



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: PADCO, Inc.

File: B-270445

Date: March 6, 1996

Kenneth A. Martin, Esq., Riley & Artabane, P.C., for the protester.
Gary M. Winter, Esq., United States Agency for International Development, for the agency.
John A. Carter, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's acceptance of proposed individual who had less than the required level of language proficiency was not prejudicial to the protester where the protester's own nominee had a similar deficiency and also was found acceptable.
2. Protest of agency's evaluation of the qualifications of the awardee's proposed key employee is denied where the record shows that the evaluation was reasonable and was conducted in accordance with the solicitation's evaluation criteria.
3. Unavailability of host country officials to participate in the evaluation of proposals as specified in a solicitation for contract for assistance in developing host country housing does not invalidate evaluation that was reasonable and in accordance with the solicitation's evaluation criteria.

DECISION

PADCO, Inc. protests the award of a contract to Technical Support Services, Inc. (TSS) by the United States Agency for International Development (USAID) under request for proposals (RFP) No. MOROCCO 95-P-003. PADCO challenges the award to TSS because, according to the protester, the awardee's proposal did not offer long-term personnel who conformed with the RFP requirements and the agency failed to follow its announced evaluation scheme.

We deny the protest.

The USAID office in Morocco issued the RFP on June 9, 1995, to obtain the services of a technical support contractor for an "Urban and Environmental Support" project that is part of a larger program to aid Morocco in alleviating and resolving problems with substandard housing and environmental services. The RFP contemplated a

4-year cost reimbursement contract for long- and short-term technical assistance and training to assist Moroccan agencies and municipalities.

The contractor's effort was to be headed initially by a "Chief of Party" (COP), and by a project planning specialist who would be responsible for seconding the COP in all management and technical oversight and would be expected to replace the COP in the final year of the contract. The RFP stated that the COP would be responsible for managing all contract components and activities and would serve as the contractor's technical representative in interactions with both USAID and the Government of Morocco. The COP was also to have primary responsibility for ensuring that all USAID project implementation regulations and procedures were followed. The RFP required that the COP and the planning specialist have French and English language proficiency at least at Foreign Service Institute equivalent S3/R3. The RFP suggested that the COP be an expatriate and that the planning specialist be a Moroccan national or other resident hire.

The RFP stated that offerors could suggest alternate personnel configurations, so long as they explained their deviations from USAID's suggestions, and that the COP did not have to be a leading expert in any particular aspect of the field because that expertise could be provided through the contractor's short-term personnel. The RFP also stated that it would be acceptable to rearrange tasks, modify the number of work-months per person depending on the individuals selected, or propose individuals with slightly different specializations than those suggested, so long as all essential tasks were covered by a combination of long- and short-term personnel without resulting in excessive costs.

The RFP provided that proposals would be evaluated by a committee of USAID officers and representatives of the host government, and identified the evaluation criteria and their relative weights as follows:

Understanding of Housing and Urban Development in Morocco	20 points
Overall Approach to the Project	35 points
Innovativeness and Viability of General Approach and Methodology	15 points
Quality of Long-Term Personnel	40 points
Quality of Short-Term Personnel	30 points
Evidence of Relevant Corporate Experience and Ability	25 points
Cost Containment and Reasonableness of Costs	35 points

With regard to the evaluation of long-term personnel, the RFP stated that the points would be allocated between the COP nominee (25 points) and the project planner (15 points) and that the evaluation would be based primarily upon relevant experience, appropriate technical and language skills and relevant academic training.

Both PADCO and TSS proposed project planners that did not quite satisfy the RFP's language proficiency requirement. After an evaluation by USAID personnel, USAID eliminated the third firm's proposal from the competitive range. TSS received an initial technical score of 133.5 and a cost score of 26; PADCO's technical score was 116 and its cost score was 18. During discussions both were asked about the language capabilities of their project planners and each responded in similar fashion--by proposing accelerated language training for the original nominee or, alternatively, another candidate with greater language proficiency. In both instances, the evaluators preferred the original candidates and considered the accelerated language training to be satisfactory. In the final evaluation the overall scores for technical and cost were 159.5 for TSS and 134 for PADCO. The agency awarded the contract to TSS, which had the highest technical rating and offered the lowest proposed cost.

PADCO argues that USAID improperly waived or relaxed the solicitation requirement regarding project planner language proficiency by accepting TSS' proposal. PADCO further argues that TSS' COP does not satisfy the requirement for knowledge of USAID's project regulations and procedures. Finally, the protester asserts that USAID failed to adhere to the RFP's evaluation scheme by excluding representatives of the Moroccan government from the technical evaluation committee.¹

PROJECT PLANNER

The evaluation record shows that the agency was concerned that the language skills of the project planners offered by both firms fell short of the RFP requirements. The matter was brought to the attention of both firms during discussions. Each firm responded in a similar manner, offering to train the candidates originally proposed or to offer alternate candidates possessing the requisite language skills. In both instances the agency evaluators chose to accept the original candidate because of the candidates' other qualifications.

The protester argues that this waiver/relaxation of the solicitation requirements was improper and takes the position that both proposals should have been rejected or the solicitation amended. We do not, however, understand how the protester was

¹In its initial protest to our Office, PADCO also contended that TSS' COP was a third-country national, not an expatriate; that TSS' costs could not be realistic; and that USAID made the award to TSS based solely on TSS' lower costs. USAID addressed these allegations in its report on the protest and PADCO did not respond to USAID's positions on these issues. We therefore consider PADCO to have abandoned these allegations. D & M Gen. Contracting, Inc., B-259995; B-259995.2, May 8, 1995, 95-1 CPD ¶ 235.

prejudiced by the agency's action. Both firms offered candidates with the same deficiency and both offered essentially the same solution during discussions, which the agency accepted in both instances. There is nothing in the record that indicates the deficiencies resulted in inconsistent ratings of the proposals. Prejudice is an essential element of every viable protest, McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51, and we will not sustain a protest where the record does not establish prejudice. We thus have no basis upon which to object to the agency's action in this regard.

CHIEF OF PARTY

PADCO argues that USAID acted improperly by accepting the TSS proposal despite the fact that the firm's proposed COP did not have the qualifications to meet the RFP requirement that the COP be responsible for ensuring adherence to all USAID project implementation regulations and procedures. The protester points out that in order to propose its fully qualified COP it had to offer a much higher salary than was proposed by TSS for TSS' less well-qualified candidate, and PADCO therefore was prejudiced in the evaluation.

The record shows that the evaluators noted that TSS' COP did not have much background in USAID regulations and procedures. They so informed TSS during discussions. The firm responded by admitting that its proposed COP was not an expert in USAID procedures but explained that he had extensive experience in the civil service and that he would be assisted by others on the proposal team who have such experience. This was acceptable to the agency.

In reviewing the propriety of an agency evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the contracting agency. North Florida Shipyard, Inc., B-260003 et al., Apr. 14, 1995, 95-1 CPD ¶ 201. Rather, we will review an evaluation only to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation. Id. There was no requirement in the RFP that a COP have any particular background, just that he be able to assume the primary responsibility for ensuring that USAID regulations and procedures were followed. The evaluators concluded that TSS' COP could adequately perform this function based upon his general civil service background and on the fact that others with the requisite knowledge of USAID regulations and procedures would be available to assist him. We do not find this conclusion unreasonable.

EVALUATION TEAM

PADCO argues that USAID violated the evaluation scheme set forth in the solicitation by failing to include representatives of the Moroccan government on the proposal evaluation team. According to the protester, those officials have unique

insight into the housing problems that are the subject of the contract and, by excluding them, USAID denied PADCO the competitive advantage inherent in its extensive past experience in working with the Moroccan government.

The RFP did specify that the proposals would be evaluated by a committee of USAID officers and representatives of the host government. However, according to the agency, it was unable to provide such an evaluation group because the host country representatives were not available.

Generally, the composition of a technical evaluation board or committee is within the discretion of the contracting agency, and we will not question the composition of the board or committee unless there is evidence of fraud, bad faith, conflict of interest, or actual bias. MGM Land Co.; Tony Western, B-241169; B-241169.2, Jan. 17, 1991, 91-1 CPD ¶ 50. Further, even the fact that the composition of the evaluation committee or board changes during the course of a procurement does not automatically indicate anything improper, so long as the underlying evaluation is reasonable and consistent with the evaluation criteria. See Space Applications Corp., B-233143.3, Sept. 21, 1989, 89-2 CPD ¶ 255.

It is unfortunate that the host country representatives were not able to participate in the evaluation. Nevertheless, in view of the fact that the record does not show that the evaluation that was conducted was unreasonable, inconsistent with the stated evaluation criteria, or otherwise improper, this matter provides no basis upon which to question the selection of TSS.

The protest is denied.

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