



Comptroller General
of the United States

43322

Washington, D.C. 20548

Decision

Matter of: The Pragma Corporation
File: B-255236; B-255236.2; B-255236.4
Date: February 18, 1994

Robert M. Fitzgerald, Esq., and Keith C. Phillips, Esq., Watt, Tieder & Hoffar, for the protester. Clayton S. Marsh, Esq., Ropes & Gray, for Partners for International Education and Training, an interested party. Mary Alice Kleinjan, Esq., and Nina G. Nathani, Esq., Agency for International Development, for the agency. Barbara C. Coles, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation: (1) did not clearly state the agency's technical scoring scheme, (2) assigned inordinate weight to certain evaluation factors, and (3) deprived offerors of adequate time for site visits is untimely where it is not filed prior to the time set for receipt of initial proposals.
2. Where agency reasonably determined that technical superiority of awardee's proposal outweighed its higher cost, selection of awardee's proposal as the most advantageous to the government is not objectionable.
3. Protest that agency failed to conduct meaningful discussions with the protester and the awardee is denied where the record establishes that the agency identified specific deficiencies and weaknesses in each offeror's proposal and gave both offerors an equal opportunity to correct them.
4. Protest that agency should have excluded the awardee from the competition because a proposed subcontractor has, in the protester's view, an organizational conflict of interest is denied where the subcontractor did not participate in the preparation of the statement of work and did not gain a competitive advantage that could be passed on to the awardee.

DECISION

The Pragma Corporation protests the award of a contract to Partners for International Education and Training (PIET) under request for proposals (RFP) No. OP-A-FAO-93-P-003, issued by the Agency for International Development (AID) for technical and management services for AID's Participant Training Program and the Thomas Jefferson Fellowship Program. The protester contends that AID mishandled the procurement from the time it issued the solicitation to its selection decision by drafting the solicitation to favor the awardee, failing to perform a reasonable cost/technical tradeoff, failing to conduct meaningful discussions with Pragma, and overlooking the competitive advantage the awardee gained via its subcontractor's organizational conflict of interest.

We deny the protest.

The RFP, issued on May 28, 1993, contemplated the award of a cost-plus-fixed-fee contract to the offeror whose technical/cost relationship was judged most advantageous to the government, with technical merit accorded 75 percent of the weight in the evaluation. The RFP's statement of work required the contractor to: (1) place foreign students in fellowship programs that are designed to meet the specific needs of the student and are consistent with the training plan for that country, (2) prepare a detailed training implementation plan, and (3) monitor and evaluate the participant's progress throughout the training process. In addition to providing these services for foreign students receiving training in the United States, the RFP advised offerors that additional services may be required either in or outside the United States. These services could include: (1) recruiting, selecting and evaluating potential fellows and (2) selecting, programming and providing support services for special groups like the participants in the Entrepreneurs International (EI) Program, which is a private sector training activity.

In addition to considering the responsiveness of the technical proposals (25 points), the solicitation advised offerors that the evaluators would consider each offeror's ability to provide: (1) an experienced staff with extensive knowledge of and familiarity with U.S. educational and training institutions, training areas and private sector groups (100 points); (2) management and operational capabilities (200 points); (3) a successful working relationship with the national and international educational organizations and institutions as well as private sector entities (125 points); (4) in-house or consultant staff for overseas field support services (250 points); (5) management

information and accounting systems, including knowledge of tax laws and regulations for each participant (75 points); (6) maintenance and expansion of an up-to-date resource center (75 points); and (7) a cost-effective training program based on an understanding of the agency's needs (150 points). The maximum technical score was 1,000 points.

Four offerors, including Pragma and PIET, submitted proposals by the July 13 closing date. Upon completion of its evaluation, the technical evaluation committee recommended that the competitive range be composed of the following offerors based on their overall scores, considering technical merit and cost: (1) PIET (97 of 100 available points), (2) Pragma (93), and (3) Offeror A (93).¹

By letter dated September 8, the agency conducted discussions with all competitive range offerors, with responses due September 13. The agency advised Pragma that it needed to address several issues in its technical and cost proposals. Specifically, Pragma was notified that its technical proposal was deficient in the area of organizational outreach because it failed to adequately describe its ability to coordinate support services with private sector companies to develop an EI program, and was weak in the area of services because its proposal failed to demonstrate the necessary business relationships or expertise to organize or obtain overseas field support services.

The evaluators concluded that despite specific questions to Pragma about its organizational outreach and field service capability, the proposal failed to adequately describe Pragma's ability to coordinate with other entities to develop an EI program, or to provide overseas field support services, such as pre-departure orientation and English Language Training. The panel noted that despite Pragma's listing of several companies in its proposal, it failed to demonstrate that these companies would be responsive to the training program. Since Pragma's responses to the discussion questions were inadequate, the evaluators decided not to conduct a second round of discussions in order to ask the same questions again.

¹AID arrived at these scores by reducing the technical and price scores to a 100-point scale. Thus, the agency assigned 75 points to the high technical score and 25 points for the low cost, and then awarded proportionately lower point scores to offerors with lower technical scores and higher costs. For example, PIET received the maximum 75 points for its high technical score of 927 of 1,000 available points, and 22 points for its second low cost.

On September 20, the agency requested best and final offers (BAFO). Although the offerors revised their cost proposals, they did not revise their technical proposals. Using the original 1000-point scale for technical proposals, the evaluators rated PIET's technical proposal substantially higher than Pragma's--i.e., 962 versus 824--and noted that while PIET's proposed costs (\$81,947,359 and \$82,805,195)² were higher than Pragma's, Pragma's proposed costs (\$74,985,887) were considered unrealistic. PIET received the highest overall rating, 97.9 (for its lower cost proposal) and 97.7 (for its other cost proposal), with another offeror ranked second, and Pragma ranked third (89.3).³ As a result, the agency made award to PIET as the offeror whose proposal was most advantageous to the government. Pragma's protest to our Office followed.

IMPROPER SOLICITATION

Pragma first argues that the agency improperly drafted the solicitation to favor PIET. To support its allegation, Pragma claims that the RFP: (1) failed to clearly state the agency's method of awarding points for the technical evaluation; (2) assigned inordinate weight to the evaluation factors (i.e., organizational outreach and buy-in/field services) where PIET was likely to have strengths; and (3) deprived offerors of an opportunity to respond effectively to the RFP given the limited 2-week period allowed for site visits.

Pragma's contentions that AID drafted the solicitation to favor PIET are untimely challenges to the solicitation requirements. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of initial proposals be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1993). Since the RFP specifically stated the evaluation factors and their relative weights, the protester should have raised this issue--along with any concern about the sufficiency of the time allowed for site visits--prior to the time set for receipt of initial proposals. Kenneth L. Latham, B-245137, Dec. 18, 1991, 91-2 CPD ¶ 559.

²PIET submitted two cost proposals because it concluded that the RFP was unclear about whether certain transition costs were to be paid under the existing contract--PIET is the incumbent here--or under the new contract.

³As with the initial proposals, AID again assigned 75 points to the high technical score and 25 points for the low price, and then assigned proportionately lower point scores to offerors with lower technical scores and higher prices.

COST/TECHNICAL TRADEOFF

The protester argues that the agency's selection of PIET's proposal as the most advantageous to the government was unreasonable given that its own proposal received a satisfactory technical rating and was lower in cost. Pragma contends that the agency failed to explicitly find that PIET's 14-point higher technical score was worth its 10 percent higher cost.⁴

In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specified. Sabreliner Corp., B-242023; B-242023.3, Mar. 25, 1991, 91-1 CPD ¶ 326. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Cost/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Award may be made to a higher-rated, higher-cost offeror where the decision is consistent with the evaluation factors and the agency reasonably determines that the technical superiority of the offer outweighs the cost difference. Sabreliner Corp., supra.

To the extent that Pragma contends that it should have received the award because of its low cost, the solicitation did not specify that the agency would make award based on the lowest cost. Therefore, there was no requirement that award be made to Pragma simply because it received a satisfactory technical score and proposed lower costs.

The solicitation here advised offerors that the evaluation would consider each offeror's ability to supply necessary personnel and facilities to effectively manage, support, and administer the program. Offerors were also advised that the evaluation would consider whether the offeror demonstrated

⁴Although AID concluded--and the protester does not dispute--that Pragma's proposed costs were unrealistically low, AID did not quantify Pragma's evaluated costs by making adjustments to Pragma's proposed costs. We nevertheless conclude that the agency's failure to calculate Pragma's evaluated costs had no impact on the agency's selection decision here. Given that AID concluded that the 14-point difference in offerors' technical scores justified PIET's 10 percent higher costs, any recalculation of Pragma's costs--i.e., any upward adjustment to Pragma's proposed costs because the agency considered them unrealistically low--would only make PIET's advantage more, not less, clear.

adequate access and outreach to educational, training, and business institutions.

The record shows that even though Pragma's technical proposal was responsive it was deficient under the overseas field support services evaluation factor--the most important technical area, worth 250 points--because Pragma failed to demonstrate sufficient expertise to provide international overseas training program-related services, or adequate connections with outside sources. Absent such information, the agency could not be certain that Pragma successfully could recruit, train, and provide continuing education for program participants. Likewise, under the organizational access and outreach area, Pragma failed to show that it had the requisite working relationships with private companies to ensure that EI program participants would receive on-the-job training, observational/study tours, and informational interviews with private sector organizations, as required by the RFP. Instead, the protester simply submitted a list of companies without demonstrating any business relationship with them or showing that these companies would satisfy the participants' training needs.

On the other hand, PIET's proposed staff offered experience, language and technical capability, and cultural knowledge of the geographic regions in which a significant number of prospective students typically reside. Under the organizational access and outreach area, PIET demonstrated its access to a wide variety of organizations in the United States and its ability to work with a multitude of organizations; it also reflected PIET's creative approach to implementing the EI program.

Given these obvious strengths, as well as others in PIET's proposal, and given the lack of assurance in Pragma's proposal that it will be able to provide the services contemplated under the RFP, we conclude that the agency reasonably determined that PIET's technical superiority--reflected in its 14-point advantage--warranted its higher cost. To the extent that the protester suggests that the cost/technical tradeoff was improper due to the absence of the phrase "cost/technical tradeoff" in the selection document, the protest is unpersuasive. Our Office will not object to a contracting officer's failure to discuss the tradeoff specifically in the selection document where, as here, the record supports the reasonableness of that tradeoff. Varian Assocs., Inc., B-238452.4, Dec. 11, 1990, 90-2 CPD ¶ 478.

MEANINGFUL DISCUSSIONS

Pragma argues that AID failed to hold meaningful discussions, and that if discussions had been properly conducted, AID would not have determined that PIET was more capable than Pragma of providing overseas field support services and coordinating with other educational organizations to implement the EI program. According to Pragma, after AID reviewed Pragma's answers to the discussion questions and discovered new concerns about Pragma's ability to coordinate with organizations and provide field support services, AID should have requested that Pragma address these concerns in its BAFO. Pragma claims it was misled by AID's statement that there were "no specific areas to be addressed" in its BAFO.

Contracting officers are required to conduct discussions with all offerors whose proposals are within the competitive range, Federal Acquisition Regulation § 15.610(b). Such discussions must be meaningful, and in order for discussions to be meaningful, agencies generally must point out weaknesses, excesses, or deficiencies in proposals unless doing so would result either in disclosure of one offeror's technical approach to another or in technical leveling. Department of the Navy--Recon., 72 Comp. Gen. 221 (1993); 93-1 CPD ¶ 422; The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425. Agencies, however, are not required to notify offerors of deficiencies remaining in their proposals or to conduct successive rounds of discussions until deficiencies are corrected. Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556.

As an initial matter, Pragma's suggestion that AID discovered new concerns after reviewing Pragma's responses to discussion questions is not supported by the record. AID advised Pragma during discussions that its proposal failed to demonstrate:

"with confidence, an adequate capacity/outreach for the EI program or the capacity/mechanism for the buy-in services. The firm(')s current and proposed outreach and access to the private sector for the development of the EI program is weak. Likewise, the firm(')s ability/mechanisms for providing support for the buy-in services was weak. The proposal did not adequately describe/demonstrate the links to the field and within the U.S. to provide the special services as required by the [Participant Training Program]."

Despite the clarity of AID's concerns, Pragma subsequently failed to adequately respond as requested. While Pragma acknowledged that matching private sector professionals in

the United States with foreign business leaders was one of the most demanding tasks under the organizational access area, Pragma simply provided a list of companies without demonstrating that it had a working relationship or any formal association with the companies to ensure successful implementation of the agency's training objectives, as required by the RFP.

Although the agency notified Pragma during discussions that its proposed method of providing buy-in/field services was weak, Pragma still failed to show that the firm could provide overseas support services either in-house or using outside consultants. Since the agency clearly gave Pragma an opportunity to cure these deficiencies and Pragma failed to do so, the agency was not required--contrary to the protester's suggestion--to conduct successive rounds of discussions until Pragma corrected the deficiencies. Sec Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149.

Pragma also contends that discussions were unequal because, prior to requesting BAFOs, the agency requested that PIET address questions concerning its subcontractor's proposed rates, but did not similarly request additional information from Pragma in connection with its ability to provide outreach and field services.

After reviewing Pragma's responses to the first round of discussions, AID determined that it need not conduct a second round of discussions with offerors. As stated above, Pragma not only failed to cure the technical deficiencies that were raised, but it failed to address deficiencies in its cost proposal regarding the low level of effort proposed to perform the work contemplated by the solicitation. When Pragma's cost revisions still contained the same deficiencies that were the subject of the agency's detailed discussions, AID decided not to raise the issue a second time.

In evaluating PIET, on the other hand, AID concluded that it could not determine if PIET's proposed cost was reasonable because PIET's proposed subcontractor submitted only loaded labor rates. The agency informed PIET of this deficiency in its discussion letter and specifically requested that PIET provide information about the proposed hourly rates. While reviewing PIET's response to the agency's discussions, the contracting officer discovered--for the first time--that the subcontractor proposed an excessive 8 percent fixed fee. As a result, in its request for PIET's BAFO, the contracting officer advised PIET to review the subcontractor's proposed fee.

Contrary to Pragma's claim, we do not agree that AID engaged in unequal discussions when it requested PIET to submit information in its BAFO regarding its subcontractor's fee, but did not also request that Pragma submit additional technical information in its BAFO. While the agency gave Pragma detailed notice of all the deficiencies in its proposal during initial discussions, AID did not discover the fee issue in PIET's subcontractor's prices until after PIET responded to the initial round of discussion questions.

In our view, the agency tailored its discussions here to each offer based on whether the agency had identified specific weaknesses or deficiencies in each offeror's proposal and whether it gave the firm an opportunity to correct them. Although discussions must provide offerors an equal opportunity to revise their proposals, discussions with each offeror need not be identical; rather, a procuring agency should tailor its discussions to each offer since the need for clarification or revision will vary with the proposals. Indian Community Health Serv., Inc., B-217481, May 15, 1985, 85-1 CPD ¶ 547.

ORGANIZATIONAL CONFLICT OF INTEREST

Finally, Pragma argues that AID should have excluded PIET from the competition here because Walcoff and Associates, the subcontractor PIET proposed to prepare the program participants' income tax forms, has an organizational conflict of interest that may have given PIET a competitive advantage. According to the protester, Walcoff assisted in drafting the current solicitation and, thus, knew about the terms of the solicitation before it was issued.

AID acknowledges that approximately 8 months prior to issuing the solicitation here, it awarded a contract to Cotton and Company to evaluate PIET's performance under the predecessor contract for these services. Cotton was asked to recommend ways to improve the management of the Thomas Jefferson Fellowship and EI training programs. AID also acknowledges that Cotton issued a subcontract to Walcoff (on November 6, 1992) to assist it in evaluating PIET's performance. Nonetheless, AID contends that neither Walcoff nor PIET have an organizational conflict of interest here because Walcoff: (1) was provided only a copy of the RFP used for the prior procurement, (2) made only five general recommendations that did not favor any contractor, (3) did not participate in drafting Cotton's final recommendations to the agency, and (4) did not recommend

requiring tax preparation services under the current solicitation.⁵

The FAR sets forth both general and specific instructions on organizational conflicts of interest in subpart 9.5. The FAR generally requires contracting officials to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.501, 9.504, and 9.505. Specifically, the FAR requires that if a contractor:

- (1) "prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or services," or
- (2) "provides material leading directly, predictably, and without delay to such a work statement," the contractor may not supply the system or services except in certain limited situations. FAR § 9.505-2(B)(1).

The FAR's restriction on permitting contractors to provide systems or services in cases where a contractor has assisted the government in defining its requirements is intended to: (1) avoid the possibility of bias in situations where a contractor would be in a position to favor its own capabilities, see FAR § 9.505(a); or (2) avoid the possibility that the contractor, by virtue of its special knowledge of the agency's future requirements, would have an unfair advantage in the competition for those requirements. FAR § 9.505(b); see GIC Agricultural Group, 72 Comp. Gen. 14 (1992), 92-2 CPD ¶ 263. With respect to unfair advantage, the FAR states that such advantage exists when a contractor possesses source selection information relevant to the contract but not available to all offerors. FAR § 9.505(b)(2).

The record here does not support Pragma's claim that PIET's proposed subcontractor had an organizational conflict of interest or that PIET gained a competitive advantage from or through Walcoff. AID explains that Walcoff's efforts were limited to recommending that the new solicitation reflect: (1) consistent orientation materials, (2) escort services at every point of entry to assist participants with locating lost luggage, (3) reentry preparation, (4) an interview process that considers family stress orientation, and (5) improved procedures for storing records. These brief recommendations comprised less than 2 pages.

It is clear that Walcoff was not directly involved in the preparation of the solicitation's work statement, which--except for the new requirement for tax preparation

⁵The RFP requires tax preparation services. This is a new requirement that was not in PIET's earlier contract.

services--was remarkably similar to the solicitation under which PIET was awarded the predecessor contract. As for the tax preparation services, Cotton--not Walcoff--recommended that the statement of work call for these services. Even if we assume that Walcoff was aware of the tax preparation requirement before other prospective offerors or subcontractors, the record does not establish that either company benefitted or gained any unfair advantage from this advance knowledge.

Here, the tax work comprised a small portion of the work under the contract and was accorded little weight in the evaluation scheme--income tax preparation capability was one of four subfactors under the management information and accounting system area, all four of which accounted for only 75 of 1,000 available points. The insignificant scoring difference (2.4 points) between PIET's and Pragma's proposals in this area further suggests that PIET did not gain any unfair advantage here. Accordingly, we conclude that the agency properly determined that there was no conflict of interest requiring it to find that PIET was ineligible to participate in this procurement.

The protest is denied.

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