



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: IDG Architects
File: B-235487; B-235487.2
Date: September 18, 1989

DIGEST

1. The Federal Acquisition Regulation does not require the presence of an architect on all architect-engineer boards. The regulation only requires that government members of the board collectively have experience in architecture, engineering, construction and acquisition matters.
2. The General Accounting Office will not attribute bias in the evaluation of proposals on the basis of inference or supposition such as protester's questioning of the ethnic composition of evaluation officials.
3. Protest against alleged apparent defects in evaluation criteria for architect-engineer selection is untimely where filed after the date specified for receipt of qualification statements from the competing firms.
4. Protest that selected firm is less qualified than protester is denied where record does not demonstrate that the agency's evaluation was unreasonable.
5. A showing of prejudice is an essential element of a viable protest. Where rescoring of proposals is undertaken because original evaluation used weights inconsistent with those in the solicitation, and rescoring using proper weighting shows that selected firm is still clearly the highest rated, protester is not prejudiced.

DECISION

IDG Architects protests the selection by the National Aeronautics and Space Administration's (NASA) Ames Research Center of Bentley Engineers as the firm with which to negotiate an architect-engineer (A-E) contract for on-site engineering support service at Ames. IDG alleges that NASA's evaluation of its proposal and the selection process were unfair.

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The protest is denied in part and dismissed in part.

Procurement of A-E services are conducted pursuant to the Brooks Act, 40 U.S.C. §§ 541-544 (1982), as amended by Pub. L. No. 100-656 § 742, 102 Stat. 3583 (1988), and Pub. L. No. 100-679, § 8, 102 Stat. 4055 (1988), and the implementing Federal Acquisition Regulation (FAR) subpart 36.6. Under these procedures, after publicly announcing a requirement, the contracting agency convenes an evaluation board that reviews performance data and statements of qualifications submitted in response to the announcement, as well as data already filed by firms that wish to be considered for A-E contracts. The board then holds discussions with no less than three of the firms; ranks them; and submits the firms qualifications to a selection official, who determines the most highly qualified offeror. If the agency is not able to negotiate a satisfactory contract at a fair and reasonable price with the preferred offeror, the agency enters into negotiations with the next ranked firm, and so on.

Ward/Hall Assocs. A/A, B-226714, June 17, 1987, 87-1 CPD ¶ 605.

IDG contends that since there were no architects on the evaluation panel, the evaluation was improperly biased toward the selection of an engineering firm. IDG contends that FAR § 36.602-2(a) requires that an architect be a member of the evaluation panel and that NASA violated this regulatory requirement. That FAR section reads as follows:

"When acquiring architect-engineer services, an agency shall provide for one or more permanent or ad hoc architect-engineer evaluation boards (which may include preselection boards when authorized by agency regulations) to be composed of members who, collectively, have experience in architecture, engineering, construction, and Government and related acquisition matters. Members shall be appointed from among highly qualified professional employees of the agency or other agencies, and if authorized by agency procedure, private practitioners of architecture, engineering or related professions. One Government member of each board shall be designated as the chairperson."

The regulation only requires that the members collectively have experience in architecture, engineering, construction and acquisition matters. There is no requirement that at least one member of the board must be a professional architect. The appointment of highly qualified professional

employees of the government who have the requisite experience satisfies the regulatory requirement. Here, the evaluation committee was comprised of qualified and experienced engineers, technical and business personnel. Since this contract requires more engineering than architectural effort, NASA provided an appropriate mix of relevant disciplines on the evaluation board. See FACE Assocs., Inc., 63 Comp. Gen. 86 (1983), 83-2 CPD ¶ 643.

IDG also questions the ethnic makeup and sensitivity of the persons involved in the selection process including the evaluation board. The composition of technical evaluation panels is within the discretion of the contracting agency and we will not review the qualifications of panel members absent a showing of possible fraud, bad faith, or conflict of interest. Ward/Hall Assocs. A/A, B-226714, supra; Martin Marietta Data Sys., et al., B-216310 et al., Aug 26, 1985, 85-2 CPD ¶ 228. To the extent that IDG alleges bad faith or bias on the part of the evaluation and selection officials, it has produced no evidence to support this contention. We will not attribute bias in the evaluation of proposals on the basis of inference or supposition. Art Servs. and Publications, Inc., B-206523, June 16, 1982, 82-1 CPD ¶ 595.

In reviewing a protest of an agency's selection of a contractor for A-E services, our function is not to reevaluate the offeror's capabilities or to make our own determination of the relative merits of competing firms. Rather, the procuring officials enjoy a reasonable degree of discretion in evaluating the submissions and we limit our review to determining whether the agency's selection was reasonable and in accordance with the published criteria. Ward/Hall Assocs. A/A, B-226714, supra. The protester bears the burden of proving that the agency's evaluation was unreasonable, and that burden is not met by the protester's mere disagreement with the agency's evaluation. Id.

The Commerce Business Daily (CBD) synopsis provided the following evaluation criteria: (1) professional qualifications necessary for satisfactory performance of required services; (2) specialized experience and technical competence in the type of work required; (3) capacity to accomplish the work in the required time; (4) past performance on contracts with government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules; (5) location in the general geographical area of the project and knowledge of the locality of the project, provided that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and (6) the volume of work previously awarded to the firm with the

object of effecting an equitable distribution of contracts. The relative order of importance of the criteria was stated to be criterion 2 most important, criteria 3 & 4 approximately equal, criteria 1, 5 and 6, approximately equal.

IDG challenges NASA's evaluation of the proposals on several bases. First, IDG states that NASA evaluated Bentley's entire existing staff, rather than just those employees who would relocate to the immediate area and directly perform this project. NASA did evaluate the offerors' management, their educational background, technical competence, specialized experience, capacity to accomplish the work, previous work experience, professional qualifications, type of engineering discipline, and their proposed personnel plan. This is consistent with the evaluation criteria which do not call for restricting the evaluation of an offeror exclusively to its proposed on-site personnel.

In this connection, IDG's contention that criterion 5, location of firm, should have been given a more important ranking because of the importance of having on-site professional staff is untimely because this alleged defect was apparent from the announced evaluation criteria, and IDG did not protest this matter prior to the date of receipt of qualification statements of the A-E firms. Charles A. Martin & Assocs.--Reconsideration, B-222804.2, May 16, 1986, 86-1 CPD ¶ 466. In any event, we note that both Bentley and IDG are located in the San Francisco Bay area, with Bentley being slightly closer to Ames than IDG.

IDG also asserts that it was improperly given a rating for specialized experience which was lower than Bentley's. IDG states that it is the incumbent at Ames and therefore has the exact specialized experience for the job which no other firm has. With respect to American Society of Mechanical Engineers (ASME) piping systems experience in which NASA found IDG to be weaker, IDG states that as a prime contractor for the design of major multi-million dollar facilities it is responsible for major ASME piping projects. IDG states that its construction administration performance for NASA under its present contract has been excellent and its staff has written the Construction Management Manual now being used by NASA.

NASA points out that IDG's President told it during the preselection interview that IDG had no experience with ASME or American National Standards Institute (ANSI) code analysis. NASA also states that the construction manual written by IDG for NASA has required many revisions and work by NASA's staff and it is not yet being used. While NASA

recognizes IDG's on-site experience, NASA found that IDG lacked the desired depth of in-house technical capacity and experience in mechanical, electrical and civil/structural engineering. IDG was also found to have minimal corporate experience in construction management/inspection and was lacking in pressure vessel certification experience. Finally, NASA noted numerous documented problems with IDG in construction management and noted IDG's lack of depth in engineering areas. Bentley, on the other hand, was found to be a well-managed, full-service engineering firm that met all of the specialized experience requirements. NASA found Bentley to have all required disciplines in-house with substantial depth in mechanical and electrical engineering.

We find NASA's evaluation to be reasonable. A high rating in specialized experience did not require actual work at Ames, but experience in the type of work to be required. Although incumbency can indeed provide specialized experience, in view of NASA's explanation and findings as stated above, we find that NASA had a reasonable basis for Bentley's higher rating in this area.

With regard to past performance, for which IDG was rated equal to Bentley, IDG asserts that the rating does not reflect the fact that NASA has first hand knowledge of IDG's performance but has no such first hand knowledge of Bentley's performance. The fact that NASA had experience with IDG does not establish that NASA was required to find IDG's past performance superior to Bentley's. NASA found that Bentley's experience was directly applicable to the type of work it would be required to perform at Ames. NASA reasonably determined that Bentley's performance on Navy contracts substantiated its capability to respond quickly and professionally to changing government needs.

IDG also complains that under the evaluation category "capacity to accomplish the work in the required time," Bentley was rated higher than IDG because Bentley has all disciplines in-house and has in-depth capability in each discipline except architecture. IDG states that it is unfair to evaluate IDG's lack of full in-house engineering strength at its home office because when IDG was being selected under the incumbent contract NASA informed IDG that a joint venture with a nationally recognized engineering firm was not required or desired. IDG also contends that it is unrealistic to evaluate in-house capability since it cannot be utilized within the NASA service support contract.

However, whatever IDG may have been told concerning the requirements of the past contract has no bearing on the requirements of this procurement. IDG was found to lack

in-depth engineering capability and was rated less favorably than Bentley which had the requisite capacity. We find NASA's analysis on this point to be rationally based.

IDG's also objects to criterion 6, the volume of NASA contracts already awarded, as adversely affecting IDG. This is untimely since the matter should have been protested prior to the date for the receipt of qualification statements of the A-E firms. Charles A. Martin & Assocs.-Reconsideration, B-222804.2, supra. Similarly, IDG's protest that the solicitation should have been set aside for minorities is also untimely, for the same reason.

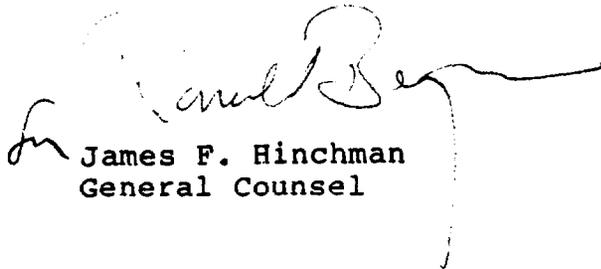
Finally, after IDG received NASA's report on its initial protest, IDG protested NASA's failure to evaluate the proposals in accordance with the stated order of importance of the evaluation criteria. NASA reports that criterion 4, past performance, was incorrectly treated as being worth five points more than criterion 3, capacity to accomplish the work, when the two criteria were stated to be equal in importance. NASA performed a corrected evaluation, with criteria 3 and 4 treated equally. This correction resulted in only a minimal change in the total scores, with Bentley's score slightly increasing and IDG's slightly decreasing.

IDG contends that the original improper evaluation prejudices it because it was not evaluated consistent with the stated evaluation criteria. With respect to NASA's argument that its error had no effect on the final ranking of firms, IDG argues that it should have been allowed to structure its offer with the new evaluation scheme in mind and NASA cannot guess how offerors would have structured their proposals had they submitted offers different from the ones they did submit.

A showing of prejudice is an essential element of a viable protest. 120 Church Street Assocs.--Request for Reconsideration, B-232139.2, Mar. 7, 1989, 89-1 CPD ¶ 245. We do not think that IDG was prejudiced by NASA's failure to use the solicitation's stated weights in its evaluation. As stated above, NASA rescored the proposals, assigning the weights in a manner which accurately reflected the solicitation's evaluation scheme. The result was that Bentley marginally increased its score and IDG's score was marginally decreased. Based on this recalculation, Bentley remained the highest-rated offeror by a slightly increased margin, and therefore the calculation error provides no

basis for us to overturn NASA's selection. Dynamic Sys., Inc., B-233282, Feb. 15, 1989, 89-1 CPD ¶ 161; Arawak Consulting Corp., B-232090, Nov. 8, 1988, 88-2 CPD ¶ 457. We note that rescoring is an acceptable method of correcting a deficient evaluation based on incorrect weighting of evaluation criteria. Id.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel