



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: American Indian Science and Engineering Society

File: B-232217

Date: December 12, 1988

## DIGEST

1. Agency properly discounted proposed contributions of one designated key employee under evaluation criterion pertaining to qualifications of personnel where offeror simply stated that this employee would devote a certain percentage of time to the contract without also defining the employee's duties and responsibilities.
2. Disparity in scores between evaluators does not alone signify that the evaluation of proposals was unreasonable or biased where there is no evidence in the record to suggest that the technical scoring by the individual evaluators reflected anything other than their reasonable judgments as to the relative merits of a given proposal.
3. Fact that agency may have utilized incorrect evaluation criteria during evaluation of initial proposals does not provide a basis upon which to sustain protest where protester was included in the competitive range based on initial evaluation, and evaluation of best and final offers was conducted in accordance with criteria set forth in solicitation, thereby forming a proper basis for award.
4. Award to a higher priced offeror is proper where that offeror received the highest overall number of points under a pre-established evaluation formula that gave four times as much weight to technical considerations as to price.
5. Contention that discussions were inadequate because agency officials failed to warn offeror of possible effects of the voluntary restructuring of its initial proposal is denied where initial proposal was not deficient and agency officials had no reason to anticipate that offeror would revise its technical approach to its detriment during its preparation of a best and final offer.

044198/137584

---

## DECISION

American Indian Science and Engineering Society (AISES) protests the Bureau of Indian Affairs' award of a contract for the administration of the Bureau's Special Higher Education Program, to American Indian Scholarship, Inc. (AIS), under request for proposals (RFP) No. BIA K51-88-003. AISES primarily disputes the Bureau's evaluation of its proposal.

We deny the protest.

The solicitation requested offers to administer the Bureau's Special Higher Education Program to provide fellowships to eligible Indian students for graduate level study, and generally provided that award would be made to the firm whose proposal was considered most advantageous to the government, price and other factors considered. The specific evaluation factors utilized for this procurement were listed in relative order of importance as follows:

- I. Knowledge of the Scope of Work and Soundness of Approach Demonstrated in the Technical Proposal
  - A. Statement of Anticipated Problems
  - B. Solution to the Problems
  - C. Rationale for any Deviations to the Statement of Work
  - D. Soundness of a Management Plan for Smooth Operation of the Program
- II. Experience of the Offeror in the Day to Day Management of Similar Programs
- III. Qualifications of Personnel
- IV. Cost Effectiveness of the Proposed Administrative Costs.

Although not disclosed in the solicitation, the evaluation factor weights assigned to these criteria were: knowledge of scope of work/30, experience/25, personnel/25, and cost/20.

Four firms responded to the RFP. A technical evaluation committee evaluated and scored initial proposals for technical merit. Based on these findings, the contracting

officer, after first ordering the committee members to transfer their individual evaluations to score sheets that more accurately reflected the criteria set forth in the solicitation, included three firms, including AIS and AISES, in the competitive range. The initial weighted scores for AIS and AISES for the three technical criteria were 92.0 and 85.1 respectively. Cost was not point-scored during initial evaluations.

Discussions were held with each of the three remaining offerors concerning deficiencies noted in their proposals and each was requested to submit a best and final offer (BAFO). The technical evaluation committee then conducted a final rating and ranking of the BAFOs for each of the three technical criteria as well as for proposed cost. The final weighted scores ranged from a high of 85.0 for AIS (26.3 knowledge of scope and work; 24.7 experience; 25 personnel, and 9 cost, reflecting the high evaluated price at \$3,823,741), to a low of 66.0 for AISES (18 knowledge of scope of work; 16.3 experience; 11.7 personnel; and, 20 cost, reflecting the low evaluated price of \$3,500,000). On the basis of these scores, the contracting officer selected AIS for award in accordance with the terms of the solicitation.

Following this award selection, the Bureau debriefed AISES as to the reasons for the rejection of its offer. At this time, the Bureau stated that the disparity in scores between AISES' initial proposal and BAFO primarily was due to AISES' voluntary withdrawal, after discussions, of a subcontractor it originally proposed to perform a portion of the requested services. The Bureau noted that AISES initially was awarded relatively high marks for experience and personnel because of the overall qualifications of this subcontractor. Once this subcontractor was removed, however, and no other qualified personnel were found to have been proposed as replacements, the Bureau lowered AISES' final technical scores for the two criteria pertaining to experience and personnel. AISES' protest to our Office was timely filed shortly after this debriefing.

AISES questions the evaluation of its BAFO with respect to the personnel criterion. AISES contends that the Bureau failed to give proper consideration to the qualifications of one of the individuals, Mr. Hill, the Director of AISES, identified in its BAFO as being available, if necessary, to perform required services during the term of the contract. AISES notes that Mr. Hill, whose considerable experience and qualifications are not disputed by the Bureau, was included in its BAFO to replace the staff of the subcontractor initially proposed. AISES specifically questions the

actions of one of the three members of the technical evaluation committee who awarded AISES zero points for personnel, in contrast to the other two evaluators who awarded AISES 20 and 15 points, respectively, out of an available 25 points for this criterion.

In reviewing protests against allegedly improper technical evaluations, our Office will not substitute its judgment for that of the contracting agency; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations. See ORI, Inc., B-215775, Mar. 4, 1985, 85-1 CPD ¶ 66.

Our review of the individual score sheets of the members of the technical evaluation committee confirms that, while one of the evaluators indeed discounted the proposed contribution of Mr. Hill (and, along with the other evaluators, also found the other key personnel proposed by AISES to be lacking requisite knowledge in financial aid matters), she did so based on a determination that AISES' proposal contained insufficient information to allow consideration of the services of Mr. Hill. In this regard, AISES' BAFO set forth only a cryptic description of Mr. Hill's anticipated contribution to this contract, stating simply that "AISES [would] provide the in-kind services of Mr. Hill for 50 percent to 75 percent of time if necessary during the transition period and during contract performance"; AISES did not identify the exact duties and responsibilities to be undertaken by Mr. Hill, and nowhere stated that Mr. Hill was being proposed as a replacement for the eliminated subcontractor. Under these circumstances, we do not think that it was unreasonable for this evaluator to conclude that AISES could not be credited in the evaluation for the services of Mr. Hill. See Advanced Electro Magnetics, Inc., B-208271, Apr. 5, 1983, 83-1 CPD ¶ 360 (proposals are to be evaluated on their own merits).<sup>1/</sup>

Similarly, we find nothing unreasonable in the evaluators' finding that the other key personnel proposed by AISES did not possess the requisite experience to perform this contract. The primary function of this contract is to

---

<sup>1/</sup> Although the evaluator also was concerned that, since Mr. Hill already was an AISES director, there would be no way to determine whether Mr. Hill actually was working on the contract, the record shows that it was the lack of definition in the firm's BAFO that made it impossible to consider his services.

administer fellowships to qualified Indian students; hence, knowledge of graduate fellowship grant programs, scholarships, and financial aid, as well as knowledge in such areas as academic career counseling and tutorial assistance, were considered critical to the satisfactory management of the Bureau's higher education program. The program manager proposed by AISES (the only individual AISES proposed to work exclusively on this contract), while having an academic background with particular expertise in the development of curriculum, had no prior experience in the administration of grants, scholarships, and financial assistance. Likewise, none of the other individuals proposed by AISES had such experience. Thus, the evaluation of AISES' key personnel was unobjectionable.

Moreover, contrary to the protester's understanding, the wide range of scores among the three evaluators (0, 20, and 15 points) with respect to AISES' personnel qualifications did not itself render the evaluation improper. A disparity in scores among evaluators does not automatically signify that the evaluation of proposals is unreasonable or, as suggested here by AISES, that there was bias or bad faith on the part of the low-scoring evaluator. See Digital Radio Corp., B-216441, May 10, 1985, 85-1 CPD ¶ 526. Since evaluating proposals necessarily involves subjective as well as objective judgments, we have long recognized that it is not unusual for individual evaluators to reach disparate conclusions when judging competing proposals. See Mounts Engineering, B-218489.4, Apr. 14, 1986, 86-1 CPD ¶ 358. Here, there is no evidence in the record to suggest that the scoring by any of the members of the technical evaluation committee reflected other than reasonable judgments as to the merits of AISES' proposal. The fact that two of the evaluators were willing to make assumptions as to the nature of Mr. Hill's duties under the contract does not render the third evaluator's refusal to rely on the same assumptions unreasonable. See Antenna Products Corp., B-228289, Jan. 19, 1988, 88-1 CPD ¶ 43 (General Accounting Office will not find bias based on supposition and conjecture).

AISES next argues that the Bureau improperly evaluated initial proposals on the basis of criteria not set forth in the solicitation, as evidenced by the actions of the contracting officer who, after receipt of the committee's initial evaluation, ordered the individual members to resubmit their initial evaluations on score sheets consistent with the prescribed criteria. The record supports this contention; the initial proposal score sheets disclose that the criteria utilized during initial evaluation, although related to the actual criteria, did not correspond to them exactly. For example, while the RFP contained a single

subcriterion entitled "Soundness of Management Plan for Smooth Operation of the Program," the incorrect criteria used for initial evaluations contained several subcriteria relating to this one area.

We find that this apparent impropriety had no bearing on AISES' evaluation or on the selection of AIS for award. The initial evaluation principally was used for establishing the competitive range which, as indicated above, included AISES, AIS and another offeror. The actual selection decision, however, was based exclusively on the evaluations of BAFOs; this final evaluation, as acknowledged by AISES, was conducted in accordance with the stated evaluation criteria and thus formed a proper basis for award.

AISES also argues that it should have been selected for award as the low, technically acceptable offeror. In a negotiated procurement, however, unless the solicitation so specifies, there is no requirement that award be made on the basis of lowest price. Rather, the procuring activity has discretion to select a higher-rated, higher-cost technical proposal if doing so is consistent with the evaluation scheme and is deemed worth the difference in cost. See Litton Systems, Inc., Electron Tube Division, 63 Comp. Gen. 385 (1984), 84-2 CPD ¶ 317. Here, the contracting officer concurred with the evaluation committee's finding that AIS' proposal was most advantageous to the government, based on both technical and cost factors. Since the basis for this determination was the overall point scores received, which were calculated in accordance with pre-established weights giving four times as much emphasis to technical considerations as to price, the award selection was consistent with the stated evaluation scheme.

AISES attempts to characterize its voluntary withdrawal of its subcontractor after discussions as a mistake which resulted in the severe downgrading of its proposal, and asserts that the contracting officer should have permitted the correction of this error after the submission of BAFOs, in accordance with the mistake correction rules under Federal Acquisition Regulation (FAR) § 15.607(c)(3). This contention is without merit. AISES' error here was not a mistake within the intent of the regulation. A decision to alter a proposal, even if the decision is flawed based on the offeror's misunderstanding during discussions, is no more than a business judgment. Correction is not available to remedy such an erroneous judgment. See generally Handy Tool & Mfg. Co., Inc., 60 Comp. Gen. 189 (1981), 81-1 CPD ¶ 27.

AISES argues that it was misled during discussions into withdrawing its subcontractor, and that the Bureau should have advised the firm during discussions that eliminating its subcontractor could lower its score for personnel. We do not agree. During discussions, agencies simply must advise offerors of the areas in which their initial proposals are believed to be deficient so that they may have an opportunity to revise their proposals to fully satisfy the agency's requirements. See Proprietary Software Systems, B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143.

Here, AISES was not told to restructure its proposal; the agency merely expressed concern that AISES had relied too extensively on this one subcontractor. Agency officials therefore had no reason to anticipate that AISES would eliminate its proposed subcontractor, and had no reason to advise AISES of the consequence of doing so.

Finally, AISES argues that the 1 day afforded it for the submission of a BAFO was inadequate. Since AISES first raised this basis of protest approximately 1 month following the due date for submission of BAFOs, the protest ground is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1988).

The protest is denied.

*for* *Seymour Efron*  
James F. Hinchman  
General Counsel