

**Matter of:** American Indian Law Center, Inc.  
**File:** B-254322  
**Date:** December 9, 1993

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Philip S. Deloria for the protester.  
 James L. Weiner, Esq., and Justin P. Patterson, Esq.,  
 Department of the Interior, for the agency.  
 David Hasfurther, Esq., and Linda C. Glass, Esq., Office of  
 the General Counsel, GAO, participated in the preparation of  
 the decision.

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**DIGEST**

Where agency evaluators reasonably conclude that two proposals are essentially technically equal, award without discussions to the low-priced offeror was proper.

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**DECISION**

American Indian Law Center, Inc. (AILC) protests the award of a contract to ACKCO, Inc. under request for proposals (RFP) No. BIA K51-93-001, issued by the Department of the Interior, Bureau of Indian Affairs, for a feasibility study to determine the practicability of a central registry to track Indian child abuse. AILC contends that the agency unreasonably evaluated proposals.

We deny the protest.

The RFP, as amended, required offerors to submit both technical and price proposals for the feasibility study by July 6, 1993. The agency reserved the right to make award on the basis of initial offers, without discussions,

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<sup>1</sup>The protester argues that the agency did not provide it with any of the pertinent information contained in the agency report submitted to our Office in response to the protest and thus it did not have all the evidence necessary to support its allegations. The agency did not release certain portions of its report to the protester because it determined that its release would require the issuance of a protective order. See 4 C.F.R. § 21.3(d)(1) (1993). AILC declined to obtain counsel so as to permit release of these documents.

to the responsible offeror whose offer was most advantageous to the government. Technical proposals were to be evaluated on the basis of the following four criteria listed in descending order of importance: (1) demonstrated knowledge and experience in the operation, design, and study of central registry systems and in confidentiality and privacy considerations; (2) quality and quantity of experience in working with Indian tribes on both substantive and child protection-related issues; (3) demonstrated experience with and knowledge of large computerized and manual information systems; and (4) efficient use of resources to achieve the highest degree of quality combined with expedient results.<sup>2</sup> Cost was described as "important" with its degree of importance increasing with the similarity in the quality of proposals.

Four offerors submitted technical and cost proposals. The technical proposals were evaluated by a technical panel consisting of four evaluators. The protester proposed to perform the requirement using two major subcontractors, one with experience in survey instrumentation design and the other with experience in studying central registry operations. The protester, as the prime contractor, was to provide management, project administration, and Indian child protective services experience to the project. ACKCO, a 100-percent Indian-owned corporation with experience in designing central registries and in addressing social and cultural issues concerning Indian tribes, proposed to perform with its own staff and with three designated consultants. The proposals of ACKCO and AILC received the highest consensus scores: 83.25 and 81, respectively. The price of the protester's proposal, \$297,077, was higher than ACKCO's price of \$191,242. Award was made to ACKCO based on its significantly lower price. This protest followed.

AILC essentially argues that its proposal should have been rated higher than ACKCO's in all evaluation areas because its subcontractors had extensive knowledge of and experience with central registry systems and confidentiality and privacy concerns. AILC further maintains that its experience with both Indian tribes and child protection is superior to ACKCO's more limited Indian tribes experience.

In reviewing protests against an agency's technical evaluation and selection decision, we examine the record to determine whether the evaluation was reasonable and

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<sup>2</sup>Maximum scores permissible for the four criteria were 40, 30, 20, and 10, respectively.

consistent with the evaluation criteria. Downtown Copy Center, B-240488.8, Dec. 28, 1992, 92-2 CPD ¶ 443. As discussed below, we have no basis to object to the evaluation and award decision.

Under the most important evaluation factor, demonstrated knowledge and experience, in the operation, design and study of central registry systems, ACKCO's consensus score was significantly higher than AILC's score. The evaluators found that ACKCO's proposal demonstrated prior experience in designing and successfully maintaining a central registry system and knowledge of other existing systems which have specific relevance to the agency's objectives. AILC also demonstrated knowledge and understanding of the relevant issues, such as characteristics of central registry, quality control to assure confidentiality, and researching areas of confidentiality and privacy in jobs registry. The evaluators downgraded the protester because the protester suggested using clearinghouse and case management methodologies that were part of a previous study which were not relevant to this statement of work (SOW). AILC's offer also made continued references to the benefit of tracking victims, which was specifically stated in the SOW as not an option under this study. The evaluators also concluded that the protester's subcontracting plan with non-Indian firms might not satisfy the Indian Preference Program requirements of the solicitation. We think AILC properly was downgraded based on these concerns and the agency reasonably concluded that ACKCO's response under this factor was better than AILC's.

Under the second most important factor, quality and quantity of experience in working with Indian tribes on substantive issues and experience in working on issues of child protection, AILC received a higher score than the awardee under this factor primarily because its proposal evidenced experience in working with tribes on substantive issues, including issues of child protection. While AILC's score here was higher than ACKCO's, the evaluators did determine that AILC did not appear to recognize the primary objective of the SOW which was to gain tribal input. The evaluators specifically found that ACKCO had extensive experience in working with tribes on similar social and cultural issues. While the evaluators noted that much of ACKCO's work involved social issues and not specifically child protection, the evaluators found that ACKCO, in its proposal, demonstrated knowledge of issues of child protection. We have no basis to question the evaluators' conclusions.

On the other two factors, experience with large computerized information systems and efficient use of resources, the protester and ACKCO received virtually identical ratings.

Both offerors addressed these factors and referenced their large computerized systems' experiences and explained how they would efficiently perform the work. Again, the evaluation of these factors was reasonable.

While the protester disagrees with the evaluation and argues that it proposed a better qualified team than the awardee, the record does not substantiate the protester's position that its proposal was technically superior. To the contrary, the record supports the evaluators' judgment that the awardee's offer reasonably could be considered technically equal (if not slightly better because of its higher rating under the most important criterion), when compared to the protester's offer. There was no clearly superior technical proposal; each proposal had its strengths and weaknesses. For example, as discussed above, while the protester had greater relevant child protection experience, the firm did not adequately address the SOW concerning design of the study. The awardee was better in its study design, but did not have direct experience in child protection issues. In these circumstances, award to ACKCO at its significantly lower price, without discussions, was proper. Professional Safety Consultants, Co., Inc., B-247331, Apr. 29, 1992, 92-1 CPD ¶ 404.<sup>3</sup>

The protester also raises several untimely contentions regarding the solicitation. First, AILC contends that the agency's listing of the evaluation factors in descending order of importance without providing the exact weights was improper. Second, AILC argues that the last evaluation criterion, efficient use of resources, was vague. Such alleged improprieties must be protested prior to the time set for receipt of initial proposals. See U.S. Def. Sys., Inc., B-245006.2, Dec. 13, 1991, 91-2 CPD ¶ 541; 4 C.F.R. § 21.2(a)(1).

The protest is denied.

James F. Hinchman  
General Counsel

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<sup>3</sup>Regarding the protesters allegation that the evaluators were biased in their evaluation, as we conclude above, the record supports the reasonableness of the evaluation and selection decision, and there is no evidence to support AILC's allegation of bias.