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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chemonics International
File: B-222793
Date: August 6, 1986

DIGEST

1. The requirement for meaningful discussions is fulfilled when an agency advises an offeror with specificity of areas of its proposal requiring elaboration, even though agency does not raise experience weaknesses, where agency apparently believed these were actual weaknesses not subject to remedy through discussions rather than mere inadequacies in the way the proposal was assembled.
2. Even where a technical evaluation panel does not find protester weak in experience based on evaluation of its initial proposal, source selection official may rely on opposite conclusion by a second evaluation panel based on review of best and final proposal, so long as those conclusions reasonably reflect the contents of the protester's proposal.
3. An organizational conflict of interest warranting exclusion from competition is not indicated where the protester alleges, but does not present hard facts showing, that an employee of the awardee was involved in the drafting or reviewing of the solicitation statement of work; the agency denies the allegation; and the record shows only a remote connection between the employee and the procurement.
4. Agency decision to award to a technically superior, higher priced offeror is reasonable and consistent with the evaluation criteria when the solicitation calls for a cost-reimbursement contract, does not state that award will be made to the lowest priced, technically acceptable offeror, and the agency's cost analysis indicated that the awardee's man-month cost was lower than the protester's.

DECISION

Chemonics International protests the award of a contract to Winrock International Institute of Agricultural Development under request for proposals (RFP) No. 391-0489-072, issued by the Agency for International Development (A.I.D.), Islamabad, Pakistan. The solicitation contemplated award of a cost-reimbursement, fixed-fee contract for the Management of Agricultural Research and Technology (MART) project in Pakistan for 4-1/2 years. Chemonics, the only offeror other than Winrock determined to be in the competitive range, alleges that A.I.D. failed to conduct meaningful discussions with Chemonics; should have excluded Winrock from

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the competition because of an organizational conflict of interest; and failed to conduct a realistic cost analysis of the proposals.^{1/}

We deny the protest.

BACKGROUND

The MART project focuses on the expansion and strengthening of the human, physical, and technological resources available within Pakistan's national agricultural research network and the improvement of the management of the system at the national and provincial levels. The RFP consisted of three components: research management and administration, information transfer, and training for the agricultural research network. The RFP provided for evaluation of proposals for quality of the technical proposal, experience and capability of the offeror, and qualifications of proposed personnel. The first two criteria were allocated 30 points each; the third criterion was allocated 40 points. Price reasonableness was to be evaluated but not point scored.

A.I.D. determined Chemonics and Winrock (out of a total of six offerors) to be in the competitive range with initial technical evaluation scores of 83.75 and 79.50, respectively. A.I.D. notified the offerors of the shortcomings in their initial proposals for negotiation purposes. The deficiencies in Chemonics' proposal were stated in a telex as follows: 1) lack of focus on the relationship between the proposed project and other A.I.D. activities; 2) lack of an outline or contents for the master plan for the National Agricultural Research Center; 3) weak discussion of strategy to bring about the participation of the private sector in research activities; 4) emphasis on a crop trials approach rather than a global, multisectoral approach in the proposed farmer-oriented Farming Systems Research program; 5) lack of delineation of training program end objectives and explanation tying training in with the rest of the project; and 6) lack of outlines of the reports to be submitted. Clarifications also were requested in three areas: 1) excessive home office strength--proposed staffing to be explained and justified; 2) high intensity of activity in the middle of the first year--how these activities are to be accomplished in such a short time frame, and alternative plans to be proposed; and 3) lack of a specific Pakistani subcontractor for financial management activities--selection to be made before discussions. In addition, A.I.D. advised that it considered Chemonics' man-month cost "substantially high."

A.I.D. held discussions with both firms and requested best and final offers. The firms' best and final offers then were reevaluated and ranked by a second technical evaluation committee. Winrock received a

^{1/} Chemonics raises certain arguments for the first time in a July 16 letter based on its recent receipt of evaluation documents. We consider all of Chemonics' arguments in this decision.

final technical score of 85.1, while Chemonics received a score of 64.4. The final total evaluated cost of Winrock's proposal was \$4,097,777, as compared to the protester's \$3,960,832, but Winrock's man-month cost was evaluated as lower since Winrock proposed a greater level of effort.

Since Winrock's offer was rated technically superior by a margin of 32 percent and Winrock proposed a lower man-month cost, A.I.D. made award to Winrock on March 20, 1986.

A.I.D. notified Chemonics that although it had submitted a good proposal that was very strong in the areas of strategy, approach and methodology, the contract had been awarded to Winrock based on a determination that Chemonics' proposal was weaker in four respects: 1) lack of specific detail that demonstrated a complete understanding of the technical requirements and tasks of the statement of work; 2) lack of required experience and demonstrated capability in successfully implementing national agricultural research management, training and information transfer programs of the nature and scope required; 3) lack of relevant experience of some of the proposed candidates; and 4) high man-month cost.

TECHNICAL DISCUSSIONS

Chemonics first argues that none of the shortcomings or areas of clarification raised by A.I.D. and addressed by Chemonics during technical discussions related to the three weaknesses ultimately identified by A.I.D. as the reasons why Chemonics did not receive the award. Specifically, Chemonics states that A.I.D. indicated that Chemonics' explanations during negotiations were too specific and, when specifically asked, that there was no problem with Chemonics' experience. Chemonics concludes that A.I.D. did not conduct meaningful discussions and deprived Chemonics of the opportunity to remedy these weaknesses. Chemonics believes it could have improved the scoring of its best and final proposal had it been advised of these weaknesses.

The governing provision of the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253b(d)(2) (Supp. III 1985), requires that written or oral discussions be held with all responsible sources whose proposals are within the competitive range. Such discussions must be meaningful, that is, agencies must point out weaknesses, excesses, or deficiencies in proposals unless doing so would result either in disclosure of one offeror's approach to another, or in technical leveling when the weakness or deficiency was caused by a lack of diligence or competence. See Joule Engineering Corp.--Reconsideration, 64 Comp. Gen. 540 (1985), 85-1 C.P.D. ¶ 589. Ultimately, the content and extent of discussions are matters within the judgment of the agency involved and are not subject to question by our Office unless they are clearly without a reasonable basis. Stewart & Stevenson Service, Inc., B-213949, Sept. 10, 1984, 84-2 C.P.D. ¶ 268.

We think the record supports the conclusion that the weaknesses in Chemonics' proposal were adequately addressed in discussions with the firm. Regarding the first weakness, which related to Chemonics' technical understanding, as A.I.D. notes in its report, several of the deficiencies in Chemonics' initial proposal did in fact relate to a perceived lack of detail demonstrating understanding by Chemonics of certain aspects of the requirement. The third deficiency specified, for example, was a weak discussion of strategy to involve the private sector in research activities. Other specified deficiencies--absence of report outlines, failure to delineate end objectives of the training program, lack of a master plan outline--also fairly could be characterized, we think, as evidencing a lack of specific detail demonstrating Chemonics' understanding. Thus, A.I.D. did advise Chemonics of several deficiencies as to detail in its initial proposal, and did afford Chemonics an opportunity to modify its proposal to correct these deficiencies.

Although, following discussions, Chemonics attempted to address A.I.D.'s concerns in its best and final offer, the second evaluation panel concluded that Chemonics had failed to eliminate the deficiencies in this area. One evaluator commented, for example, that "the proposal is general in nature. It lacks detailed plans and content that is specifically designed for MART." Another evaluator, while finding that Chemonics' best and final offer had eliminated weaknesses and shown a good overall understanding, at the same time commented that "the specific problems of Pakistan were not highlighted, nor did the specific approach reflect understanding sufficient to plan the project in some detail." The fact that A.I.D. ultimately concluded that the proposal remained weak in this area is not a basis for finding that discussions in this area were not meaningful.

A.I.D. concedes that, during negotiations, it suggested that Chemonics focus on an overall, rather than a specific, strategy. A.I.D. explains, however, that this suggestion was made for Chemonics' benefit, only after Chemonics began presenting specific ideas which A.I.D. believed were based on little local research and would not be useful. In any case, A.I.D. points out, Chemonics never was advised not to include the previously-requested specific detail in its best and final offer.

Whether A.I.D.'s or Chemonics' impression as to the course of face-to-face discussions is the correct one, we agree with A.I.D. that Chemonics was on sufficient notice that deficiencies relating to the absence of certain detail from its proposal would have to be addressed in its best and final offer.

As for Chemonics' weakness in experience, A.I.D. explains that it did not advise Chemonics that the institutional or personnel experience presented in its initial proposal was deficient based on the initial evaluation because this experience was clearly and adequately expressed in the proposal and no significant lack of relevant experience was found. A.I.D. explains that the second evaluation team also did not find

Chemonics' proposal deficient in institutional and personnel experience set forth in the sense that it was technically unacceptable but, rather, found Chemonics had inherent weaknesses in this area. One evaluator, for instance, commented that a principal employee under the contract, the information transfer advisor, "lacks experience in information needs assessments, planning of media campaigns, promotion, advertising, and organizational assessment," specific solicitation requirements. Another evaluator noted that Chemonics had not "worked closely at improving the management of national and provincial research organizations."

Even had the initial evaluation panel viewed Chemonics' experience as relatively weak, the requirement for meaningful discussions did not necessitate advising Chemonics of this conclusion. The solicitation clearly set forth the experience which would be evaluated, and Chemonics responded in detail by including in its initial proposal 25 pages covering institutional experience, and 22 pages on personnel experience. Chemonics broadly asserts that it could have improved its scoring in this area through discussions, but does not specify how it would have improved upon the extensive treatment of experience in its initial proposal. We have held under similar circumstances that agencies need not disclose experience deficiencies where they are viewed as weaknesses in actual experience, which could not be remedied during negotiations, rather than as mere correctable inadequacies in the way the proposal was assembled. Cosmos Engineers, Inc., B-220000.3, Feb. 24, 1986, 86-1 C.P.D. ¶ 186.

Chemonics also asserts that Winrock unfairly was afforded an opportunity to address all weaknesses in its proposal, while Chemonics was not. Chemonics was afforded the same opportunity as Winrock to clarify and address all weaknesses subject to negotiations; again, Chemonics' weaknesses in experience were not required to be made part of the negotiation process. Winrock was not found to be weak in the experience areas.

In sum, we cannot agree with Chemonics that A.I.D. failed in its obligation to conduct meaningful discussions.

INCONSISTENT TECHNICAL SCORING

Chemonics takes issue with the fact that the second evaluation panel discerned weaknesses in its proposal which were not found by the first panel. Chemonics claims that this inconsistent scoring gives rise to doubt as to whether the second panel properly applied the evaluation criteria. This argument is without merit.

The mere fact that scoring of initial and best and final technical proposals by different evaluation panels results in different conclusions as to the quality of an offeror's proposal, and thus in different scores, does not automatically evidence an improper application of evaluation criteria by one or the other of these panels. Scipar, Inc., B-220645, Feb. 11, 1986, 86-1 C.P.D. ¶ 153. Rather, some differences in judgment are to be expected in any evaluation process due to the subjective nature

of such evaluations. For this reason, we long have expressed the view that while technical point ratings may be useful as guides for informed decisionmaking, these ratings should not be overemphasized. RCA Service Co., B-208871, Aug. 22, 1983, 83-2 C.P.D. ¶ 221. It remains the ultimate responsibility of the source selection official to determine how much, if any, significance should be attached to technical scores assigned by a technical evaluation panel. Global Associates, B-212820, Apr. 9, 1984, 84-1 C.P.D. ¶ 394.

Here, the selection official was presented with two quite different scores for the initial and best and final Chemonics' proposals, and determined that the scoring of the best and final proposal most accurately reflected the relative quality of Chemonics' overall proposal. The selection official obviously agreed with the second panel's perception that Chemonics' institutional and personnel experience were not as strong as they could be. The relevant question, therefore, is whether the second panel's conclusions were reasonable.

We have examined Chemonics' proposal in light of the second panel's comments and scores, and find no indication that the panel deviated from the evaluation criteria or otherwise evaluated Chemonics' proposal unfairly. Chemonics' proposal does evidence some Asian and Pakistani experience, but the second evaluation panel obviously concluded that this experience was weaker than Winrock's. In this regard, a summary sheet in Chemonics' proposal indicates that while the proposed long-term project advisers possessed Asian experience, they had no Pakistani experience. Winrock's long-term staff, on the other hand, was comprised of five individuals, four of whom had substantial experience in Pakistan. Similarly, while most of Chemonics' listed institutional experience appears to be centered in Central and South America (particularly Bolivia, Panama and Honduras), with some Asian experience, Winrock's experience includes at least nine long-term agricultural projects in Asian countries, including Pakistan.

We conclude that the second evaluation panel reasonably found Chemonics' experience relatively weak, and that the selection official therefore reasonably relied on the second panel's findings in determining Winrock to be the technically superior offeror entitled to the award.

CONFLICT OF INTEREST

Chemonics also contends that Winrock gained an improper competitive advantage due to the involvement of one of its employees in the design of the project and the preparation of the scope of work of the solicitation. Specifically, Chemonics asserts that an employee of Winrock was present at a group meeting concerned with the project design, participated in informal discussions, and wrote a "thought piece" critiquing the rough design of the project. In addition, Chemonics states that the employee had access to the final draft of the project design and to the approved project paper that served as the basis for the RFP. Chemonics

argues that this constituted an organizational conflict of interest that should have led to the exclusion of Winrock from the procurement.

A.I.D. asserts unequivocally that the employee did not participate in the development of the project design, was not provided copies of the project paper, and did not draft any part of the RFP. A.I.D. maintains that the employee was one of many scientists consulted and only provided informal general background information in response to questions by the project design team concerning the agricultural research network in Pakistan. A.I.D. supports its position with affidavits from the project development officer and the chairman of the Pakistan Agricultural Research Council, the organization that reviewed and approved the project. A.I.D. states that it was sensitive to the potential conflict of interest of the employee and carefully avoided any such taint of the procurement process. Winrock also submitted a sworn statement from the employee substantiating A.I.D.'s version of the facts.

The responsibility for determining whether a firm has a conflict of interest which warrants its exclusion from the competition rests in the first instance with the procuring agency; we will overturn such a determination only when it is shown to be unreasonable. LW Planning Group, B-215539, Nov. 14, 1984, 84-2 C.P.D. ¶ 531. Further, mere inferences or suspicion of actual or potential conflicts of interest do not afford a basis for finding an agency's determination to the contrary unreasonable; there must be hard facts establishing the conflict of interest, not just a remote connection. NFK Engineering, Inc., B-220007, Dec. 9, 1985, 65 Comp. Gen. ____, 85-2 C.P.D. ¶ 638.

The evidence in the record does not show that the employee in question had anything but a tangential relationship to the A.I.D. project design. The employee was not involved in the drafting or reviewing of the statement of work, according to the agency; he was merely consulted on an isolated issue for background information. Chemonics has presented no hard evidence (i.e., documentation, affidavits, etc.) linking the employee with the preparation of the solicitation itself. This being the case, its conclusions amount to no more than conjecture and supposition. Given that the agency has specifically denied Chemonics' allegation and furnished supporting affidavits, we conclude that Chemonics has not carried its burden of showing that the employee's relationship to the procurement presented a conflict of interest or otherwise resulted in an unfair competitive advantage to Winrock.

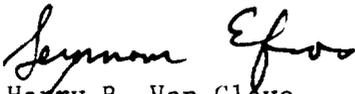
COST EVALUATION

Chemonics contends that if A.I.D. had performed a proper cost analysis, Chemonics' proposal would have been found to represent the lowest overall cost to A.I.D., and the results of the evaluation process might have been substantially different.

Chemonics is correct that its overall proposed cost of \$3,960,832 was lower than Winrock's proposed \$4,097,777 (by approximately \$137,000). A.I.D. evaluated proposed cost based on man-month cost, however, calculated by dividing the total direct labor proposed (including fringe benefits, overhead and fee), by the offeror's proposed level of effort. Since Chemonics proposed a lower level of effort than Winrock, 393.50 as opposed to 410 work-months of direct labor,^{2/} Winrock's evaluated man-month cost was lower than Chemonics'.

Even had total, rather than man-month, cost been evaluated, it does not appear that the award decision would have been different. In a negotiated procurement providing for the award of a cost-reimbursement contract (where proposed cost may not be an accurate indicator of actual cost), award of a contract need not be made to the offeror proposing the lowest cost unless required by the solicitation. Federal Acquisition Regulation, 48 C.F.R. § 15.605 (1985). Rather, cost/technical tradeoffs may be made, governed only by the test of rationality and consistency with the established evaluation factors. See Asset, Inc., B-207045, Feb. 14, 1983, 83-1 C.P.D. ¶ 150. The RFP did not provide for award based on lowest total cost, and A.I.D. obviously considered the significant difference in the technical scores, together with Winrock's lower man-month cost, sufficient to overcome any potential cost advantage represented by Chemonics' lower total cost. We cannot conclude that this determination was unreasonable.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel

^{2/} Although the level of effort proposed by the RFP was 392 work-months, the instructions to offerors stated, at section L-6, that this was a minimum level of effort and that offerors were free to suggest an alternate level of effort.