



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Institute for International Research

File: B-232103.2

Date: March 15, 1989

DIGEST

1. Protest of inclusion of only one offeror in the competitive range is denied where record supports agency's determination that there was no reasonable chance protester could correct the deficiencies in its proposal through discussions.

2. Protest of award to higher-cost offeror, whose technical proposal was scored 30 percent higher in technical merit when compared to protester's proposal, is denied where proposal evaluation standards gave greater weight to technical merit and lesser weight to cost.

3. Protest that factors outside the technical merit of protester's proposal improperly contributed to its exclusion from the competitive range is denied where protester fails in its burden of proof to establish bias or bad faith.

DECISION

The Institute for International Research (IIR) protests the award of a cost-plus-fixed-fee contract to the Academy for Educational Development (AED) under request for proposals (RFP) No. 88-005, issued by the Agency for International Development (AID). IIR contends that its proposal was improperly excluded from the competitive range.

We deny the protest.

According to the RFP's statement of work, the contractor was to provide technical services to the Ministry of Education, Liberia, and to AID to ensure the effective and timely implementation of the Primary Education Project (Project). The Project represents a revision to the second phase of an assistance program to the Liberian Ministry of Education with the goal of overcoming Liberia's lack of adequate instructional materials and qualified teachers in primary

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education. The first phase included development of effective instructional materials through a system using "sequenced learning" and testing of the materials in selected schools. The second phase goal was to upgrade the quality of all Liberian public primary schools through implementation of the sequenced learning system. As revised, the Project retained the original goal of the second phase, but was expanded to include integration of the sequenced-learning system with textbooks and traditional primary education in Liberia. As such, AID considered this a "new system."

Offerors were required to submit detailed technical and cost/business proposals. Technical proposals were to lay out clearly the objectives to be accomplished at various stages of the 5-year project implementation, based upon the statement of work. Further, the proposals were to include the offerors': (1) Understanding of the Project; (2) Methods and Work Plan; (3) Fulfillment of Requirements; (4) Overall Management Approach; (5) Implementation Plan and Schedule; (6) Personnel (including resumes); (7) Facilities and Equipment (to be used in performing tasks); and (8) Experience and Capabilities.

Technical Proposals were evaluated in accordance with the following criteria:

1. Qualifications of Personnel 40
 - a. Technical competence and experience of TA [technical assistance] staff proposed for the project.
 - b. Quality of overseas experience and performance of overseas experience and performance of the personnel proposed with particular emphasis on related projects and Africa experience.
 - c. Technical and particularly management and administrative capabilities for the candidate for team leader and his ability to work with host country counterparts, other team members, and USAID Staff.
2. Quality and Responsiveness of Proposal 30
 - a. Understanding of the objective of the project and the appropriateness of the proposal to meet them.

- b. Responsive to project implementation requirements.

3. Qualifications of the Institution

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- a. Breadth and type of experience in implementing similar program in developing countries.
- b. Ability of the institution to provide appropriate project field staff.
- c. Demonstrated backstopping capability to provide support to technical assistance teams and to implement and monitor effectively participant training programs.

Cost was not assigned a numerical weight, but offerors were advised not to minimize the importance of the proposed estimated cost plus fixed fee, since this would be closely evaluated. Award was to be made to the offeror whose overall proposal promised the greatest value to the government with consideration given to technical and cost factors.

Seven proposals were received by the April 4, 1988, closing date. The proposals were reviewed by a technical evaluation committee composed of six members: two with Ph.Ds in education; two who are the key officials responsible for design of the project, the evolution of its needs, and its future requirements; and two who are key Liberian government staff concerned with project needs and government expectations.

In its review of IIR's technical proposal, the committee found the proposal lacking in all three evaluation areas. With regard to personnel qualifications, they found that the qualifications of long term staff were not strongly related to project needs. For example, the proposed "chief of party" (educational administrator) candidate did not have a strong background in primary education and the alternate candidates had limited Africa experience. Also, no previous experience as a chief of party was indicated for the proposed candidate.

With regard to the quality and responsiveness of the proposal, the committee found that IIR placed so much emphasis on its past performance on the first phase of the system that it indicated a lack of understanding of the Project, which was a revised and new version of the originally conceived second phase. They also found IIR's approach to the

Project was not clearly proposed. IIR's proposal placed considerable emphasis on use of the Liberian Rural Communication Network (LRCN) in implementing the project and use of computer technology currently inappropriate to Liberia. IIR had provided for marketing and promotion of the Project through broadcast and print media, which AID believed inappropriate since the priority of the Project was satisfaction of the demand for services and not public relations. In addition, IIR had proposed additional research and surveys as part of the implementation, approaches more suited to the first phase than to the revised Project.

With regard to the qualifications of the institution, the committee found that IIR's track record in providing appropriate field staff was "uneven." The committee rated IIR the third highest offeror with a composite score of 70.8.

In contrast, AED was rated highest with a composite score of 92.1. The committee agreed that AED proposed highly qualified personnel with relevant African experience; that it had the best grasp of the Project objectives; that it had the clearest response to implementation requirements; and the AED had great breadth and type of experience, as well as backstopping capabilities.

The contracting officer, as source selection official, analyzed the proposals in order to determine a competitive range. Four proposals, including IIR's, had scored in a cluster from 64.1 to 71.6. The contracting officer analyzed these scores along with AED's scores to determine whether there was any skewing due to extraordinary ratings in a limited number of criteria or raters. Finding no such skewing, and recognizing that the RFP requirements and evaluation criteria were clear cut, the contracting officer concluded that other offerors could not reasonably be expected to correct their deficiencies to span the more than 20 points (30 percent) difference in scores between AED and the cluster. He believed that the degree to which other offerors could be expected to change their proposals was insufficient to make them competitive with AED.

The contracting officer also analyzed the proposed costs and determined that there was no effective difference between AED's cost proposal and others in the cluster in that the significantly lower technical scores were not offset by any significantly lower cost of those offerors. He thus concluded that there was not a realistic opportunity that cost differences in combination with technical improvements through negotiations would provide another offeror with a reasonable chance of winning the award. The contracting officer was concerned that the success of the Project was

strongly tied to the technical and managerial competence of the awardee. As such, the contracting officer relied upon Federal Acquisition Regulation (FAR) § 15.605(d) (FAC 84-16) concerning evaluation of proposals in cost-reimbursement contracts. This section provides in part that "the cost proposals should not be controlling, since advance estimates of cost may not be valid indicators of final costs." Since awards based primarily on estimated costs could encourage the submission of unrealistically low estimates and result in cost overruns, the "primary consideration should be which offeror can perform the contract in a manner most advantageous to the government." Id.

Based on this analysis, the contracting officer determined that only AED would be included in the competitive range. Subsequent negotiations resulted in AED's lowering its cost proposal to \$3,413,202. The final proposed cost was approximately 5 percent higher than IIR's proposed cost of \$3,245,926, and award was made to AED.

Upon being notified of the award, IIR requested a debriefing. After receiving a written debriefing which outlined the deficiencies in its proposal, IIR filed its protest with our Office.

In its original protest, IIR contended that its proposal had not been evaluated properly and requested that all proposals be re-evaluated. After receiving the agency's report, including a redacted copy of AED's proposal, IIR submitted, as part of its comments, a 94-page analysis comparing its proposal with AED's. Most of this submission consisted of quotations of selected passages from the two proposals. Based on this analysis, IIR maintained that its proposal was at least as good as AED's and that therefore it should have been awarded the contract since its proposed cost was lower and it could have overcome perceived deficiencies in its proposal through discussions.

The purpose of a competitive range determination in a negotiated procurement is to select those offerors with which the contracting agency will hold written or oral discussions. FAR § 15.609(a) (FAC 84-16); Everpure, Inc., B-226395.2, B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264. We have consistently defined the competitive range as consisting of all proposals that have a "reasonable chance" of being selected for award, that is, as including those proposals which are technically acceptable as submitted or which are reasonably susceptible of being made acceptable through discussions. Information Systems & Networks Corp., B-220661, Jan. 13, 1986, 86-1 CPD ¶ 30; Fairchild Weston Systems, Inc., B-218470, July 11, 1985, 85-2 CPD ¶ 39.

We also recognize, however, that the determination of whether a proposal is in the competitive range is principally a matter within the contracting agency's reasonable exercise of its discretion. Cotton & Co., B-210849, Oct. 12, 1983, 83-2 CPD ¶ 150. In this regard, it is not the function of our Office to evaluate proposals de novo, although we closely scrutinize an agency decision which results, as here, in a competitive range of one. Art Anderson Assocs., B-193054, Jan. 29, 1980, 80-1 CPD ¶ 77. We will not disturb that determination absent a clear showing that it was unreasonable, arbitrary, or in violation of procurement laws or regulations. Systems Integrated, B-225055, Feb. 4, 1987, 87-1 CPD ¶ 114.

It is proper for an agency to determine whether or not to include a proposal within the competitive range by comparing the initial proposal evaluation scores and the offeror's relative standing among its competitors. This "relative" approach to determining the competitive range may be used even where the result is a competitive range of one. Therefore, a proposal that is technically acceptable as submitted need not be included in the competitive range when, relative to other acceptable offers, it is determined to have no reasonable chance of being selected for award. Everpure, Inc., B-226395.2, B-226395.3, supra; System Integrated, B-225055, supra.

We have reviewed the proposals, evaluations, and other submissions of the parties and are unpersuaded that the agency's determination to include only AED in the competitive range was unreasonable, arbitrary, or in violation of any laws. The agency's conclusions as to the relative strengths and weaknesses between AED and the other offerors, as evidenced by the 30 percent difference in scores, is supported by the record. Likewise we agree that since this is a cost reimbursement contract IIR's lower proposed cost was not sufficient to overcome the deficiencies in its proposal. See FAR 15.605(d).

It is not clear that IIR could have significantly improved its overall score through discussions. For example, IIR was downgraded on the qualifications of its proposed candidates and alternates for chief of party and other leadership positions, an evaluation criterion worth 40 percent of the total score. While IIR proposed candidates with many qualifications, we find that AID reasonably concluded that these qualifications were not sufficient to warrant a perfect score. It is highly unlikely that in discussions IIR could have improved the qualifications of these proposed candidates. In this respect, we note that the essence of IIR's

position is that the personnel which it had proposed did possess particularly strong and relevant experience, contrary to AID's evaluation; not that IIR could and would have substituted different personnel.

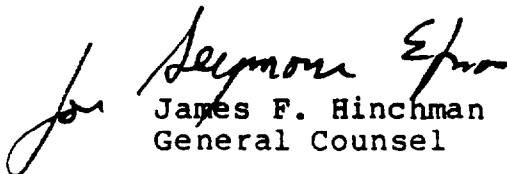
Further, although IIR now notes several instances where it allegedly could "easily trim" elements considered superfluous by the committee, explain its proposal, or otherwise correct "perceived" deficiencies, that position is inconsistent with the tenor and substance of the balance of its comments to the effect that its initial proposal was as good as AED's and that in that proposal it had made clear that IIR could carry out the work in a satisfactory manner.

We find that IIR's detailed comments are nothing more than a disagreement with the agency's evaluation of its proposal in matters involving professional judgment. We have consistently held that a protester's mere disagreement with the agency's judgment does not establish unreasonableness or other error in the evaluation process. Instruments & Controls Service Co., B-230799, June 6, 1988, 88-1 CPD ¶ 531.

Since the solicitation gave greater weight to technical merit than to proposed cost, we have no basis to object to the award to AED at a proposed cost approximately 5 percent higher than the protester's in view of the fact that AED's technical proposal was scored 30 percent higher than IIR's.

IIR also alleges that AID is guilty of bad faith or bias in the evaluation, in that factors other than the merits of its proposal entered into the decision to exclude it from the competitive range. IIR, however, has failed to timely submit evidence to substantiate its claims. In its first comments on the agency report, IIR asked our Office to interview certain persons to determine the "true reasons" for AID's low evaluation of IIR. However, we will not investigate such matters to establish the validity of a protester's allegation. Fayetteville Group Practice, Inc., B-226422.5, May 16, 1988, 88-1 CPD ¶ 456.

Accordingly the protest is denied.


James F. Hinchman
General Counsel