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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

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## Decision

**Matter of:** International Resources Group

**File:** B-286663

**Date:** January 31, 2001

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Jessica C. Abrahams, Esq., and Lorenzo F. Exposito, Esq., Powell, Goldstein, Frazer & Murphy, for PA Consulting Group, an intervenor.  
Kevin F. O'Donnell, Esq., Agency for International Development, for the agency.  
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. For purposes of Federal Acquisition Regulation § 15.505(a)(1), which provides that an offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition, where e-mail notification of an offeror's exclusion from the competitive range enters the offeror's computer system after close of business or on a weekend or holiday and is not opened before the following business day, receipt of the notice is considered to have occurred on that business day.
  2. Agency improperly reopened discussions with only one of several offerors in the competitive range after receipt of final revised proposals.
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### DECISION

International Resources Group (IRG) protests the rejection of its proposal and the award of a contract to Hagler Bailly Services, Inc. (HBS)<sup>1</sup> under request for proposals No. OEEI1284-00-003, issued by the Agency for International Development (AID) for technical assistance and training to improve the management of natural resources, especially water and energy, in the Central Asian Republics of Kazakhstan, Kyrgyzstan, Turkmenistan, and Uzbekistan. The protester contends that the agency misled it during discussions and engaged in improper discussions with HBS.

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<sup>1</sup> Subsequent to award of the contract, HBS was acquired by PA Consulting Group.

We sustain the protest.

The RFP, which was issued on March 31, 2000, contemplated the award of either a cost-plus-award-fee or cost-sharing contract for a base period of 3 years and an option period of another 2 years. RFP §§ B.2, L.4. The solicitation provided for award to the offeror whose proposal represented the best value to the government, with technical aspects of the proposal of significantly greater importance in the determination than cost. RFP § M.1. Technical evaluation factors, listed in order of their significance, were as follows:

1. Qualifications of personnel
2. Managerial Capacity
3. Proposed Performance Benchmarks/Results
4. Technical approach and methodology
5. Past performance

The RFP provided that offerors would be free to present their own plans for staffing the contract, but furnished an illustrative staffing pattern as guidance. RFP § F.5. The illustrative staffing pattern consisted of a management cluster and three technical clusters: training/partnerships, energy, and water and environment. Significant positions to be filled within the management cluster were Chief of Party (COP), Deputy COP, and Financial/Contracting Officer. The RFP required that the above three individuals and the leaders of the three technical clusters be resident in the Central Asian Republics. Id.

Seven offerors submitted proposals prior to the May 31 closing date. A technical evaluation committee (TEC) reviewed and scored the offerors' technical proposals; upon review of the TEC's findings and proposed costs, the contracting officer determined that the three proposals with the highest technical scores--i.e., those of HBS [deleted], IRG [deleted], and Offeror A [deleted]--should be included in the competitive range. Proposed costs for the three offerors included in the competitive range were as follows: [deleted]. The contracting officer conducted discussions with the three offerors via e-mail and instructed each to submit a final revised proposal.

After receipt of HBS's and IRG's final revised proposals (but prior to receipt of Offeror A's),<sup>2</sup> the contracting officer notified the offerors in the competitive range

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<sup>2</sup> The offerors were not given a common deadline for submission of revised proposals, apparently because they were not furnished with their discussion questions on the same date. IRG's final revised proposal was due on July 12; HBS's on July 13; and Offeror A's on July 26. The assignment of differing deadlines for the submission of final proposal revisions is contrary to Federal Acquisition Regulation

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(again, via e-mail) that two of the tasks called for under the original RFP had been deleted and that the budget ceiling for the 3-year base period had been reduced to \$17.9 million. IRG and HBS were given until July 27 to submit revised proposals based on the reduced requirements. Both responded with lower-cost proposals; HBS now proposed costs for the base period as [deleted], while IRG proposed costs of [deleted].

In early August, the TEC reconvened to evaluate the revised proposals. [Deleted] Memorandum of Negotiation at 19; Memo for Post-Award Debriefing of IRG at 2.

The evaluators [deleted], noting that the original proposal had been strong and that “the offeror wisely did not tamper significantly with it.” Memorandum of Negotiation at 18. The TEC found the HBS proposal to be the superior offer from a technical perspective and in line for award, but since the proposal was “not without its weaknesses and uncertainties,” it recommended that the contracting officer conduct further negotiations with HBS. Id. at 20-21.

The contracting officer proceeded to engage in a series of communications with HBS. By e-mail of August 8, the contracting officer furnished HBS with a list of technical and cost comments regarding its proposal and instructed the offeror to take them into careful consideration in crafting a response, which was due on August 16. [Deleted]<sup>3</sup>

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(FAR) §15.307(b), which requires the contracting officer to establish a common cut-off date for receipt of final proposal revisions. Because discussions were reopened and another round of final revised proposals requested, there is no evidence that IRG was prejudiced by this violation, however.

<sup>3</sup> Other communications with HBS after receipt of the July 27 final revised proposals but prior to IRG’s exclusion from the competitive range, as summarized by the agency in its report, included the following:

- July 29--Contracting officer asks HBS to clarify certain assumptions in the alternative proposal that it submitted on July 27. (In response to the reduced scope of work, HBS had submitted both a primary and an alternate proposal, as permitted by § L.6(b) of the RFP).
- August 22--Contracting officer seeks further clarification and asks HBS to consider withdrawing its alternate offer.
- August 29--HBS submits [deleted] proposal based on its primary proposal.
- Sept. 1--Contracting officer furnishes HBS further comments on [deleted].
- Sept. 6--HBS responds [deleted].

(continued...)

On August 10, while communications with HBS were underway, IRG contacted the contracting officer for information regarding the approximate date on which the agency expected to make an award decision. By e-mail of August 12, the contracting officer responded that he and the evaluators were “taking time to consider the revised offers, including IRG’s,” and that they hoped to wrap things up within the next week to 10 days. In other words, according to the contracting officer, IRG was still under consideration for award—i.e., was still in the competitive range—as of August 12. On September 1,<sup>4</sup> IRG again contacted the contracting officer, inquiring as to the status of award. Later the same day, the contracting officer notified IRG that it had been excluded from the competitive range.

By e-mail dated September 7, IRG requested a debriefing. On September 20, having received no response from the agency, IRG reiterated its request. Award to HBS was made on September 26. On October 6, the agency notified the protester that it would furnish a post-award debriefing on October 12. The debriefing was held on October 12, and IRG protested to our Office on October 23.

As a preliminary matter, the intervenor, PA Consulting Group (which, as noted above, acquired HBS after award of the contract here), argues that IRG’s complaint

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- Sept. 13—Following additional communications, HBS revises [deleted].
- Sept. 15—HBS submits [deleted].

Since, as discussed below, we find that the communications between HBS and the agency on August 8 and 15 constituted discussions, we need not address whether these other exchanges also constituted discussions.

<sup>4</sup> There is confusion regarding the dates on which various e-mails pertaining to this protest were sent and received. For example, the records furnished to us by the agency indicate that IRG sent its message inquiring as to the award status to the contracting officer in Kazakhstan at 3:39 a.m. on September 2 and that the contracting officer sent a return message at 11:31 p.m. on September 1, a time sequence which does not make sense. We assume that the explanation for the incongruity is that Kazakhstan is in a time zone 11 hours ahead of Washington, D.C., where IRG is located, and that the time and date of the message is expressed in terms of the local time at the receiving end. In other words, IRG sent its message to the contracting officer at 4:39 p.m. Washington time on September 1, which was 3:39 a.m. on September 2 in Kazakhstan, the time and date shown on the agency’s copy of the e-mail. Although the contracting officer received and responded to the message on September 2 Kazakhstan time, it was still September 1 in Washington when he sent his response back.

regarding the discussions conducted with HBS should be dismissed as untimely because it was not filed within 10 days after the protester learned of its basis for protest. PA contends that IRG clearly knew of this basis for protest by September 1,<sup>5</sup> but did not file its protest until October 23. PA acknowledges that our Bid Protest Regulations provide for an exception to the requirement that a protest be filed not later than 10 days after the basis of protest is, or should have been, known where the protest challenges a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required, 4 C.F.R. § 21.2(a)(2) (2000), but argues that the debriefing here was not required because it was not requested in a timely manner. PA notes that in order for a request for a pre-award debriefing to be timely, it must be made “within 3 days after receipt of the notice of exclusion from the competitive range.” FAR § 15.505(a)(1). PA contends that IRG’s request for a pre-award debriefing was untimely because it was not filed until September 7, 6 days after IRG received notice of its exclusion from the competitive range on September 1.

Although the e-mail message notifying IRG of its exclusion from the competitive range was apparently sent by the agency shortly before midnight (Washington, D.C. time) on September 1, it did not enter IRG’s computer system until approximately 12:16 a.m. on Saturday, September 2, Declaration of IRG’s Vice President ¶ 5, and was not opened by the recipient until the following business day, Tuesday, September 5.<sup>6</sup> Supplemental Declaration of IRG’s Vice President ¶ 4. Where an e-mail notification of exclusion from the competitive range enters an offeror’s computer system after close of business on a weekday or on a weekend or holiday and is not opened before the following business day, we think that for purposes of FAR §15.505(a)(1), receipt of the notice should be considered to have occurred on that business day.<sup>7</sup> To construe receipt of an e-mail notification as occurring when the notification enters the offeror’s computer system, even when the entry occurs outside of normal business hours, would lead to a reduction of the 3-day period for requesting a debriefing granted by the FAR to a single day when the notification is transmitted after close of business on Friday or on Saturday of a weekend followed by a Monday holiday. Accordingly, we find that IRG’s request for a preaward debriefing here, which was filed within 3 days after IRG received notice of its exclusion from the competitive range on September 5, was timely.

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<sup>5</sup> PA cites as evidence that IRG was aware of its basis for protest on September 1 IRG’s statement on pages 3-4 of its protest that in its e-mail to the contracting officer on September 1, “IRG informed AID that . . . Hagler personnel indicated Hagler was responding to AID requests on almost a daily basis.”

<sup>6</sup> Monday, September 4 was the Labor Day holiday.

<sup>7</sup> We would consider the message received on that business day, however, even if it were not actually read until later.

The protester argues that it was improper for the agency to engage in further discussions with, and request additional proposal revisions from, HBS while failing to afford other offerors in the competitive range the same opportunity. As explained below, we agree.<sup>8</sup>

If a procuring agency holds discussions with one offeror, it must hold discussions with all offerors whose proposals are in the competitive range. FAR § 15.306(d)(1); Charleston Marine Containers, Inc., B-283393, Nov. 8, 1999, 99-2 CPD ¶ 84 at 6; Strategic Analysis, Inc., B-270075, B-270075.4, Feb. 5, 1996, 96-1 CPD ¶ 41 at 4. Similarly, if discussions are reopened with one offeror after receipt of final revised proposals, they must be reopened with all offerors in the competitive range. Patriot Contract Servs., LLC et al., B-278276 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 5 n.3. Discussions occur when an offeror is given the opportunity to revise or modify its proposal, or when information requested from and provided by an offeror is essential for determining the acceptability of its proposal. FAR § 15.306(d); J. A. Jones/ IBC Joint Venture; Black Constr. Co., B-285627.2, Sept. 18, 2000, 2000 CPD ¶ 161 at 5.

Here, we find that the communications between AID and HBS after final revised proposals were requested from other offerors in the competitive range constituted discussions because HBS was given the opportunity to, and did, revise its proposal. [Deleted] The communications between HBS and the agency which resulted in these changes to HBS's proposal thus constituted discussions, and since offerors other than HBS remained in the competitive range at the time these discussions were conducted, the agency violated its duty to reopen discussions with these offerors as well.

IRG was prejudiced by AID's actions because it is possible that IRG's proposal could have been improved enough through further discussions to become the best value offer. In this regard, where we find an impropriety in the conduct of discussions, we will resolve any doubts concerning the prejudicial effect of the agency's actions in favor of the protester; a reasonable possibility of prejudice is a sufficient basis for sustaining the protest. National Med. Staffing, Inc., B-259402, B-259402.2, Mar. 24, 1995, 95-1 CPD ¶ 163 at 4. For example, one of the principal weaknesses in IRG's

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<sup>8</sup> Since the agency maintains that the contracting officer did not eliminate IRG from the competitive range until early September--see, e.g., Agency Report at 12 ("the Agency thus believes it acted reasonably and within established precedent in narrowing the competitive range to one in September--by which time discussions with HBS had clearly gone well and it would have been to no purpose to continue including IRG in the competition")--we need not consider whether the contracting officer could reasonably have determined to exclude the protester from the competitive range at an earlier point.

proposal cited by the agency in its debriefing memorandum was the [deleted]. The protester maintains that had it been informed that the agency viewed this approach to staffing as a weakness, it [deleted]. Protester's Comments, Dec. 6, 2000, at 22. A second principal weakness in IRG's proposal cited by the evaluators was its [deleted]. This also appears to be a weakness that the protester could have remedied had it been given the opportunity.

We recommend that the agency reopen discussions with all of the offerors who remained in the competitive range at the time AID engaged in additional discussions with HBS during mid-August and that it request another round of final revised proposals.<sup>9</sup> If, after evaluation of the revised proposals, the agency determines that the proposal of an offeror other than HBS represents the best value to the government, we recommend that AID terminate the contract awarded to HBS and make award to the offeror whose proposal represents the best value. We also recommend that the agency reimburse the protester for its costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2000). In accordance with section 21.8(f) of our Regulations, IRG's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of the decision.

The protest is sustained.

Anthony H. Gamboa  
Acting General Counsel

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<sup>9</sup> Because we are sustaining the protest on this basis and recommending that the agency reopen discussions, we need not address the protester's argument that the agency misled it during the previously conducted discussions.