Calhoun 152958

Comptroller General
of the United States
Washington, D.C. 20548

224510

Decision

Matter of: Shah & Associates

File: B-257405

Date: September 30, 1994

K. R. Shah for the protester.
Dennis J. Gallagher, Esq., Department of State, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that firm was improperly excluded from further consideration in architect-engineer acquisition is denied where record shows that evaluation panel's conclusions concerning protester's submission were reasonable and consistent with stated evaluation factors.

2. Protest that contracting agency violated applicable statute and regulations during the conduct of an architect-engineer acquisition with respect to the composition of the evaluation panel, and with respect to the number of small business concerns recommended for negotiation, is denied where the record shows that no such violations occurred.

DECISION

Shah & Associates protests the rejection of its qualifications statement under solicitation No. S-FBOAD-94-R-0010, issued by the Department of State (DOS) for electrical engineering services for diplomatic and consular posts worldwide. Shah argues that the agency improperly evaluated its submission.

We deny the protest.

This procurement action is for the acquisition of architect-engineer (A-E) services and, consequently, is being conducted pursuant to the procedures outlined in the Brooks Act, as amended, 40 U.S.C. § 541 et seq. (1988), and its implementing regulations, Federal Acquisition Regulation (FAR) subpart 36.6. In accordance with the regulations, the contracting agency, on November 24, 1993, synopsized the

requirement in the Commerce Business Daily (CBD). The synopsis stated that the agency anticipated awarding up to five indefinite quantity/indefinite delivery contracts for the performance of professional engineering services such as surveys, inspections, studies of electrical systems for problem solving, renovations, additions, and other related tasks at existing facilities at various DOS offices overseas; with at least three of the contracts set aside for small business concerns. The synopsis invited consulting engineering firms to submit a completed Standard Form (SF) 254 (A-E and Related Services Questionnaire) and an SF 255 (A-E and Related Services for Specific Project Questionnaire) on which firms provide their qualifications. The CBD notice also stated that firms submitting their qualifications would be evaluated under seven evaluation factors. The maximum available score was 100 points, distributed as follows:

> "(1) Professional qualifications necessary for satisfactory performance of required services (25 pts. max)....
>
> "(2) Specialized experience and technical competence in the type of work required (25 pts. max)....
>
> "(3) Capacity to accomplish the work in the required time (20 pts. max)....
>
> "(4) Past performance on contracts in terms of cost control, quality of work, and compliance with performance schedules (15 pts. max)....
>
> "(5) Electrical/Consulting services performed in-house (5 pts. max)....
>
> "(6) Familiarity with the metric system and the ability to design in metric units (5 pts. max)....
>
> "(7) Overseas experience (5 pts. max)."

In response to the CBD notice, 65 firms submitted qualifications statements. The agency convened a five-person technical evaluation panel for purposes of selecting a list of firms with which to negotiate the A-E contracts. Each member of the panel assigned points under each evaluation factor, and these points were compiled to form an evaluator's raw total score for each firm. The

agency then averaged each evaluator's raw points.[1] Shah received an average score of 73.8 points out of a possible 100, ranking the firm 29th of the 65 firms evaluated, and 14th among the small business concerns evaluated.[2] Shah was notified on April 27 that it would not be considered further, and a debriefing was conducted on May 16. This protest followed.

Shah argues that the technical panel's evaluation of the firm's submittal was "fraudulent and faulty," and essentially asserts that its qualifications should have garnered it a score high enough to be recommended for further negotiation. The protester also contends that DOS violated the Brooks Act and its associated regulations by using an evaluation panel whose members did not conform with those regulations, and by failing to recommend at least nine small business concerns for negotiation for these contracts.[3]

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[1]One of the evaluators used a scoring sheet with a maximum score of 60 points instead of 100 points. To normalize his scoring in accordance with the evaluation factors, his score was multiplied by 1.666. While this multiplier produces some anomalies, in that it results in a score for some subfactors that is slightly higher than the maximum score, we do not believe that it evidences what the protester calls a "grossly fundamental flaw" in the scoring. Rather, we see the evaluator's use of the multiplier as an effort to conform to the evaluation scheme stated in the CBD synopsis which resulted in no discernible prejudice to the protester.

[2]While the consolidated scoring sheet indicates that Shah received an average score of 75.2, one evaluator's score was listed on that sheet as 91 when, in actuality, the evaluator gave Shah 84 points.

[3]Shah also argues that the agency's debriefing of the firm was inadequate and misleading. The purpose of a debriefing is to inform the offeror of the basis for the selection decision or deficient factors in the offeror's submission. FAR § 15.1003. A review of the debriefing memorandum and the individual evaluator's scoring sheets shows that the debriefing was incomplete at best, as all of the weaknesses disclosed during the debriefing were relatively minor, and the more important weaknesses were not disclosed at all. However, since Shah has now had an opportunity to address all of the weaknesses noted by the evaluators, we do not believe the firm has been prejudiced by this incomplete debriefing. Competitive prejudice is an essential element of every viable protest. See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379.

In reviewing a protest of an agency's evaluation of an A-E firm's submission, it is not the function of our Office to make our own determination of the relative merits of that submission. The procuring officials enjoy a reasonable degree of discretion in evaluating such submissions and we will not substitute our judgment for that of the procuring agency by conducting an independent examination. Y. T. Huang & Assocs., Inc., B-217122; B-217126, Feb. 21, 1985, 85-1 CPD ¶ 220. Rather, our review of the agency selection of an A-E contractor is limited to examining whether that selection is reasonable. We will question the agency's judgment only if it is shown to be arbitrary. Nomura Enter., Inc., 69 Comp. Gen. 69 (1989), 89-2 CPD ¶ 437. A protester's mere disagreement with the agency's evaluation does not show that it is unreasonable. IDG Architects, 68 Comp. Gen. 683 (1989), 89-2 CPD ¶ 236; ConCeCo Eng'g, Inc., B-250666, Feb. 3, 1993, 93-1 CPD ¶ 98.

Here, we have reviewed Shah's SF 254 and 255; the individual evaluation scoring sheets for the firm; affidavits submitted by several of the individual evaluators; and the filings submitted by both parties. As discussed below, these materials simply do not show that the agency's evaluation of the firm was either unreasonable or inconsistent with the criteria set forth in the CBD synopsis.

Many of Shah's arguments consist of statements that the firm should have received the maximum score because it met the requirements set forth in the CBD synopsis--these arguments are often couched in terms of the agency's having used "hidden evaluation criteria." However, in an A-E acquisition, the evaluation panel is to evaluate firms in accordance with the stated criteria and recommend for further negotiation the most highly qualified firms. FAR § 36.602-3. Accordingly, the highest evaluation scores are reserved for those firms that are most highly qualified. Here, the agency reports that, though Shah was found to be qualified, other firms were found to be superior to the protester.

For example, Shah received fewer than the maximum points available under the specialized experience factor because its proposed program manager had only 14 years of experience and did not have a professional engineer (PE) license. While Shah correctly contends that the CBD synopsis did not require the program manager to have a PE license or more than 14 years of experience, the notice did advise interested firms that this evaluation factor included a consideration of the qualifications and experience of the proposed electrical personnel. Shah has provided us no basis to think that the agency unreasonably concluded that a firm proposing a program manager with more than 14 years of experience and with a PE license was more highly qualified

than a firm without such a program manager. Similarly, Shah did not receive the maximum score available under the in-house services factor because it appeared that the firm's capability in disciplines other than electrical engineering was very limited; one evaluator believed the firm might not be able to handle the various concurrent projects involving life safety, structural (including seismic), civil or mechanical work, HVAC and plumbing. Shah's response, that its proposed personnel have abilities in these areas, does not make unreasonable the agency's conclusion that more extensive abilities in these areas warranted a higher score.

Other points raised by Shah are merely disagreements with the agency's conclusions and, as discussed above, do not provide a basis for finding those conclusions unreasonable. ConCeCo Eng'g, Inc., supra. For example, Shah was downgraded under the capacity to work factor because the evaluators believed the firm's organization had little depth except in electrical engineering, raising concerns about the firm's capacity for timely performance, and because the firm's organization plan did not include all necessary disciplines and expertise for the overseas work required. Shah's statements that the firm has provided sufficient staffing based on its past experience, and that its organization plan meets all of the requirements, do not make the agency's evaluation unreasonable. Shah was also downgraded because an evaluator was concerned that its current contract commitments would detract from its capacity to perform DOS work. While Shah argues that its SF 255 stated that "a number" of its current projects would be completed by February 1994, the submission shows that of six current federal contracts held by Shah, one was 20 percent complete; one was 50 percent complete; and two were 70 percent complete. We do not think it unreasonable for the evaluator to conclude that these contractual commitments might have an impact on Shah's performance of the contracts at issue here.

In still other areas of the technical evaluation, Shah was given less than the maximum score because it failed to provide sufficient information. Evaluators gave Shah fewer points under the capacity to work factor for providing a "skimpy" description of its oversight plan and for providing only a summary paragraph to describe its quality control plan; under the professional qualifications factor for failing to provide sufficient evidence of facilities inspections experience relevant to DOS overseas activities; and under the past performance factor for failing to sufficiently address cost control procedures and for failing to provide sufficient information to show its ability to meet schedules. While Shah disagrees with all of these conclusions, essentially arguing that it provided sufficient information to warrant the maximum score, our review of

Shah's SF 255 confirms that there is a lack of detail in these areas. As a result, we have no basis to conclude that the agency's judgment was unreasonable.[4]

Finally, Shah was not given the maximum score under both the professional qualifications factor and the capacity to work factor for, among other things, its lack of experience with secure government electrical systems. In its comments on the agency report, Shah argues that its SF 255 did indicate some experience with secure government electrical systems. The record is not entirely clear as to the extent of Shah's experience in this area, but even if the evaluators were in error, Shah would not be prejudiced. At the very most, Shah lost nine points as a result of these evaluations; those additional nine points would not have made it eligible for inclusion on the list of firms with which to negotiate. We will not sustain a protest where, as here, no reasonable possibility of competitive prejudice is shown or is otherwise evident. See MetaMetrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306.

Shah also takes issue with several other aspects of the conduct of this acquisition. Shah first contends that FAR § 36.602-2(a) requires that an architect and a construction manager be members of the evaluation panel and that DOS 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 [g]overnment 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 [g]overnment member of each board shall be designated as the chairperson."

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[4]Another evaluator gave Shah fewer than the maximum points under the professional qualifications factor because the firm frequently "fuzzed" the nature of the firm's responsibilities with words like "involved," rather than precisely defining its activities. This indicated to him that Shah was puffing its experience. Shah's mere disagreement with this conclusion provides us insufficient basis to find it unreasonable.

The regulation only requires that the members collectively have experience in architecture, engineering, construction, and acquisition matters. There is no requirement that one member of the board be an architect and one a construction manager. The appointment of highly qualified professional employees of the government who have the requisite experience satisfies the regulatory requirement. Here, the evaluation panel was comprised of three electrical engineers; one mechanical engineer; and one configuration manager. These five members had experience in such areas as nuclear power, power utility company distribution and general systems, facilities systems planning design and construction, engineering procurement, and civil engineering. Considering the nature of contemplated projects, as described in the CBD synopsis, and their emphasis on engineering, DOS provided an appropriate mix of relevant disciplines on the evaluation board. IDG Architects, supra.

Shah also contends that at least nine small businesses should have been recommended for negotiation, since DOS had announced an intent to make five awards, three of which were to be set aside for small businesses. The applicable regulation states that at least three of the most highly qualified firms are to be recommended for negotiation. FAR § 36.602-3. Here, the evaluation panel recommended 20 firms--7 of which were small business concerns. We find nothing in the record to suggest that limiting the number of small business firms to seven was unreasonable. See Roy F. Weston, Inc., B-252541.2, July 19, 1993, 93-2 CPD ¶ 33. Moreover, since Shah was not among the nine most highly qualified small business concerns, we fail to see how the firm was prejudiced by the agency's selection of only seven small business concerns.

Shah argues that DOS recommended only seven small business concerns because it intended to award contracts only to firms that had hired former DOS employees. However, prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, and supposition. See Crown Logistics Servs., B-253740, Oct. 19, 1993, 93-2 CPD ¶ 228. Here, there is no evidence in the record to support the protester's allegation except a statement by the firm's president that a representative of another firm told him that firm did not receive any DOS contracts until it hired a former DOS employee. While the protester has chosen to infer bad faith on the part of the agency from this information, we have no basis to do so. The protester's contention is based on

unsupported inference and supposition, which is insufficient to prove its claim. See Monarch Enters., Inc., B-233303 et al., Mar. 2, 1989, 89-1 CPD ¶ 222.

The protest is denied.

Robert P. Murphy
Acting General Counsel