



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Parameter, Inc.
File: B-241652
Date: February 28, 1991

Jeffrey P. Aiken, Esq., Frisch Dudek, Ltd., and Richard A. Lofy, for the protester.
Dennis C. Dambly, Esq., Nuclear Regulatory Commission, for the agency.
Roger J. Mattson for Scientech Inc., an interested party.
Barbara R. Timmerman, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably found the awardee of a contract for monitoring nuclear power plant compliance with safety and technical orders did not have an organizational conflict of interest where the unrelated consulting work the awardee performed for some of the plants would not affect the awardee's ability to provide objective advice under this contract.
2. Protester was reasonably downgraded in accordance with the evaluation criteria where it did not provide sufficient requested details despite being advised to do so during discussions.
3. Protest that evaluation was improperly biased is denied where the record shows the proposals were evaluated in accordance with the evaluation criteria and there is no convincing proof of bias.

DECISION

Parameter, Inc. protests the award of a contract to Scientech, Inc. under request for proposals (RFP) No. RS-NRR-90-030, issued by the Nuclear Regulatory Commission (NRC) for engineering and technical support in monitoring and documenting the compliance of nuclear power plants with safety orders and other technical bulletins.

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The protest is denied.

The RFP contemplated a fixed-price task-order type requirements contract for a 3-year period. Technical proposals were evaluated based on four listed criteria:

1. Understanding of NRC statutory responsibility for and objectives of the contract (35 points).
2. Knowledge and experience with large computer data base systems and report preparation (30 points).
3. Staff qualifications and capacity.
 - a. Technical Staff (15 points).
 - b. Project Management (10 Points).
4. Status and Cost Monitoring Capability (10 points).

The RFP advised offerors that although cost would be a factor in the evaluation of proposals, technical merit would be a more significant factor.

NRC received eight proposals by the April 5, 1990, closing date. After initial evaluation by a technical review committee, three proposals, including the protester's, were found to be within the competitive range. Scientech, the awardee, received an initial score of 94 points while Parameter received 72.3 points on a 100 point scale.

After discussions, the contracting officer requested best and final offers (BAFO) to be submitted by June 29. As a result of BAFOs, Scientech improved its rating by 4.3 points for a total of 98.3 points while Parameter improved its rating by 13.7 points for a total of 86 points. Scientech, which had the highest rated proposal, was recommended for award at an evaluated price of \$427,137. Parameter had the lowest rated proposal and offered the lowest evaluated price of \$415,545.19.

According to the agency, because a number of Scientech personnel were previously employed by the NRC, it asked the office responsible for administering the contract, the Office of Nuclear Reactor Regulation, to conduct an independent review of the evaluation in order to ensure the integrity of the evaluation process. The independent panel reviewed each offeror's technical proposal and BAFO and the initial and final scores. The panel concluded that the evaluation was conducted in accordance with NRC procedures and that there was no evidence of bias in the evaluation process.

The record shows that although Parameter submitted an "acceptable good" proposal, it had several notable weaknesses, whereas Scientech's excellent proposal had none. The slight price advantage enjoyed by Parameter was found not to offset Scientech's significant technical advantage. Consequently, on September 21, NRC awarded the contract to Scientech.

Parameter then filed this protest with our Office. Parameter contends that NRC disregarded conflict of interest problems inherent in the selection of Scientech for award. Parameter also alleges it was wrongfully downgraded and that there was bias in the evaluation. Our review of the parties' arguments, proposals, written submissions, committee and staff source selection and evaluation documentation discloses no basis for finding that Scientech had an organizational conflict of interest or that the evaluation was biased or deviated from the evaluation criteria.

With regard to Parameter's allegations that Scientech has an organizational conflict of interest, the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2210(a) (1988), which is applicable to NRC procurements, provides that an organizational conflict of interest exists when the nature of the work to be performed under a proposed government contract may diminish the contractor's capacity to give impartial, technically sound, objective assistance and advice in performing the work, or result in the contractor's being given an unfair competitive advantage. The RFP included a clause, implementing the organizational conflict of interest restrictions, that required offerors to warrant that they had no organizational conflicts of interest and that precluded the contractor from performing any services for any NRC licensee or applicant that are the same as, or substantially similar to, the services contemplated under the RFP scope of work. The record shows that all offerors, including Scientech, were reviewed to ascertain whether an organizational conflict of interest existed; NRC found no such conflict in Scientech.

Parameter argues that Scientech's relationship with NRC-regulated utilities gives rise to an organizational conflict of interest because it would make Scientech's independent analysis of a utility company's compliance with safety orders suspect. In this regard, Parameter asserts that Scientech is actively soliciting business from NRC-regulated utilities, which causes its impartiality to be in doubt. The protester's primary example of Scientech's alleged conflict is certain testimony of a Scientech employee, on behalf of a utility, at a rate hearing. Parameter argues that if a firm receives "any" income or revenues from an NRC-regulated utility or

related organization, it has an organizational conflict of interest that should preclude it from receiving an award under this RFP. The protester also asserts that the contractor's occasional need for proprietary information from the regulated utilities would create document control problems for a company that does consulting work for competing utilities.

NRC asserts that Parameter is reading the organizational conflict of interest constraints far too restrictively and that none of the work Scientech has done for its commercial clients is the same as, similar to, or conflicts with the work required under this procurement. Scientech states that its past work for NRC-regulated utilities was not significant, that it does not routinely assist such utilities in matters before the NRC, that its most recent work for a single NRC-regulated utility was unrelated to this RFP work and ended in December 1990, and that it is not actively soliciting business from the utilities. It also explains that the expert testimony by its employee at a rate hearing, the primary evidence of a conflict cited by Parameter, was related to the issue of what proportion of costs of construction of new nuclear power plants should be paid through increased electric rates, and not to anything encompassed by this procurement.

The responsibility for determining whether an actual or apparent conflict of interest will arise if a firm is awarded a particular contract, and to what extent a firm should be excluded from the competition, rests with the procuring agency, and we will only overturn such a determination when it is shown to be unreasonable. Radiation Safety Serv., Inc. B-237138, Jan. 16, 1990, 90-1 CPD ¶ 56.

From our review, we think NRC reasonably concluded that none of Scientech's past or present business relationships with NRC-regulated utilities adversely affects Scientech's ability to provide objective advice under this contract to document the compliance of nuclear power plants with safety orders and other technical bulletins. The business relationships that Scientech apparently has with NRC-regulated utilities are not directly related to this work and do not appear to be such that the agency should reasonably be concerned about the objectivity of Scientech's work--there is no evidence that Scientech represents or provides any advice to NRC-regulated utilities regarding the utilities' compliance with these safety orders or technical bulletins. The mere fact that Scientech has performed work for NRC-regulated utilities and may perform such work in the future does not mean there is an

organizational conflict of interest.^{1/} Under the circumstances, we find NRC reasonably determined Sciencetech did not have an organizational conflict of interest.

Parameter next contests each instance where its proposal was downgraded, and contends that its low score may have been caused by bias on the part of the chairman of the technical review panel, or bias in favor of Sciencetech since it employed numerous former employees of NRC.

The record shows that under the first factor concerning understanding the evaluation panel noted as weaknesses in Parameter's proposal the firm's failure to demonstrate optimum knowledge and understanding of the generic and unresolved safety issues and regulatory issues arising from the Three Mile Island 2 (TMI-2) nuclear power plant incident.

Parameter has assisted NRC under another contract in monitoring safety issues of general applicability to all nuclear power plants. Parameter contends that this procurement involves the same basic retrieval, evaluation and report work as the contract that it successfully performed. It notes that

^{1/} NRC regulations, implementing the Atomic Energy Act and incorporated in the RFP, provide the following example:

"The ABC Corp., in response to a RFP, proposes to perform certain analyses of a reactor component which are unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

"Guidance. An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work during the performance of the NRC contract with the private sector which could create a conflict. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example." 41 C.F.R. § 20-1.5405-2 (1983). (These regulations, although still in effect, are not currently codified.)

in response to the agency's discussion questions, it expanded its discussion of TMI-2 action plan items and pointed out their similarity to the services Parameter had previously provided the NRC. Parameter states that it explained that these action plans, unresolved safety issues and generic safety issues need not be treated any differently from how it has treated safety issues of general applicability in the past. Parameter also argues that its understanding is necessarily superior to the awardee's in this area as Scientech has never documented the compliance of power plants with any safety or technical orders.

The agency responds that it increased Parameter's initial score in this area by five points, from 24.3 to 29.3, as a result of the discussion in the firm's BAFO of technical issues related to TMI-2. The protester did not receive the full 35 points under this factor because the evaluators concluded that the offeror still did not sufficiently discuss specific issues to demonstrate its understanding of regulatory issues or the generic and unresolved safety issues associated with TMI-2 or the close out of licensing actions in this area. A review of the proposals indicates that Parameter's proposal provided little specific information on TMI-2, particularly when compared to Scientech's proposals which discussed in a more specific manner these regulatory and safety issues as they relate to TMI-2. Since this area was both emphasized in the RFP evaluation criteria and during discussions, it was reasonable for the agency to downgrade Parameter for these weaknesses.

With respect to Parameter's concern that Scientech lacked experience, the record shows that the evaluators did view, as a minor weakness, Scientech's relative lack of experience in generic issues of overall applicability. The record also shows that the evaluators concluded that Scientech's demonstration of its understanding of the work, by providing, for example, an explanation of each type of generic communication of the NRC issues, showed its understanding. Scientech's proposal showed extensive experience in analyzing safety and technical issues relating to nuclear power plants. Thus, we find there is sufficient evidence in the record to support the evaluators' ratings.

Parameter also challenges the evaluators' finding that it does not have optimum experience with large computer data base systems, since its proposal demonstrates an intimate knowledge of NRC's large computer data base. Under this factor, Parameter received 24 out of 30 possible points. While the evaluators gave appropriate credit to Parameter for familiarity with NRC data base systems, they concluded that the firm did not show the same familiarity as the awardee with large data bases in general. Although Parameter argues that

knowledge of other than NRC's system is not necessary, the RFP did not limit the evaluation factor in this way. We think it reasonable for the evaluators to conclude that while Parameter's experience with NRC data bases was good, Scientech's experience with numerous data bases, including NRC's, was better. The evaluators were also concerned about Parameter's failure to demonstrate in its proposal the firm's ability to do more than extract data. In this regard, while the agency, in written discussions, asked Parameter to specifically address its ability to extract and compile data from large computer data base systems, and to design, compose, edit and prepare major reports, we agree with the evaluators that Parameter's BAFO did not specifically address these matters. Thus, we find NRC's evaluation of this factor reasonable.

The only other area in which Parameter did not receive all points possible was the subfactor project management. Parameter was given 7 out of 10 possible points in this area because of concerns related to the proposed use of the president of the firm as the project leader. Specifically, Parameter did not provide, as requested in written discussions, examples of specific projects managed by the proposed project leader, or the percentage of time he spent on other projects.

Parameter responds that its cost proposal showed that the project leader, the president of Parameter, would devote 350 hours, or approximately 6 percent of his time, to the effort. Parameter also states that it listed 237 specific tasks that the president had directed in an appendix to the proposal.

An agency is not required to search through an offeror's cost proposal to find information that should form a part of the technical proposal. Here, NRC specifically asked Parameter to address the amount of time the project leader devoted to other projects. Parameter did not address this issue except to list in its cost proposal that the project leader would work approximately 350 hours during the life of the contract. Further, although the referenced proposal appendix did contain an extensive listing of the numerous tasks it has performed for NRC in the past, it did not relate in any way the tasks on the list with the project leader's contribution to those tasks. We consequently find nothing unreasonable in the agency not awarding the protester maximum points in this category.

Although Parameter argues that there may have been bias in favor of Scientech because that firm employed "numerous" former NRC employees, it has identified no instances where any of these employees violated regulatory or statutory restrictions on post-employment practices, nor has it challenged

NRC's affirmative statement that it is unaware of any violations. Moreover, NRC was properly sensitive to the fact that this may be perceived to be a problem in requiring this evaluation to be independently reviewed to assure there was no bias.

With respect to alleged bias on the part of the technical review committee chairman, the protester must submit convincing proof that the chairman had a specific and malicious intent to harm the protester in order for us to question the award on this basis, since contracting officials are presumed to act in good faith. Scipar, Inc. B-220645, Feb. 11, 1986, 86-1 CPD ¶ 153. In this case, while the protester has told a number of anecdotes about the chairman's behavior in discussions and in monitoring earlier contract performance, it presents no convincing proof of improper bias on his part. Nothing in the record indicates that the scoring of Parameter's proposal was the result of bias; all three evaluators gave Parameter the lowest score of those proposals included in the competitive range, and, as indicated above, we reviewed each area where the protester did not receive full points and found the evaluation reasonable.

We deny the protest.



James F. Hinchman
General Counsel