

Murphy



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Coopers & Lybrand
File: B-224213
Date: January 30, 1987

DIGEST

1. Protest is sustained where the agency's exclusion of the protester's proposal leaves only one proposal in the competitive range, since discussions with the rejected offeror could reasonably be expected to result in revisions making the proposal acceptable without submission of an entirely new proposal.
2. Offeror is not prohibited from competing for a procurement for services to enhance industrial preparedness because it previously prepared a list of recommended actions to achieve the same objectives under a grant from the procuring agency. The offeror was not employed to prepare or assist in preparing the statement of work; only a few of the recommended actions resemble tasks in the statement of work; and the offeror could not reasonably have gained any competitive advantage from the agency's consideration of the recommended actions in developing the solicitation.

DECISION

Coopers & Lybrand protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. EMW-86-R-2389, issued by the Federal Emergency Management Agency (FEMA) for a project intended to enhance industrial preparedness for national defense. Coopers & Lybrand contends that FEMA failed to adhere to the stated evaluation criteria, wrongly concluded that the Coopers & Lybrand proposal did not have a reasonable chance for award, and should have rejected the only other offeror's proposal because of an organizational conflict of interest.

We sustain the protest in part and deny it in part.

BACKGROUND

The RFP sought proposals to conduct an analysis of the major issues affecting industrial preparedness, to convene at least

037926

three steering/policy group meetings to identify issues and plan the agenda for a national forum to address national preparedness, to convene the national forum, and to prepare an evaluation of the results. FEMA included two options for follow-on work such as developing recommendations for governmental and industrial actions to enhance industrial preparedness and encouraging those actions using steering/policy group meetings and national forums.

The solicitation is an outgrowth of a grant that FEMA awarded the International Management and Development Institute (IMDI) in 1984 to provide a forum for establishing the basis for permanent, long range strengthening of the industrial base in the field of emergency preparedness. FEMA originally intended to award a sole-source grant to IMDI for the follow-on work. After passage of the Competition in Contracting Act of 1984, 41 U.S.C. § 253 (Supp. III 1985), which requires that agencies conduct sole-source procurements only in specified, narrow circumstances, FEMA sought competition for its requirements by issuing an RFP in April 1985. Six firms responded to the 1985 solicitation, and the agency found four proposals, including the ones submitted by Coopers & Lybrand and IMDI, to be acceptable. It subsequently canceled the procurement. The protested solicitation is very similar to the 1985 RFP, including identical evaluation criteria; the major difference is that the 1985 procurement did not include options beyond the base contract.

The solicitation provides that proposals will be scored in three technical categories: understanding the scope of work (20 points); soundness of methodological approach (45 points); and technical qualifications of personnel (35 points). The solicitation states that the technical evaluation will be given more importance than the offerors' prices. FEMA received proposals from only two firms, Coopers & Lybrand and IMDI, by the September 11, 1986 closing date. The FEMA technical evaluation panel concluded that Coopers & Lybrand's proposal was unacceptable and could not be made acceptable through discussions without a complete revision. (One panel member dissented, stating that the proposal had a number of strengths, met the needs of the government, and should be considered acceptable.) Accordingly, no discussions were held, and on September 23, the contracting officer notified Coopers & Lybrand that its proposal would not be considered further. Coopers & Lybrand protested on September 25, and, after a debriefing, supplemented its protest on October 21. The agency is withholding award until our decision on the protest.

CONFORMITY WITH STATED EVALUATION CRITERIA

Based largely upon information provided by members of the FEMA technical evaluation panel at the debriefing, Coopers &

Lybrand believes that one aspect of the evaluation criteria--specific experience with and knowledge of industrial preparedness issues--was given more weight than the solicitation permits.

Contracting agencies are required by statute to set forth in a solicitation all significant evaluation factors and their relative importance. 41 U.S.C. § 253a(b)(1). As a general rule, a contracting agency need not specifically identify subfactors if they are sufficiently related to the stated criteria so that offers would reasonably expect them to be included in the evaluation. Washington Occupational Health Associates, Inc., B-222466, June 19, 1986, 86-1 CPD ¶ 567. Thus, for example, where an RFP lists general experience and personnel qualifications as an evaluation criterion, the contracting agency reasonably may consider an offeror's experience in the specific services called for under the RFP since it is reasonably related to the general experience evaluation criterion. See, e.g., Technical Services Corp., 64 Comp. Gen. 245 (1985), 85-1 CPD ¶ 152. On the other hand, the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.605(e) (1985), requires that solicitations disclose "any significant subfactors" to be considered in the award decision, and agencies may not give importance to specific experience beyond that which would reasonably be expected by offerors. Devres, Inc., B-224017, Dec. 8, 1986, 86-2 CPD ¶ ____.

In support of its contention that FEMA gave too much weight to specific experience, the protester focuses on the following criteria and subcriteria:

"2. Soundness of Methodological Approach

"a. Demonstrated ability to solicit cooperation of high level national government and private sector leadership in a project of this complexity and scope. (25 points)

.

"3. Technical Qualifications of Personnel

"a. Expertise of project leader including experience on projects of similar scope and complexity. (15 points)

.

"c. Quality and pertinence of expertise and confirmed commitment of the personnel with knowledge of national business issues and national security issues which impact on industrial preparedness. (10 points)"

Coopers & Lybrand states that during the debriefing, all four members of the evaluation panel agreed that the firm lost points under criterion 2(a), worth one-fourth of all available points, because conferences it had previously conducted did not specifically concern industrial preparedness. Coopers & Lybrand points out that the criterion refers only to projects of "this complexity and scope," not conferences about the same subject matter as covered by the RFP.

The record does not establish that FEMA penalized the firm under criterion 2(a) because its previous conferences did not specifically involve industrial preparedness. Four out of five panel members did not cite a lack of specific experience as a weakness under criterion 2(a) in their scoring worksheets^{1/} or in the evaluation report signed by all panel members. Nor did the contracting officer do so in the competitive range determination. The weaknesses that were cited are within the scope of criterion 2(a), and we find them to be consistent with the proposal submitted by the protester. These include a concern that Coopers & Lybrand had not established its ability to elicit cooperation of the necessary level or breadth of public and private leadership in analogous projects, either through previous experience or a description of a sound approach in the proposal.

We also find that FEMA did not give specific expertise too much weight in evaluating proposals under criteria 3(a) and 3(c). The expertise to be considered under these criteria was not qualified in the RFP to exclude expertise in the specific field of industrial preparedness. In light of the RFP description of the criteria quoted above and the nature of the procurement, offerors should have expected FEMA to give specific expertise considerable weight. The worksheets of four out of five panel members, the evaluation summary, and the competitive range determination establish that FEMA

^{1/} We recognize, as FEMA points out, that the worksheets do not necessarily represent the final views of the panel members. In this case, we give them some weight since the record includes no other evidence of what the agency considered relevant under specific criteria or which weaknesses and strengths in Coopers & Lybrand's proposal relate to those criteria.

considered a number of aspects of the expertise and experience of the project leader and other personnel. The weaknesses FEMA found are within the scope of the two criteria and are reflected in Coopers & Lybrand's proposal. These include a lack of relevant experience in industry and with conferences of analogous complexity and scope.

EXCLUSION FROM THE COMPETITIVE RANGE

Coopers & Lybrand contends that it should have been given the opportunity to improve its proposal through discussions, pointing out that its proposal was determined acceptable under the similar 1985 solicitation. The Competition in Contracting Act of 1984 requires that if an agency conducts discussions, it must do so with all responsible offerors within the competitive range. 41 U.S.C. § 253b(d)(2). The FAR provides that the competitive range must include all proposals that have a "reasonable chance of being selected for award," and that any doubt as to whether a proposal is in the competitive range should be resolved by inclusion. 48 C.F.R. § 15.609(a). In view of the importance of achieving full and open competition in government procurement, we closely scrutinize any evaluation that results in only one offeror being included in the competitive range. Laser Photonics, Inc., B-214356, Oct. 29, 1984, 84-2 CPD ¶ 470. -

Here, the protester's elimination from the competitive range rested solely on FEMA's determination that its proposal would have to be completely revised in order to be acceptable; the offerors' prices were not a factor. We find nothing in FEMA's evaluation of Coopers & Lybrand's proposal under eight out of nine technical evaluation criteria that would warrant exclusion of the protester's proposal. The proposals of the two offerors were rated equal or very close on six out of nine criteria. FEMA found a somewhat greater disparity with respect to criteria 1(b) ("knowledge of government and industry activities which can be most effectively utilized to improve the nation's industrial preparedness capability") and 3(a) (expertise of the project leader). However, under criterion 1(b), the two proposals differed by only 3 points, which does not appear significant considering that 100 points were allocated to the technical evaluation. Coopers & Lybrand's weakness under criterion 3(a) could have been remedied after discussions by restructuring the project leadership to add additional expertise in certain areas.

The determinant factor in FEMA's evaluation of the two proposals--representing half of the total difference in technical scores--concerns the extent to which the firms demonstrated their ability to elicit cooperation of high-level leadership in a project of similar complexity and

scope (criterion 2(a)). We have reviewed both proposals and find that FEMA's relative ranking of the proposals and its conclusion that Coopers & Lybrand's proposal was deficient in this area are reasonable. In our view, the issue is whether discussions with the protester could be meaningful, i.e., whether, as a result of discussions, the firm could supplement its proposal with respect to criterion 2(a) so as to have a reasonable chance of being selected for award.

The procurement record indicates that initially a majority of the evaluation panel considered the protester's proposal to be acceptable. While two members eventually changed their minds, it is apparent that the panel believed that with a "complete rewrite" Coopers & Lybrand's proposal could be made acceptable. Apparently with respect to criterion 2(a), FEMA believed that the firm had not fully discussed its experience in obtaining cooperation of high level leadership to address complex issues or that through additional analysis and planning, Coopers and Lybrand could demonstrate its ability to do so in this case. FEMA was primarily concerned with omissions from Coopers & Lybrand's proposal, not with aspects of the firm's approach that are inherently inconsistent with its ability to bring the proposal into the acceptable range.

We recognize that agencies are not required to permit an offeror to revise an unacceptable initial proposal when the revisions required are of such a magnitude as to be tantamount to the submission of a new proposal. Falcon Systems, Inc., B-213661, June 22, 1984, 84-1 CPD ¶ 658. In this case, a revision is required in the protester's proposal with respect to criterion 2(a), and there are some weaknesses in other areas. We do not, however, believe that required revisions would constitute a new proposal or that discussions would necessarily be meaningless. We sustain the protest for this reason.

ORGANIZATIONAL CONFLICT OF INTEREST

The protester also contends that IMDI should be excluded from the procurement because it prepared the statement of work. As a result of work supported by FEMA's 1984 grant, IMDI prepared a one-page "Unfinished Agenda," listing recommendations and plans of the Fowler-McCracken Commission^{2/} to

^{2/} IMDI is a nonprofit educational organization associated with the Fowler-McCracken Commission, which is a publicly- and privately-funded group with the objective of improving government-business cooperation in the conduct of international economic policy.

improve industrial preparedness. These included convening national leadership conferences on industrial preparedness, preparing annual reports on progress and future action, and organizing a network of organizations to share information and strategies to improve industrial preparedness.

The FAR prohibits contractors that prepare or assist in preparing a statement of work from providing the required system or services except in three narrow circumstances not applicable here. 48 C.F.R. § 9.505-2(b). This restriction is intended to avoid the possibility of bias where a contractor would be in a position to favor its own capabilities.

In this case, IMDI was not specifically employed to prepare or assist in preparing the statement of work. The recommendations and plans reported by IMDI were considered by FEMA in developing the statement of work, but only three or four recommendations resemble tasks in the RFP, and the similarity is very general. For example, the Fowler-McCracken Commission planned to convene a core group consisting of its Policy Committee on National Security and others, without indicating the specific purpose or objectives for the group. The RFP calls for creation of a steering/policy group of high-level public and private leaders and lists specific - objectives, primarily the identification of issues and development of plans for a national forum of "key decision-makers." Another similarity is that the "Unfinished Agenda" and the RFP both include a year-end assessment and plans for future action. This task is a logical element of any continuing endeavor, and is so generally described in both documents that there is no clear relationship between the two. We do not believe that IMDI can be said to have participated in preparation of the statement of work under 48 C.F.R. § 9.505-2(b), nor do we think IMDI gained any competitive advantage from FEMA's consideration of the "Unfinished Agenda" in preparing the solicitation. Consequently, we believe that FEMA properly considered IMDI's proposal.

CONCLUSION

By separate letter of today we are recommending to the Director of FEMA that Coopers & Lybrand be retained in the competitive range and discussions be conducted with both offerors.

We sustain the protest in part and deny it in part.

for 
Comptroller General
of the United States