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Comptroller General
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** RDA International, Inc.

**File:** B-244271.2

**Date:** December 9, 1991

Kenneth B. Craib for the protester.
Kevin F. O'Donnell, Esq., Agency for International Development, for the agency.
Jennifer Westfall-McGrail, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

**DIGEST**

1. Protest alleging that offeror's proposal was improperly excluded from the competitive range because its cost proposal, which included the cost of a major project component omitted by its competitors, was higher than the cost proposals of its competitors is denied where: (1) protester's proposal was excluded from the competitive range based on its low technical and cost scores, and not simply based on its high cost; (2) there is no evidence that the protester included in its cost proposal the costs that it claims its competitors omitted; and (3) the protester has furnished no evidence as to the magnitude of the costs allegedly omitted by its competitors.

2. Protest of cost evaluation is denied where protester fails to demonstrate that agency lacked a reasonable basis for awarding it low scores on cost evaluation factors.

3. Failure to notify offeror promptly of its exclusion from the competitive range is a procedural defect which does not affect the validity of an award.

**DECISION**

RDA International, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 91-001, issued by the Agency for International Development (AID) for a fisheries development and management project in the Sultanate of Oman. RDA contends that its competitors excluded from their cost proposals the cost of a major component of the project and that the agency improperly established a competitive range based on these artificially low cost proposals. The

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protester also challenges the cost evaluation of its proposal.

We deny the protest.

The RFP contemplated the award of a cost-plus-fixed-fee level of effort contract for technical and consulting services to assist the Government of Oman in improving the management of its marine resources. Contract objectives included increasing the level of training of employees of Omani fishery institutions, strengthening the capability of these staffers to oversee fishery research projects, and to improve planning, programming, budgeting, and administrative skills. The solicitation advised offerors that certain categories of logistical support under the contract were to be furnished by the contractor and included as a cost in each offeror's cost proposal, while other categories of logistical support were to be furnished by the Government of Oman. With regard to participant training, the solicitation instructed offerors that direct expenses (i.e., "fees, tuition, domestic travel, stipends, etc. per AID Handbook 10") of long-term and short-term training in the United States would be borne by the Government of Oman.

The RFP provided for award to the offeror whose proposal promised the greatest value to the government, cost and technical factors considered. Offerors were advised that the following five factors would be considered in evaluating technical proposals: (1) strategy for project implementation; (2) staff capability; (3) institutional experience; (4) support systems; and (5) management structure/system.

The RFP also provided that the following eight factors would be considered in evaluating cost proposals: (1) total cost and fee at provisional indirect cost rates; (2) total cost and fee at ceiling indirect cost rates; (3) the realism and reasonableness of proposed costs; (4) the quality and detail of narrative explanations and justifications of costs; (5) the completeness and the clarity of the cost proposal; (6) demonstration of cost consciousness; (7) the balance of direct costs versus indirect costs and fee; and (8) the proportion of costs dedicated to providing technical services versus management and support.

Three offerors--RDA, Chemonics International Consulting Division, and Checchi and Company--submitted proposals by the February 8, 1991, closing date. Between March 4 and March 22, a team of evaluators reviewed and scored the technical proposals. The contracting officer reviewed and scored the cost proposals. The scores assigned were as follows:

| Offeror | Tech. Score | Overall Cost (Millions) | Cost Score | Total Score | Weighted Score |
|---|---|---|---|---|---|
| Chemonics | 74.7 | $10.2 | 76 | 150.7 | 75.4 |
| Checchi | 65.4 | $14.0 | 74 | 139.4 | 69.7 |
| RDA | 56.8 | $16.7 | 50 | 106.8 | 53.4 |

The contracting officer determined that RDA did not stand a reasonable chance of being selected for award and that therefore only Chemonics and Checchi should be included in the competitive range. The contracting officer, in reaching this conclusion, considered not only the significant spread between the overall technical point scores of the highest and lowest offerors, but also the fact that the difference in scores was generally consistent across all technical factors and that RDA's score of only slightly more than half the available points was low in absolute, as well as comparative, terms. The contracting officer further found that RDA's cost proposal far exceeded the agency's estimate of the cost of the contract work.

By letter dated March 23, 1991, the contracting officer opened negotiations with both Chemonics and Checchi. By letter dated May 1, he requested best and final offers (BAFO) from both offerors by May 13. On May 15, the contracting officer awarded a contract to Chemonics.

As stated previously, RDA asserts that both Chemonics and Checchi excluded from their cost proposals the cost of a major component of the project. Specifically, RDA contends that its competitors excluded certain administrative support costs from the manpower development component of their proposals under the assumption that these costs would be paid directly by AID or the Government of Oman. The costs include the costs of implementing an efficient system for the recruitment, screening, and selection of candidates for training; making travel arrangements for students traveling overseas; providing students traveling overseas with orientation regarding the culture of the country in which they will be studying; and monitoring and evaluating the students' progress. RDA further asserts that it included the costs of furnishing these administrative support services in its cost proposal, within the budget proposed for its principal subcontractor for manpower development, the University of Rhode Island.

To the extent that RDA's argument is premised on the assumption that its proposal was excluded from the competitive range due solely to its higher proposed cost, the protester's argument is factually erroneous. RDA's proposal was excluded from the competitive range not simply because its proposed cost was highest, but also because its technical and combined cost/technical scores were lowest.

Further, although RDA recognized the need for all of the previously listed administrative support services in its technical proposal, we have no means of verifying the extent to which the protester included the costs of furnishing these services in its cost proposal. There is no indication in either RDA's proposed budget for manpower development activities or its proposed budget for its subcontractor, the University of Rhode Island, that the proposed costs included the costs of administering a training program. In fact, neither budget proposed any costs in the category of "training."

In addition, RDA has not demonstrated that the costs which its competitors allegedly omitted from their cost proposals were significant in comparison with the offerors' overall cost proposals. The protester has furnished us with no information as to the dollar figures involved, other than to indicate that the sums were "significant" and not in the "sub-$100,000 range." Without further information as to sums involved, we cannot conclude that RDA was prejudiced by its alleged inclusion in its cost proposal of the administrative support costs of conducting a manpower development program.

RDA also challenges the cost evaluation of its proposal. The protester contends that the scores that it received on a number of the cost evaluation factors were unfairly low.

For example, with regard to the evaluation factor relating to total cost and fee at the provisional indirect cost rates, on which RDA received a score of 6,[1] the protester takes issue with the contracting officer's criticism of its proposed cost as exceeding the agency's estimate. RDA argues that its proposed cost of approximately $16.7 million was lower than the agency's estimate of $18.5 million.

In response, the agency points out that its pre-procurement project budget for this contract of $18.5 million included an estimated $4.8 million to carry out the project's direct training expenses.[2] The budget for the project without

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[1]Each evaluation factor was worth a maximum of 12.5 points.

[2]The agency apparently intended that the direct expenses (i.e., "fees, tuition, domestic travel, stipends, etc. per AID Handbook 10") of long-term and short-term training in the United States would be paid by the contractor (and

training was thus approximately $13.7 million--a sum that is, as the agency contends, substantially less than RDA's proposed cost of $16.7 million.

As another example, the protester complains that the agency awarded it only 5 points on the cost evaluation factor concerning total cost and fee at ceiling indirect cost rates. RDA contends that the contracting officer should not have penalized it for failing to offer ceiling indirect cost rates since it did, in fact, propose ceilings. In this regard, RDA notes that it stated in its proposal that it "would propose and is willing to accept the currently approved indirect rates as ceiling rates."

We have examined the portion of RDA's cost proposal relating to ceiling indirect cost rates and note that the protester has quoted to us from it selectively. With regard to ceiling rates, RDA's proposal actually stated:

> "RDA additionally notes that Section L(9) of the RFP states 'the Offeror (and each subcontractor) should propose ceiling indirect cost rates'. . . but does not require them. The overhead rates utilized in this proposal are those currently authorized for FY91 (year ending 8/31/91) and those forecast for FY92-95. These forecast rates presume award of this contract as bid, and also presume award of one or more major AID contracts for similar fisheries-related work in the Pacific. Pending determination of Pacific contract status, RDA is reluctant to propose what could become overly restrictive ceilings on indirect cost rates. In the interim, RDA would propose and is willing to accept the currently approved indirect rates . . . as ceiling rates."

It is apparent from this excerpt that RDA did not propose an indirect cost rate ceiling, as it contends; rather, it proposed only to accept the currently approved indirect rates as a ceiling until it could determine, based on the status of other projects awarded to it, what an appropriate ceiling would be. Thus, the contracting officer clearly did have a basis for penalizing RDA for failing to offer a limitation on indirect costs.

The protester also complains, among other things, that the agency awarded it less than half the available points for

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included in offerors' cost proposals); the RFP instead indicated, however, that these direct expenses would be paid by the Government of Oman. Thus, no offerors included them in their cost proposals.

the evaluation factor concerning demonstration of cost consciousness. RDA contends that the contracting officer wrongly concluded, based on the preface to its cost proposal, in which it maintained that lowest cost did not necessarily translate to best value, that RDA was offering a high cost proposal.

Regardless of whether or not the agency correctly interpreted RDA's preface as advocating a high cost approach, the fact remains that RDA's proposal was in fact substantially higher in cost than its competitors' proposals and the agency estimate. Thus, in our view, the contracting officer had a reasonable basis for awarding the protester a lower score for cost consciousness. We therefore cannot conclude that AID's evaluation of the protester's cost proposal was unreasonable.

The protester also objects to the evaluation of its technical proposal. RDA argues in essence that given its experience with fishery development and management in general and with Omani fisheries in particular, it could not possibly have deserved such a low--i.e., approximately half the available points--technical score. The protester suggests that one possible explanation for its low score may have been that the Omani evaluators were biased against it. In this regard, the protester alleges that one of the Omani evaluators, a high ranking official in the Omani Ministry of Agriculture and Fisheries, had reason to be biased against it because of criticisms it had made of his performance under a previous contract.

We have reviewed the technical evaluators' worksheets *in camera* and find that they do not support the protester's hypothesis that its low average technical score was attributable to the low scores awarded it by the Omani evaluators. It, in fact, appears that the average score that RDA received from the Omani evaluators was virtually identical to the average score that it received from the non-Omani evaluators. Furthermore, RDA's lowest technical score by far was awarded by one of the American evaluators. Thus, we find no evidence that RDA's low technical score was the product of bias on the part of the Omani evaluators.[3]

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[3]RDA also objects to the fact that the agency ultimately shifted responsibility for payment of direct training expenses from the Government of Oman to the contractor after RDA was excluded from the competitive range, without having issued an amendment. The record shows that the agency instructed both offerors remaining in the competitive range to add $4.8 million to their cost proposals to cover the direct training costs. The contract awarded to Chemonics reflected the change--i.e., it provided for payment of the

Finally, RDA complains that the contracting officer failed to notify it of its exclusion from the competitive range until several weeks after he had opened discussions with both of its competitors. The protester contends that the contracting officer violated the provisions of Federal Acquisition Regulation (FAR) § 15.1001(b) by failing to notify it promptly that it had been excluded.

In response, the contracting officer states that he elected not to provide RDA with prompt notification of its exclusion from the competitive range based on his determination, consistent with the provisions of FAR § 15.1001(a), that such disclosure would have been detrimental to the government's interest.[4] The contracting officer explains he did not notify RDA of its exclusion since he did not want the other competitors to learn, through industry gossip, that only two firms remained in the competition.

In our view, the contracting officer's professed concern with maximizing competition did not justify his failure to notify RDA promptly of its exclusion from the competitive range. Two firms remained in the competition after RDA's exclusion; thus, neither could use the knowledge that RDA had been eliminated to gain an upper hand in negotiations with the agency.

We also fail to see how the knowledge that RDA was out of the competition could in any way have compromised the quality of the technical proposals submitted by the remaining firms. If anything, it would seem that such knowledge would have improved the quality of the proposals since it allowed the other firms to propose to employ certain highly qualified individuals who had originally been unconditionally committed to RDA.

Even assuming that the agency improperly failed to notify RDA promptly of its exclusion from the competitive range, however, this failure does not provide a basis for

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training expenses by the contractor. Since we find that RDA was properly excluded from the competitive range, the failure to issue an amendment did not affect the firm.

[4]FAR § 15.1001(a) provides that:

> "The contracting officer shall promptly notify each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award, unless such disclosure might prejudice the Government's interest." (Emphasis added.)

sustaining RDA's protest. Space Comms. Co., 66 Comp. Gen. 2 (1986), 86-2 CPD ¶ 377. The failure to notify an unsuccessful offeror promptly that it is no longer in consideration for award is merely a procedural defect and does not affect the validity of the award. Id.

The protest is denied.

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for James F. Hinchman
General Counsel