



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Decision

Matter of: Planning And Development Collaborative International

File: B-299041

Date: January 24, 2007

Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for the protester.
Richard P. Rector, Esq., Robert M. Reiser, Esq., DLA Piper US LLP, for The Services Group, Inc., an intervenor.
John B. Alumbaugh, Esq., U.S. Agency for International Development, for the agency.
Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency was not required to hold discussions regarding area of protester's proposal that was weak, but acceptable, and that did not prevent the protester from having a reasonable opportunity for award.

DECISION

Planning and Development Collaborative International (PADCO) protests the award of a contract to The Services Group, Inc. under request for proposals (RFP) No. 111-05-033, issued by the U.S. Agency for International Development (USAID) for technical assistance and support for the Government of Armenia. PADCO principally argues that the agency failed to hold meaningful discussions regarding a significant weakness in its proposal.

We deny the protest.

The RFP, issued on January 23, 2006, contemplated the award of a cost-plus-fixed-fee contract with a 3-year base period and two 1-year options, to implement USAID's Social Protection Systems Strengthening (SPSS) Program for improving the social protection systems in Armenia, while, at the same time, increasing opportunities for self-reliance and reducing the Armenian citizens' dependence on public support to meet basic needs. To achieve these ends, USAID sought a contractor to provide technical assistance and support for capacity-building training, commodities, and public education to select public and private sector entities targeting four key areas: (1) social insurance; (2) employment services; (3) occupational safety and labor code; and (4) social assistance programs for vulnerable populations. RFP at C-1.

For each of the four key areas, the RFP set forth expected results for the 3-year base period as well as the full 5-year contract term (base plus two option periods) and sought from each offeror their expected results for the program as well.

Proposals were to be evaluated on a “best value” basis considering the following three technical factors listed in descending order of importance: (1) technical approach, management approach, and personnel, (2) past performance, and (3) small disadvantaged business (SDB) participation. The technical approach, management approach, and personnel factor, which was “significantly more important than all other factors combined,” consisted of three equally weighted sub-factors: (i) clarity and demonstrated effectiveness of offeror’s proposed strategies and activities, (ii) relevance of the proposed activity work, and (iii) proposed management and staffing plan. RFP at M-2. The past performance factor was composed of five sub-factors of equal weight and the SDB participation factor was composed of four equally weighted sub-factors. In its evaluation of proposals, the RFP indicated that the agency was to use the following adjectival rating scheme: outstanding, better, acceptable, marginal, and unacceptable. As it relates to the protest, ratings of better and acceptable were defined as follows:

“Better” . . . Fully meets all solicitation requirements and significantly exceeds many of the solicitation requirements. Response exceeds an “Acceptable rating.” The areas in which the Applicant exceeds the requirements are anticipated to result in a high level of efficiency or productivity or quality.

“Acceptable” . . . Meets all solicitation requirements. Complete, comprehensive, and exemplifies an understanding of the scope and depth of the task requirements as well as the Applicant’s understanding of the Government’s requirements.

RFP at M-2.

With respect to cost, which was identified as being of “significantly less importance” than the technical evaluation factors, offerors were instructed to include a detailed budget for the 5-year contract term. RFP at M-4. Offerors’ cost proposals were to be evaluated on (i) realism and risk mitigation, (ii) consistency with the technical proposal, (iii) overall cost control, and (iv) amount of proposed fee. While cost was the least important evaluation factor, the RFP stated that where the agency considered proposals to be essentially equal, “cost may be the determining factor.” RFP at M-4.

By the RFP’s closing date of April 10, 2006, the agency had received proposals from four offerors, including PADCO and The Services Group. For the purpose of evaluating proposals, USAID composed a technical evaluation committee, which was responsible for evaluating offerors’ technical proposals while the contracting officer

concurrently evaluated offerors' cost proposals. Based on its evaluation of initial proposals, the agency rated the proposals of PADCO and The Services Group as follows:

Evaluation Criteria	PADCO	The Services Group
Technical Approach, Management Approach, and Personnel	Better	Acceptable
i. Clarity and demonstrated effectiveness of the offeror's proposed strategies and activities and their rationale	Better	Better
ii. The relevance of the proposed Activity Work	Acceptable	Acceptable
iii. Proposed Management and Staffing Plan	Better	Acceptable
Past Performance	Acceptable	Acceptable
1. Quality of product or service	Better	Acceptable
2. Cost control	Acceptable	Acceptable
3. Timeliness of performance	Better	Acceptable
4. Customer satisfaction	Acceptable	Acceptable
5. Effectiveness of key personnel	Acceptable	Acceptable
Small Disadvantaged Business Participation	Better	Acceptable
a. The extent to which SDB concerns are specifically identified	Acceptable	Acceptable
b. The complexity and variety of the work SDB concerns are to perform	Better	Acceptable
c. Past performance of offerors in complying with subcontracting plan goals for SDB concerns and monetary targets for SDB participation	Acceptable	Acceptable
d. The extent of participation of SDB concerns in terms of the value of the total acquisition	Better	Acceptable
OVERALL TECHNICAL RATING	Better	Acceptable
TOTAL PROPOSED COST	18,477,785	17,023,789

Agency Report, Tab 133, Negotiation Memorandum, at 8.

In its evaluation of PADCO's proposal, the TEC noted several strengths and weaknesses under the technical approach, management approach, and personnel subfactors. Specifically, the TEC noted three strengths and five weakness under the subfactor "clarity and demonstrated effectiveness of the offeror's proposed strategies and activities and their rationale," one strength and two weaknesses under the "activity work plan" subfactor, and two strengths and two weaknesses under the "management and staffing plan" subfactor. As it relates to the protest, the two strengths under the "management and staffing" subfactor were described as follows:

Strength 1: PADCO has proposed [an] overall, personnel mix that is well matched to the technical proposal and to [] fulfilling the objectives

of the SPSS project. The technical management approach meets the proposal and requirements of the RFP extremely well. PADCO has proposed and respectively budgeted for an excellent mix of expatriate long- and short-term advisors and local Armenian “champions” for all four components, through the entire life-cycle of the project. . . . Qualifications of cross-cutting intervention managers match the areas identified in the RFP.

Strength 2: Proposed Chief of Party Daniel Wartonic has an outstanding record of hands-on professional and managerial experiences in a mix of major social protection technical assistance activities under the SPSS. . . . Mr. Wartonic is very well suited to span key SPSS project’s areas – pension and overall social insurance reform and social assistance. . . .

AR, Tab 54, TEC Selection Memorandum, at 18-19.

In its evaluation of The Services Group’s proposal, the TEC identified various strengths and weaknesses, one of which was described as a “significant weakness.” Specifically, under the management and staffing plan subfactor, while the TEC noted two strengths, it indicated that “[t]he quantity and quality of [The Services Group’s] proposed team of local long-term technical experts does not meet the RFP’s requirement on ensuring that the project’s Armenian staff play major roles in project decision making and implementation,” which, in the view of the TEC, constituted a “significant weakness.” AR, Tab 54, TEC Selection Memorandum, at 26.

The TEC presented its initial evaluation findings to the contracting officer and recommended that three of the four proposals, including those of PADCO and The Services Group, be included in the competitive range for the purpose of discussions. The contracting officer, considering the TEC’s recommendation and the results of the cost evaluation, agreed with the TEC and decided to hold further negotiations with three firms. In deciding on the competitive range, the contracting officer considered in detail the level of effort proposed by each offeror, as reflected in their cost proposals. The competitive range decision memorandum in fact included, for each offeror, a detailed break-down of the offeror’s proposed level of effort by labor category, for each year of the contract.¹ AR, Tab 55, Competitive Range Determination, at 28, 37. Based on this review, the contracting officer noted that PADCO’s level of effort was sufficient for implementation of the program and echoed the comments of the TEC in concluding that The Services Group’s proposed

¹ In preparing its report the agency indicated that it had discovered errors with its calculations of the levels of effort in the offerors’ initial proposals. AR, Tab 135, Errata Sheet. The agency maintains that its calculations of the offerors’ final proposed levels of effort are correct.

level of effort contained a “significant weakness” since it relied heavily on expatriate as opposed to local advisors. AR, Tab 55, Competitive Range Determination, at 9.

On July 18, 2006, the agency sent discussion letters to the competitive range offerors identifying the various weaknesses in their proposals, with revised proposals due August 3. Thereafter, as explained in the discussion letters, the agency scheduled oral presentations with the competitive range offerors, which were to be used to “augment” their written proposals in accordance with Federal Acquisition Regulation (FAR) § 15.102. Oral presentations consisted of a 90-minute presentation by the offeror followed by a 2-hour period for questions and answers. On August 18, the agency received final proposal revisions from the three offerors.

In evaluating the revised technical proposals, the TEC considered the oral presentations as well as the offerors’ revised proposals. The record reflects that the agency viewed The Services Group’s performance during oral presentations more favorably than PADCO’s. Specifically, with respect to The Services Group, the agency commented as follows:

During the oral presentation the Offeror’s team exhibited real teamwork and genuine engagement by the home office representatives. Each team member demonstrated clear understanding of the conditions in Armenia’s social sector as well as the details and vision of the proposal. The Offeror’s oral presentation and responses to the TEC’s questions demonstrated the quality and cohesiveness of the Offeror’s proposed team and provided assurance that they could be effective in accomplishing the project’s objectives . . . the Offeror’s oral presentation appreciably strengthened and improved its technical proposal and convincingly demonstrated the validity and effectiveness of its technical approach.

AR, Tab 133, Negotiation Memorandum, at 56.

However, as to PADCO, the agency stated that its

oral presentation demonstrated that, despite the fact that the offeror pulled together a cadre of international experts of very good quality, they did not act as a team working towards a common goal. The offeror failed to demonstrate also sound understanding of the objectives of the oral presentation and was not able to manifestly present the proposal.

AR, Tab 133, Negotiation Memorandum, at 55.

In addition, the record reflects that PADCO’s overall technical score was reduced from “better” to “acceptable,” while The Services Group’s overall score increased

from “acceptable” to “better.” In evaluating PADCO’s final proposal submission, the TEC indicated that PADCO had addressed each of the weaknesses identified in its proposal in discussions; however, the TEC noted a new weakness with respect to the management and staffing subfactor, which had not been previously raised with PADCO. Specifically, the TEC described this weakness as follows:

Weakness 1: The proposed [level of effort] contrasts sharply in our minds with the stated plan of action, which is significantly based on cultivating Armenian champions. This mismatch in the intent versus the amount of allocated human resources left us concerned that the intended transfer of skills and expertise would be at risk. For example, Local [long term technical advisors] is relatively high and steady in years 1-3, but then declines by 35% from year 3 to year 4 and 60% from year 3 to 5. The reduced levels of Expatriate [long-term technical advisors] and local [long-term technical advisors] appear at odds with the desire to cultivate Armenian champions and offer no security against unanticipated disruptions in the political climate, key government counterparts, or other factors which could affect progress in any or all of the project components.

RFP, Tab 126, Final TEC Report, at 12.

It appears from the record that this newly identified weakness resulted from the TEC’s obtaining information regarding the specific distribution of PADCO’s level of effort by labor category for each year of the project. This information appears to have been drawn from PADCO’s cost proposal, which the contracting office provided to the TEC as part of its final technical evaluation. See AR, Tab 109, E-mail Regarding Level of Effort Analysis; AR, Tab 111, E-mail Regarding Draft Final Scores. While the weakness identified was new, it was not the result of any change to PADCO’s proposal. In this regard, one of the members of the TEC questioned whether the weakness identified should be considered a weakness as opposed to “an overall comment,” since, as the evaluator noted “[t]o be fair and consistent, we did not raise this during the initial evaluation . . . and PADCO did not change their original approach to the staffing and management plan.” AR, Tab 116, E-mail Regarding TEC Memorandum.

Ultimately, PADCO’s initial rating of “better” under the management and staffing plan subfactor was changed by the TEC to reflect a final rating of “acceptable.”

The final evaluation results were as follows:

Evaluation Criteria	PADCO	The Services Group
Technical Approach, Management Approach and Personnel	Acceptable	Better
i. Clarity and demonstrated effectiveness of the offeror's proposed strategies and activities and their rationale	Better	Better
ii. The relevance of the proposed Activity Work	Acceptable	Acceptable
iii. Proposed Management and Staffing Plan	Acceptable	Better
Past Performance	Better	Acceptable
1. Quality of product or service	Better	Acceptable
2. Cost control	Acceptable	Acceptable
3. Timeliness of performance	Acceptable	Acceptable
4. Customer satisfaction	Better	Acceptable
5. Effectiveness of key personnel	Better	Acceptable
Small Disadvantaged Business Participation	Better	Acceptable
a. The extent to which SDB concerns are specifically identified	Better	Acceptable
b. The complexity and variety of the work SDB concerns are to perform	Better	Acceptable
c. Past performance of offerors in complying with subcontracting plan goals for SDB concerns and monetary targets for SDB participation	Better	Acceptable
d. The extent of participation of SDB concerns in terms of the value of the total acquisition	Better	Acceptable
OVERALL TECHNICAL RATING	Acceptable	Better
TOTAL REVISED COST	17,221,335	16,873,454

AR, Tab 133, Negotiation Memorandum, at 56.

As part of the final cost evaluation and best value determination, the contracting officer closely examined the distribution of offerors' level of effort between expatriate and local advisors, as well as their level of effort distribution between the base and option year periods. In this regard, while the TEC maintained that the overall level of effort proposed by The Services Group in its revised proposal presented a weakness, albeit not a significant weakness, the contracting officer concluded that the distribution of local labor cost and level of effort proposed by The Services Group "greatly contributes to capacity building and sustainability." AR, Tab 133, Negotiation Memorandum, at 138. With regard to the distribution of effort between the base and option periods, the contracting officer noted that Armenia would be facing parliamentary elections in 2007 and presidential elections in 2008 with resulting changes of the government and key counterparts for the project, and stated that The Services Group's "approach with proportional distribution of [level of effort] and especially [expatriate level of effort] between the base and option periods

of the program will greatly support the sustainability of reforms to be initiated during the base period of the contract. . . .” AR, Tab 133, Negotiation Memorandum, at 138. This was contrary to the level of effort proposed by PADCO, which was “heavily loaded on the base period of the program.” Id. Ultimately, the contracting officer concluded that the proposal submitted by The Services Group, which was higher rated and reflected a lower evaluated total cost as compared to PADCO’s, represented the best value to the government.

After learning of the agency’s decision, PADCO requested a debriefing, which the agency provided on October 17, 2006. During the debriefing, the agency identified the strengths of PADCO’s proposal as well as its one weakness regarding the distribution of its level of effort between the base and option periods. Regarding this weakness, the agency explained that while it increased the risk of project implementation, it was not considered to be a significant weakness or deficiency. AR, Tab 132, PADCO Debriefing Notes, at 3. This protest followed.

LACK OF MEANINGFUL DISCUSSIONS

The protester primarily argues that it did not receive meaningful discussions concerning the weakness identified by the TEC regarding the distribution of its level of effort between the base and option periods since this issue was not raised during discussions. The protester maintains that the “weakness” should have been addressed during discussions since it proved to be a primary discriminator in the agency’s best value decision and because the “weakness” was significant since it directly resulted in a downgrading of its technical proposal from “better” to “acceptable.”

Where contracting agencies conduct discussions with offerors whose proposals are within the competitive range, the discussions must be meaningful; that is, an agency must, at a minimum, point out deficiencies and significant weaknesses that must be addressed in order for the offeror to have a reasonable chance for award. FAR § 15.306(d)(3); PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 123 at 8. An agency, however, is not required to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score. Id.

Here, USAID initially conducted discussions with PADCO (as well as other offerors whose proposals were in the competitive range), which were followed by submission of revised proposals. The record reflects that while PADCO adequately addressed each of the weaknesses raised by the TEC in discussions, the TEC subsequently attributed a new weakness to PADCO’s revised proposal, specifically, the distribution of its level of effort for the SPSS project between the base and option periods. As explained above, this weakness does not appear to have arisen because of changes made through PADCO’s proposal revisions; that is, the weakness appears to relate to PADCO’s proposal as it was prior to the discussions.

If an agency holds discussions and, in the context of evaluating offerors' revised proposals, identifies concerns that should have been raised had they been identified before discussions were held, the agency is required to reopen discussions in order to raise the concerns with the offerors. The key fact is that the concerns (while identified after discussions have been closed) relate to the proposals as they were prior to discussions.² Al Long Ford, B-297807, Apr. 12, 2006, 2006 CPD ¶ 68 at 8.

The question thus posed by PADCO is whether the agency acted improperly by not reopening discussions to raise the additional, later-identified "weakness" in its proposal.

As a preliminary matter, however, the issue of PADCO's lack of an evenly distributed level of effort between the base and option periods, as reflected in the best value decision, was not identified by the contracting officer as a weakness at all. Rather, in the context of a very close competition, the agency's best value decision reflects a comparative judgment between the proposals of PADCO and The Services Group, which had a lower total evaluated cost, and a preference for The Services Group's proposed technical approach, which, as compared to PADCO's, provided a more even distribution of level of effort across the base and option periods. Thus, rather than being viewed as a weakness of PADCO's proposal, the level of effort issue in the context of the best value decision, was principally viewed as a distinguishing strength of The Services Group's proposal since it enhanced the likely success of the SPSS program. In this regard, the contracting officer's best value decision states as follows:

All three offerors proposed adequate level of [effort] for project implementation. However, TSG's [level of effort] distribution among expat and [local] labor is the most reasonable and contributes to capacity building and sustainability.

It is worth to mention that Armenia will be facing parliamentary elections in 2007 and presidential elections in 2008 with following changes of the government and key counterparts for the project. [The Services Group's] approach with proportional distribution of [level of effort] and especially expat [level of effort] between the base and option periods of the program will greatly support the sustainability of reforms to be initiated during the base period of the contract and will ensure continue[d] dialogue with the post elections Government of

² This contrasts with the situation where an offeror introduces an element in a post-discussion revision to its proposal that the agency views as a deficiency or a weakness. In that situation, the agency is not required to reopen discussions to address the new concern. See Ogden Support Servs., Inc., B-270354.2, Oct. 29, 1996, 97-1 CPD ¶ 135 at 7.

Armenia. In [contrast] the proposals from [offeror A] and PADCO are heavily loaded on the base period of the program with [level of effort] and other resources and have not taken the above mentioned factor into account.

AR, Tab 133, Negotiation Memorandum, at 138.

We recognize, as PADCO points out, that the TEC did in fact describe the level of effort feature of its proposal as a “weakness.” Contrary to PADCO’s argument, however, discussions are not inadequate simply because a weakness, which was not addressed during discussions, subsequently becomes a determinative factor in choosing between two closely ranked proposals, as was the case here. See, e.g., Gracon Corp., B-293009 et al., Jan. 14, 2004, 2004 CPD ¶ 58 at 3; Hines Chicago Inv., LLC, B-292984, Dec. 17, 2003, 2004 CPD ¶ 5 at 3-4.

Further, regarding PADCO’s contention that the weakness must have been significant because its final ratings were decreased, the agency reports, and the record confirms, that this weakness was not viewed by the agency as significant. At PADCO’s debriefing, USAID expressly stated that it did not consider the above weakness to be significant. Consistent with this statement, the evaluation documents show that none of the evaluation comments characterize PADCO’s distribution of its level of effort as a “significant weakness,” a term the agency had used to describe other weaknesses it identified in its evaluation. See, e.g., AR, Tab 55, Competitive Range Determination, at 9 (discussing a “significant weakness” in the initial proposal submitted by The Services Group). While the distribution of PADCO’s level of effort presented a “risk,” as indicated by the TEC, there is nothing to suggest that it created an unacceptable level of risk or “appreciably” increased the risk of PADCO’s proposal. See FAR § 15.001 (defining a “weakness” as “a flaw . . . that increases the risk of unsuccessful contract performance” and a “significant weakness” as “a flaw that appreciably increases the risk of unsuccessful contract performance”). Ultimately, under both the management and staffing plan subfactor and the overall technical approach factor, PADCO’s proposal received a rating of “acceptable,” which, as noted above, was defined by the RFP as a proposal which meets all solicitation requirements, is “complete” and “comprehensive,” and exemplifies an understanding of the tasks required. RFP at M-2.

PADCO also argues, for the first time in its comments, that “USAID actually may have misled PADCO” regarding the adequacy of its staffing plan since the TEC had identified as a strength in PADCO’s proposal, that its staffing plan was “excellent” “through the entire life-cycle of the project.” AR, Protester’s Comments at 9. PADCO, however, alleges only that it “may” have been misled without pointing to any evidence that the allegedly misleading strength was ever identified to PADCO. Based on our review, there is nothing in the record reflecting that this information in fact was provided to PADCO during its discussions with the agency. As a

consequence, there is no basis for our Office to conclude that the agency's discussions were misleading.

MISCELLANEOUS UNTIMELY ISSUES

PADCO also contends that it was unfairly and unequally treated as compared with The Services Group. These arguments are untimely.³

As a general matter, under our Bid Protest Regulations, protests based on other than solicitation improprieties must be filed within 10 calendar days of when the protester knew or should have known their bases. 4 C.F.R. § 21.2(a)(2) (2006). Moreover, where a protester initially files a timely protest, and later supplements it with independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. FR Countermeasures, Inc., B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 9.

In this regard, where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later, more specific arguments and issues cannot be considered unless they independently satisfy the timeliness requirements under our Bid Protest Regulations. Biospherics, Inc., B-285065, July 13, 2000, 2000 CPD ¶ 118 at 12-13. In this regard, we have found supplemental protest grounds untimely which present "examples" of flaws in the agency's evaluation generally alleged in the initial protest since such staggered presentation of issues, each of which involves different factual circumstances and requires a separate explanation from the agency, constitutes precisely the type of piecemeal presentation of issues that our timeliness rules do not permit. QualMed, Inc., B-257184.2, Jan. 27, 1995, 95-1 CPD ¶ 94 at 12-13.

Here, in its initial protest, PADCO raised a general allegation that USAID unfairly and unequally evaluated and treated PADCO and The Services Group. In its comments on the agency report, which were filed more than 10 calendar days after receipt of the agency report due to the protester's request for an extension of time, PADCO identified specific examples of how the agency's treatment of PADCO was unfair and unequal

³ Because we conclude that PADCO's allegations regarding the propriety of discussions and the evaluation of proposals are without merit or otherwise not for consideration, PADCO's objection to the best value decision--based solely on these alleged improprieties--likewise provides no basis to sustain the protest.

as compared to The Services Group. These challenges are untimely because they were raised more than 10 calendar days after PADCO knew the basis for these issues.⁴

The protest is denied.

Gary L. Kepplinger
General Counsel

⁴ An extension of time period for filing comments does not waive the timeliness requirements pertaining to the filing of new grounds of protest. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 3-4 n.3. Accordingly, the arguments raised for the first time by PADCO in its December 1 comments are untimely because they were not raised within 10 days of PADCO's receipt of the agency report, which put PADCO on notice of these arguments.