**Comptroller General**
**of the United States**

**Washington, D.C. 20548**

# Decision

**DOCUMENT FOR PUBLIC RELEASE**

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**Matter of:** WRS Infrastructure & Environment, Inc.

**File:** B-281222

**Date:** January 12, 1999

Donald J. Kinlin, Esq., and Scott K. McPeek, Esq., Thompson Hine & Flory, for the protester.
Richard B. Oliver, Esq., McKenna & Cuneo, for Environmental Chemical Corporation, and Michael Donnelly, Esq., for Montgomery Watson Americas, Inc., the intervenors.
Gregory H. Petkoff, Esq., and Capt. Douglas M. Whitehead, Department of the Air Force, for the agency.
Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest that an awardee was given undue evaluation credit for proposing a solution to a sample task order because it allegedly copied the solution provided by its proposed subcontractor (which was also a successful competitor) is denied where the record does not support the protester's speculation that the solution was merely copied.

## DECISION

WRS Infrastructure & Environment, Inc. (WRS) protests the award of a contract to Environmental Chemical Corporation (ECC) under request for proposals (RFP) No. F42650-98-R-0003, issued by the Department of the Air Force for construction and operation and maintenance (O&M) services for remediation, restoration, clean-up and long-term monitoring of environmental actions at Hill Air Force Base and surrounding Air Force property in Utah. WRS alleges that ECC received undue evaluation credit for its mission capability on the basis that its response to a sample task was allegedly copied from that of another offeror--Montgomery Watson Americas, Inc. (MW).

We deny the protest.

BACKGROUND

The RFP, issued on March 16, 1998, solicited offers for up to four indefinite-delivery/indefinite-quantity contracts against which task orders would be issued. The base period for performance was 3 years with two 1-year options. The RFP provided that:

> The Government may award one contract to an 8(a) firm and one to a small business firm if the government determines, from the proposals, there are offerors in these categories technically capable of satisfying the requirement. The remaining two contracts will be awarded to technically qualified firms, regardless of size, using full and open competition.

RFP § M 3.0B.

Section M of the RFP provided that awards would be made on a best value basis considering four evaluation factors: mission capability, performance confidence, proposal risk, and cost/price. Mission capability and performance confidence were considered to be of equal importance and more important than the remaining factors. Proposal risk was less important than the first two factors and more important than cost/price. Mission capability and proposal risk had identical subfactors, listed in descending order of importance: (1) Design concept and construction work plan to the sample task order[1]; (2) O&M plan to the sample task order; (3) Personnel plan; and (4) Breadth of experience. RFP §§ M 4.0-4.2.

Twelve offers were received by the proposal submission date. The RFP in section L-1 at 1 incorporated a clause providing that awards could be made on the basis of initial proposals and, in fact, no discussions were held. In his selection decision, the source selection authority (SSA) noted that ECC, a firm specializing in construction, and MW, an architectural/engineering (A&E) firm, submitted virtually identical proposals and that each was listed as the primary subcontractor in the other's proposal. Source Selection Decision (SSD), Sept. 10, 1998, at 1. He further found that "their solution" to the sample task order exceeded the agency's requirements and noted that ECC had submitted the third lowest evaluated price while MW's price was sixth lowest. Id. As for the protester, the SSA noted the following: "[WRS] was competitive and its design met all requirements. However, its approach did not provide any added benefit to the Air Force and its price was the ninth lowest." Id. at 2.

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[1]The sample task order was a hypothetical environmental remediation problem that offerors were required to address.

Awards were made to MW, ECC, and two other firms on September 11. Following an October 1 debriefing, WRS filed this protest on October 5.

PROTEST AND ANALYSIS

In its initial protest, WRS alleged that: (1) MW and ECC engaged in prohibited multiple bidding which prejudiced the government and other offerors; (2) the awards to reciprocal teaming partners MW and ECC would subvert competition for task orders; (3) the awards will tend to increase the scope and maximum value of the contracts; and (4) MW's potential conflicts of interest as a former A&E contractor at Hill Air Force Base will further complicate competition for task orders and cause the agency to incur additional expenses in tracking and preventing such conflicts. The agency report addressed each of these allegations in detail and WRS, after reviewing the report and the accompanying exhibits provided to its counsel under a protective order issued by this Office, reformulated its position as follows:

> Based on the facts in the record, including the Agency Report submitted in response to this protest, the issue in this protest can now be stated as follows:
>
> Did the Government evaluate proposals fairly and in accordance with the Solicitation factors when it gave [ECC] the same "Green" rating for Mission Capability as it gave to [MW], where ECC merely copied [MW's] solution to the Sample Task Order upon which the Green rating was based?
>
> The answer must be an emphatic 'no' . . . .

WRS's Comments, Nov. 18, 1998, at 1.

More particularly, WRS has now recast its argument to make the assertion that, with respect to two of the most important evaluation factors, mission capability and performance risk, ECC received undue evaluation credit for the first two subfactors under each factor--i.e., those involving the design and construction solutions to the sample task order and those involving the O&M solution to the sample task order. Moreover, WRS submits that had ECC been properly rated, the protester would have necessarily been in line for award.

In reviewing protests against the propriety of an agency evaluation of proposals, it is not the function of our Office to independently evaluate proposals and we will, therefore, not disturb the agency's conclusion unless it is shown to be unreasonable. The record must establish that the evaluation is unreasonable and the mere fact that a protester disagrees with the agency does not render the

evaluation unreasonable. American Educ. Complex Sys., B-228584, Jan. 13, 1988, 88-1 CPD ¶ 30 at 2. Moreover, our Office will not sustain a protest that is based on speculation. Id.

WRS's repeated contention that ECC merely copied MW's solution to the sample task order is founded in speculation that is not supported by the record. Noting that the solutions submitted by the two offerors are virtually identical, which is confirmed by our reading of the proposals, WRS essentially bases its entire argument on the following statement made by the evaluators when rating ECC's proposal: "Proposal [under subfactor 1] was a sloppy cut and paste of the [MW] proposal (e.g. Table 2, Figure 2, grammatical errors, etc.). Reflects poorly on offeror's internal QC program." Technical Team Review of Proposals, July 29, 1998, at 14. From this, WRS concludes that ECC copied the sample task order portion of MW's proposal.

In our view this statement does not, as the protester insists, establish that the agency believed that ECC had no role in the preparation of the task order solution, or that this was objectively true. On the contrary, the statement reflects what the evaluators termed a "minor weakness" in ECC's presentation. Id. In his source selection decision, the SSA essentially recognized that the two offerors collaborated in developing the solution when he concluded that: "[t]heir [ECC's and MW's] solution to the sample problem exceeded performance requirements . . . ." SSD, supra, at 1. Moreover, in a sworn statement, ECC's project manager stated that at least five members of his firm collaborated with MW on the sample task solution by helping to evaluate four possible design concept alternatives, including the preparation of technical drawings and plans, contacting specialty contractors and preparing cost estimates. He further states that ECC and MW discussed the alternatives and jointly developed a design approach. Once the approach was determined, he states that ECC personnel drafted portions of the response including the construction plan, the soil handling plan and the excavation and soil handling QC and safety sections. ECC's Comments, Dec. 3, 1998, Attachment at ¶ 2. In its final comments, MW confirms the collaborative effort in preparing a joint solution as "the work of experts from both companies with skills relevant to the solution." MW's Comments, Dec. 10, 1998, at 2.

WRS also notes that ECC relied in its proposal on the extensive experience of MW with contracts at Hill Air Force Base and argues that, since ECC had no such experience of its own, it impermissibly piggy-backed on its proposed subcontractor's experience to demonstrate mission capability it otherwise did not have. The RFP did not require Hill-specific experience and did not prohibit subcontracting. Accordingly, there is no basis to object to the evaluator's decision to consider MW's experience in rating ECC. Further, a review of ECC's proposal indicates that it listed a number of large remediation contracts where it performed as the prime contractor at other base locations. To the extent that WRS suggests that MW's Hill-specific experience provided ECC with an unfair advantage because

it gave ECC credit for developing a response to a Hill-specific sample task order problem when ECC had no such experience, the Air Force responds and the record supports that the sample task order problem was not specific to Hill Air Force Base.

In sum, the record provides no basis to question the agency's conclusion that ECC deserved to be rated the same as MW with respect to the sample task order solution, notwithstanding WRS's speculation that ECC's proposal was merely a copy of MW's, and the agency's evaluation of ECC's proposal is unobjectionable.

The protest is denied.

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