

S. RIBACK



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arthur Anderson & Company

File: B-245903; B-245903.2

Date: February 10, 1992

W. Bruce Shirk, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.

Alan M. Grayson, Esq., for Urbach, Kahn & Werlin, an interested party.

Nancy Sullivan, Office of the Inspector General, Department of Agriculture, for the agency.

Scott H. Riback, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in preparation of the decision.

DIGEST

1. Protest challenging evaluation of awardee's proposal is denied where record shows that agency scored proposal consistently with RFP evaluation scheme; although awardee had relatively less experience than protester, agency reasonably determined that, in light of overall experience, it was appropriate to score awardee only marginally lower than protester under technical experience factor.

2. Agency was under no obligation to discuss price with protester where record does not show that agency considered protester's price unreasonable, and protester's offered hourly rates were below hourly rates used to calculate government estimate.

DECISION

Arthur Anderson & Company (AAC) protests the Department of Agriculture's award of a contract to Urbach, Kahn & Werlin (UKW), under request for proposals (RFP) No. OIF-91-R-5, for financial and compliance audit services. AAC argues that the agency improperly evaluated UKW's proposal and failed to conduct adequate price discussions with AAC.¹

¹In its initial letter of protest, AAC also argued that the agency improperly failed to conduct adequate technical discussions with it. In its comments on the agency report, however, AAC made no mention of this issue, which the agency responded to in its report. We deem the issue to have been abandoned by AAC, and consequently will not consider it.

Moran Constr. Co., B-241474, Jan. 7, 1991 / 91-1 CPD ¶ 16.

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We deny the protests.

The RFP called for the submission of firm, fixed hourly rates to perform an indefinite quantity of accounting work for a base year and 1 option year and provided a labor mix that the agency considered an adequate estimate of the hours necessary to perform the work. The solicitation stated that proposals would be evaluated on the basis of both technical and cost considerations, with technical considerations worth 75 percent of the overall score and cost worth 25 percent. Four technical evaluation factors were specified (along with a range of available points for each): technical experience of the contractor (0-30 points); qualifications of personnel (0-35 points); capability of the contractor (0-20 points); and work plan (0-15 points). Each of the major factors had one or more subfactors. Under the "technical experience of the contractor" factor, the only one relevant here, there was one subfactor: "prior experience of personnel in performing financial statement audits of large, complex financial institutions, especially government organizations."

In response to the solicitation, the agency received seven initial proposals, four of which were determined after evaluation to be technically acceptable and within the competitive range. The contracting officer concluded on the basis of the initial technical evaluation results that there was no need to engage in technical discussions with the offerors. The agency then solicited best and final offers (BAFO) from the competitive range offerors.

After receiving the BAFOs, the agency developed composite scores for each firm. The protester's proposal was ranked the highest from a technical standpoint (97 points), and UKW received a lower technical score (91). UKW's cost score was the highest, based on its lowest proposed cost, while AAC's cost score was the lowest. UKW's final normalized composite score (93.25) was slightly higher than AAC's (92.06), and Agriculture made award to UKW on this basis.

AAC first argues that the agency misevaluated UKW's technical proposal under the "technical experience of the contractor" factor. According to AAC, UKW's proposal does not reflect a level of experience in conducting financial statement audits of large financial institutions that would warrant the score assigned to the firm. AAC notes that while the consensus technical evaluation found that UKW had performed the "financial statement audits of government corporations and other government entities," the firm had only "limited experience [with] large financial statement audits." In addition, AAC alleges that UKW may have "overstated" its prior experience with federal governmental entities; although UKW's proposal listed a number of federal

contracts, AAC claims that a search of various computer data bases indicates that UKW has only been awarded three federal contracts for audit services, and that one of them is the contract at issue here. AAC further alleges that Agriculture must have failed to check UKW's references; AAC maintains that had the agency done so, it would have discovered that UKW was lacking in technical expertise.

The evaluation of technical proposals and the determination of their relative merits is primarily the function of the procuring agency; the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. We thus will not substitute our judgment for the agency's. Dimensions Travel Co., B-224214, Jan. 13, 1987, 87-1 CPD ¶ 52. We will examine a challenged evaluation to ensure that it was reasonable and consistent with the stated evaluation factors and applicable statutes and regulations. Travel Centre, B-236061.2, Jan. 4, 1990, 90-1 CPD ¶ 11.

We have examined UKW's proposal and the written evaluation materials, and conclude that Agriculture's evaluation of UKW's proposal under the technical experience factor was reasonable. UKW's proposal provided evidence of a broad range of auditing experience, some related to the performance of federal government contracts and some related to the performance of audits for state and local governmental entities required to have audit work performed in connection with the receipt of federal funds. UKW's proposal also provided evidence of the performance of audits for a broad range of private financial institutions of various sizes, as well as some experience in doing audits of or for federal financial institutions such as the Resolution Trust Corporation.

The evaluation materials demonstrate that the evaluators considered UKW to have relatively limited experience in performing large financial statement audits, and that they took this limitation into account in rating UKW marginally under the first evaluation factor. Although AAC believes the score was too high, there simply is no basis on this record to conclude that some other lower score was required. In this regard, AAC's position reflects its view that it possesses substantially greater experience than UKW in performing large financial institution audits, and that this relative superiority should have been reflected in a similarly substantial scoring advantage under this factor. Notwithstanding AAC's greater experience in auditing large financial institutions, however, UKW's overall experience was deemed sufficient for what the agency was seeking, and the agency's conclusion that UKW warranted a good score in

this area, marginally below AAC's, was not inconsistent with the RFP or otherwise unreasonable.

AAC notes that while one of the three evaluators gave UKW a perfect score of 30 under the technical experience factor, the other two evaluators gave UKW only a score of 25. Although AAC suggests that this disparity may call into question UKW's overall score of 27 under this factor, it is not unusual for individual evaluators to have disparate, subjective judgments on the relative strengths and weaknesses of a proposal. See, e.g., Mounts Eng'g, 65 Comp. Gen. 476 (1986), 86-1 CPD ¶ 358; Syscon Servs., Inc., 68 Comp. Gen. 698 (1989), 89-2 CPD ¶ 258. The mere existence of such a disparity does not establish that the evaluation process was irrational or otherwise flawed. Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75. Here, the evaluation record shows that the three evaluators reached a consensus as to the appropriate score and, as indicated above, we find that the overall evaluation in this regard was reasonable. Although it does not appear that the evaluators actually contacted UKW's listed references to verify its performance, UKW furnished a generally extensive description of the work under most of its contracts. The agency was entitled to rely on this information. In the absence of contradictory information or other reason to question representations about prior experience, procurement officials have no duty to check any or all of the references furnished in a proposal. Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715.

AAC also argues that Agriculture improperly failed to conduct price discussions with it and that, as a result, the firm was deprived of the opportunity to lower its BAFO price and achieve a higher overall score. Specifically, according to AAC, its first year price (\$187,650) exceeded the government's estimate (\$175,000) for the first year of the contract by \$12,650--there was no estimate for the second, (option) year--and therefore should have been determined "unreasonable" by Agriculture, thereby imposing a duty on the agency to raise the matter during discussions.

This argument is without merit. An agency generally must point out weaknesses, excesses or deficiencies in a proposal in order to satisfy the statutory mandate for meaningful discussions with offerors in the competitive range. See Technical and Mgmt. Servs. Corp., B-242836.3, July 30, 1991, 91-2 CPD ¶ 101. An agency has a legal obligation to inform an offeror that its price is too high only if the government has reason to think that the price is unreasonable. Weeks Marine, Inc./Bean Dredging Corp. a Joint Venture, 69 Comp. Gen. 108 (1989), 89-2 CPD ¶ 505; Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54. Agriculture reports that, taking into account the other competitive prices received in

response to the solicitation, the agency's prior experience, and the agency estimate, it at all times considered AAC's price fair and reasonable even though it was the highest price offered. In this regard, AAC's total initial proposed price (\$375,300) was only slightly above the initial price of two of the other three offerors (\$371,400 and \$372,963). Even considering only first-year prices, AAC's price was only 7 percent higher than the estimate. This differential is not so great that the agency was compelled to consider AAC's first-year price unreasonably high. Further, although AAC's offer was higher than the government estimate in the aggregate, a comparison of the hourly rates used to calculate the government estimate and the hourly rates proposed by AAC shows that AAC's rates were lower than the government estimate rates for each of the labor categories. Consequently, Agriculture was under no obligation to discuss price with the protester.

The protests are denied.

Robert P. Murphy
for James F. Hinchman
General Counsel