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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-205636

**DATE:** September 22, 1982

**MATTER OF:** Energy and Resource Consultants, Inc.

**DIGEST:**

1. It was not unreasonable for the procuring agency to consider personnel experience in evaluating the criteria listed under the "Experience of Organization" evaluation factor in the RFP.
2. Where subcontracting is not restricted in the RFP, procuring agency is not precluded from accepting proposal with substantial subcontractor participation.
3. Where protester contends subcontractor is a "shell" of a corporation formed for the sale of firewood and other wood products, but procuring activity has indicated that corporate charter does not impose any limitations on the kind of work corporation can do and that a team of professors and other persons have worked together under the corporate name before on technical programs similar to that in the RFP, it was not unreasonable for the procuring activity to have no reservations about the corporation's proposed performance.
4. The determination of the relative merits of proposals is the responsibility of the procuring agency and it is not the function of any other instrumentality, including GAO, to make an independent determination of the relative merits of proposals.
5. Speculation that procuring activity disclosed protester's proposal to competitor during negotiations, which is denied by procuring activity, does not meet protester's burden of proof.

6. Whether personnel performing for subcontractor are in violation of the consulting policy and conflict of interest rules of the university where they are also employed is a private matter between the personnel and the university and not for consideration by GAO.

Energy and Resource Consultants, Inc. (ERC), protests the award to Mountain West Research, Inc. (MWR), of a contract for the development of a socio-economic component for the development of shale oil under request for proposal (RFP) No. YA-553-RFP1-1043 issued by the Department of the Interior, Bureau of Land Management (BLM).

We deny the protest.

ERC protests against the award to MWR on several grounds. ERC's first complaint is that, in the evaluation of proposals under the "Experience of Organization" factor in the RFP, BLM evaluated the experience of the individuals associated with Agricultural Enterprises, Inc. (AEI), one of MWR's principal subcontractors, instead of the experience of the corporation. In this regard, ERC points out that while the individuals who are associated with AEI have had experience in performing for other institutions, AEI itself is a "shell" and has had little experience. ERC contends that the evaluation was improper since the RFP contained a separate category for the evaluation of the experience of individuals.

It is not our function to evaluate proposals. Cost Services and Publications Incorporated, B-206523, June 16, 1982, 82-1 CPD 595. That function is the responsibility of the procuring agency and the determination of the procuring agency will not be disturbed absent a clear showing of unreasonableness. Joanell Laboratories, Inc., 56 Comp. Gen. 291 (1977), 77-1 CPD 51.

While it is true, as ERC contends, that the RFP contained a separate factor, "Qualifications of Key Personnel (10 points)," to evaluate the experience of

individuals, that factor was limited to evaluation of the "Graduate level degrees in Economics" and the "working knowledge \* \* \* of input/output analysis as it relates to Energy Development in the West." The "Experience of Organization (50 points)," on the other hand, provided for the evaluation of "experience of completing an input/output analysis based on primary and secondary data," "experience in building input/output models of the magnitude described in this project and putting the model on \* \* \* computer," "capability of successfully building an interactive system that would allow field use of the input/output model that has been developed," and "knowledge of the data requirements working sources." The "Experience of Organization" factor is far more encompassing than the "Qualifications of Key Personnel" factor and lists items separate and apart from the latter factor.

The "Experience of Organization" factor does not state that it is limited to institutional experience. As the contracting officer has indicated, the dictionary definition of "organization" encompasses "personnel." Thus, we do not find that it was unreasonable for the procuring agency to consider personnel experience in evaluating the criteria under the "Experience of Organization" factor. In that connection, we note that in a companion area, the matter of determining the responsibility of offerors, it is not improper to consider the experience of the principal officers of the offeror for that purpose. Hydromatics International Corporation, B-180669, July 29, 1974, 74-2 CPD 66.

ERC's second objection to the award to MWR is that MWR is relying heavily upon subcontractors to perform the contract. However, there is no restriction on subcontracting in the RFP. ERC also proposes to subcontract. In the absence of a restriction in the RFP against subcontracting, there is no prohibition on the Government's right to accept a proposal that proposes substantial subcontractor participation. Presentations South, Inc., B-196099, March 18, 1980, 80-1 CPD 209.

ERC's third objection to the award to MWR is that its subcontractor, AEI, is a "shell" of a corporation formed for the "Sale of Firewood and Other Wood

Products' rather than for the conduct of technical research. However, the procuring activity has indicated that the corporate charter does not impose any limitation on the kind of work it can do and that a team of professors and other persons has worked together before on similar programs as an organizational unit under the AEI name. Therefore, the procuring activity had no reservations about AEI's proposed performance. In the circumstances, we are unable to conclude that the decision of the procuring activity with regard to AEI was unreasonable.

ERC also contends that its proposal is technically superior to MWR's and suggests that the proposals be submitted to an independent evaluator. However, as indicated above, the determination of the relative merits of proposals is the responsibility of the procuring agency. It is not the function of any other instrumentality, including our Office, to make an independent determination of the relative merits of the proposals. Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD 285. The determination rests with the procuring agency since it must bear the burden of any difficulties incurred by reason of a defective evaluation. Centurion Films, Inc., supra. In light of this, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and that discretion will not be disturbed where it is not shown to be arbitrary. Centurion Films, Inc., supra; Joanell Laboratories, Inc., supra. Although ERC has made a general statement that its proposal is superior to MWR's, ERC has presented no evidence to show that the procuring agency's determination of superiority is unreasonable.

ERC also alleges that the procuring activity disclosed its proposal to MWR during negotiations because the MWR final proposal is similar to ERC's proposal in some respects. BLM denies the allegation. The protester has the burden to affirmatively prove its allegation. Reliable Maintenance Service, Inc., -- request for reconsideration, B-185103, March 24, 1976, 76-1 CPD 337. Absent any probative evidence of the actual disclosure of the ERC proposal, we must assume

that ERC's allegation is speculative and we conclude that ERC has not met its burden of proof. Domar Industries Co., Inc., B-202735, September 4, 1981, 81-2 CPD 199.

Finally, ERC contends that the performance of the BLM contract by three AEI personnel will violate the consulting policy and conflict of interest rules of the university where they are also employed. If there is such a violation, that is a private matter between the personnel and the university and not for consideration by our Office. Ted R. Brown & Associates, Inc., B-201724, February 23, 1981, 81-1 CPD 127.

*Harry W. ...*  
Comptroller General  
of the United States