



Comptroller General
of the United States
Washington, D.C. 20543

514264

Decision

REDACTED VERSION

Matter of: CH2M Hill, Ltd.
File: B-259511; B-259511.2; B-259511.3
Date: April 6, 1995

Kenneth B. Weckstein, Esq., and Raymond Fioravanti, Esq., Epstein, Becker & Green, for the protester. Stephen M. Ryan, Esq., David E. Frulla, Esq., and E. J. Hong, Esq., Brand, Lovell & Ryan, and Judith S. Sapir, Esq., PRC, Inc., for PRC Environmental Management, Inc., an interested party. Jose Aguirre, Esq., Cynthia S. Guill, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency. Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the contracting agency improperly evaluated the submissions of both the awardee and the protester under a procurement for architect-engineer services is denied where the record shows that the agency's evaluation was reasonable and in accordance with the published evaluation factors.
2. Protest that awardee submitted an unacceptable subcontracting plan, and that the contracting agency improperly conducted discussions solely with the awardee to make the proposal acceptable, is denied where the record shows that the plan was not deemed unacceptable, and that the awardee's status as the successful offeror was not the result of any revisions to its plan; as a result, communications concerning that plan related to the awardee's responsibility and, thus, did not constitute discussions.
3. Protest that the contracting agency improperly selected awardee despite an alleged organizational conflict of interest is denied where the record does not support this allegation.

*The decision issued on April 6, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

DECISION

CH2M Hill, Ltd. protests the decision of the Department of the Navy, Naval Facilities Engineering Command (NAVFAC), to select PRC Environmental Management, Inc. (PRC EMI) for award of a contract under solicitation No. N62474-94-D-7609, issued to obtain architect-engineer (A-E) services for the Navy's "Comprehensive Long-Term Environmental Action Navy (CLEAN II)" program in NAVFAC's Western Division.² CH2M Hill argues that the Navy improperly evaluated the submissions of both the awardee and itself, and improperly determined to award the contract to PRC EMI despite an alleged organizational conflict of interest (OCI) apparent from its submission.

We deny the protests.

BACKGROUND

This acquisition of A-E services is being conducted pursuant to the procedures outlined in the Brooks Act, as amended, 40 U.S.C. §§ 541 et seq. (1980), and its implementing regulations, Federal Acquisition Regulation (FAR) subpart 36.6. In accordance with the regulations, on September 22, 1994, the contracting agency synopsisized the requirement in the Commerce Business Daily (CBD).³ The synopsis stated that the agency would award a cost-plus-award-fee contract for a 1-year base period, with up to 9 option years, at a total estimated value of \$260,000,000. The services sought will support Navy environmental programs primarily within northern and central California, Nevada, and Utah, such as the Installation Restoration Program (IRP); base closure efforts; the Underground Storage Tank program; and efforts associated with air, water, waste water, solid waste, asbestos, and hazardous substance/waste management and compliance.

The synopsis invited consulting engineering firms to submit a completed Standard Form (SF) 254 (A-E and Related Services Questionnaire) and an SF 255 (A-E and Related Services for Specific Project Questionnaire) on which firms provide their qualifications. Offerors were cautioned that an OCI clause

²All subsequent references to NAVFAC's Western Division will be to the Navy's new designation for that division, "Engineering Field Activity (EFA), West."

³The procurement action was originally advertised in the CBD on June 1, 1994, as solicitation No. N62474-94-D-9486, which was canceled on September 16.

applied to the solicitation, and the CBD notice stated that firms submitting their qualifications would be evaluated under seven evaluation factors, listed in descending order of importance:

- (1) Recent experience and past performance;
- (2) Program management capability;
- (3) Staff and key personnel expertise and experience;
- (4) Ability of the firm to provide continuity of service;
- (5) Demonstrated ability and commitment of the firm with respect to small and small disadvantaged business (SB/SDB) subcontracting;
- (6) Ability of the firm to manage a large and complex DOD contract; and
- (7) Volume of work awarded to the firm by the Department of Defense (DOD) during the previous 12 months.

Twelve firms submitted qualifications statements by the October 24 due date. The Navy's slate committee evaluated these submissions and reviewed A-E performance records for each firm, including those associated with CLEAN II's predecessor contract, CLEAN I. PRC EMI was the incumbent prime contractor under EFA West's CLEAN I contract, and CH2M Hill was a subcontractor under the Southwestern Division's CLEAN I contract. The committee found five firms to be "best qualified," among them PRC EMI and CH2M Hill. After the committee's report was approved, the Navy's evaluation board reviewed the submittals of the slated firms, conducted oral discussions, and forwarded its report and recommendation to the selection authority.

The evaluation board's report listed the five slated firms in order of preference: PRC EMI was first on the list, and CH2M Hill was second. The board recommended PRC EMI for award based on its staff's combined technical and program management abilities. While it believed that PRC EMI and CH2M Hill were essentially equal in specialized experience, the board concluded that PRC EMI demonstrated a superior professional program management team, would retain its top key managers and installation coordinators, and had a proven ability to provide transition and continuity of service. The selection authority approved the board's report on November 14, and the Navy notified the remaining slated firms of its decision the next day. After its debriefing, CH2M Hill filed an initial and a supplemental protest in this Office, and award of the contract was suspended pursuant to 4 C.F.R. § 21.4(a) (1995). Subsequent to the filing of the agency report, CH2M Hill filed a second supplemental protest.

CH2M Hill argues that the Navy improperly evaluated the submissions of both PRC EMI and itself under five of the seven evaluation factors: recent experience and past performance; program management capability; staff and key personnel expertise and experience; demonstrated ability and commitment with respect to SB/SDB subcontracting; and volume of work awarded to the firm by DOD. In addition, the protester argues that the Navy improperly determined to award the contract to PRC EMI despite an alleged OCI apparent from its submission.

EVALUATION OF SUBMISSIONS

In reviewing a protest of an agency's selection of a contractor for A-E services, our function is not to reevaluate the offerors' capabilities or to make our own determination of the relative merits of competing firms. Rather, the procuring officials enjoy a reasonable degree of discretion in evaluating the submissions, and our review examines whether the agency's selection was reasonable and in accordance with the published factors. ConCeCo Eng'g, Inc., B-250666, Feb. 3, 1993, 93-1 CPD ¶ 98; ARTEL, Inc., B-248478, Aug. 21, 1992, 92-2 CPD ¶ 120; James W. Hudson & Assocs., B-243277, July 5, 1991, 91-2 CPD ¶ 29. The protester bears the burden of proving that the evaluation is unreasonable, and that burden is not met by the protester's mere disagreement with the evaluation. IDG Architects, 68 Comp. Gen. 683 (1989), 89-2 CPD ¶ 236.

Here, we have reviewed the SF 255s of both PRC EMI and CH2M Hill; the slate committee report; the evaluation board report; the performance evaluation data; and the submissions of the parties. These materials do not show that the agency's evaluation of PRC EMI and CH2M Hill was either unreasonable or inconsistent with the factors set forth in the CBD synopsis, and we have no basis upon which to disturb the agency's decision.

Recent Experience and Past Performance

CH2M Hill argues that the Navy improperly determined that the two firms were "essentially equal" with respect to recent experience and past performance. The protester contends that the Navy's evaluation rationale did not discuss PRC EMI's performance under the CLEAN I contract "in detail," and ignored unfavorable information about that performance.

The evaluation board report considered the quality of PRC EMI's performance of more than 300 contract task orders (CTOs) under the CLEAN I contract. Performance scores were used to assess PRC EMI's work on both active CTOs and

program management office (PMO) efforts in order to calculate award fees. Between June 1989 and November 1993, PRC EMI received approximately 800 CTO scores. Eighty-nine percent of these were rated either "satisfactory" or "exceeds expectations"--only 4 percent were rated "marginally satisfactory," and a mere .5 percent "unsatisfactory." PRC EMI's average award fee score over this period was less than 2 points below the "exceeds expectations" adjectival rating, and the firm's average PMO rating over this period was "exceeds expectations."⁴ Overall, the Navy concluded that PRC EMI's past evaluations, awards, and cost control demonstrated superior performance.

In light of this performance record on CLEAN I, and considering the Navy's favorable evaluation of the firm's performance under other contracts, we find unreasonable CH2M Hill's argument that two instances of unsatisfactory CLEAN I performance render PRC EMI's overall CLEAN I performance "lackluster."⁵ It is true that PRC EMI did not perform well in the two 1992 instances--in one case, the firm's late submittals delayed award of a construction contract, and, in the other, the firm's failure to adequately supervise subcontractor performance led to soil resampling at government expense. However, this information is contained in the data reviewed by the Navy--the evaluation board report even refers to one of these incidents--and, after the initial unsatisfactory rating associated with the latter instance, the Navy concluded that PRC EMI's performance on the CTO was improving. The existence of isolated instances of poor performance does not preclude a

⁴As the protester notes, PRC EMI's scores have generally declined from January 1990 through November 1993. However, the record shows that its later scores show an improving trend.

⁵In its initial protest, CH2M Hill also submitted affidavits from its employees attributing unfavorable comments concerning PRC EMI's performance under CLEAN I to Navy personnel. We find these hearsay statements unpersuasive in the face of the documented record of PRC EMI to the contrary. See Border Maintenance Serv., Inc.--Recon., 72 Comp. Gen. 265 (1993), 93-1 CPD ¶ 473. This is especially true since PRC EMI's submission contained a letter of commendation from a person named in these affidavits.

favorable evaluation of past performance overall. See E. Huttenbauer & Son, Inc., B-257778; B-257779, Nov. 8, 1994, 94-2 CPD ¶ 206; Corvac, Inc., B-254222, Dec. 2, 1993, 93-2 CPD ¶ 294. Under the circumstances, we have no basis to find the agency's evaluation unreasonable.

Program Management Capability

CH2M Hill argues that the Navy arbitrarily concluded that PRC EMI's program management capability was superior to its own. The protester asserts that the evaluation board report "deleted" favorable information about its accomplishments that was found in the slate committee report, and that, with or without these "deletions," there is no significant difference between the evaluation of the two firms to justify a conclusion of PRC EMI's superiority.

As an initial matter, the FAR and NAVFAC's contracting manual indicate that, in an A-E acquisition such as this one, the slate committee report documents the rationale for slating firms for further consideration, while the evaluation board report sets forth the basis for ranking the slated firms. See generally FAR § 36.602; NAVFAC P-68 § 36.602 (March 1994). That these two bodies, comprised of different individuals for different purposes, would issue documents that are not identical is to be expected, especially where, as here, the evaluation board report is written after the conduct of oral discussions. Moreover, even a casual review of both documents belies CH2M Hill's allegation that the evaluation board merely "edited" the slate committee report without conducting any review of its own. On the whole, the latter report is significantly more detailed than the former, and is generally augmented by additional favorable discussion of both firms.

The Navy asserts that the textual differences between the two documents merely show that the evaluation board members viewed some information to be less material, conveyed other information more concisely, or moved certain information to a more relevant factor. The Navy also rejects as baseless CH2M Hill's challenge to the overall evaluation as to each subfactor.

⁶While CH2M Hill argues that its past performance is superior to that of PRC EMI, citing its high ratings under a different contract, the record shows that this contract uses scoring standards which differ markedly from those employed under the CLEAN I contract. Moreover, CH2M Hill's claim that its performance record as a CLEAN I subcontractor shows its superiority is not supported by the record.

The first subfactor is the "ability to concurrently perform and manage multiple complex projects in different locations to meet schedules and control direct and indirect costs." We are not persuaded that the inclusion of the sentences and partial sentences at issue demonstrate CH2M Hill's superiority. For example, a reference to a magazine article's ranking of firms merely indicates CH2M Hill's size and the percentage of its business derived from hazardous waste and environmental projects. While the protester contends that this evidences the experience and capability of its management to head CLEAN II, it does not explain how it bears on "the ability to concurrently perform and manage multiple complex projects in different locations." A statement that the firm sets rates in accordance with its Cost Accounting Standards statement was not "deleted," but rephrased and moved to a more appropriate section of the report; information bearing on controlling direct and indirect costs was retained and condensed. A paragraph describing CH2M Hill's organizational structure which states that it demonstrates "concise, direct lines of authority," was condensed to read "[t]hey proposed a well thought out organizational chart with strong lines of authority." We see no substantive distinction between the two passages.

CH2M Hill's challenge to the Navy's conclusion that PRC EMI was superior to it under this subfactor consists primarily of its citation to the first sentences of the evaluation board report summaries with respect to both firms, and its claim that the descriptions are "virtually identical." However, notwithstanding any similarities between these two sentences, a complete reading of the passages establishes the reasonableness of the agency's conclusion. The summary of CH2M Hill's submission goes on to discuss the fact that it is an experienced prime contractor for EPA, DOD, and private companies; its team members have worked together extensively; and it conducts monthly variance analysis and schedule review. In marked contrast, the summary of PRC EMI's submission goes on to discuss its demonstrated ability to meet schedules; its proven effective program management system developed as a prime contractor to EPA, DOD, and private companies; its proven cost tracking system; its proven effective monthly variance review for costs; and its effective scheduling. In addition, the board favorably recognized PRC EMI's technical advisory review panels; dedicated installation project teams; and "innovative"

⁷We do not believe the omission of the chart's identification of the firm's SB/SDB administrator was prejudicial, especially since PRC EMI's organizational chart also identifies such an individual.

planned remedial engineering center group. Given these stated qualitative distinctions between the two firms, we have no basis to question the Navy's view that PRC EMI was superior.

The second subfactor is the "ability to submit technical and cost proposals within 30 days of receipt of CTO SOWs, to negotiate CTOs promptly, and to commence work expeditiously upon award of a CTO." While the slate committee report included the statements that CH2M Hill had a demonstrated ability to submit cost/technical proposals in an average of 15 to 20 days,⁹ with an average of 20 days on its CLEAN I subcontract, and a demonstrated ability to start work the day after award of a contract, the evaluation board report compressed this assessment to read, in whole, "The Team has demonstrated the ability to submit technical and cost proposals within the set time frame, and to negotiate and commence work in a timely manner."

CH2M Hill argues that the omission of this information is particularly important since PRC EMI submitted only 90 percent of its CLEAN I proposals within 30 days, and did not state that it had an ability to start work the day after award.

The Navy asserts that an average response time of 20 days does not mean all proposals were submitted within 30 days, and an average response time of 20 days as a subcontractor does not show superior performance when no information is

⁸In its comments, CH2M Hill complains that relevant information in the slate committee report under another evaluation factor was improperly omitted from the evaluation board's analysis here. However, the only items of cited information that are not in the evaluation board's analysis here concern the CH2M Hill Team's completion of two specific contracts on or ahead of schedule. We are not persuaded that the mere addition of this information demonstrates CH2M Hill's superiority under this subfactor.

⁹CH2M Hill argues that the agency understated its average response time because, under one of the programs listed in its submission, its average response time was 5 days. The protester contends that its average response time is more accurately 5 to 20 days. However, when the response times for all eight programs are averaged, the result is an average response time of 15.25 days. Moreover, 7 of the 8 programs, consisting of 834 task orders, listed average response times of between 14 and 20 days. The program with the 5-day average response time consisted of only 12 task orders.

provided concerning the required time for submission to the prime contractor. According to the Navy, the information provided by the two firms did not allow for a direct comparison and, given the dissimilar manner in which the firms represented their respective response times, it was not possible to determine which was superior. Consequently, the evaluation board concluded that each firm demonstrated an ability to submit timely proposals--the evaluation board's assessment of PRC EMI under this subfactor is identical to the protester's, and the firms were considered to be equal.

A determination of "equality" does not mean that proposals are identical. It simply means that, overall, there is no material difference in what the proposals have to offer. See Northern Virginia Serv. Corp., B-258036.2; B-258036.3, Jan. 23, 1995, 95-1 CPD ¶ 36. Here, while it is true that CH2M Hill offered advantages that were not clearly offered by PRC EMI, the converse is true as well. The slate committee's assessment of the awardee contained several favorable aspects not clearly offered by the protester. The protester, which does not acknowledge these additional favorable aspects of PRC's submission, has not provided us sufficient basis to find the agency's conclusion unreasonable.

The third subfactor is the "ability of [the] firm to coordinate and work effectively with other contractors involved in [EFA West] environmental programs." While the issue of "deleted" material does not arise here, CH2M Hill's protest of the overall evaluation consisted of its quotation of the language in the evaluation board report and its assertion that such language indicated "no distinction."¹⁰ Again, a comparison of the two passages strips the protester's claim of validity. The evaluation board stated that CH2M Hill demonstrated the ability to effectively manage its team members on large projects for several agencies and firms, and continued to show a strong working relationship with past and present EFA West contractors. In contrast, PRC EMI had an "excellent" track record of coordinating with EFA West contractors; had worked closely with such contractors for the transition to remedial action and to conduct lab analysis work; currently coordinated extensively with such contractors for base closure plans; worked with Navy activities using in-house forces for remedial actions; and, during CLEAN I, brought on a

¹⁰Given the content of the protest itself, the protester's assault on the Navy's report for "parrot[ing]" the phrasing of the evaluation board report "as if that constitutes some meaningful analysis" is unwarranted.

pre-CLEAN contractor as a subconsultant to ensure consistency. In light of the distinctions noted by the evaluation board, we have no basis to question the reasonableness of its conclusion.

Staff and Key Personnel

CH2M Hill argues that the Navy arbitrarily concluded that PRC EMI was superior to it with respect to staff and key personnel, particularly the proposed program manager and deputy program manager.

The Navy documented the extensive experience and education of PRC EMI's proposed program manager, and stated that he had been "highly successful" under CLEAN I. In his interview, he "demonstrated the program leadership and technical expertise necessary to lend credibility to the Navy's IRP and [base closing] environmental program in the exceedingly challenging San Francisco Bay Area." The Navy also documented the "exceptional" qualifications and education of the firm's proposed deputy program manager, and stated that he had "proven to be resourceful, responsive and flexible" under CLEAN I. In his interview, he "impressed the board with his knowledge base in environmental technical issues, as well as his experience in management." Further, in summarizing its reasons for recommending PRC EMI for award, the evaluation board emphasized that this proposed team was the "strongest combination of all firms interviewed."

CH2M Hill does not challenge the substance of the Navy's evaluation of these two individuals except to posit that the above-discussed 1992 instance involving inadequate supervision¹² is representative of their overall performance. We think this position is unreasonable, especially given the Navy's view that PRC EMI's performance

¹¹The protester's only other assertion, raised for the first time in its comments, is that PRC EMI's submission named only one EFA West contractor, as opposed to its submission, which named six. However, CH2M Hill does not explain why the mere naming of these contractors, five of which were named in the evaluation board report, demonstrates its superiority.

¹²This instance, discussed in detail in our analysis of CH2M Hill's challenge to the Navy's evaluation of recent experience and past performance, *infra*, involved PRC EMI's failure to adequately supervise subcontractor performance, leading to soil resampling at government expense.

under this CTO was improving. Further, the protester's assertion that its proposed personnel are superior to those of PRC EMI, supported solely by its quotation of the evaluation board report's comments, does not afford us a basis to determine that the Navy's evaluation was arbitrary; on the contrary, a full reading of the report supports the Navy's judgment in this regard. CH2M Hill's mere disagreement with the Navy's evaluation does not make it unreasonable. See IDG Architects, supra.

SB/SDB Subcontracting

CH2M Hill argues that the Navy arbitrarily found the two firms to be equal under the SB/SDB subcontracting factor. The protester asserts that PRC EMI submitted an unacceptable subcontracting plan, and that the Navy improperly conducted discussions solely with PRC EMI, after the award decision was made, in order to make its proposal acceptable.

Firms were not required to include an SB/SDB subcontracting plan with their submissions, but were required to provide various data to demonstrate their compliance with this evaluation factor. Among other things, they were to: identify team SB/SDB subcontractors and describe the work to be performed by these firms; identify the total dollar value of work planned to be subcontracted, as well as the amount to be subcontracted to SB/SDBs; identify the types of work planned to be subcontracted to SB/SDBs; and describe their SB/SDB subcontracting outreach plans. Firms were advised that, if they were selected for award, the same data in their SF 255s regarding this evaluation factor must be included within a subcontracting plan when requested. The slate committee did not question either firm's submissions under this evaluation factor, and, after the firms were slated, the contracting officer asked each slated firm to submit a subcontracting plan. The evaluation board reviewed the plans to confirm that they contained the information found in the offerors' respective SF 255s, and raised no concerns for either firm.

After PRC EMI was selected, its subcontracting plan was forwarded to the Small Business Administration's (SBA) representative at EFA West for review. By letter dated November 30, he endorsed the plan, but expressed reservations because it did not comply with FAR § 52.219-9(d)(3), which requires offerors to identify the types of supplies and services planned for subcontracting to SB and SDB concerns. PRC EMI's plan listed the supplies and services it planned to subcontract, and stated that these would be subcontracted to large businesses and to SB/SDBs, with primary consideration given to SB/SDBs. The SBA representative then explained that this concept was

acceptable, but that he was concerned about the firm's plans to subcontract to SBs/SDBs for professional work, and its plans to subcontract to SB/SDB testing laboratories. On December 5, PRC EMI met with the Navy and the SBA, was asked to respond to these concerns, and did so, both by letter dated December 6 and by an attachment to its subcontracting plan. The SBA representative subsequently noted that he regarded his concerns as satisfied.

Because the requirement for an acceptable small and disadvantaged business subcontracting plan generally is applicable to the "apparently successful offeror," FAR § 19.702(a)(1), we have viewed this requirement as relating to an offeror's responsibility. See Ask Mr. Foster Travel Div., B-238305, May 9, 1990, 90-1 CPD ¶ 460; Booz, Allen & Hamilton, Inc., B-236476, Dec. 4, 1989, 89-2 CPD ¶ 513. Since communications relating to an offeror's responsibility do not constitute discussions, an agency request for a revised subcontracting plan does not constitute discussions or require that revised proposals be solicited from all offerors. Id. However, the protester, citing our decision in Fritz Co., Inc., B-246736; et al., May 13, 1992, 92-1 CPD ¶ 443, argues that since an offeror's ability and commitment with respect to SB/SDB subcontracting was a technical evaluation factor, the request for and provision of information concerning the subcontracting plan involved a matter of proposal acceptability.

In Fritz Co., Inc., the contracting officer awarded the contract on the basis of initial proposals based upon his conclusion, which we found unreasonable, that the awardee's subcontracting plan was superior to those submitted by the other offerors; the awardee was subsequently allowed to revise its subcontracting plan. In response to the agency's argument that this revision was not the result of discussions, but the negotiation of an acceptable subcontracting plan with the apparent successful offeror under FAR § 19.702(a), we specifically stated that it was unreasonable to interpret this provision to apply where, as there, the offeror's status as successful offeror is the result of the revisions to its subcontracting plan. Id.; Daniel F. Young, Inc.--Recon., B-246736.4, July 30, 1992, 92-2 CPD ¶ 62.

Here, however, PRC EMI's status as the successful offeror is not the result of any revisions made to its subcontracting plan. Neither the slate committee nor the evaluation board raised any questions under this evaluation factor, and the record does not show that PRC EMI's subcontracting plan was unacceptable--the SBA representative clearly states that it was acceptable despite its lack of greater specificity because PRC EMI's CLEAN I experience had indicated that

B-259511 et al.

quantifiable prediction about such plans was highly uncertain. Further, on the day the SBA representative wrote the letter expressing his reservations, the Navy's deputy for small business reviewed the plan, found it compliant with FAR § 52.219-9, and recommended it for approval. Moreover, PRC EMI's December 6 letter shows that the concerns of the SBA representative, who had not read the firm's SF 255, were misplaced: its submission proposed an SDB team member to provide professional services, and proposed to distribute work to SDBs for laboratory analysis. Since there is no reason to believe that PRC EMI's post-decision communications with the Navy had any effect on its status as the apparent successful offeror, these communications concerned its responsibility, and not the acceptability of its proposal. See Ask Mr. Foster Travel Div., supra.¹³

DOD Contracts

CH2M Hill argues that the Navy arbitrarily concluded that the two firms were equal under this evaluation factor, under which the Navy was to consider the "volume of work awarded to the firm by DOD during the previous 12 months with the object of effecting an equitable distribution of work among qualified firms." The protester asserts that since the Navy evaluated the volume of CH2M Hill's work at [DELETED] and PRC EMI's at [DELETED], it was wrong for the Navy to conclude that the firms were essentially equal.

The evaluation board report does not state that it found the two firms equal under this evaluation factor; no comment is specifically made concerning the matter. However, Defense FAR Supplement § 236.602-1(a)(6) provides that the primary factor in A-E selection is the determination of the most highly qualified firm, which should not be rejected solely in the interest of equitable distribution of contracts. Consistent with this provision, the DOD contracts factor was the least important of the seven evaluation factors applied here. Since the evaluation results showed that PRC EMI was

¹³Even if we concluded that the issue involved proposal acceptability, the information provided by PRC EMI as a result of its communications with the government primarily confirms the SBA representative's understanding of the plan's features. As a result, the communications constituted clarifications, or inquiries for the purpose of eliminating minor uncertainties or irregularities in a proposal which do not give an offeror an opportunity to revise or modify its proposal, and may be requested from just one offeror. FAR § 15.601; Allied Management of Texas, Inc., B-232736.2, May 22, 1989, 89-1 CPD ¶ 485.

rated superior by virtue of its staffing and key personnel, its program management capability, and its ability to provide transition and continuity of service, we think it is consistent with the evaluation factors for the Navy to have selected PRC EMI despite the fact that the volume of work it was awarded exceeded that of CH2M Hill. See Liberty Assocs., Inc., B-232650, Jan. 11, 1989, 89-1 CPD ¶ 29.

ORGANIZATIONAL CONFLICT OF INTEREST

CH2M Hill argues that award to PRC EMI is improper because the president of one of its proposed subcontractors, Levine-Fricke, chairs a committee of the East Bay Conversion and Reinvestment Commission. CH2M Hill alleges that the Commission will have an oversight role over work that will be performed under CLEAN II while Levine-Fricke, as a member of PRC EMI's team, will receive CLEAN II work, and that the Navy has improperly failed to ensure that no OCI exists.

An OCI occurs where, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. FAR § 9.501. Contracting officials are to avoid, neutralize or mitigate potential significant conflicts of interest so as to prevent unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR § 9.504(a).

The Commission helps determine community needs as the region experiences economic dislocation from military downsizing, and is the focal point for Office of Economic Adjustment assistance to the local community regarding downsizing and national laboratory realignments.¹⁴ The Commission holds public meetings to help identify and test methods for the reuse of closing military facilities, and identifies and facilitates training and job opportunities for displaced workers. Levine-Fricke's president is a facilitator at these public meetings.

¹⁴Section 4302 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, 106 Stat. 2315 (1992), directed DOD to develop and test new approaches to community adjustment in regions where the local economy would be affected by military downsizing. The Commission was created as a result of this direction.

The Navy contends that the Commission has no direct oversight role with regard to government contracts. The Navy points out that, in support of its argument to the contrary, CH2M Hill has distorted the statement of work (SOW). Section C.5.2.d. of CLEAN II's SOW does not require the contractor to "provide clean-up technologies and schedules to accommodate community re-use plans," as the protester would have us believe, but to "become familiar with community reuse plans and, with Navy guidance, apply cleanup technologies and schedules to accommodate such." The Navy argues that the CLEAN II SOWs will be developed by agency personnel, and that the Commission does not prepare any actual reuse plan for the region, as this task is under the purview of local governments. Under the circumstances, and since the protester has failed to provide any evidence to suggest a potential OCI with respect to Levine-Fricke's status as a PRC EMI team member, there is no basis upon which to preclude PRC EMI from receiving the award.

The protests are denied.

Robert P. Murphy
General Counsel