



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: RONCO Consulting Corporation

File: B-280113

Date: August 11, 1998

Stephen J. Edelman for the protester.

Robert A. Mangrum, Esq., and Jason I. Hewitt, Esq., Winston & Strawn, for Chemonics International, Inc., an intervenor.

Deborah James, Esq., U.S. Agency for International Development, for the agency. Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where the two highest-scored technical proposals, which received scores within 5 percentage points of each other, were reasonably determined to be essentially equal technically, award to the offeror which submitted the lower cost, lower scored proposal is unobjectionable notwithstanding the solicitation's emphasis on technical merit over cost.

DECISION

RONCO Consulting Corporation protests the award of a contract to Chemonics International, Inc. under request for proposals (RFP) No. 624-97-005, issued by the U.S. Agency for International Development (USAID) for technical services to assist the USAID/Mali Mission in increasing production, processing and trade in key economic sub-sectors.¹ RONCO alleges that the contracting officer improperly determined that the proposals of RONCO and Chemonics were technically equivalent and made award to Chemonics primarily on the basis of its low cost. RONCO also contends that the agency was biased in making its award determination.

We deny the protest.

The RFP, issued on June 24, 1997, contemplated the award of a cost-plus-award-fee performance-based contract for short- and long-term technical assistance support to and provision of non-academic in-country and third-country workshops, conferences, training, and observation tours; management of sub-contracts;

¹The contractor is to provide technical services to the Sustainable Economic Growth (SEG) core team in meeting defined performance increases in production/processing/trade in cereals, livestock, and alternative commodities.

administration of necessary commodity procurement and/or logistics; and all necessary administrative, financial and logistic support necessary to achievement of performance measures in the contract for a 4.5-year period.

Section M of the RFP provided that the government would evaluate proposals by assigning numerical ratings to each proposal under the following four factors worth a total of 1,000 points: (1) program strategy (300 points); (2) management plan (300 points); (3) work plan and performance plan (250 points); and (4) resources, experience and capability (150 points). The RFP stated that cost would not be point-scored, but would be an important factor in the evaluation. In particular, the RFP advised that "[t]echnical competence is significantly more important than cost, however, estimated cost is an important factor and its importance as an evaluation factor will increase as the degree of equality of technical competence between proposals increases." RFP § M.3. Award was to be made to the responsible offeror whose proposal was most advantageous to the government in accordance with the evaluation criteria set forth in the RFP. RFP § M.4(b).

Five offerors, including RONCO and Chemonics, submitted proposals by the August 29 closing date. A four-member technical evaluation committee (TEC) rated the initial proposals by assigning numerical scores under each evaluation factor in accordance with section M of the RFP. Narrative discussions of each offeror's strengths and weaknesses in each of the four evaluation factors were prepared. RONCO's initial technical proposal received 3,420 points and was ranked first of the five proposals.² Chemonics initial technical proposal received 3,150 points and was ranked second.

Three proposals, including RONCO's and Chemonics's, were included in the competitive range. USAID conducted written discussions and conference calls with each of these three offerors. Responses to discussions were due by November 25. The responses were reviewed by the agency evaluators and the TEC submitted a 33-page memorandum which reviewed in detail the technical proposals for the three offerors in the competitive range and provided explanatory details concerning the strengths and weaknesses of the competing proposals. Based on the evaluation memorandum and conversations with the TEC, the contracting officer made a determination that the three competitive range offerors were each technically competent to perform the required work.

By letter dated March 6, USAID requested final offers by March 20. Because offerors had previously been given the opportunity to revise their technical proposals and because all offerors were determined technically competent to perform the contract, the March 6 letters focused on the offerors' cost proposals.

²Scores assigned by each of the four TEC members were added to arrive at a total score, out of a possible total score of 4,000.

The competitive range offerors submitted final proposals which were reviewed by the TEC. The technical scores and final prices for the competitive range offerors were as follows:

Offeror	Technical Score	Price
RONCO	3,555	\$15,502,323
Chemonics	3,385	\$15,003,501
Offeror A	3,355	\$15,359,110

In response to an inquiry from the contracting officer, the TEC stated that it did not have a preference among the offerors; all three were capable of performing the contract. Although there was no explicit determination that the three proposals were technically equal, the record refers to "technical parity" and indicates that cost became the determining factor in the source selection. Memorandum of Negotiation at 6, 11. After conducting a cost analysis, as a result of which Chemonics's and RONCO's proposed costs were both found to be reasonable, complete, credible and realistic, the contracting officer determined that, based on its lowest cost, Chemonics's proposal offered the best value to the government. USAID notified offerors of the award to Chemonics, and after a May 13 debriefing, RONCO protested to our Office.

RONCO argues that, given the solicitation's emphasis on technical considerations over cost and in light of its proposal's higher technical score, the selection of Chemonics's lower-rated proposal was improper. The protester maintains that the "RFP ground rules were not followed" and that "price became the sole determining factor for the award." Protest at 1. RONCO does not challenge the technical evaluation, simply asserting that technical competence was significantly more important than cost, thus cost was to "play a minor and insignificant secondary role in awarding a contract." *Id.* RONCO points to its higher technical score and the 5 percent differential in technical scores between the two proposals. RONCO contends that the contracting officer used an incorrect .02 percent differential when comparing the technical merit of proposals because the agency report repeatedly uses the .02-percent figure.³ The agency now concedes that the .02 percent is erroneous. The protester asserts that the incorrect differential "resulted in a clear misinterpretation as to the closeness of those scores." Comments at 2. RONCO argues that its 5-percent point advantage over Chemonics "does not portray virtual equality of the technical scores" and that the agency's decision "is the direct opposite of what the RFP states." *Id.* at 1-2. RONCO also alleges that the award

³RONCO's notes from its debriefing indicate that the agency stated there that the difference in technical scores was 0.2 percent.

decision was biased because the protester was purportedly told during the debriefing that there was "substantial pressure" on the contracting officer not to award follow-on contracts to incumbent contractors.

Contrary to the protester's assertions, a finding of technical equality need not be based on strict equality in terms of point scores. The Gerard Co., B-260495, June 22, 1995, 95-1 CPD ¶ 290 at 2; WB Inc., B-250954, Feb. 23, 1993, 93-1 CPD ¶ 173 at 3. The significance of a given point spread depends upon all the facts and circumstances surrounding a given procurement; the point scores themselves are not controlling, reflecting as they do the disparate subjective judgments of evaluators, but are useful as guides to intelligent decision-making. Earle Palmer Brown Cos., Inc., B-243544, B-243544.2, Aug. 7, 1991, 91-2 CPD ¶ 134 at 10. Proposals have properly been viewed as essentially equal from a technical standpoint notwithstanding scoring differentials between proposals of more than 15 percent. Lockheed Corp., B-199741.2, July 31, 1981, 81-2 CPD ¶ 71 at 6-9; see also Ogilvy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332 at 5-6 (a difference of 6 percent found approximately equal).

The record here supports a determination that the proposals were essentially equal technically. Contrary to the protester's contentions, there is no basis to conclude that the 170-point difference in overall technical scores assigned the two proposals, by itself, represents a finding by the TEC of RONCO's technical superiority. Individual members of the TEC awarded RONCO's best and final offer (BAFO) scores ranging from 840 to 930 and awarded Chemonics's BAFO scores ranging from 770 to 960.⁴ The evaluation narratives show that both proposals, despite their distinct approaches to meeting the RFP requirements, were viewed as presenting many strengths and clear and thorough explanations for the majority of issues. The TEC also found that RONCO did not fully address three issues, and that Chemonics did not fully address four issues raised in discussions. For example, the TEC felt that RONCO's response to a question concerning its information and communications system was unfocused and presented "a list of virtually everything possible that can be done without presenting a methodical strategy for establishing a market information system" Competitive Range Evaluation Results Memorandum at 9. The TEC also found that while RONCO's BAFO identified important policy areas, it did not "prioritize the policies or provide a strategy for affecting policy changes. . . ." Id. at 11. As for Chemonics's BAFO, the TEC remained unconvinced that Chemonics's approach for acquiring local short-term technical assistance was reasonable, id. at 13-14, and concluded that the BAFO did not adequately identify opportunities that could be immediately exploited given what is currently known about Mali's agribusiness sector. Id. at 20. Finally, the

⁴The four scores for RONCO's proposal were 840, 860, 925 and 930, resulting in an average score of 888.75; the four scores for Chemonics's proposal were 770, 800, 855 and 960, resulting in an average score of 846.25.

contracting officer's record specifically notes that the evaluators concluded that all three offerors in the competitive range were qualified and capable of performing the work and that the evaluators did not have a preference among offerors.

Memorandum of Negotiation at 4. As provided by the RFP, and contrary to the protester's position that cost was of minor, secondary importance, the importance of an offeror's price/cost component was to "increase as the degree of equality of technical competence between proposals increases." RFP § M.3. Thus, the solicitation expressly recognized that cost could become the determining factor between two proposals that were determined to be equal technically. Here, based on the closeness of the technical point scores and the evaluation narrative which reasonably supports a finding of technical equality, award based on cost was proper and consistent with the RFP selection criteria.

As to RONCO's belief that the contracting officer's mathematical error "totally changed the technical outcome/cost outcome balance," Comments at 2, because the contracting officer used the incorrect .02 percent differential in making his award determination, the record does not show that the contracting officer relied on the incorrect .02 percent differential in the selection decision. Indeed, no percentage differential between the proposals was given in the agency's contemporaneous evaluation documents; rather, the agency's analysis provides, as noted above, the strengths and weaknesses in each of the competitive range proposals, the total point scores for each proposal and the cost evaluation results. Further, the contracting officer has acknowledged this mathematical error and stated that the 5 percent differential in technical scores "does not change my conclusion that there was no significant difference among the technical proposals in the competitive range" Declaration of Contracting Officer at 1. On this record, we conclude that the award determination is unobjectionable.

The protester also alleges agency bias against the protester, stating that the contracting officer told the protester at its debriefing that there was "substantial pressure" on him not to award a follow-on contract to the incumbent. Protest at 3.

Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Const. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. In addition to producing credible evidence showing bias, the protester must demonstrate that the agency bias translated into action that unfairly affected the protester's competitive position. Id. RONCO has furnished no credible evidence to support its allegation, and the contracting officer denies having made the alleged statement. Because the record supports the reasonableness of USAID's award determination, it provides no basis upon which to question the motives of the evaluators or the contracting officer.

Finally, the protester complains that, after award, Chemonics substituted a new chief of party for the individual originally proposed for this position and asserts that

because this is a key position, the agency should reopen the competition. Protester's July 17 Submission at 1.

Substitution of key personnel after contract award generally is not objectionable unless the offeror intentionally misrepresented the availability of personnel or was aware of the unavailability of personnel during the procurement process. Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577 at 3-4. For example, where the offeror provides firm letters of commitment and the names are submitted in good faith with the consent of the respective individuals (that is, the offeror is not proposing personnel it has no intention of providing), the fact that the offeror, after award, provides substitute personnel does not make the award improper. Id.

RONCO explicitly states that it is not alleging that Chemonics engaged in a "bait-and-switch" endeavor here. Protester's July 17 Submission at 1. The record shows that the name of Chemonics's proposed chief of party was submitted in good faith and that the awardee had no idea that this individual would fail to follow through on his commitment. Specifically, Chemonics's proposal contains a signed letter of commitment from the proposed chief of party. The proposed chief of party visited Chemonics's home office and was interviewed by members of the awardee's management. The proposed individual also participated in proposal preparation. A copy of a May 19, 1998 e-mail message indicated that the proposed chief of party intended to attend home office orientation on June 1. However, 2 days later, on May 21, the proposed individual notified Chemonics that he would not serve as chief of party under this contract and, on the following day, Chemonics notified USAID that its proposed chief of party had withdrawn. The agency has advised our Office that it has approved Chemonics's proposed replacement. Nothing in the RFP prohibits substitution of personnel, and by itself, substitution after contract award provides no basis to conclude that the award was improper or that the agency should reopen the competition where, as here, there is nothing in the record to suggest that Chemonics acted in bad faith in proposing its chief of party or misrepresented its proposed personnel. Whether any substituted personnel are qualified to fill the vacated position is a matter of contract administration which our Office will not review. 4 C.F.R. § 21.5(a) (1998).

The protest is denied.

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