



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jones & Company, Natural Resource Engineers
File: B-228971
Date: December 4, 1987

DIGEST

1. Protest that technical evaluation of proposal was unreasonable is denied where protester failed to respond to agency request for information regarding the qualifications of its employees.
2. Protest that qualifications of one of the protester's employees were not fairly evaluated is denied where protester demonstrates only that it disagrees with the evaluation.
3. Where record clearly indicates that deficiencies in protester's proposal were brought to its attention, agency conducted meaningful discussions with protester.
4. Allegation that agency awarded contract to protester's competitor to retaliate against protester for filing of earlier protest is denied where protester presents no evidence that contracting officials acted other than in good faith.

DECISION

Jones & Company, Nature Resource Engineers protests the award of a contract to Cooper Consultants, Inc. under request for proposals (RFP) No. BIA-M00-86-27, issued by the Bureau of Indian Affairs (BIA). The RFP sought offers for preparation of a comprehensive water development plan for use in litigation concerning the Rio San Jose watershed on the Acoma and Laguna Indian reservations in New Mexico. Jones alleges that BIA improperly selected Cooper's proposal over its own technically-equal, lower-priced offer.

We deny the protest.

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The RFP provided that technical factors would be more significant than price in the selection of an awardee, and listed 13 technical evaluation factors and their relative weights. The award factors focused primarily on the offerors' knowledge and experience in various types of water projects (e.g., the design of agricultural irrigation systems) and Indian water rights litigation. Since the technical evaluation was to be based primarily on the qualifications of the offerors' personnel, offerors were instructed to include in their proposals the names and resumes of the employees and consultants who would work on the study.

Four Indian-owned firms and one non-Indian firm, Stetson Engineers, submitted proposals by the August 15, 1986 closing date. Although the RFP provided that consideration for award would be given first to qualified Indian-owned firms, BIA determined that since Stetson's technical score was substantially higher and its price substantially lower than those of any of the Indian-owned firms, it would include Stetson in the competitive range along with the two highest ranked Indian firms, Jones and Cooper. The contracting officer requested best and final cost proposals from the three offerors, and awarded a contract to Stetson on September 30.

Jones protested the Stetson award to our Office. We sustained the protest on the ground that the agency had failed to conduct technical discussions with the offerors in the competitive range. Jones & Co., B-224914, Feb. 24, 1987, 66 Comp. Gen. ____, 87-1 CPD ¶ 201. We recommended that BIA reinstate the RFP, conduct additional discussions with the three firms in the competitive range, and request additional best and final offers.

In response to our recommendation, BIA conducted oral discussions with the three firms on March 27, 1987 and requested a second round of best and final offers (BAFOs) to be submitted by May 22. On July 17, the contracting officer requested another round of BAFOs due by July 24, from the two Indian-owned firms.^{1/} The technical evaluation committee awarded Cooper's best and final technical proposal a score of 84.1 and Jones' proposal a score of 50.5; the final price proposals for the two firms were \$366,268.74 and \$320,919.00 respectively. On August 26, a contract was awarded to Cooper.

^{1/} Apparently BIA decided to make award only to an Indian-owned firm.

Jones contends that an award to Cooper is not in the government's best interest since its technical score was essentially equivalent to Cooper's and its price was significantly lower. In this regard, the protester complains that the evaluation must have been flawed since its technical proposal received a score of 77.3 when it was first submitted in August 1986.

The agency points out that the two proposals did not receive essentially equivalent scores on their BAFOs. While Jones received a score of 77.3 and Cooper a score of 77.8 on their offers in August 1986, the proposals were rescored after discussions opened in response to our recommendation, and Jones' score dropped to 50.5, while Cooper's rose to 84.1. The agency explains that the initial rating was based on the original technical proposal without the benefit of technical discussions. After discussions were held, the evaluators became concerned that Jones might not have the resources to perform a contract of this complexity. In this regard, the evaluators were not impressed with Jones' failure to respond to repeated agency requests for information regarding its employees who would work directly on the project.

We do not think that the agency acted improperly by making award to Cooper based on its conclusion that Cooper's higher technical score justified its higher price. Here, the RFP's evaluation criteria provided that technical rating was to be considered more important than price. In a negotiated procurement the agency is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Radiation Systems, Inc., B-222585.7, Feb. 6, 1987, 87-1 CPD ¶ 129. The agency has the discretion to select a more highly rated technical proposal if, as in this case, it is consistent with the RFP's evaluation scheme. Haworth, Inc., B-215638.2, Oct. 24, 1984, 84-2 CPD ¶ 461. Further, there is nothing per se improper with an agency deciding after conducting discussions with an offeror that its initial rating of the proposal was too high and subsequently lowering its rating. That final evaluation must, however, be rationally based. See RDW Systems, Inc., B-204707, July 20, 1982, 82-2 CPD ¶ 61.

Jones challenges the final scoring of its proposal. The protester contends that BIA did not fairly evaluate the qualifications of its project manager and ignored the information that it had submitted regarding the qualifications of its other proposed personnel.

Since the evaluation of proposals is the function of the contracting agency, our Office's review of allegedly improper evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Delany, Siegel, Zorn & Assocs., B-224578.2, Feb. 10, 1987, 87-1 CPD ¶ 144. We will question the contracting agency's determination concerning the technical merit of proposals only upon a clear showing of unreasonableness or abuse of discretion. Lewis-Shane, CPA, B-221875, June 4, 1986, 86-1 CPD ¶ 522.

The record does not support Jones' allegation that the technical evaluation of its proposal was unreasonable. With regard to Jones' contention that the agency failed to consider the qualifications of some of its proposed personnel, we note that Jones had stated in its proposal that it intended to perform approximately 70 percent of the work itself,^{2/} but had furnished the resumes of only two employees: Mr. Jones, its project manager, and another individual whom Jones claimed was an employee, but whose resume did not reflect any association with the company. Jones had also furnished the resumes of several consultants, but given the percentage of work that Jones intended to perform itself, the agency reasonably inquired as to the qualifications of other Jones employees who would work on the project. Jones responded that its project manager would perform all of the engineering himself and would hire additional personnel if needed. Where, as here, the agency specifically asks for the qualifications of the people who will be directly involved in the project, a promise to hire qualified employees is not sufficient for evaluation purposes. Center for Employment Training, B-203555, Mar. 17, 1982, 82-1 CPD ¶ 252.

Further, with regard to Jones' contention that its project manager's qualifications were not fairly evaluated, the record shows that the evaluators downgraded Jones' proposal primarily because Mr. Jones proposed to perform so many of the diverse tasks himself. We think it was reasonable for the agency to be concerned (and for the scoring to reflect that concern) that Jones essentially proposed that a single individual, with the help of additional unnamed personnel to be hired later and possibly one other individual, would perform almost 70 percent of the project, which consisted of such varied tasks as the preparation of reports on the beneficial use development of Indian rights claims and construction schedules for all proposed development schemes.

^{2/} The RFP permitted the contractor to subcontract up to 30 percent of the total contract.

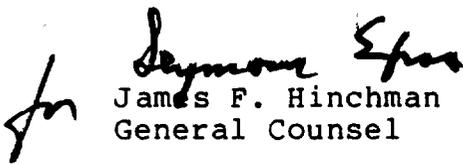
Jones also argues that the agency failed to conduct meaningful discussions with it. The protester asserts that the weaknesses and deficiencies in its proposal were not pointed out. This was clearly not the case. The record shows that information regarding Jones' other employees was requested in the oral discussions on March 27, and the agency's July 17 request for a third round of BAFOs specifically stated:

". . . our review of your proposal indicated there was insufficient personnel data provided in order for us to give your firm a complete technical evaluation. We request that you submit resumes and/or other documentation which will identify the key employee(s) you will have employed on this project. . . ."

Jones responded to this request for additional information by objecting to the continued inquiry into the qualifications of its personnel rather than by furnishing additional information. It appears that this intransigence, apparently based on Jones' belief that its initial score could not be reduced, in the face of repeated requests by the agency for further information was the primary reason for its relatively low final rating.

Finally, the protester has presented no evidence in support of its contention that the agency made award to Cooper to retaliate against Jones for its protest. Here, we have concluded that the agency's actions were rationally based, and we have no basis upon which to conclude that agency officials acted other than in good faith. See Snow White Cleaners and Linen Supply, Inc., B-225636, Mar. 26, 1987, 87-1 CPD ¶ 347.

The protest is denied.

 James F. Hinchman
General Counsel