

DECISION

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

FILE: B-222328

DATE: June 2, 1986

MATTER OF: LNR Associates

DIGEST:

Agency's decision to exclude an offeror from the competitive range is proper where the offeror's technical proposal received an average score of 27 points out of a possible 100 and where the agency reasonably considered the offeror's technical proposal to be so deficient as to require major revisions before it could be made acceptable.

LNR Associates protests its exclusion from the competitive range under request for proposals (RFP) No. RS-NMS-86-001, issued by the Nuclear Regulatory Commission (NRC), Washington, D.C., to provide technical assistance to the NRC in its evaluation of environmental assessment studies prepared by the Department of Energy (DOE).

We deny the protest.

The Nuclear Waste Policy Act, 42 U.S.C. § 10101, et seq. (1982), requires that DOE select a site for the location of a repository for nuclear waste (high-level waste (HLW) repository). Consequently, DOE prepared environmental assessments for nine candidate sites. The act also requires that the NRC adopt for its own purposes, to the extent practicable, Environmental Impact Statements (EIS) prepared by DOE for any candidate site. Accordingly, the subject RFP was issued by NRC to procure technical assistance in reviewing and evaluating DOE's technical assessments.

The RFP provided that award would be made to the offeror (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is most advantageous to the government. The RFP also stated that while cost was a factor in the evaluation of proposals, technical merit would be more significant in the selection of the successful

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offeror. The RFP cautioned offerors that expertise in numerous technical areas was required and included the following technical evaluation criteria (ranked in descending order of importance):

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| "A. <u>Related Past Experiences</u> (total 50) | 30 |
| 1. Amount and type of the proposed review team's education and experiences in planning and conducting Environmental Impact Statement (EIS) preparation and NEPA reviews. Technical areas included are water quality, land use planning, terrestrial ecology, aquatic ecology, air quality, meteorology, noise, aesthetic resources, archeological, cultural and historical resources, radiological impact, non-radiological transportation and socioeconomic impacts. | |
| 2. Amount and type of EIS experiences in completing EIS's on a timely basis for nuclear plants, waste disposal facilities or other similar facilities. 20 points | |
| B. <u>Management</u> (total 35) | 20 |
| 3. Offeror's proposed quality assurance program to support the technical soundness of work. | 5 |
| C. <u>Technical Approach</u> (total 15) | 10 |
| | Total <u> </u> " |
| | 100 |

Three proposals were received in response to the RFP and were evaluated by a Source Evaluation Panel. LNR received an average score of 27 points of a potential 100 points,

while the scores of the other two offerors were both above 75 points. LNR therefore was not included in the competitive range and its proposal was rejected as technically unacceptable.

Accordingly, the NRC notified LNR that its proposal had been eliminated from further consideration for the following reasons:

- 1) the level of education of proposed personnel and related past experience were insufficient;
- 2) the proposed management structure, quality assurance program and cost control program were unacceptable; and
- 3) the proposal indicated a lack of understanding of the technical approach necessary to complete a timely EIS review and failed to demonstrate capability to provide multidiscipline assistance as required by the statement of work.

LNR disagrees with the NRC's evaluation in these areas and argues that the rejection of its proposal was not justified. While our Office has been furnished the evaluation reports and other relevant exhibits concerning this protest, the agency, which still has not selected a successful offeror, considers these documents to be privileged and has not provided them to the protester. Although we therefore are unable to reveal technical and cost details concerning the evaluation, our decision is based on a review of all relevant reports and exhibits submitted to our Office by NRC.

Our Office will not disturb an agency's decision to exclude a firm from the competitive range on grounds that it had no reasonable chance of being selected for award when, considering the relative superiority of other proposals, this determination was reasonable. Ameriko Maintenance Co., Inc., B-216406, Mar. 1, 1985, 85-1 CPD ¶ 255. A protester has the burden of proving that the agency's evaluation was unreasonable. Robert Wehrli, B-216789, Jan. 16, 1985, 85-1 CPD ¶ 43. Moreover, an agency's decision to exclude an offeror from the competitive range is proper where the offeror's technical proposal is so deficient that it would require major

revisions before it could be made acceptable. Ameriko Maintenance Inc., B-216406, supra.

LNR was found unacceptable in several areas under the experience factor (factor A.1. and 2.). LNR argues that it did propose personnel with the required qualifications since (1) its major participant in the project has a Masters of Science degree in meteorology and 30 years' of experience as a staff member at NRC; and (2) its proposed program manager also has a Masters of Science degree in meteorology, advanced education equivalent to a Ph.D. in nuclear engineering, as well as 30 years experience as a nuclear engineer, including 10 years as a licensing program manager, which involved the supervision of multidisciplinary groups in the review of nuclear plant licensing. These two individuals, argues LNR, have previously participated in EIS preparation, while others would be available if needed. Additionally, LNR claims that a hydrologist and a civil engineer are also available.

NRC states that the experience demonstrated in LNR's proposal related only to three of the 13 areas of experience listed as necessary in the RFP. We have independently reviewed LNR's proposal and find that NRC reasonably determined that LNR did not demonstrate experience in 10 of the 13 required areas. LNR apparently argues that it does have experience in these areas, but submitted its proposal with the assumption that the evaluators would already know the operations of two other offices within NRC, Nuclear Reactor Regulation and Nuclear Regulatory Research, in which some of its proposed personnel have had experience. In other words, LNR assumed that by simply listing the title of these proposed personnel, the SEP would assume that these persons had a full range of relevant experience. LNR also states that it deliberately emphasized its experience in meteorology because the solicitation contained, as an attachment, an illustrative "Meteorological Monitoring Plan." Consequently, LNR's discussion about its experience was set forth in about two pages of text, while the other offerors' discussions were extensive (approximately 100 pages).

It was incumbent on LNR, not the contracting agency, to affirmatively demonstrate the acceptability of its proposal by showing its relevant experience. See Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD ¶ 15; Consolidated Service, Inc. of Charleston, B-183622, Feb. 18, 1976, 76-1 CPD ¶ 107. The solicitation

clearly required that experience in numerous areas be demonstrated and not only in meteorology. Since the record shows that LNR failed to do so, NRC's very low evaluation of this aspect of LNR's proposal and its finding that LNR's proposal was so deficient in this major area (50 points) that it would require major revisions before it could be made acceptable were reasonable. In this regard, we also note that with respect to previous EIS experience (factor A.2), LNR failed to indicate that it had any experience whatsoever in completing an EIS on a timely basis or any experience in an HLW program.

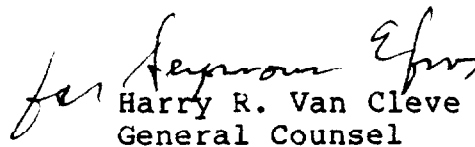
Concerning management structure and quality assurance (factor B.1., 2., and 3), the solicitation required that the contractor ensure that independent review and verification be made of all numerical computations and mathematical equations, derivations and models. The NRC found that LNR's proposal contained no discussion of how computations and equations would be handled or how revisions would be made. LNR argues that it could have corrected this deficiency during discussions and that, therefore, the deficiency should not have been a basis for excluding its proposal from the competitive range. In response, NRC states that since LNR's proposal admittedly failed to contain the required discussion of computations and equations, LNR's assertion that it could have subsequently cured the deficiency does not refute NRC's reasonable finding that this deficiency in fact existed in LNR's proposal. We note that the solicitation cautioned all offerors that award may be made without discussions and that, therefore, proposals should be submitted initially on the most favorable terms from a cost and technical standpoint. We also note that it is incumbent on an offeror to demonstrate the acceptability of its proposal. See e.g. Electronics Communications, Inc., 55 Comp. Gen. 636, supra. Here, we find that LNR again simply failed to do so.

The NRC also found that LNR failed to separate the quality assurance function from the project management function in its management structure. LNR argues that a certain individual, separate from the project manager, would be available for review of the reports for quality. However, our review of LNR's proposal shows that only a 15-percent effort level (part-time) for this individual was proposed by LNR for quality review. NRC found this

unacceptable and we have no basis to disagree. We therefore find NRC's evaluation to be reasonable with respect to this aspect of its proposal.

Regarding the last major basis for NRC's rejection of LNR's proposal, lack of understanding of the proper technical approach, we do not think that we need to separately discuss this additional basis for rejection because it is clear that NRC intended to award a contract to a very experienced offeror and that its solicitation was accordingly so structured to give weight to the experience factor (50 points out of 100). NRC found that LNR's proposal was so weak and so deficient in demonstrating related past experience that it would require major revisions before it could be made acceptable. The NRC also found that the two other proposals demonstrated an acceptable level of related past experience. Moreover, the record shows that even if LNR would have received a perfect score in demonstrating a proper technical approach, it could have received only nine additional points under this criterion. Thus, there is no basis to conclude that any miscalculation under this criterion could have prejudiced LNR by depriving the firm of the opportunity to be included in the competitive range and by eventually depriving the firm of an award to which it was otherwise entitled. See Employment Perspective, B-218338, June 24, 1985, 85-1 CPD ¶ 715; Lingtec, Inc., B-208777, Aug. 30, 1983, 83-2 CPD ¶ 279. Stated differently, we think that LNR's demonstrated experience was so weak in relevant past experience, the most important evaluation area, that NRC could reasonably exclude the firm from the competitive range because major revisions would have been required to make the proposal acceptable.

Accordingly, the protest is denied.


Harry R. Van Cleve
General Counsel