



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Development Alternatives, Inc.

File: B-279920

Date: August 6, 1998

Thomas K. David, Esq., and Kenneth D. Brody, Esq., McMahon, David & Brody, for the protester.

Andrew Irwin, Esq., Brian A. Darst, Esq., and William A. Roberts III, Esq., Howrey & Simon, for Barents Group, LLC, an intervenor.

Rumu Sarkar, Esq., and Gary Winter, Esq., U.S. Agency for International Development, for the agency.

Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that one of the contracting agency's evaluators improperly "infused" the evaluation of technical proposals with his own preferences, rather than the stated evaluation criteria, is denied where the record, when read as a whole, shows that the evaluation was reasonable and consistent with the stated evaluation criteria.
2. Protest that contracting agency improperly failed to discuss a weakness found in the protester's initial proposal is denied where there is no evidence that it was considered a significant weakness and its existence did not prevent the protester from having a reasonable chance for award. Related allegation that questions asked during an oral interview constituted discussions is denied where the record shows that the questions were merely requests for additional clarifying detail concerning information already presented in the proposals as revised by written best and final offers.

DECISION

Development Alternatives, Inc. (DAI) protests the award of a contract to Barents Group, LLC, under request for proposals (RFP) No. 168-98-01, issued by the U.S. Agency for International Development (USAID) for technical and advisory services associated with a program to provide lending and business consulting services in support of post-war reconstruction efforts in Bosnia-Herzegovina. DAI contends that USAID's evaluation of technical proposals was unreasonable, that its conduct of discussions was improper, and that its selection of Barents was not rationally justified.

We deny the protest.

BACKGROUND

The war in Bosnia-Herzegovina caused extensive damage to the country's physical infrastructure which, in turn, substantially reduced industrial production and employment levels. In 1995, the United States made a commitment to provide a significant portion of the external financing needed to meet Bosnia-Herzegovina's need for reconstruction inputs and working capital. USAID's Business Development Program has become an integral part of the fulfillment of that commitment. RFP §§ C.I.A.-B.

The business finance component of the program was intended to provide, over a 3-year period, up to \$250 million in direct balance of payments support to the government of Bosnia-Herzegovina. While the initial phase of the program was characterized as an emerging lending program dedicated to employment generation, the program was also expected to gradually begin lending through banks in early 1998. The primary implementing organization of the credit component of the lending program is the business finance team, staffed by a group of U.S. bankers and trained Bosnian staff; DAI is the incumbent contractor providing these services. The contract contemplated by this solicitation will replace the group now serving in this capacity and will see the project through to completion of USAID management of the activity, which is expected to occur early in the year 2000. RFP §§ C.I.C.-D.

The new contract team will take over the lending function of the program and implement it for approximately the first year of the contract, drawing down most of the available lending funds. During the second year the team will lend the remaining available funds as prudently as possible through banks, but its principal objective will be to carry out a successful transition exercise with Bosnian government and private sector counterparts such that management of the program can be turned over to local institutions and authorities upon conclusion of the contract. RFP §§ C.I.D., C.II.

The solicitation, issued November 25, 1997, anticipated the award of a cost-plus-award-fee contract to provide these services over 2 years. RFP §§ B.2, F.3. Award was to be made to the offeror whose proposal was most advantageous to the government, considering technical and cost factors. RFP § M.2(b). The RFP set forth three technical factors and their respective weights, as follows: experience (30 percent); personnel nominated for the field team (35 percent); and technical approach (35 percent). Technical considerations were to slightly outweigh cost considerations in making the final selection. RFP § M.1.

USAID received proposals from three firms, including DAI and Barents, by the extended closing date of February 13, 1998. Based upon a three-member technical evaluation committee's (TEC) evaluation of these initial proposals, the contracting officer established a competitive range of two proposals, those of DAI and Barents. By letters dated March 9, both offerors were given discussion questions and asked to submit written BAFOs by March 20. In addition, both offerors were told that, in conjunction with the technical BAFO, they would be required to make an oral presentation followed by a brief, fact-finding interview process. The oral presentation/interview was to be treated as an "integral part" of the BAFO and scored as such. The letter, at 2, continued, "The interview process will be limited to questions concerning information requested in the RFP or in this letter, and/or previous experience of the individuals attending. No discussions or any other form of negotiations will take place."

Both firms submitted written BAFOs and gave their oral presentations/interviews several days later. At the beginning of each oral interview, each firm was given a list of questions and asked to answer them. All three TEC members and the contracting officer, who acted as the source selection official (SSO) for this procurement, were present. In accordance with the BAFO request letters, the TEC evaluated the oral presentations/interviews as if they were part of the written BAFOs. Barents's proposal was assigned 282 of the 300 points available for its technical proposal and its costs were evaluated at \$17,627,584. DAI was assigned 257 points and its costs were evaluated at \$[DELETED].

By memorandum dated March 30, the chairman of the TEC submitted the final evaluation results to the SSO. The memorandum, at 1, provided the scoring totals as well as a breakdown which showed that two evaluators favored Barents and one favored DAI, but that Barents was "a clear winner on points." The TEC chairman stated that he was sending the individual evaluators' narrative comments by separate cover, and that the comments "[spoke] for themselves." As he summarized, "the committee was split with the majority going with the Barents Group. I believe the issue on which the evaluation turned had to do with concern over institutional capacity of the offerors to carry out sufficiently sound and prudent lending and portfolio management functions over the life of the contract so as to adequately protect project resources." March 30 Memorandum at 1-2.

In his source selection memorandum¹ the SSO provided a chronological account of the procurement and concluded, at 3, that:

After overseeing the entire evaluation process, it is my opinion that the [DELETED] difference in estimated cost is so negligible as to be likely to be ephemeral by the contract's completion, while the technical experts clearly had more confidence in Barents to complete this project. Two of the three selected Barents and the scores of the lone DAI selector were very close. I believe that the narrative of the TEC reflects the belief that Barents is more likely to guarantee a successful transition of the technical skills involved. As can be seen from the above rankings, the difference in technical scores is . . . 9%, while the cost difference is about . . . [DELETED]. Since the RFP called for technical scoring to outweigh costs, . . . and since the technical difference is considerably greater than the cost difference, award of the contract will be to [Barents].

DAI received its debriefing and filed the instant protest. Barents's performance of its contract has been suspended pending resolution of the protest, and an option to DAI's contract has been exercised allowing the firm to perform during this period.

ANALYSIS

Evaluation of Technical Proposals

DAI alleges that one evaluator "infused" the evaluation process with his own preferences, which DAI terms undisclosed evaluation criteria, improperly resulting in lower ratings for its proposal and higher ratings for Barents's proposal.

The evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5. In reviewing an agency's technical evaluation, we will not reevaluate the proposals, but will examine the record of the evaluation to ensure that it was reasonable and in accordance with the stated evaluation criteria. Id. Technical evaluators have considerable latitude in assigning ratings which reflect

¹The date on this memorandum is April 27, after award was made, but USAID advises that it was written well in advance of award and that the date reflects the date on which the memorandum was actually typed for the files. We have no reason to believe otherwise and, in any case, the memorandum is entirely consistent with the preaward documents. See Jason Assocs. Corp., B-278689 et al., Mar. 2, 1998, 98-1 CPD ¶ 67 at 6-7.

their subjective judgments of a proposal's relative merits. I.S. Grupe, Inc., B-278839, Mar. 20, 1998, 98-1 CPD ¶ 86 at 5. Evaluators may have different judgments as to a proposal's merits, and one evaluator's scoring is not unreasonable merely because it is based on judgments different from those of other evaluators. Arsenault Acquisition Corp.; East Mulberry, LLC, B-276959, B-276959.2, Aug. 12, 1997, 97-2 CPD ¶ 74 at 4. Our review shows that DAI's allegations spring from a selective reading of the evaluation record which, when read as a whole, confirms that the evaluation was reasonable and consistent with the RFP's stated criteria.

The experience factor was defined as "[c]orporate experience in financial and lending systems development in the developing world. The more similar to conditions in Bosnia and Herzegovina, the better." RFP § M.1. In the initial evaluation, the evaluator whose actions the protester challenges assigned DAI's proposal 26 of the 30 available points for this criterion. He stated that DAI "clearly has a very good range of relevant corporate experience as indicated in the proposal and attested to in the reference checks." He further stated that a lending operation such as the one contemplated would benefit from the support of an international commercial bank to supplement the prime contractor's capabilities and that DAI had benefited from the support of such a bank in its prior contract. Here, however, DAI proposed to use a "much smaller bank" which had "no lending operations overseas other than a small retail branch" in a U.S. embassy and which had "never set up or supported lending operations in a challenging market overseas." As a result, the evaluator believed that the bank's ability to "significantly supplement" DAI's own capabilities was more limited than might appear.² Evaluator's Initial Proposal Evaluation Narrative at 2.

DAI's allegation that this evaluator improperly failed to credit the firm for its lending systems development in Bosnia since 1996 is without merit; implicit in his comment regarding DAI's "very good range" of relevant experience is the firm's experience in Bosnia. DAI's principal complaint--that the evaluator adopted an unstated evaluation criterion concerning the size of the bank utilized--fails to read the comments in context. The evaluator was clearly concerned not with the size of the bank per se, but with the quality of its experience, an area unquestionably within his purview to evaluate. Finally, DAI's contention that the evaluator erroneously concluded that its bank had never set up or supported a lending operation in a challenging market overseas is primarily supported by references to

²He deducted an additional 2 points in the final evaluation because, among other things, DAI acknowledged, during the oral interview, that the bank's correspondent banking relationships in Bosnia were not credit relationships. In the final evaluation, the other two evaluators assigned DAI's proposal 27 and 28 points, respectively, for this criterion.

page numbers in its proposal, but our review of the contents of these pages affords us no basis to conclude that the evaluator's comment is inaccurate.³

The personnel factor was defined as "[a]pplicability of skills; previous experience." RFP § M.1. The evaluator in question assigned DAI's proposal 26 of 35 points for this criterion, and a second evaluator assigned the proposal 32 points. Both were concerned about staff turnover and the general amount of experience of DAI's personnel, as well as the abilities of specific personnel. As to the first concern, the evaluator in question noted that the "average amount of professional experience for the proposed field team is about 17 years which is good, but 7 years less than [DAI] provided at the outset of the program in May 1996." As a result, he had some concern about DAI's ability to attract and retain experienced bankers. Evaluator's Initial Proposal Evaluation Narrative at 2-3.

DAI's complaint that the evaluators improperly showed a strong bias for personnel with many years of experience and were less interested in the applicability of that experience to the conditions in Bosnia is without basis. First, both evaluators made specific comments regarding the applicable experience of DAI's personnel, albeit in less expansive terms than DAI apparently finds optimal. Second, the evaluators' consideration of the length of experience possessed by DAI's personnel is reasonably encompassed by the broad definition of this evaluation criterion and is supported by a detailed rationale. Finally, DAI's assertion that the evaluator in question focused on the length of DAI's experience--17 years--without talking about the applicability of that experience misses the point of the evaluator's comment. As is evident from the quoted portion above, the evaluator downgraded the proposal not because the personnel had insufficient years of experience per se, but because the proposed team has less experience than the team DAI provided 2 years ago, which was reasonably viewed as reflecting a significant risk of turnover.

The technical approach factor is defined as follows: "Innovation is encouraged to seek improved quality and efficiency in lending, training and system and institutional development. Offerors should provide a clear sequencing of events and a clear management command-and-control structure, to include all subcontractors identified." RFP § M.1. In the final evaluation, the evaluator in question assigned DAI's proposal 25 of 35 points for this criterion, and a second evaluator assigned

³DAI also contends that a second evaluator never explained how he could have given Barents's proposal the full 30 points for this evaluation criterion despite the fact that the firm has not performed development of a lending system in Bosnia as had DAI. However, as that evaluator acknowledges in his own notes, the criterion does not require such specific experience, but only experience which is similar to conditions in Bosnia-Herzegovina. In the absence of any detailed objections to the evaluation of Barents's proposal we have no basis to conclude that it was unreasonable.

the firm's proposal 29 points. Both evaluators were concerned about DAI's plan to transition management of the program to the local authorities. Specifically, both believed that DAI's proposal to rapidly reduce the number of expatriate lending officers, while turning their responsibilities over to relatively inexperienced Bosnian staff, was overly risky.

DAI's allegation that these comments reflect an improper disagreement with the RFP's objective of transitioning the program to Bosnian staff by the conclusion of the contract is without merit. The record shows that both evaluators judged that DAI proposed to transition the program too quickly within the contractual time period. As the TEC memorandum on the evaluation of initial proposals, signed by all three TEC members, points out, "[it] is recognized that [the] RFP mandated that the project was to be turned over to Bosnian management by the end of the contract period. It is a question of degree. It is also a question of the definition of what this means . . . while maintaining portfolio quality." TEC Memorandum on Initial Proposals at 3. In this regard, the evaluator whose actions the protester challenges expressed the concern that it might be wiser to retain more expatriates during the contract's 2 years than proposed by DAI and wiser to keep their lending expertise fully involved while preparing for management of the program by Bosnian institutions. DAI's insistence on viewing this concern as inconsistent with the solicitation is unwarranted, and does not provide us a basis to conclude that the concern or the resulting evaluation was unreasonable.

Discussions

DAI contends that USAID improperly failed to conduct meaningful discussions with the firm because it was not advised that its banking subcontractor was of concern to two evaluators.

The applicable Federal Acquisition Regulation (FAR) provision, FAR § 15.610(c)(2) (June 1997), requires that a contracting agency "[a]dvice the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Government's requirements." We review the adequacy of discussions to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Department of the Navy--Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ 422 at 4 n.2. Agencies need not discuss every aspect of the proposal that receives less than the maximum score or identify relative weaknesses in a proposal that is technically acceptable but presents a less desirable approach than others. SeaSpace Corp., B-252476.2, June 14, 1993, 93-1 CPD ¶ 462 at 15, recon. denied, B-252476.3, Oct. 27, 1993, 93-2 CPD ¶ 251.

As explained above, in evaluating DAI's initial proposal two evaluators believed that the experience of DAI's banking subcontractor gave it a more limited ability to significantly supplement DAI's capabilities than might appear, and downgraded it by 4 and 5 points, respectively. While this matter was not one of the discussion

questions listed in DAI's BAFO request letter, there is no evidence that the firm's use of this bank was considered a significant weakness. In addition to the fact that relatively few points were deducted from its score for this reason, neither the TEC memorandum on the evaluation of initial proposals nor the TEC memorandum on the evaluation of BAFOs mentions this matter. Moreover, it is clear that the existence of this weakness did not keep DAI from having a reasonable chance for award; the firm was very much in the competition and was ultimately not selected for other reasons. Since the principal concerns about its proposal were brought to its attention, and since this concern did not prevent DAI from having a reasonable chance for award, USAID's failure to point it out did not deprive DAI of meaningful discussions. Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 5.

DAI also alleges that, notwithstanding the agency's intent to the contrary, the questions asked during the oral interview constituted discussions. As a result, DAI argues, the agency was required to request second BAFOs from the offerors on the competitive range. FAR § 15.611(a) (June 1997).

As set forth in FAR § 15.601 (June 1997), discussions "means any oral or written communication between the Government and an offeror, (other than communications conducted for the purpose of minor clarification) whether or not initiated by the Government, that (a) [i]nvolves information essential for determining the acceptability of a proposal; or (b) [p]rovides the offeror an opportunity to revise or modify its proposal." The acid test of whether discussions have been held is whether it can be said that an offeror was provided the opportunity to revise or modify its proposal. BE, Inc.; PAI Corp., B-277978, B-277978.2, Dec. 16, 1997, 98-1 CPD ¶ 80 at 5.

Whether or not the oral presentation constituted part of the BAFO such that a second round of BAFOs was not required, see Labat-Anderson Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244 at 11 n.4, the record shows that the questions asked are in the nature of clarifications--they merely request additional detail concerning information already presented in DAI's proposal as revised by its written BAFO. BE, Inc.; PAI Corp., *supra*, at 5-6. For example, in its BAFO, DAI reduced by ten the number of Bosnian lending professionals that it would use under the contract. During the oral interview the firm was asked to describe any changes that this reduction would require in the way the lending staff was deployed and organized. Other questions included requests for elaboration on the reasons for selecting particular personnel and on arguments made and positions taken in the BAFO to support a particular approach. Contrary to DAI's position, the fact that some of its scores changed as a result of the oral interview does not show that it was allowed to revise its proposal, but that its explanations of what was already proposed became more clear, at times to the firm's detriment and at times to its benefit.

Source Selection Decision

DAI argues that the SSO failed to articulate a rational basis for his selection decision and, instead, deferred to the subjective point scores of "deadlocked" evaluators without resolving their "split."

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Mevatec Corp., B-260419, May 26, 1995, 95-2 CPD ¶ 33 at 3; Grey Adver., Inc., B-184825, May 14, 1976, 76-1 CPD ¶ 325 at 12. In exercising that discretion they are subject only to the tests of rationality and consistency with the established evaluation criteria. Mevatec Corp., *supra*. While the selection official's judgment must be documented in sufficient detail to show that it is not arbitrary, a source selection official's failure to specifically discuss every detail regarding the relative merit of the proposals in the selection decision document does not affect the validity of the decision if the record shows that the agency's award decision was reasonable. SEAIR Transp. Servs., Inc., B-274436, Dec. 12, 1996, 96-2 CPD ¶ 224 at 6.

The source selection decision here is brief but the record supports the reasonableness of the award decision. The record documents the evaluation process, including the narrative comments, as well as the point scores, and concludes with the SSO's statement that he has considered both. In this regard, the SSO expresses his belief that the TEC's narrative--comprised of the narratives of each evaluator--reflects the view that Barents was more likely to guarantee a successful transition of the technical skills involved. We do not agree with DAI that the SSO was required to resolve the differences between the two evaluators who believed that Barents could better ensure successful transition and the one evaluator who favored DAI; such differences are not uncommon given the subjective nature of such judgments. Since we have concluded that the evaluation was reasonable, we have no basis to question the SSO's reliance on the fact that the majority of the evaluators had more confidence in Barents to complete the project. See KRA Corp., B-278904, B-278904.5, Apr. 2, 1998, 98-1 CPD ¶ 147 at 13-14; see also SEAIR Transp. Servs., Inc., *supra*.

The protest is denied.

Comptroller General
of the United States