



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SRI International
File: B-224424
Date: October 7, 1986

DIGEST

1. Allegation that conflict of interest exists because awardee proposed to utilize 3 members of 10-member advisory panel that made recommendations to the contracting agency as to how to best proceed under the current solicitation is denied where all deliberations of the panel were made available and where there is no evidence that panel members had access to any information which provided the awardee with an unfair advantage in the procurement.
2. Allegation that agency engaged in technical leveling and transfusion by issuing an amendment which required the protester's approach in one technical area and improperly discussed protester's proposed solution with an offeror in another area is denied where record shows that all offerors included in their proposal the same technical approach proposed by the protester and where there is no evidence that discussions were held in order to raise other proposals to protester's level.

DECISION

SRI International (SRI) protests the award of a contract to Abt Associates, Inc. (Abt) under request for proposals (RFP) OAA-86-02 issued by the Department of Labor (DOL) to evaluate the effectiveness of the Job Training Partnership Act (JTPA). SRI contends that the award to Abt creates an improper organizational conflict of interest. Also, SRI argues that DOL engaged in technical leveling and transfusion by disclosing to other offerors SRI's innovative approach.

We deny the protest.

BACKGROUND

The JTPA, 29 U.S.C. § 1501 et seq. (1982), was established to help reduce unemployment and under the Act, DOL is required to assess its impact on earnings, employment, welfare

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dependency, and educational attainment for selected target groups and treatments in a small number of service delivery areas. The JTPA replaced the Comprehensive Employment and Training Act (CETA) as the vehicle for combating unemployment and because of past difficulties in evaluating the effectiveness of CETA, DOL requested that a technical advisory panel be established to improve the evaluation design. Basically, past evaluations of CETA used different statistical methods to correct potential sample selection bias, and the studies produced such diverse results that it was impossible to determine with any degree of specificity the effects of CETA. The panel was comprised of 10 technical experts, including economists, statisticians and experts in research design, and was charged with reviewing the major evaluations of CETA, assessing the validity of these evaluations and recommending alternatives to improve the reliability of future evaluations of the JTPA. The panel met three times, in both open and closed sessions, and issued a final report which strongly recommended that DOL switch to classical experiments in evaluating the JTPA.

DOL reviewed the report and agreed with the panel's recommendations. The current solicitation was then prepared which basically followed the panel's suggestions, although varying in some respects. Under the RFP, two separate awards were contemplated. Part A was for the operational design and management of the experiments and Part B was for the experimental design, collection of data and analysis of the experimental results. Firms could submit proposals for either Part A or Part B or for both parts.

DOL issued the solicitation on January 6, 1986. Two proposals were received for Part A and three proposals for Part B. After a technical evaluation, Part A was awarded to Manpower Demonstration Research Corporation, while Part B was awarded to Abt. SRI's protest concerns only the award of Part B to Abt.

CONFLICT OF INTEREST

SRI contends that the award to Abt is improper because three individuals on Abt's proposed team served on the technical advisory panel that recommended the evaluation methodology adopted by DOL for this procurement.^{1/} SRI alleges that

^{1/} The three individuals that were on the advisory panel and on Abt's team are Abt's principal investigator, an employee of a subcontractor to Abt and a university professor hired by Abt as a consultant for this project.

these individuals were able to tailor the recommendations of the panel to their advantage. In addition, SRI argues that Abt had an unfair advantage in preparing its proposal since these individuals were in a position to know DOL's predisposition as to how certain problems were to be handled and were better able to interpret unclear provisions of the RFP. SRI also complains that Abt was able to recruit key consultants early because it had a good idea of the scope of work prior to the RFP being issued. SRI argues that a contractor is prohibited from providing services where that contractor prepares or assists in preparing a work statement, that Abt in effect assisted in preparing the statement of work (SOW) and that the award to Abt is therefore improper.

DOL indicates that all materials, including the advisory panel's final report, appendices to the report and meeting minutes, were made available to all firms and that as a result, Abt did not gain any unfair advantage by having an employee of the firm on the panel or by adding two additional panel members to its team for the project. In addition, DOL indicates that the advisory panel merely acted as an industry representative and set out a broad evaluation strategy for the JTPA rather than an actual SOW. Also, DOL notes that the recommendations were not prepared by Abt but rather by a panel of 10 individuals representing the research community and since Abt did not prepare the recommendations, there is no basis to exclude it from competing for this requirement.

Also DOL argues that the specific allegations made by SRI are without merit. DOL points out that two of Abt's team members that allegedly tailored the panel's recommendations were not even affiliated with Abt during the advisory panel proceedings. DOL contends that it is unclear how any panel member could have structured the panel's recommendations to favor a particular firm because the panel's basic recommendation was for DOL to initiate scientifically sound experiments and that such a recommendation does not favor any one firm. Moreover, DOL indicates that the proposals were evaluated by DOL employees, none of whom were members of the advisory panel and that, as a result, there is no basis for SRI's allegation that panel members had any special information as to how proposals would be evaluated. DOL argues that no conflict exists and in view of the full disclosure of the panel's deliberations, there is no reason to prohibit members of the panel from working on this project.

In considering an allegation of organizational conflict of interest, we note that the responsibility for determining whether a firm has a conflict of interest if it is awarded a particular contract, and to what extent a firm should be excluded from competing, rests with the procuring agency and we will not overturn such a determination unless it is shown to be unreasonable. NAHB Research Foundation, Inc., B-219344, Aug. 29, 1985, 85-2 CPD ¶ 248. The procuring agency bears the responsibility for balancing the competing interests between preventing bias in the performance of certain contracts which would result in a conflict of interest and awarding a contract that will best serve the government's needs to the most qualified firm. Battelle Memorial Inst., B-218538, June 26, 1985, 85-1 CPD ¶ 726.

The Federal Acquisition Regulation (FAR) recognizes that an organizational conflict of interest exists when the nature of the work to be performed under a proposed government contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor, or impair the contractor's objectivity in performing the contract work. FAR, 48 C.F.R. § 9.501 (1985); Systemetrics, Inc., B-220444, Feb. 14, 1986, 86-1 CPD ¶ 163. Generally, where a firm prepares or assists the procuring agency in preparing specifications or a SOW, that firm should be precluded from providing the item or performing the work required under the solicitation. FAR, 48 C.F.R. §§ 9.505-2(a)(1), 9.505-2(b)(1). However, notwithstanding the disagreement between DOL and SRI as to whether the advisory panel actually prepared the SOW for this solicitation, we point out that the FAR does not specifically cover the present situation since Abt did not draft the panel's recommendations. See Nelson Erection Co., Inc., B-217556, Apr. 29, 1985, 85-1 CPD ¶ 482. At best, 3 of the 10 panel members were affiliated with Abt and even if we were to conclude on that basis that Abt must therefore be considered to have been on the advisory panel, we note that a contractor need not be excluded where more than one contractor is involved in preparing the work statement. FAR, 48 C.F.R. § 9.505-2(b)(1)(iii).^{2/} Consequently, we see no regulatory prohibition requiring DOL to exclude Abt from consideration.

Furthermore, we think the record supports DOL's determination not to exclude members of the advisory panel. While SRI complains that it was denied total access to the appendices

^{2/} Section 9.505-2(a) covers the situation where a contractor prepares and furnishes complete specifications for nondevelopmental items. Section 9.505-2(b) covers the situation where, as here, services are being procured.

of the panel's report and was required to read and take notes on these appendices, the fact remains that access to all information generated by the advisory panel was provided. In addition, we note that SRI has presented no evidence, other than its bare allegations, to support its contentions that the panel's recommendations were tailored to favor one firm or that panel members had access to information not contained in the RFP as to how DOL would evaluate proposals. We have held that firms should not be excluded from competing on the basis of a theoretical or potential conflict of interest; see Rxotech Sys., Inc., 54 Comp. Gen. 421 (1974), 74-2 CPD ¶ 281, and under the circumstances, we see nothing in the record which indicates that Abt had an unfair advantage in this procurement.

TECHNICAL LEVELING AND TRANSFUSION

SRI states that its technical approach was based on conducting follow-up interviews with the complementary nonapplicant sample. Also, SRI strongly recommended selecting sites using random sampling with randomly selected backups. The RFP, in both cases, did not require the approaches proposed by SRI, but during discussions, DOL issued an amendment which included follow-up interviews and also indicated that the sampling procedure proposed by SRI was DOL's preferred approach. SRI argues that this is clear evidence of technical leveling and transfusion.

DOL indicates that there was nothing unique and innovative about SRI's approach in these two areas. DOL states that the two other offerors both included in their original offers a proposal for conducting follow-up interviews as well as the sampling strategy proposed by SRI. Concerning follow-up interviews, DOL indicates that this was inadvertently omitted from the statement of work and was not added in response to SRI's proposal. In addition, DOL states that random sampling of randomly selected backups was an integral part of Abt's proposal. DOL argues that no unique features of SRI's proposal were disclosed and that no technical leveling or transfusion occurred.

Technical transfusion is the disclosure to other offerors in a negotiated procurement of one offerors innovative or ingenious solution to a problem. Strobe Data, Inc., B-220612, Jan. 28, 1986, 86-1 CPD ¶ 97. Our review of the record shows that Abt did offer the same alternatives offered by SRI and under these circumstances, we find no basis to conclude that DOL improperly disclosed SRI's technical approach. TEK, J.V. Morrison-Knudsen/Harnischfeger, B-221320, et al., Apr. 15, 1986, 86-1 CPD ¶ 365.

With respect to SRI's allegation of technical leveling, we find no evidence that DOL improperly coached Abt with the intent of bringing Abt's proposal up to SRI's level. C&W Equip. Co., B-220459, Mar. 17, 1986, 86-1 CPD ¶ 258. In this respect, we note that Abt was ranked higher technically throughout DOL's evaluation and our review of the evaluation record shows that the comments directed to Abt concerned areas of deficiencies in its proposal or solicited additional clarifying information. Consequently, we find that no technical leveling occurred.

Finally, we note that SRI argues in its comments that DOL's issuance of the two amendments resulted in technical leveling and transfusion if they reduced SRI's original technical advantage in these two areas. We disagree. The requirement for follow-up surveys was added to correct an omission in the original RFP and ensure that all offerors competed on an equal basis. In addition, an agency has an obligation to conduct meaningful discussions by pointing out to all offerors weaknesses, excesses or deficiencies in their proposals and technical leveling does not occur unless discussions are utilized to point out weaknesses caused by the offeror's lack of diligence or competence. TEK, J.V. Morrison-Knudsen/Harnischfeger, supra. We note that the technical scores of all offerors, including SRI's, increased as a result of discussions and since we find no evidence of improper coaching, we conclude that no technical leveling occurred.

The protest is denied.



Harry R. Van Cleve
General Counsel