



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Coastal Environments, Inc.

File: B-233571

Date: March 3, 1989

DIGEST

1. Protest that solicitation was vague with respect to funding and the scope and duration of work is untimely since the protest was filed well after the closing date for receipt of initial proposals.
2. Contracting agencies are not required to equalize competition to compensate for the experience, resources or skills that one offeror allegedly has obtained by performing a prior contract where the competitive advantage, if any, enjoyed by a particular firm is not the result of preferential treatment or other unfair action by the government.
3. Protest that discussions with the contracting agency misled the protester into believing that adding other topics would not substantially improve its original proposal focusing on only one critical physical process affecting wetlands loss is without basis where the record shows that the agency clearly expressed to the protester its concern with regard to the narrow focus of its proposed research and suggested adding other topics, and the protester's response indicates that it understood the agency's concern.
4. Protest that proposals were not evaluated on the basis of the RFP's stated evaluation criteria is denied where the record indicates that the evaluation of proposals was properly conducted in accordance with the RFP's evaluation criteria.

DECISION

Coastal Environments Institute (CEI) protests the award of a cost-plus-fixed-fee contract to Louisiana State University, Coastal Studies Institute (LSU-CSI) under request for proposals (RFP) No. 7410, issued by the U.S. Geological Survey (USGS) for a study of the critical physical processes causing wetlands loss in coastal Louisiana. CEI contends

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that the solicitation was vague; that the awardee had an unfair competitive advantage; that its firm was misled during discussions; and that the contract was awarded on the basis of factors that were not set forth in the RFP.

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

The RFP was issued to carry out one part of a planned 5-year research study of wetlands jointly initiated by USGS and the U.S. Fish and Wildlife Service in cooperation with the State of Louisiana. The solicitation sought research on the critical physical processes associated with wetlands loss that would build on the existing information base and provide new information and innovative ideas that would extend the present state of knowledge on the subject. While encouraging other innovative approaches, the RFP suggested for consideration the following research study areas:

- (a) sediment dispersal;
- (b) salt and freshwater dispersal;
- (c) physical processes and marsh erosion;
- (d) wetlands soil development;
- (e) subsidence.

The RFP required that proposals review existing knowledge, demonstrate how the proposed research would extend that knowledge, and provide explicit information on how the results of the research would be applicable to managing wetlands, mitigating wetlands loss, and/or forecasting future conditions.

For technical evaluation purposes, the RFP listed the following equally weighted factors:

- (a) understanding the requirement;
- (b) technical quality of the proposal;
- (c) competence of key personnel and research team to perform the work.

The RFP advised that, based on the availability of funds, one or more contracts would be awarded to the offerors whose proposals, conforming to the solicitation, were determined to be in the best interest of the government, with emphasis on technical factors, cost realism and other factors. Other factors specified in the RFP included an affirmative determination of responsibility, compliance with specified minimum technical requirements and the comparative rank of the technical proposals.

The RFP was issued on May 27, 1988. Four proposals were received by the July 11 closing date--two from CEI and one each from LSU-CSI and LSU-Center for Wetland Resources. One of CEI's proposals was determined to be unacceptable. Discussions then were held and best and final offers (BAFOs) received from the three offerors. The proposed costs of all three BAFOs were examined and were determined to be allocable, allowable, fair and reasonable. LSU-CSI's BAFO was ranked first technically, receiving 263 out of a possible 300 points, at a total cost plus fee of \$200,152. CEI's BAFO was ranked third technically, receiving a total of 200 technical points, at a total cost plus fee of \$57,890.58. The contracting officer determined that award to LSU-CSI was in the best interest of the government, and a contract was awarded to LSU-CSI on September 29.

CEI first contends that the RFP was vague with regard to funding and the scope and duration of work, and therefore precluded submission of proposals that could be compared on an equal basis. The alleged vagueness in the RFP was apparent on the face of the solicitation. Our Bid Protest Regulations require that a protest of alleged improprieties that are apparent in a solicitation be filed before the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1988). CEI's protest, filed on November 14, well after the July 11 closing date, therefore is untimely. See Talbot & Korvola, B-231569, Sept. 27, 1988, 88-2 CPD ¶ 288.

CEI also contends that LSU-CSI had an unfair competitive advantage in the procurement because LSU-CSI previously has received major USGS grants for related work. CEI alleges that this procurement for research on wetlands loss resulted from an expansion of a barrier islands study being performed under a USGS grant by LSU-Louisiana Geological Survey (LSU-LGS), a close associate of LSU-CSI, and that, if LSU-LGS personnel working on the barrier islands study are also scheduled to work on the wetlands study, LSU-CSI would have had an unfair advantage in this competition. CEI also states that USGS may have inadvertently provided LSU-CSI with information on the "true" requirements of the RFP. CEI's allegation in this regard is very general. CEI has not alleged any specific instance in which the USGS provided LSU-CSI, its associate (LSU-LGS) or any of its proposed personnel with information that would help LSU-CSI in the competition.

USGS states that LSU-CSI has only one USGS grant, the barrier islands study, and that the awardee was not provided with any advance or inside information on the protested procurement. The agency states that if a competitive

advantage existed it derived from the relevant training and research experience of the awardee's proposed scientists.

Agencies are not required to attempt to equalize competition to compensate for the experience, resources or skills that one offeror has obtained in performing a prior contract or because of one offeror's particular circumstances. IBI Security Service, Inc., B-216799, July 25, 1985, 85-2 CPD ¶ 85. The test is whether the competitive advantage enjoyed by a particular firm is the result of preference or unfair action by the government. Id.

There is no evidence in the record that the wetlands study contract was awarded to LSU-CSI as the result of preferential treatment or other unfair actions by USGS. Moreover, contrary to CEI's assertion, it appears that the RFP's true requirements were exactly as stated in the solicitation. The RFP apprised all potential offerors of the five physical processes which USGS considered important to wetlands loss and clearly stated that other innovative topics were welcome. LSU-CSI responded to the RFP by proposing to do research on all five suggested topics listed in the RFP and, as allowed by the solicitation, added an innovative idea, "meteorological characteristics of wetlands loss." Furthermore, the record indicates that USGS program officials and reviewers, out of concern that there was the potential for an appearance of favoritism, specifically avoided discussing this solicitation or possible proposals with LSU researchers performing ongoing research on barrier islands erosion.

CEI maintains, however, that if USGS had released certain withheld documents, including LSU-CSI's proposal,^{1/} its firm would have been able to provide evidence that LSU-LGS barrier islands researchers will also work for LSU-CSI on the wetlands research. The protester contends that LSU-CSI's use of LSU-LGS personnel who have gained knowledge and experience from the barrier islands project represents an unfair advantage in the present competition.

^{1/} The USGS has withheld most of the evaluation materials and the awardee's proposal from the protester, but has provided all of the materials to our Office for our use in resolving CEI's protest. We have examined the materials in camera in light of the protester's allegations.

Our in camera review of the record, including the withheld documents, indicates that LSU-LGS and LSU-CSI are jointly involved with USGS in the study of barrier islands erosion. The RFP specifically recognized that many of the results of the barrier islands study are applicable to wetlands loss. In its technical proposal, LSU-CSI proposed 21 key personnel, including eight from LSU-LGS; at least three of the eight LSU-LGS personnel were involved with the barrier islands study. (In this regard, we note that the nondisclosure of the documents did not hamper CEI's presentation of its protest because the record shows, as the protester contends, that barrier islands researchers were proposed by LSU-CSI.) However, the fact that these researchers were proposed for the wetlands study does not establish that LSU-CSI had an unfair competitive advantage. In view of the value that the barrier islands study has to the RFP's proposed wetlands study, it was logical that LSU-CSI would propose personnel with barrier islands research experience for the wetlands study. While this may have provided LSU-CSI with a competitive advantage in this procurement, that advantage does not constitute an impermissible advantage resulting from preferential treatment or unfair action on the part of the government.

CEI next alleges that its firm was misled during discussions. Specifically, CEI states that, in response to the USGS letter requesting further information on its proposed approach, it offered to modify its proposal by adding additional research on the problems of subsidence and salt-water intrusion, but was told by USGS that the agency did not have funding for an expanded proposal. CEI maintains that this and the request for a BAFO led its firm to believe that its initial proposal to document thoroughly just one major coastal problem, the physical process of water erosion, was an acceptable response to the solicitation. Basically, CEI appears to contend that it was misled into thinking that adding other areas of study would not have substantially improved its proposal.

USGS denies that CEI was misled and explains that, in its letter requesting additional information, the protester was merely asked to clarify whether it proposed to address the possible influence of subsidence and saltwater intrusion, as well as physical erosion, as dominant processes in wetlands loss. USGS reports that CEI did so in its BAFO, which later was determined to be fully acceptable.

There is no basis for CEI's contention that during discussions it was misled by USGS into believing that its original proposal would not be substantially improved with the addition of other areas of study. The contracting officer's

letter requesting clarification clearly advised CEI that its proposal could be improved if other topics such as the effect of saltwater intrusion and regional subsidence were studied and evaluated. The contracting officer also advised CEI that its proposal was deficient because it appeared to present a premise and then gather evidence in support of that premise, rather than present an appropriate scientific design, i.e., setting up a hypothesis that could be impartially investigated.

In response to the clarification request, CEI stated that it recognized that, in addition to physical erosion, salt water intrusion and regional subsidence were also major processes which contribute to wetlands loss. However, CEI discounted the importance of including a study of those two topics in its proposal, stating that it had chosen to study a coastal marsh area where regional subsidence rates had been established and where a sequence of vegetation changes from freshwater to brackish marsh had already been documented. Nevertheless, CEI informed USGS that it was prepared to address the role of saltwater intrusion and subsidence in its proposal through a review of existing literature. CEI, however, apparently believed that the two topics should be separately studied, stating that to study these two processes adequately would require a separate proposal and additional funding. In this regard, the protester stated that it had prepared a brief statement of how these two processes could be studied at its chosen site, but, while it was prepared to do so, had not submitted a detailed proposal or budget, and suggested that this might be an excellent follow-up study for next year.

Since the record indicates that USGS clearly expressed to CEI its concern with regard to the narrow focus of its proposed research, and CEI's response indicates that it understood the agency's concern, the protester's contention that it was misled into thinking that its proposal would not be improved by adding other topics is without merit. With regard to the alleged agency refusal to allow CEI to expand its original proposal, there is no evidence in the record supporting CEI's charge that USGS personnel told the firm that the agency did not have sufficient funding for a contract based upon an expanded proposal.

CEI further contends, generally, that USGS awarded the contract on the basis of factors that were not set forth in the RFP. USGS denies the allegation, stating that all proposals were evaluated in accordance with the solicitation's evaluation factors and that contract award was made, as stated in the RFP, to the offeror whose proposal was determined to be the most advantageous to the government.

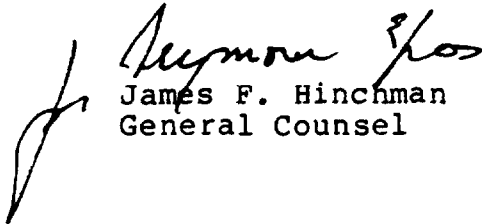
The procuring agency is primarily responsible for and has reasonable discretion in evaluating the relative merits of offerors' technical proposals. Our review of allegedly improper evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. We will question the contracting agency's determination only upon a clear showing of unreasonableness or abuse of discretion. Sal Esparza, Inc., B-231097, Aug. 22, 1988, 88-2 CPD ¶ 168.

Our review of the record, including the technical evaluation scoresheets, indicates that the proposals were properly evaluated on the basis of the RFP's evaluation factors. We recognize that the awardee's proposed costs were substantially higher than CEI's. The record shows, however, that the evaluators concluded that the superior technical merit of the awardee's proposal justified the higher cost, and that the awardee's proposal overall was most advantageous to the government. Specifically, LSU-CSI's proposal ranked first because the technical evaluators found that the proposal was comprehensive and fulfilled all of the RFP's requirements. The evaluators noted that LSU-CSI's proposed multidisciplinary team of researchers had extensive experience in a complete range of scientific topics (e.g., physical oceanographic processes, geologic evaluation of coastal wetlands, and biological effects of environmental change). Additionally, the evaluators noted that all of LSU-CSI's principal investigators had extensive experience in successfully carrying out research and field studies in coastal Louisiana, and that there appeared to be a high likelihood that the LSU group could achieve the RFP objective of increasing scientific understanding of the most critical physical processes affecting wetland areas. Further, the evaluators noted that LSU-CSI's proposed scientific coordinator would provide the necessary strong project leadership, and assure that research products will be timely and of high quality.

On the other hand, CEI's technical proposal was ranked third, because the technical evaluators noted that the proposal approached the problem of wetlands loss obliquely; that CEI, based on its earlier research, seemed convinced that erosion by physical processes (e.g., waves and tidal currents) was the cause for most wetlands loss; and that the proposed study excluded other important processes such as subsidence and saltwater intrusion. The evaluators also noted that while CEI's proposed researchers had excellent reputations, the amount of scientific return to be gained from their proposed research would not be as great as that which could be obtained from either the first or second ranked proposals.

Based on the above, we conclude that the evaluation of proposals was fair and reasonable and consistent with stated criteria. CEI's mere speculation with regard to the propriety of the evaluation and the award of the contract does not establish that the agency acted unreasonably or abused its discretion. See Supreme Edgelight Devices, Inc., B-230265, June 20, 1988, 88-1 CPD ¶ 584.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel