



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Native American Consultants, Inc.; ACKCO, Inc.

File: B-241531; B-241531.2

Date: February 6, 1991

A. Patrick Hanes for Native American Consultants, Inc., and Egan Artichoker for ACKCO, Inc., the protesters. James F. Trickett, Department of Health and Human Services, for the agency. Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Establishment of a competitive range of one does not convert a competitive procurement into a sole-source one.
2. Agency reasonably determined that protester's proposal was technically unacceptable and therefore not for inclusion in the competitive range where solicitation required the development of an electronic communications network using a specified information system and protester's proposal contained inadequate discussion of how it would go about establishing such a network using that system.
3. Agency reasonably determined that protester's proposal was technically unacceptable and therefore not for inclusion in the competitive range where one of principal tasks to be accomplished under the solicitation was development of an electronic communications network and protester's proposed staff did not have sufficient experience to oversee such a task.

DECISION

Native American Consultants, Inc. (NACI) and ACKCO, Inc. protest the exclusion of their proposals from the competitive range under request for proposals (RFP) No. 105-90-1002, issued by the Office of Human Development Services, Department of Health and Human Services, for technical assistance to Indian grantees under Title VI of the Older Americans Act. The protesters object to inclusion of only one, non-Indian-owned firm in the competitive range. The protesters also take issue with the technical evaluation of their proposals.

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The solicitation requested proposals to furnish technical assistance to Title VI grantees to assist them in developing their capacity to provide supportive and nutritional services for older Indians. The RFP advised offerors that technical quality would be more important than cost in the selection of an awardee. The RFP further stated that the following criteria (with the indicated weights) would be used to evaluate technical proposals: understanding of the problem (20 points), technical approach to work plan (50 points), staff qualifications (20 points), and organizational qualifications (10 points).

Under the criterion "Understanding of the Problem," offerors were advised that their proposals should indicate an understanding of Indian tribal organization, history, structure, and the status of aging services to older Indians. In addition, proposals were to reflect an understanding of the means and difficulty of using technical assistance to upgrade the quality of Title VI projects and an understanding of the aging network and supportive services for the Indian elderly. Under the criterion "Technical Approach to Work Plan," offerors were asked to delineate the steps that they would take to accomplish each of the tasks identified in the RFP's scope of work. These tasks included preparing to provide technical assistance in a number of areas (for example, fiscal management), providing such assistance through site visits and small group workshops, and planning several regional technical assistance workshops. In addition, the awardee was to establish and maintain an electronic communications network among Title VI grantees, Administration on Aging offices, and itself through the use of the CompuServe Information Service.

Under "Staff Qualifications," offerors were advised that their personnel should be experienced in developing and maintaining computer assisted data and communications systems. Under "Organizational Qualifications," offerors were instructed to furnish evidence of previous involvement in technical assistance projects concerning program development and management of Indian tribal service organizations.

Five offerors submitted proposals by the May 17, 1990, closing date. Development Associates, Inc. received a technical score of 92. The other four proposals were rated technically unacceptable, with scores ranging from 62 (NACI) to 39.5 (ACKCO). The contracting officer determined that only Development Associates stood a reasonable chance of being selected for award and included only that firm in the competitive range.

NACI argues first that by including only one firm in the competitive range, the agency converted the competition into a sole-source procurement. It also objects to the selection of a non-Indian-owned firm for award and questions the objectivity of the technical evaluators.

The agency's establishment of a competitive range of one did not convert the procurement into a sole-source acquisition. The agency issued a competitive RFP and received and evaluated five proposals; the fact that it determined, based on this evaluation, that only one proposal stood a reasonable chance of being selected for award and therefore included only one proposal in the competitive range did not change the procurement into a noncompetitive one. See Decom Sys., Inc., B-215167, Sept. 24, 1984, 84-2 CPD ¶ 333. Furthermore, there was nothing improper about the agency's selection of a non-Indian firm for award given that the procurement was not set aside for Indian-owned businesses.

Although the protester questions the objectivity of the technical evaluators, it offers no evidence that they were in any way biased and we will not attribute improper motives to government officials on the basis of inference or supposition. See Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. To the extent that the protester suggests that a request by the chairman of the evaluation panel for a rescoring of proposals indicates that the chairman was attempting to engineer a particular result, we disagree. The proposals were rescored because the evaluators had been provided an incorrect breakdown of the number of points assigned the various criteria. Under both evaluations, Development Associates scored substantially (i.e., by more than 20 points) higher than any of the other offerors.

Both protesters argue that their proposals should have been determined to be technically acceptable and included within the competitive range. In this regard, we note that the evaluation of technical proposals and the resulting determination of whether a proposal is in the competitive range are matters within the contracting agency's discretion. See Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588. In reviewing an agency's technical judgment, we will not reevaluate the proposal, but instead will examine the evaluation to ensure that it was not arbitrary or in violation of the procurement laws and regulations. Id. Although we will closely scrutinize an agency decision which results in a competitive range of one, we will not disturb such a determination absent a clear showing that it was unreasonable. See StaffAll, B-233205, Feb. 23, 1989, 89-1 CPD ¶ 195.

NACI'S PROPOSAL

The evaluators identified weaknesses in NACI's proposal under each of the technical evaluation criteria. Thus, for example, under the staff qualifications factor, the evaluators found that: (1) NACI's project director would be assigned only 75 percent of the time to the project, even though the RFP called for 100 percent of the project director's time; (2) the overall level of effort proposed was less than suggested in the RFP; (3) specific experience in the operation of programs for American Indians by the proposed staff was not presented although specifically required by the RFP; and (4) NACI unduly relied on outside consultants of planning for regional and on-site technical assistance.

The most serious deficiency the evaluators identified, however, was under the most important evaluation factor, "Technical Approach to Work Plan." The evaluators found NACI's proposal to be deficient in that it failed to describe adequately NACI's approach to developing, acquiring, implementing and providing training in the use of the Title VI electronic communications network, using the CompuServe Information System, an omission that the agency viewed as a serious and uncorrectable lack of understanding. The evaluators further noted that NACI had offered an alternative to the existing Title VI Management Information and Client Tracking System, although the RFP clearly required its use, as well as the use of the CompuServe system. The evaluators also found that NACI's proposal failed to demonstrate the offeror's understanding of the difficulty of using technical services to upgrade the quality of services provided under Title VI or to assist in coordinating with other agency network programs. In addition, the evaluators found that NACI had not demonstrated any knowledge of recent changes in the application and operations requirements for Title VI funding and the impact that these changes will have on the provision of technical assistance.

NACI contends that the evaluators incorrectly determined that its proposal reflected a lack of understanding regarding the requirement for development of an electronic communications network using CompuServe and that the other weaknesses identified in its proposal were minor informational deficiencies that could easily have been corrected through discussions. According to NACI, although it proposed to develop an electronic communications network not using CompuServe, it understood that the RFP called for a system using CompuServe and offered to provide such a system if the agency so desired.

We think that the protester misunderstands the thrust of the agency's criticism of its approach to the development of a Title VI electronics communications network. The technical evaluators found that NACI had not adequately described its approach "to developing, acquiring, implementing and providing training in the utilization of the Title VI electronic communications and reporting network." The deficiency, as we understand it, was not only that NACI had proposed to develop an alternative system not using CompuServe, but that the protester had failed to describe adequately its approach to developing a system using CompuServe, as required by the RFP. In particular, there was no discussion in NACI's proposal concerning the networking capabilities of CompuServe.

Our own review of NACI's proposal shows that the discussion of the implementation of the electronics communications network was very general in nature, and focused on the asserted, although undetailed, advantages of using an alternative to the CompuServe system. In its comments on the agency report on the protest, NACI does not address the agency's findings in this area, focusing instead on its contention that, while it offered an alternative to CompuServe, it also stated in its proposal that it would provide CompuServe. In this regard, while NACI states that it "described how [it] could provide CompuServe," there is no detailed discussion of how it would do so either in its proposal or in its comments on the agency report. Although the protester contends that it could have furnished information responding to the agency's concerns, the agency is not required to include in the competitive range an offer that would require major revisions to become acceptable. Source AV, Inc., B-234521, supra.

As noted above, the evaluators also found that NACI's proposal failed to show an understanding of the difficulties involved in providing and using technical services in connection with the Title VI program and did not demonstrate any knowledge of recent changes in the application and operations requirements for Title VI funding that would affect the provision of technical assistance. In response to these findings, NACI states only that they were "minor" informational deficiencies, which could have been remedied through discussions. We do not agree that the deficiencies identified are properly characterized as minor; on the contrary, they relate to whether the offeror had a fundamental grasp of the goals of the effort sought under the RFP.

Based on the evaluation documents and our review of the protester's proposal, and given the protester's failure to rebut the agency's conclusions, we find that the agency reasonably viewed the omissions from NACI's proposal as serious deficiencies that could not be corrected without

major revision. Accordingly, it was reasonable for the agency to exclude the proposal from the competitive range.

ACKCO'S PROPOSAL

The evaluators found that ACKCO's proposal had failed to demonstrate an adequate understanding of the current problems and issues to be addressed in carrying out the project. In addition, the evaluators noted that the proposal did not indicate that the project director or technical specialists had the experience and background to oversee the development and maintenance of a Title VI electronic communications network.

ACKCO takes issue with the agency's criticism of its proposal as failing to reflect an understanding of the current technical assistance needs of Indian organizations. According to the protester, it is apparent from its previous experience in working with Indian tribes and with the management of Title VI programs that it understands the technical assistance needs of the Indian groups. ACKCO further argues that other weaknesses in its proposal could easily have been resolved through discussions.

With regard to ACKCO's argument concerning its knowledge of the technical assistance needs of Indian organizations, the issue is not merely whether ACKCO possessed sufficient understanding, but rather whether its proposal was written in such a way as to reflect that understanding. ACKCO has not argued that its proposal in fact was. Furthermore, the fact that the protester has provided technical assistance in the past does not necessarily mean that it is qualified to render technical assistance in the present, given that the nature of the technical assistance required may have changed.

The agency also properly determined that the proposal was technically unacceptable based on ACKCO's failure to propose staff with sufficient experience in computer systems development. In this regard, we note that the evaluators found that neither ACKCO's proposed Project Director nor its technical specialists had the experience or background necessary to oversee development of an electronic communications network, which was one of the principal tasks to be accomplished under the RFP. ACKCO does not dispute this finding. In order to correct this deficiency, ACKCO would have been required to change its proposed staff, which would have involved a major revision of the proposal. CSP Assocs., Inc., 67 Comp. Gen. 213 (1988), 88-1 CPD ¶ 87. We therefore think that the agency was justified in finding its proposal technically unacceptable and excluding it from the competitive range.

Finally, both NACI and ACKCO note that their proposed prices were competitive with Development Associates' price. The protesters' prices are irrelevant, however, given that their proposals were determined to be technically unacceptable, since a technically unacceptable proposal can be excluded from the competitive range even if it is low in price.
Federal Serv., Inc., B-235661, Aug. 28, 1989, 89-2 CPD ¶ 182.

The protests are denied.


for James F. Hinchman
General Counsel