



Comptroller General  
of the United States

8J3139

Washington, D.C. 20548

## Decision

Matter of: PeopleWorks, Inc.

File: B-257296

Date: September 2, 1994

Eduardo Pena, Esq. and Bridnetta D. Edwards, Esq., Alexander, Gebhardt, Aponte & Marks, for the protester. Virginia Kelly Stephens, Esq., Department of Housing and Urban Development, for the agency. Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Agency properly excluded proposal from competitive range which had no reasonable chance of receiving award because it contained significant technical weaknesses and was scored substantially below the higher-rated competitive range proposals.
2. Allegation of bias is denied where the record contains no credible evidence that agency acted with specific intent to injure the protester.

### DECISION

PeopleWorks, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DU100C000018346, issued by the Department of Housing and Urban Development (HUD), for management assessments of troubled Public Housing Authorities (PHAs). PeopleWorks contends that the exclusion was unwarranted and resulted from agency bias.

We deny the protest.

Prior to the RFP's issuance, PeopleWorks sought to have the requirement set aside under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988).<sup>1</sup> HUD declined to set the requirement aside based on its determination that full and open competition would be in the best interest of the agency, and it issued the RFP in November 1993.

According to the RFP, the management assessments are to be conducted on-site by a team of knowledgeable individuals with expertise in public housing and real estate management, who will consider issues relating to the PHA's resident population and physical inventory. The RFP contemplated the award of one or more indefinite quantity contracts to perform task orders concerning between 62 and 200 PHAs over a performance period of 48 months. The RFP included two sample task orders and required offerors to include in their proposals a description of how they would address them.

Section M advised offerors of the following technical evaluation factors and weights: offeror's experience and qualification (35 points); qualifications of key personnel (35 points); quality of proposal (30 points); and participation of minority/small/women business enterprises (5 points). Technical factors were more important than price, and award was to be made to the offeror with the responsive proposal most advantageous to the government, price and other factors considered.

Eleven offerors including PeopleWorks submitted proposals by the January 4, 1994, closing date. The agency's evaluation of the competitive range proposals resulted in far higher scores than those received by the other proposals (including PeopleWorks's), which were evaluated as having significant weaknesses and were rejected as technically unacceptable.<sup>2</sup> The evaluators concluded that none of the unacceptable proposals could be improved sufficiently to have a reasonable chance of obtaining the contract. The contracting officer agreed and eliminated those proposals from the competitive range. PeopleWorks then protested, first to the contracting agency and then to our Office.

The evaluation of proposals and the determination of whether a proposal is in the competitive range are principally

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<sup>1</sup>Section 8(a) authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns.

<sup>2</sup>As no award has been made, we do not disclose the number of competitive range offers or their actual scores received.

matters within the contracting agency's discretion, since agencies are responsible for defining their needs and for deciding the best method of meeting them. Advanced Sys. Technology, Inc.; Eng'g and Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. Thus, it is not the function of our Office to evaluate proposals de novo and we will not disturb that determination absent a showing that it was unreasonable or in violation of procurement laws or regulations. Institute for Int'l Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273.

PeopleWorks basically contends that it was improper to exclude its proposal from the competitive range and that it should have been provided an opportunity to correct its deficiencies through discussions. We disagree.

The purpose of a competitive range determination is to select those offerors with which the agency will hold written or oral discussions. Federal Acquisition Regulation § 15.609(a); Everpure, Inc., B-226395.2; B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264. The competitive range consists of all proposals that have a "reasonable chance" of being selected for award, usually including those proposals which are technically acceptable as submitted or which are reasonably susceptible of being made acceptable through discussions. Infor. Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. In determining the competitive range, it is an acceptable practice to compare the evaluation scores and consider an offeror's relative standing among its competitors, and to exclude a proposal that is capable of being made technically acceptable when, relative to other offers, it is determined to have no reasonable chance of being selected for award. Id.

We have reviewed the agency's competitive range determination here and find it reasonable and proper. Offerors were advised by the RFP that their corporate experience would be evaluated on the basis of demonstrated experience, background, and capability, including management and administrative ability, understanding of the historic problems of public housing, experience and expertise in public and/or private housing management. Personnel qualifications were to be evaluated on the basis of demonstrated experience and qualifications of key, in-place, and full-time personnel in organizing and conducting the independent management assessments, along with the capabilities of subcontractors and any consultants available to the offeror. Proposal quality was to be evaluated on the basis of demonstrated clarity, detail, and technical quality, as evidenced by analytical ability and awareness of problems inherent in the work statement.

While the evaluators found that PeopleWorks's proposal had strengths based upon its demonstrated understanding of the historic problems of public housing and its proposal of an experienced project director, and was entitled to full credit in the area of minority participation, they also found numerous, major weaknesses in the three other technical factors. Under "corporate experience" they found a lack of PHA or public/private management experience; that PeopleWorks's experience was primarily in total quality management training, information systems, and data design; and that its stated experience was only in three of the eight program areas--PeopleWorks received an average score of 17.4 points out of a possible 35 points under this factor. Under "personnel experience," PeopleWorks's proposal contained no information about the offeror's in-place staff except a single resume, which failed to indicate what the individual does, and all remaining personnel were consultants and subcontractors--PeopleWorks received an average score of 19.4 points out of 35 points for this factor. Under "proposal quality," the evaluators found PeopleWorks's proposal to be potentially costly because it went beyond the task order requirements and failed to respond to the task orders with specifics. In this regard, the RFP explicitly required offerors to furnish complete responses with breakdowns of the various subtasks, levels of effort, and estimated costs for two sample orders; PeopleWorks's proposal simply outlined its procedures without detailing its approach to the samples--PeopleWorks received an average score of 2 points out of 30 points for this factor. Overall, PeopleWorks's proposal received a score of 43.8 points, which is much lower than the scores received by the competitive range offers.

PeopleWorks does not challenge its evaluation or its point score, and based on our review of the agency's evaluation, we find it reasonable. In view of PeopleWorks's relatively poor proposal, as exemplified by the above-described deficiencies and low score, particularly as compared with the top-scored, competitive range proposals, the agency correctly determined that the protester had no reasonable chance for award. Accordingly, its proposal was properly excluded from the competitive range. *Id.* While PeopleWorks argues that it should have been provided with an opportunity to correct its deficiencies in discussions, it was not entitled to discussions because it was properly eliminated from the competitive range. *Drytech, Inc.*, B-246276.2, Apr. 28, 1992, 92-1 CPD ¶ 398.

PeopleWorks also contends that its proposal's elimination from the competitive range was due to agency bias evidenced by the agency's refusal to set the procurement aside under

section 8(a)<sup>3</sup> and an expression of prejudice in HUD's letter advising the SBA of that determination:

"The importance of this contract cannot be overstated; the implications to both the taxpayer and the residents of troubled public housing agencies are simply too great to do otherwise. We are not implying that PeopleWorks lacks the necessary expertise to warrant consideration as part of a competitive process. They do not, however, possess a depth of experience in this area that would lead us to conclude that consideration of other sources would be unnecessary."

Before we will find bias, the record must establish that an agency acted with specific intent to injure a protester. Hill's Capitol Sec., Inc., B-250983, Mar. 2, 1993, 93-1 CPD ¶ 190. Inference and supposition are insufficient to establish a claim of bias. See Monarch Enters., Inc., B-233303 et al., Mar. 2, 1989, 89-1 CPD ¶ 222. Here, the record contains no evidence of bias. The agency determination not to set aside the procurement does not constitute evidence of bias against an 8(a) contractor, especially where, as here, the agency actively solicited the contractor to submit a proposal. Further, the language on which PeopleWorks relies merely reflects the agency's recognition that the HUD requirement is important and that PeopleWorks is not so clearly qualified that the agency is willing to forego full and open competition; it provides no evidence of any preconceived view that the protester is technically incompetent.

PeopleWorks also challenges the evaluation factors and their relative weights, arguing that the emphasis on experience tends to eliminate an 8(a) firm such as the protester. The evaluation factors as well as their specific weights were disclosed in the RFP. Having failed to challenge the

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<sup>3</sup>In its original protest, PeopleWorks appeared to challenge the agency's determination not to set the procurement aside under section 8(a). However, its comments concede that this is not a basis for protest. See 4 C.F.R. § 21.3(m)(4) (1994); Lecher Constr. Co.--Recon., B-237964.2, Jan. 29, 1990, 90-1 CPD ¶ 127.

factors and their alleged impact prior to the closing time for receipt of proposals, PeopleWorks's protest on these bases is now untimely. 4 C.F.R. § 21.2(a)(1).

The protest is denied.

/s/ James A. Spangenberg  
for Robert P. Murphy  
Acting General Counsel