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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-204871

DATE: March 19, 1982

MATTER OF: Westec Services, Inc.

DIGEST:

1. Contention that a proposal should not have been excluded from the competitive range is without merit where the offeror's technical proposal received 193 points of a possible 430, and the record shows substantial support for numerous deficiencies assessed in the evaluation.
2. Mere disagreement with the research approach favored by the contracting agency does not meet the protester's burden of showing that the approach is unreasonable.
3. Composition of a technical evaluation panel is within the discretion of the contracting agency and will not be objected to in the absence of evidence of fraud, bias or conflict of interest.
4. GAO has no authority under the Freedom of Information Act to determine what information must be disclosed by Government agencies.

Westec Services, Inc. (Westec) protests the award of a contract to Wirth Associates, Inc. (Wirth) under request for proposals (RFP) No. 8000-81-32, issued by the National Park Service (NPS) to procure professional archaeological services for the U.S. Army at the Fort Irwin National Training Center, California.

Westec argues that its initial proposal should not have been excluded from the competitive range, and that it should have been given an opportunity to revise and clarify its proposal. Westec also criticizes the winning proposal and requests this Office to evaluate and compare

the proposals of Westec and the awardee. In addition, Westec complains about the composition of the NPS technical evaluation committee (TEC), and protests the NPS's failure to release the breakdown of the technical evaluation scores of both Westec's and Wirth's initial proposals. We deny the protest.

The RFP requested proposals for a variety of archaeological services at Fort Irwin, to be accomplished through the implementation of two basic ordering agreements (BOAs), one involving intensive archaeological survey and site testing of 49 square kilometers, the other involving six data recovery tasks at a number of known sites at Fort Irwin. In order to coordinate all these research efforts, as well as to provide a strategy for future efforts, section C of the RFP required each proposal to include a comprehensive research design for the investigation of prehistoric cultural resources at Fort Irwin, to be known as the Fort Irwin Area Archaeological Research Design (FIAARD). The RFP set out in detail the minimum requirements of the FIAARD and stated that "[t]he proposed FIAARD will be an important consideration in proposal evaluation." The importance of the FIAARD to the overall evaluation of the proposal is further demonstrated by the RFP's requirement that the research design for each individual BOA "be task specific and clearly related to the contractor's FIAARD." A defective FIAARD, therefore, would have a substantial effect on the evaluation of the entire proposal.

Section L of the RFP (the Solicitation Instructions and Conditions) emphasized that proposals should be organized in a manner that would reflect responsiveness to the evaluation factors in section M. Section M set forth a detailed list of evaluation criteria, which can be summarized as follows:

- a. Fort Irwin Area Archaeological Research Design (120 points)
 - (1) Literature Review (40 points)
 - (2) Identification of the archaeological research problems and domains of research (40 points)
 - (3) Methodology (40 points)
- b. BOAs (100 points each)
 - (1) Research Design (Order specific) (25 points)

- (2) Field Aspects (25 points)
 - (3) Analysis and Laboratory Aspects (25 points)
 - (4) Feasibility of Work Schedule (25 points)
- c. Personnel and Organization (60 points)
 - d. Corporate Experience and Capability (50 points)

Proposals were scored for technical merit, as set out above, by a TEC composed of NPS archaeologists. Westec's proposal received a total technical score of 193 points of a possible 430. The TEC was particularly critical of Westec's FIAARD, parts of which were described as "canned" and non-specific, and other parts of which were determined to be absent altogether. The proposal's BOA discussion was considered to be similarly flawed, with responses to the RFP again described as nonspecific and inadequately related to the FIAARD or to research problems particular to the Fort Irwin area. The proposal was determined to be unusable without extensive revision which, if permitted, would have amounted to submission of a new proposal. Based upon the TEC's evaluation, the contracting officer determined Westec's proposal to be technically unacceptable and outside the competitive range. Of three other proposals, discussions were entered into with two offerors whose proposals were considered within the competitive range.

Regarding Westec's request that we evaluate its initial proposal in comparison to the winner's, it is neither our function nor our practice to conduct independent technical evaluations of proposals. The review of technical evaluations by this Office generally is limited to examining whether the agency's determinations were fair and reasonable. See Simpson, Gumpertz & Heger, Inc., B-202132, December 15, 1981, 81-2 CPD 467. Thus, we will not become involved in making independent judgments as to the numerical scores that should have been assigned to various proposals. See John J. McMullen Associates, Inc., B-196281, June 2, 1981, 81-1 CPD 433.

Westec's contention that it should have been permitted to revise and clarify its proposal essentially is an objection to being excluded from the competitive range. This follows from the rule that an agency is not required to

hold discussions with an offeror whose proposal has been properly determined to be outside the competitive range. See 52 Comp. Gen. 198, 208 (1972).

Westec's principal support for its contention that its proposal was improperly excluded from the competitive range concerns the revisions that the winning offeror, Wirth, was permitted to make in its initial proposal. Westec contends that Wirth's subsequent revisions were both fundamental and substantial, and that, had it been permitted an opportunity to make similar revisions, Westec could have presented a technically competitive proposal. We disagree. Wirth's revisions were not of such a substantial nature as to constitute a complete revision of its proposal which, as stated above, was the reason why Westec's offer was excluded from the competitive range.

In contrast to Westec's proposal, which was determined to be fundamentally flawed in terms of its research design and corresponding methodology, Wirth's proposal was criticized during discussions principally on administrative grounds related to field personnel. Substantive comments made to Wirth were primarily aimed at pointing out areas in which proposed field work was overly intensive; NPS's comments were intended to specify areas in which Wirth's proposal could be technically refined and where cost cutting measures could be implemented. No comparable adjustments were possible with regard to Westec's proposal without the submission of a substantially revised FIAARD. There is no requirement that an agency permit an offeror to revise an initial proposal when such a revision would be tantamount to the submission of another proposal. Decilog, B-198614, September 3, 1980, 80-2 CPD 169.

Westec further states that it was unjustly criticized for proposing a "catchment analysis," while others who were criticized for the same type of analysis were not excluded from the competitive range. The term "catchment analysis," as used by the TEC, apparently refers to Westec's overall concern with subsistence and settlement patterns in the region, which Westec calls an "anthropologic approach." Westec states that the question really revolves around "opposing theories," in that its research design emphasized an "anthropologic approach" rather than a site-specific "archaeological approach," involving detailed mechanisms of analysis and interpretation.

First, we note that Westec was excluded from the competitive range because of its overall proposal, and not merely because its research design appeared to favor any one type of analysis. We also note that other proposals were not criticized for utilizing overall "catchment analyses," but rather that site catchment studies, referring to analyses of subsistence and settlement patterns at individual sites, were stated to be inappropriate for the level of field work intended for certain specific tasks. Finally, the evaluation of a particular research approach is a matter within the discretion of the agency involved. See Simpson, Gumpertz & Heger, supra. Westec's assertion that the "anthropologic approach" utilized in its proposal was equally appropriate merely states its disagreement with the approach taken by the NPS and does not meet its burden of showing that approach to be unreasonable. See Architectural Preservation Consultants, Resource Analysts, Inc., B-200872 et al., December 18, 1981, 81-2 CPD 446 at p.9; Virginia State University, B-202502, August 12, 1981, 81-2 CPD 129. To the extent that Westec disagreed with the requirements of the RFP, which indicated a clear preference for what Westec terms an "archaeological approach," that disagreement should have been stated prior to the closing date for receipt of initial proposals. See 4 C.F.R. § 21.2(b)(1) (1981).

Westec's next contention is that the composition of the TEC was such that a technically inadequate, arbitrary and biased evaluation was likely. Although every member of the TEC holds a graduate degree in archaeology and has substantial experience in the administration of archaeological contracts, Westec argues that the TEC was inadequate because of the absence of individuals with special expertise in California Desert archaeology. In addition, Westec emphasizes that all committee members were NPS personnel and argues that the inclusion of one committee member who was employed as the supervisor of other TEC members increased the potential for a biased evaluation.

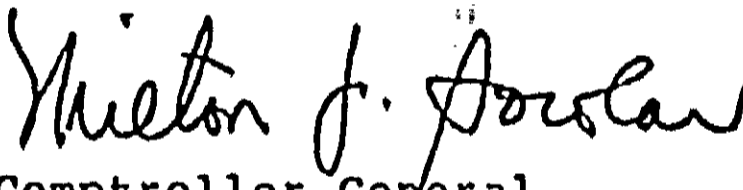
This Office has consistently held that the composition of a technical evaluation panel is within the discretion of the contracting agency, and we will not object in the absence of evidence of fraud, bad faith, conflict of interest, or actual bias. HSA/Multichem, B-202421, August 11, 1981, 81-2 CPD 118; New York University, B-195792, August 18, 1980, 80-2 CPD 126. We do not consider the mere fact that the TEC did not include California Desert specialists to be a proper basis to question the composition of the TEC, particularly as the record shows that all TEC members had considerable expertise in archaeology in general and in the administration of archaeological service contracts

in particular. We also do not consider the agency's inclusion of one committee member who was employed as a supervisor of other members as evidence of bias or conflict of interest--there simply is no evidence that any member of the TEC failed to exercise independent judgment in his or her evaluation.

Finally, Westec protests the NPS's failure to respond to its requests under the Freedom of Information Act (FOIA) to release information on the technical evaluation point scores. Our Office has no authority under FOIA to determine what information must be disclosed by Government agencies. The protester's recourse is to pursue its disclosure remedies under the procedures provided by FOIA. Bell & Howell Corporation, B-196165, July 20, 1981, 81-2 CPD 49.

In this case, the agency report to our Office in fact contains sufficient documentation to support the evaluation decision made by the NPS. We have carefully reviewed and considered it in light of the allegations raised by Westec, and have concluded that the record does not support these allegations.

The protest is denied.

for 
Comptroller General
of the United States