

(Williams)



Decision

Matter of: Geographic Resource Solutions

File: B-260402

Date: June 19, 1995

Kenneth A. Stumpf for the protester.
Kass Green, for Pacific Meridian Resources, an interested party.
Allen W. Smith, and Ron Hooper, Department of Agriculture, for the agency.
Paula A. Williams, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that firm selected for negotiation of an architect-engineer (A-E) contract should have been excluded from the procurement because of an organizational conflict of interest is denied where there is no evidence in the record to indicate that the firm prepared or assisted in preparation of the scope of services.
2. Protest that agency should have selected the protester, the fourth-ranked firm, as the most highly qualified firm with which to negotiate an A-E contract is denied where the record shows that the agency reasonably evaluated the protester's qualifications in accordance with the stated evaluation criteria.

DECISION

Geographic Resource Solutions (GRS) protests the selection by the Department of Agriculture, Forest Service, of Pacific Meridian Resources (PMR) as the firm with which to negotiate a contract using the procedures set forth in the Brooks Act for the award of architect-engineer (A-E) contracts. The contract is for Landsat Thematic Mapping Services for classification and mapping of the Chatham Area of the Tongass National Forest using remotely sensed (satellite) data. GRS alleges that PMR should be ineligible for award because of an organizational conflict of interest arising from its prior involvement in a similar procurement. In addition, the protester challenges the overall evaluation of competing A-E submittals, including the composition of the evaluation board and an alleged bias in favor of PMR.

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We deny the protest.

This A-E procurement is governed by the Brooks Act, as amended, 40 U.S.C. § 541 et seq. (1988), and its implementing regulations, Federal Acquisition Regulation (FAR) subpart 36.6. These authorities require agencies to publicly announce their A-E requirements listing general and project-specific evaluation criteria, appoint A-E evaluation boards to review qualification statements already on file, as well as those submitted in response to the synopsis, and evaluate and rank at least three firms on a short list for further contract negotiations in order of ranking. See generally, FAR subpart 36.6; 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 Forest Service announced the procurement in the Commerce Business Daily (CBD) on November 4, 1994. The published scope of services and evaluation criteria for this image processing and vegetation mapping project in the Forest Service's Region 10 were based on the scope of services and evaluation criteria for similar services for the Forest Service in Region 6. The project encompasses the use of remotely sensed data to produce maps which define existing vegetative resources. The synopsis stated that selection would be based on 10 criteria and invited firms to submit completed Standard Forms (SF) 254 and 255.¹ As is pertinent here, the evaluation criteria called for the evaluation of specified relevant experience and job knowledge, but did not require information as to how the work was to be performed.

Six firms, including GRS, submitted qualification statements. The submittals were evaluated by a three-member evaluation board which assigned color-adjectival ratings of blue/exceptional, green/good, yellow/fair, or red/poor for each criterion. PMR's submittal was rated blue/exceptional and was ranked first; the protester's submittal was rated green/good and was ranked fourth. Based upon its highest ranking, PMR was selected for negotiation.

GRS contends that PMR should be ineligible for award of the contract because the firm previously assisted in the "design" of image processing and vegetation mapping

¹SF 254, Architect-Engineer and Related Services Questionnaire, is the statement of qualifications submitted annually by firms wishing to be considered for A-E contracts. SF 255, Architect-Engineer and Related Services for Specific Project, is a supplement to the SF 254 and requires firms to furnish job specific experience.

methodologies for the Forest Service. In this respect, the protester maintains that PMR participated in the preparation of a draft report issued by the Forest Service in April 1994, entitled "Guidelines for the Use of Digital Imagery for Vegetation Mapping." GRS states that numerous references to PMR are found in this report which has allegedly been promoted by the agency as the "standard" for remote sensing applications and widely distributed to numerous Forest Service districts. GRS also asserts that PMR's participation in preparing this report as well as its prior mapping contracts in Region 6 create a conflict of interest and afford PMR an unfair competitive advantage in the protested procurement. In this regard, GRS alleges that the evaluators may have been biased in favor of PMR as a result of their familiarity with the draft report or knowledge of PMR's role in developing the report.

In response, the contracting officer contends that the services PMR provided to the Forest Service did not result in a conflict of interest as alleged by GRS. According to the contracting officer, procurement officials in Region 10, which includes the Tongass National Forest, had no knowledge of the draft report until after the protest was filed. After reviewing the draft report, the contracting officer disputes the protester's allegation that the draft report constitutes the "standard" for remote sensing applications; rather, the draft report is simply a guide containing examples of image processing applications. The contracting officer also questions whether the draft report--which will probably be revised before a final report is issued--could be considered a "design" specification. As to the protester's allegation that the Region 6 scope of services, which was used to define the requirements for the protested solicitation, reflects PMR's methodology, the contracting officer states that PMR did not gain an unfair competitive advantage because vegetation mapping methodology was not an evaluation criterion in the present procurement.

The record here does not support the protester's claim that PMR had a conflict of interest or that PMR gained an unfair competitive advantage. PMR was not directly involved in the preparation of the current Region 10 scope of services although the contracting officer used the Region 6 scope of services to define the requirements. Nor does the record establish that the draft report has been expressly or impliedly adopted by the Forest Service as a "standard" to be used by its regions. Although PMR may have gained an advantage from its performance of other Forest Service contracts, there is no requirement that an agency equalize a competitive advantage that a firm may enjoy because of its own particular business circumstances or because it gained experience under a prior government contract provided those advantages do not result from a preference or unfair action

by the government. See Information Ventures, Inc.; Harris Consultive Servs., B-219989; B-219989.2, Dec. 16, 1985, 85-2 CPD ¶ 668. Here, we have no basis to conclude that any advantages PMR may have based on its performance of prior contracts was a result of any improper action by the Forest Service.

Moreover, we find no support for the protester's argument that the evaluators were biased in favor of PMR due to PMR's extensive experience in performing similar A-E contracts. The fact that the firm selected for negotiation has extensive, project-specific experience, does not by itself establish that the evaluators were biased or acted in bad faith. The record contains no evidence of wrongdoing or bad faith, and the mere assertion of bias by a disappointed A-E firm does not establish bias. IDG Architects, 68 Comp. Gen. 683 (1989), 89-2 CPD ¶ 236.

Next, the protester contends that since there were no evaluators with satellite image processing experience on the evaluation board, the evaluators did not have adequate experience to perform a competent evaluation.

The selection of individuals to serve as evaluators is within the discretion of the contracting agency and we will not review the qualifications of board members absent a showing of possible fraud, bad faith, or a conflict of interest. IDG Architects, supra. There has been no such showing here. In any event, the agency has provided descriptions of the qualifications of the three board members to establish their extensive experience in the areas related to this project. This experience includes: remote sensing, cartography, resource mapping photogrammetry, application and operation of automated computer mapping programs, and forest vegetation. In our view, the evaluation board was qualified to evaluate the A-E submittals for this project. While the protester continues to dispute the expertise of the board members, we have no basis to question the composition of the evaluation board.

GRS further challenges the evaluation of competing A-E submittals. For example, it contends that although the CBD announcement specifically advised firms that past performance would be evaluated, the evaluators did not contact the references listed in the A-E submittals in order to evaluate past performance. While the evaluation scheme envisioned that references may be contacted, we are aware of no requirement that the evaluators must do so. An agency may accept a firm's representations of its experience unless there is reason to believe that the representations are inaccurate. See, e.g., Medical Care Dev., B-235299, Aug. 17, 1989, 89-2 CPD ¶ 149; Roy F. Weston, Inc., B-197866; B-197949, May 14, 1980, 80-1 CPD ¶ 340. Here,

there is nothing in the A-E submittals which suggested to the evaluators that the firms' representations were false, and we fail to see how GRS was prejudiced by the agency's equal treatment of the competing firms when the evaluators decided not to contact any references.

The protester further alleges that the record includes inconsistencies in the evaluation of submittals. For example, GRS points out that the evaluators criticized its reliance on three subcontractors as being "slightly greater than some of the other firms." GRS argues, however, that there is no indication that two firms on the "short list"--PMR and Vestra Resources, Inc.,--which also listed three subcontractors in their submittals, were similarly criticized. We have reviewed the evaluation record, including the individual score sheets and A-E submittals, and find that only one evaluator identified the number of subcontractors proposed by GRS as a weakness. Specifically, the evaluator noted that "outside consultants will be needed to carry out our proposed project (minor point)." Contrary to the protester's assertions, we read the evaluator's comment as denoting a need for more than three subcontractors based on GRS' proposed approach; in any event, that evaluator gave the firm a rating of "excellent" under that criterion. While a similar criticism of the PMR and Vestra Resources submittals was not noted (presumably, the evaluator concluded that these firms' approaches would require only three subcontractors), we fail to see how GRS was prejudiced by this criticism since the evaluator assigned the firm the highest adjectival rating despite this identified weakness in its submittal.

GRS raises other examples, which are not specifically discussed in this decision, of what it argues was an unreasonable evaluation. For example, GRS questions the evaluation of PMR's submittal in the areas of its acceptable level of accuracy in the field of image processing and proposed methodology; and the evaluation of Vestra Resources' imaging processing experience. Our review of the agency selection of an A-E contractor is limited to examining whether that selection is reasonable.

Greenhorne & O'Mara, Inc., B-258281, Jan. 5, 1995, 95-1 CPD ¶ 1. It is not the function of our Office to make our own determination of the relative merits of the submissions of A-E firms. Procuring officials enjoy a reasonable degree of discretion in evaluating such submissions and we will not substitute our judgment for that of the procuring agency by conducting an independent examination. Harding Lawson Assocs., Inc., B-230219, May 20, 1988, 88-1 CPD ¶ 483. We note that, as the agency points out, vegetation mapping methodology was not listed as an evaluation criterion for this acquisition. Thus, to the extent the protester believes that the awardee's proposed methodology is

inadequate, this concern simply was not the focus of the published evaluation criteria and the evaluation which addressed, for the most part, the firm's experience. Based on our review, we find the protester's concerns simply illustrate its disagreement with the evaluators' judgment; as such they are without legal merit.

The protest is denied.



Co.-Robert P. Murphy
General Counsel