility criteria which required offerors to possess exposition management experience in order to qualify for award. Section M.1 states that:

"1. Offeror Qualifications and Capacity

Offerors must be regularly engaged in the business of providing the type of service and equipment covered by this solicitation, with adequate financial background and organization to insure satisfactory and timely performance. They must have established an acceptable record in the past for completion of contracts of a similar character and

> extent. The Government shall consider and weigh all information available in making a determination of award and will be the sole judge of the offeror's apparent ability to perform this work satisfactorily."

The protesters argue that because USIA was soliciting a contractor which had previous experience in managing expositions similar to Expo 86, this provision imposed mandatory experience criteria on offerors. The protesters argue that DPD lacked this type of experience and, therefore, should not have been considered for award.

USIA argues that it never intended to restrict the competition only to those offerors that had experience in managing expositions similar to Expo 86. USIA contends that the contractor is only required to manage the performance of the services required by the contract. USIA argues that the contractor would not have overall responsibility for the management of the United States' pavilion, which was to remain in USIA control. USIA contends that the RFP did not require a contractor with prior exhibition management experience, but rather a contractor who was experienced in managing a range of specified activities and able to assemble a team capable of meeting the contract requirements.

USIA disagrees with the protesters that section M.1 of the RFP established a definitive responsibility criteria and contends that the provision did not require offerors to be regularly engaged in managing expositions. USIA argues that section M.1 did not contain specific experience criteria which offerors were required to possess as precondition to award and that such requirements could easily have been imposed had USIA intended to limit the class of prospective contractors. USIA indicates that the information elicited by section M.1 would be utilized by the contracting officer in evaluating each offeror's responsibility and, to the extent the protesters are challenging DPD's ability to perform this contract, USIA states that DPD demonstrated to the contracting officer's satisfaction that the firm had a responsible record of providing and managing the type of services required.

As a general rule, our Office will review an agency's affirmative determinations of a bidder's responsibility only if fraud on the part of the contracting official is

alleged or, as here, if the solicitation contains definitive responsibility criteria which allegedly have not been applied. Janke & Company, Inc., B-210756, Feb. 22, 1983, 83-1 CPD ¶ 183. Definitive responsibility criteria are specific and objective standards established by an agency for a particular procurement for the measurement of a bidder's ability to perform the contract. These special standards limit the class of bidder to those meeting specified qualitative and quantitative qualifications necessary for contract performance as a precondition of award. Watch Security, Inc., B-209149, Oct. 20, 1982, 82-2 CPD ¶ 353.

Here, we find that section M.1 did not establish a definitive responsibility criteria. The requirement that an offeror be "regularly engaged in the business" and have established an acceptable record in the past for completing similar contracts merely advises potential offerors that past performance will be considered in deciding whether the contractor has the capacity to perform in a satisfactory manner. E.J. Murray Company, Inc., W.M. Schlosser Company, Inc., B-212107, B-212107.2, March 16, 1984, 84-1 CPD ¶ 316. (Requirement that subcontractor be regularly engaged in the manufacture of temperature control equipment and systems "held not to constitute a definitive responsibility criterion.") In our view, section M.1 lacks specific qualitative and quantitative qualifications which would limit the class of prospective contractors in the manner suggested by the protesters. C.f. Urban Masonry Corp., B-213196, Jan. 3, 1984, 84-1 CPD ¶ 48. (Requirement that firm be "regularly engaged for a minimum of five years in the erection of architectural precase concrete units" constituted a definitive responsibility criteria.)

In addition, we disagree with the protesters that the solicitation required that an offeror have prior exposition management experience and that only this type of experience would be considered. Simply stated, there is no specific statement in the solicitation which indicates that USIA was soliciting only firms with exposition management experience. Although the work to be performed under the contract is in connection with an exposition and management services are required, the terms of the solicitation did not restrict the type of management experience which would

be considered and evaluated by USIA.[1] Accordingly, the objective standards which characterize "definitive" responsibility criteria are lacking in this solicitation and the protesters' contentions in this regard are without merit.

Application of Evaluation Criteria

The RFP required that offerors provide detailed background information regarding experience with such projects (section M.2.A.1) and section M.5.A stated that the information provided by the offeror would be evaluated to determine the offeror's ability to perform the specific functions that were required of the contractor. The protesters argue that management services were required by the solicitation and that, under the evaluation scheme, each offeror was required to be an experienced provider of these services. Rather than considering DPD's prior experience, or lack thereof, the protesters allege that USIA improperly considered and evaluated the experience of DPD's proposed subcontractors. The protesters argue that they were evaluated on the basis of their own past experience in providing this type of service and that USIA failed to apply the same standards in evaluating DPD's proposal. Also, the protesters note that the suitability of the proposed subcontractors was separately evaluated in section M.5.D and, by conducting the evaluation in this manner, USIA significantly increased the importance of this criteria.

USIA argues that it was never envisioned that a single offeror would be able to provide the wide variety of

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[1] Rathe argues that "exposition management services" are unique and that there is a significant difference in managing services for an exposition and managing those same services elsewhere. To the extent this is true, the absence of a specific statement in the solicitation that exposition management experience would be evaluated supports USIA's contention that the type of management experience which would be considered was not restricted in this manner.

services required by the RFP.2/ USIA indicates that all offerors assembled a diverse group of individuals and/or firms to accomplish the work and that the teams proposed by all offerors were considered. USIA argues that all offerors, including Rathe and RRR, were treated equally and that under the RFP's evaluation scheme, it was not improper to consider the experience of the entire team rather than only of the specific firm making the offer. Also, USIA notes that even if the same "subcontractors" were again evaluated under section M.5.D of the RFP, neither Rathe nor RRR was prejudiced since they were both treated in the same fashion and readjusting the scores under this particular criterion would not affect the outcome.

We note that procuring agencies are given a considerable range of judgment and discretion in carrying out a technical evaluation. Spectrum Leasing Corp., B-205781, Apr. 26, 1982, 82-1 CPD ¶ 383. It is not the function of this Office to rescore proposals nor will we make independent judgment as to the numerical scores which should been assigned. Blurton, Banks and Associates, Inc., B-206429, Sept. 20, 1982, 82-2 CPD ¶ 238. We will review the record to determine whether the agency's evaluation was reasonable and whether the agency followed the evaluation scheme set forth in the RFP. Crown Point Coachworks and R&D Composite Structures; North American Racing Co., B-208694, B-208694.2, Sept. 29, 1983, 83-2 CPD ¶ 386.

We do not find that section M.5.A is limited solely to the evaluation of a firm's management experience nor do we find that USIA acted improperly by evaluating the experience of the team proposed by DPD. The solicitation was for a "turn key" operation and requested that the contractor not only manage certain functions, but also required that the contractor be responsible for the actual

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2/ USIA requests that the protesters' allegation concerning USIA's evaluation of proposals, as well as the other specific objections raised by the protesters, be dismissed as untimely. We disagree. Based on the record, it appears that the bases for these allegations were not made clear until the receipt of information released by USIA in response to Freedom of Information Act requests prior to the GAO conference. These issues were raised in a timely fashion thereafter and USIA has not demonstrated that the protesters were aware or should have been aware of this information previously.

performance of those functions. The RFP, under section M.5.A, stated that a firm's successful prior experience would be considered and referred offerors to the description of those functions contained in the scope of work in detailing what would be considered. A review of those functions (section C.2.A-section C.2.G) demonstrates that the contractor is clearly required to do more than merely manage. For example, under section C.2.A (Construction, etc.), the contractor is responsible for all capital construction (section C.2.A.1), as well as the management of all subcontracted construction. In addition, we note that under C.2.C (Participation Promotion), the contractor is required to compile lists of potential participants, develop and distribute materials and to produce and encourage publicity. In our view, the solicitation was not simply for management services, nor do we agree with the protesters that under section M.5.A, USIA was limited to considering only a firm's successful management experience.[3]

Furthermore, we do not find that USIA's action in evaluating the experience of the team proposed by DPD, rather than solely the experience of DPD, violated the evaluation plan set forth in the RFP. Subcontracting was not restricted and USIA was not limited to considering only the institutional experience of each offeror. Energy and Resource Consultants, Inc., B-205636, Sept. 22, 1982, 82-2 CPD ¶ 258. In addition, we note that all offerors, including RRR and Rathe, assembled teams for this specific project in order to provide the wide range of services which were required. The record shows that no offeror was institutionally capable of providing all the services which were required. The construction and management services offered by RRR were to be performed by another firm and we note that both RRR and Rathe submitted the name of the same

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[3] Rathe refers to the price schedule in arguing that management services were solely to be evaluated under section M.5.A. We believe this reliance is misplaced since the appropriate reference in determining what USIA intended to evaluate is section "C" (Scope of Work), which defines what is required of the contractor for each function. The price schedule only requested the cost for management services in many of the section "C" areas because the costs for the services other than management services, which were also to be provided, were to be reimbursed on a cost basis.

individual for the performance of certain Promotion and Participation Coordination services. Under Travel and Transportation services (section C.2.H and evaluated by USIA under section M.5.A.9 of the RFP), all offerors submitted as part of their proposals the services of various travel agencies.

Under the circumstances, it appears clear that all offerors expected USIA to evaluate the ability of the entire team proposed by each offeror to satisfy the requirements of the RFP. Accordingly, we disagree with the protesters' characterization of the solicitation as solely for "management services" and the assertion that USIA could only evaluate each offeror's own institutional experience under the RFP. The solicitation contains no such requirements and we find that USIA's application of the evaluation criteria was consistent with the evaluation scheme set forth in the RFP.4/

In sum, we find that the evaluation of DPD's proposal was reasonable and we find no evidence that Rathe or RRR was treated unfairly or that the evaluation was structured in such a manner as to ensure that DPD was awarded the contract. Our review of DPD's proposal shows that DPD offered to provide the management of the services requested by the solicitation and arranged for the actual performance of those services. Although DPD may not have possessed the institutional experience in all areas, the overall team proposed by DPD exhibited the requisite experience in the areas required by the solicitation.

Other Issues

Rathe argues that USIA impermissibly considered the fact that DPD is a Canadian firm since this factor was never included in the RFP's evaluation criteria. Also, the RFP indicated that technical proposals would be evaluated

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4/ Concerning the additional evaluation of the suitability of the proposed subcontractors under section M.5.D, the record is unclear as to whether USIA made any distinction between subcontractors for evaluation purposes. However, we stress that USIA could properly consider and evaluate the entire team proposed under section M.5.A and, to the extent any "double" counting occurred under section M.5.D, we agree with USIA that such action was not prejudicial since offerors were evaluated equally in this request and the decision to award the contract to DPD is not affected.

independently of each offeror's price proposal. The protesters complain that USIA evaluators had knowledge of each offeror's proposed price when evaluating the best and final offers and allegedly adjusted the best and final scores to ensure that award was made to the lowest cost offeror. Also, RRR complains that negotiations were conducted on an unequal basis since RRR was requested to revise its clerical hours' estimate upward to its disadvantage, yet DPD allegedly was not advised of a similar deficiency. Lastly, RRR complains that USIA did not evaluate the best and final offers, but rather considered and evaluated the "discussions" which occurred prior to the submission of the best and final offers.

USIA indicates that since Expo 86 is in Canada, DPD's Canadian ties gave it a competitive advantage in certain areas and that this was entirely within the evaluation scheme. USIA states that DPD was given additional points where DPD's knowledge of local conditions gave the firm a competitive edge. Also, USIA denies that it adjusted the best and final offers to ensure that award was made to the lowest cost offeror and argues that the agency properly evaluated the best and final offers which were submitted. Finally, USIA asserts that both RRR and DPD were treated equally in discussions concerning the clerical hours that each firm proposed.

We see no impropriety in USIA evaluators' determining that its Canadian "ties" would enable DPD to perform the required work more effectively. Our Office will not object to the use of evaluation factors not specifically stated in the RFP where they are reasonably related to the specified criteria. National Biomedical Research Foundation, B-208214, Sept. 23, 1983, 83-2 CPD ¶ 363. Here, USIA did not give additional credit to DPD simply because of the firm's Canadian ties but, rather, gave DPD additional credit where those ties better qualified DPD to perform the work required by the solicitation. We believe USIA's actions were reasonable since a sufficient correlation exists between the offeror's ability to perform and manage certain functions and knowledge of local conditions and the location of management overseeing the performance of the required work.

In addition, we see no impropriety in USIA evaluators' being aware of each offeror's cost position when evaluating best and final offers. The RFP advised that price proposals would be evaluated separately, but concurrently

(section M.3); however, we do not read this provision as prohibiting USIA's evaluators from having any knowledge of the offeror's cost proposal when reviewing the offeror's technical proposal. In effect, this allegation challenges the subjective motivation of USIA's technical evaluators, and we have repeatedly held that bias will not be attributed to procurement officials based on inference and supposition. Martin-Miser Associate, B-208147, Apr. 8, 1983, 83-1 CPD ¶ 373. We recognize that it may be difficult for the protesters to establish on the written record--which forms the basis for our decision--the existence of bias. The protesters argue that the scoring of the best and final offers demonstrates that USIA "leveled" the scores to ensure that DPD was awarded the contract. We cannot, however, infer that the agency acted in such a biased manner since there must be evidence that the technical evaluators' scoring reflected other than their reasoned judgment concerning the merits of the proposals. Id. Based on the record, we find that the existence of bias has not been established.

RRR further complains that USIA did not evaluate the best and final offers, but rather the "discussions" which occurred with each offeror prior to their submission. RRR has not, however, argued that to the extent USIA evaluated these "discussions," the information which USIA considered differed from that which was subsequently set forth in the written proposals submitted to USIA. Under these circumstances, we find no basis to conclude that such action was prejudicial to any offeror. Also, we find without merit RRR's assertion that USIA treated RRR and DPD unequally in discussions concerning the proposed clerical hours in the respective proposals. USIA indicates that both RRR and DPD were asked substantially the same question regarding the clerical hours proposed. The record confirms that USIA did question DPD regarding the number of clerical hours proposed by the firm and we find that USIA did not treat RRR unequally in this respect. In addition, we find no evidence to substantiate the allegation that USIA intentionally questioned RRR concerning this matter so that RRR would increase its price and become less competitive.

The protests are denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel