

DECISION



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

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FILE: B-218298

DATE: May 23, 1985

MATTER OF: National American Indian Housing Council

DIGEST:

1. In reviewing protests against allegedly improper evaluations, GAO will not substitute its judgment for that of the contracting agency's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed solicitation criteria.
2. Mere disagreement with the results of the agency's evaluation does not meet the protester's burden of proving that the evaluation was itself unreasonable.
3. A protester cannot realistically assert that its proposal was improperly determined to be materially deficient for not specifying a qualified project director and staff directly responsible for the contract effort, where the RFP clearly provided that the qualifications of personnel in charge of the work constituted the most important evaluation criterion.
4. Although, as a general rule, an RFP must contain sufficient information for offerors to compete intelligently and on a relatively equal basis, the rule is inapplicable in a situation where the information not provided was virtually unrelated to the RFP's requirements and thus was not necessary for the proper preparation of proposals.

The National American Indian Housing Council (NAIHC) protests the award of a contract to the National Indian Housing Improvement Association (NIHIA) under request for

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proposals (RFP) No. BIA K51-0040, issued by the Department of the Interior, Bureau of Indian Affairs (BIA), under the authority of the Buy Indian Act, 25 U.S.C. § 47 (1982), as a set-aside limited to organizations 100 percent Indian-owned and -controlled. The procurement was for the acquisition of data-gathering and analytical services to improve the quality of the annual Indian housing inventory for the BIA's Housing Improvement Program (HIP). NAIHC complains that the BIA improperly evaluated its proposal as technically unacceptable, and that the successful offeror may have gained an unfair competitive advantage through knowledge of a current BIA data resource, information about which was not provided to the other offerors. We deny the protest.

The RFP provided that the contractor was to collect, analyze, and consolidate an actual housing need inventory for each Indian tribe, pueblo, and native Alaskan village in the United States. The contractor was to identify and monitor new housing recipients under certain HIP grant categories, analyze and consolidate quarterly HIP reports, develop procedures to eliminate excessive delay in the collection of these reports, and develop a uniform criterion to be used by tribes in the selection of eligible applicants for HIP grants.

The RFP's stated evaluation criteria for proposals were as follows:

- (1) qualifications of the offeror's personnel in charge of the work (including education, relevant experience, and knowledge of HIP) (40 points);
- (2) completeness and thoroughness of the offeror's proposed approach to perform the services (30 points);
- (3) qualifications, experience, capability, and accomplishments of the offeror as an organization (20 points); and
- (4) cost effectiveness of the proposed technical approach (10 points).

Six proposals were received in response to the RFP. Award was made to NIHIA on the basis of initial

proposals as only NIHIA's proposal was determined to be within the competitive range. NIHIA's proposed cost of \$80,660 was only marginally higher than the BIA's own estimate for the work.

In contrast, NAIHC's proposal received the lowest technical rating of the five unacceptable proposals, and its proposed cost of \$197,500 was the highest. A panel of three BIA evaluators determined that the proposal was deficient because: (1) NAIHC had not specified any project director and supporting staff for the work, the firm having stated in its proposal that it would initiate recruitment efforts for a project director once it received the award; and (2) the firm's proposal failed to show any understanding of the HIP as a grant program and of the BIA's need for an accurate annual housing inventory, NAIHC having proposed to collect data from other federal agencies that, according to BIA, have no involvement with the HIP and, therefore, have no data for use in performing the contract requirements. For the personnel qualifications criterion, rated as worth 40 points, NAIHC received only an average score of 1.7 points; in fact, two of the evaluators rated the proposal as "0" in this area. Similarly, NAIHC only received an average score of 5.7 points for the completeness and thoroughness of its proposed technical approach.

NAIHC contends that the BIA improperly downgraded the proposal because of a perceived lack of qualified personnel when, in fact, NIHIA proposed for the project two former staff members of NAIHC who did not terminate their employment with NAIHC until after the submission of proposals, and that this meant that NAIHC's prior experience was impermissibly "transferred" to NIHIA. NAIHC further asserts that the BIA's evaluation was erroneous because the firm's proposed technical approach in acquiring data bases from other agencies was consistent with the BIA's need for a comprehensive inventory of Indian housing, and that these agencies (especially the Department of Housing and Urban Development (HUD)) play major roles in the provision of such housing.

NAIHC also believes that the proper conduct of the procurement is open to question because the firm is now aware that the BIA is in the process of collecting an actual inventory of Indian housing by means of detailed house-by-house survey. NAIHC alleges that NIHIA may have

been aware of the availability of this data resource, which was not made known to the other offerors, thereby enabling the firm to gain an unfair competitive advantage in preparing its proposal. NAIHC contends that the implementation of this survey means that the subject RFP did not accurately set forth the agency's actual needs, and that, accordingly, all offerors should have been informed of its existence so that they would not have proposed unnecessary data-gathering efforts. We find the protest to be without merit.

In reviewing protests against allegedly improper evaluations, we will not substitute our judgment for that of the contracting agency's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed solicitation criteria and whether there were any violations of procurement statutes and regulations. D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 CPD ¶ 396. A protester's mere disagreement with the results of the evaluation does not meet the protester's burden of proving that the evaluation was itself unreasonable. A.B. Dick Co., B-207194.2, Nov. 29, 1982, 82-2 CPD ¶ 478.

We do not agree with NAIHC's assertion that the BIA's evaluators erred in concluding that the firm's proposal was wholly deficient with respect to the personnel qualifications criterion, because the proposal failed to set forth any staff directly responsible for the work, and NAIHC acknowledged that it had yet to retain a qualified project director. The RFP clearly provided that this criterion would be of greatest importance in selecting the successful offeror and specifically stated in the instructions section that proposals "shall contain the names of the project manager and others to be assigned for direct work on the study, including education, background, accomplishments, and other pertinent information." NAIHC at no point indicates why this material deficiency should not have formed the basis for the extremely low evaluation scores given NAIHC's proposal under that criterion. Although NAIHC in essence complains about the fact that it lost certain qualified staff members to NIHIA, we do not think that this has any bearing upon the reasonableness of the BIA's evaluation of proposals. In this regard, we see

no legal ground for the firm's assertion that this personnel loss somehow led to a "transfer" of NAIHC's prior experience to NIHIA during the evaluation process. Although these individuals may have still been in NAIHC's employ at the time of proposal submission, it is clear from an examination of NIHIA's proposal that they were fully committed to working for NIHIA throughout the entire period of contract performance.

It is well settled that an offeror bears the burden to submit an adequately written proposal. Marvin Engineering Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15. Thus, NAIHC's failure to specify a qualified project director and staff responsible for the project is the fault of the firm--in our view, this material deficiency was sufficient, under the RFP's stated criteria, to render the proposal unacceptable for that reason alone--and we do not believe that NAIHC can realistically argue otherwise.

To the extent that NAIHC contends that its proposal was improperly evaluated with regard to the completeness and thoroughness of its technical approach, the firm's contention is nothing more than a mere disagreement with the evaluators' judgments and, hence, does not serve to demonstrate that those judgments were unreasonable. A.B. Dick Co., B-207194.2, supra.

Here, the BIA evaluators concluded that NAIHC's evaluators concluded that NAIHC's technical approach in performing the data-gathering and analytical requirements of the RFP was unacceptable because NAIHC in large measure proposed to rely upon the information resources of other federal agencies which are simply not involved in the HIP. The evaluators determined from NAIHC's proposal that the firm had not shown a basic understanding of the nature and objectives of the HIP inventory project, and that its proposed data-gathering and analytical efforts were beyond what was necessary to meet the BIA's particular needs. From our examination of NAIHC's proposal, we see nothing to contradict the evaluators' conclusions in this area. Much of NAIHC's proposal is devoted to the concept of conducting meetings with personnel of other federal agencies for purposes of accessing and analyzing those agencies' Indian housing data base information. The ultimate goal of this approach is the establishment of

of a multiuser data base system which, from all appearances, would benefit the information-gathering ability of other agencies rather than serve to improve the BIA's Indian housing inventory. Since, as the BIA informs us, these other agencies have no involvement with the HIP and, therefore, no useful information for performing the contract, it is obvious that NAIHC's technical approach demonstrated a lack of understanding of the RFP's requirements. Hence, we see nothing unreasonable in the BIA's negative evaluation of the firm's proposal in this area.

With regard to NAIHC's contention that the existence of the current BIA Indian housing survey should have been made known to all offerors and that NIHIA may have had knowledge of it to its unfair advantage, the BIA states that this effort is separate and distinct from the work called for under the RFP. According to the BIA, the present survey was developed for use by BIA local agencies and tribes in the preparation of tribal HIP plans required in seeking BIA funding. The BIA states that the survey is part of a congressionally mandated new distribution system for such funding and represents a one-time effort that is unrelated to the work required under the RFP. Accordingly, the BIA asserts that there was no need to inform offerors of the survey's existence, as this knowledge was unnecessary for the preparation of proposals that would satisfy the RFP's requirements.

As a general rule, offerors must be given sufficient information to compete intelligently and on a relatively equal basis. University Research Corp., B-216461, Feb. 19, 1985, 64 Comp. Gen. _____, 85-1 CPD ¶ 210. Furthermore, in this regard, any information provided to one offeror must be promptly furnished to all other offerors in the form of a solicitation amendment if the information is necessary in submitting proposals, or if the lack of such information would be prejudicial. Id.

However, in this matter, we agree with the BIA that the nature of the survey was such that it was not germane to the RFP's requirements and, thus, offerors were not adversely affected by not knowing of its existence. The purpose of the survey is to obtain data from each tribe about the housing (principally HUD-funded) in current existence. The survey forms ask for specific information

with regard to such features as the construction, condition, nature of water and electrical systems, type of rooms, and number of occupants of each identified housing unit. The information is to be used for budgetary purposes in fiscal year 1985. In contrast, the BIA states that the annual Indian housing inventory, which, it points out, is only one aspect of the RFP's requirements, has been an on-going process since 1968, the purpose of which is to identify, in a given fiscal year: (1) construction starts; (2) number of units completed; (3) anticipated construction starts for the following fiscal year; (4) total number of homes completed from 1963 to the present; and (5) the current Indian housing need.

We believe that the BIA is correct in stating that the data obtained from the survey would be of little use to a contractor in improving the quality of the annual housing inventory, given that the two sets of data would have essentially no correlation with each other. Accordingly, information about the existence of the survey was not necessary for proper proposal preparation. See the Federal Acquisition Regulation, 48 C.F.R. § 15.402(a) (1984); see also Telephonics Corp., B-194110, Jan. 9, 1980, 80-1 CPD ¶ 25.

In the same vein, we have found nothing from our examination of NIHIA's successful proposal to indicate that the firm had any prior knowledge of the survey and, since the survey was unrelated to the RFP's requirements in any event, the allegation that NIHIA may have gained an unfair competitive advantage need not be considered further.

The protest is denied.

for Seymour E. Gove
Harry R. Van Cleave
General Counsel