



**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Northwest Procurement Institute, Inc.

File: B-286345

Date: November 17, 2000

Patrick Shields for the protester.

Terrence J. Tychan, Department of Health and Human Services, for the agency.
Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The agency's exclusion of the protester's proposal from the competitive range was reasonable where the proposal was reasonably determined not to be one of the most highly rated.

DECISION

Northwest Procurement Institute, Inc. protests the exclusion of its proposal from the competitive range and award of a contract to Business Management Research Associates, Inc. (BMRA) under request for proposals (RFP) No. RFP-17-00-HHS-OS, issued by the Department of Health and Human Services (HHS) for training services.

We deny the protest.

The RFP provided for the award, on a cost/technical tradeoff basis, of a task order, level-of-effort contract for training of agency procurement personnel and program project officers for a base year with four 1-year options. The RFP listed the acquisition training courses and project officer courses that had been provided as classroom instruction in prior years by the agency. Offerors were informed that the agency preferred to receive web-based instruction for the acquisition courses; the project officer courses would be provided by way of classroom instruction.

The following technical evaluation factors and associated point values were identified:

Factor	Maximum Points
Personnel capability	30
Technical approach	10
Management capability	10
Past performance	50

Offerors were instructed to propose the acquisition training courses using one or more of the following listed delivery options, stated in descending order of preference:

1. Commercial, off-the-shelf, web-based courses that have been reviewed by the American Council on Education's (ACE) College Recommendation Service, or similar service, and are comparable to college-level courses and may be used as transfer credits at many participating colleges and universities.
2. Commercial, off-the-shelf traditional classroom courses that have been reviewed by the ACE's College Recommendation Service, or similar service, and are comparable to college-level courses and may be used as transfer credits at many participating colleges and universities.
3. Commercial, off-the-shelf traditional classroom courses.
4. The HHS courses listed in RFP section C delivered by traditional classroom instruction.

The RFP required offerors to indicate under which delivery preference group or groups the offeror was proposing.¹

The following method of evaluating offers for the various delivery preferences was stated:

The 1st preference group will be evaluated first and if the contracting officer determines that an adequate number of proposals are most highly rated for inclusion in the competitive range, then an evaluation of government preference options #2, 3 and 4 will **NOT** be undertaken.

¹ Offerors were also informed that they were not allowed to offer courses using a mix of delivery preferences, for example, a mix of web-based and classroom-based training courses.

However, if the contracting officer determines not enough proposals in that preference group have been submitted to represent efficient competition, then the most highly rated proposal(s) will be retained, and evaluation of the 2nd preference group will proceed. If it is again determined that not enough proposals in the 2nd group, in combination with those retained from the 1st group, are highly rated enough to represent efficient competition, then evaluation of the 3rd preference group shall be conducted. Evaluation of the 4th preference group shall only occur if after evaluation of the 3rd group, the contracting officer determines that not enough proposals from that group in combination with those retained from the 1st and 2nd group's proposals, are highly rated enough to represent efficient competition. This process will conclude at any point the contracting officer feels enough highly rated proposals have been found to conduct an efficient competition. Should the government decide to conduct discussions, only those most highly rated proposals retained from the preference groups at whatever point efficient competition was represented will be included.

RFP § M, at 66.

HHS received three offers, including those of Northwest and BMRA. Northwest proposed to provide the acquisition courses only under the first delivery option for commercial, off-the-shelf, web-based training, the only offeror to do so; BMRA and other offeror proposed under the second delivery option for commercial, off-the-shelf, classroom training.

Consistent with the RFP, Northwest's proposal was evaluated first. As a result of this evaluation, HHS asked Northwest whether the web-based courses it was proposing were ACE accredited and requested that Northwest provide HHS with access to a web-based course for demonstration purposes. Northwest responded that access to a web-base course was not currently available, given that Northwest was still "in the process of implementing its web-based training programs and is working with webmasters to make these programs fully operational." Northwest also informed HHS that it did not yet have ACE accreditation, that ACE "[is] just beginning to implement its review process for web-based [Government contracting] training programs," and that "the review of web-based delivery methods could be accomplished prior to fiscal year end." Agency Report, Tab 2A, Letter from Northwest to HHS, Aug. 9, 2000, at 1.

The contracting officer decided to evaluate BMRA's and the other offeror's proposals. The three proposals received the following evaluation scores:²

Factor	BMRA	Offeror C	Northwest
Personnel qualification	29	28	20
Technical approach	9	9	5
Management capability	9	9	7
Past performance	42	50	21
TOTAL	89	96	54

The evaluation board's scoring was supported by detailed narratives describing the relative strengths and weaknesses of the offers under each of the evaluation factors.³ The contracting officer determined that Northwest's proposal did not have a reasonable chance of being selected for award and excluded Northwest's proposal from the competitive range. Discussions were conducted with BMRA and Offeror C, and final proposal revisions received. Award on a cost/technical tradeoff basis was made to BMRA. Following a debriefing, Northwest protested to our Office.

Northwest objects to the exclusion of its proposal from the competitive range, arguing that its proposal under the first delivery option should have been selected for award without consideration of BMRA's and the other offeror's proposals under the second delivery option.⁴ In the protester's view, Northwest established its ability to provide web-based training and therefore HHS should not have evaluated offers under the delivery options that the RFP stated were of lower preference. Northwest also argues that if HHS believed that its proposal under the web-based training delivery option was not acceptable, the agency should have considered its proposal as offering the second (classroom-based) delivery option. Northwest also complains

² The point scores were calculated by averaging the individual scores of the evaluators.

³ The evaluation narratives are source selection sensitive information that was not provided to the protester. No protective order was issued in connection with this protest because the protester proceeded pro se. We reviewed, however, the evaluation narratives in camera in resolving Northwest's protest.

⁴ Northwest also challenges the composition of the evaluation board, which consisted of four evaluators including the contracting officer/source selection official. The composition of a technical evaluation panel is within the discretion of the contracting agency, which we will question only upon evidence of bad faith, conflict of interest, or bias. Xeno Technix, Inc., B-278738, B-278738.2, Mar. 11, 1998, 98-1 CPD ¶ 110 at 6. Northwest has provided no such evidence here. In any event, we do not find that including the source selection official on the evaluation panel is per se improper, as Northwest suggests.

that HHS simply averaged the scores of the evaluators in assessing the merits of the proposals.

In reviewing protests challenging the evaluation of proposals and exclusion of proposals from a competitive range, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. In order for us to review an agency's evaluation judgment, an agency must have adequate documentation to support its judgment. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. While point scores are useful as guides to decision-making, they must be supported by documentation of the relative differences between proposals, their strengths, deficiencies, weaknesses and risks. Federal Acquisition Regulation (FAR) § 15.305(a); Century Envtl. Hygiene, Inc., B-279378, June 5, 1998, 98-1 CPD ¶ 164 at 4.

Here, the record fully supports the agency's judgment of the relative merits of Northwest's proposal in relation to the offers found to be in the competitive range. That is, the proposals were evaluated in accordance with the solicitation evaluation factors, and the agency's judgment documented in detailed narrative statements that weighed the respective strengths and weaknesses of the offers. Contrary to the protester's arguments, the agency did not mechanically average point scores to exclude Northwest's proposal from the competitive range. Rather, the record establishes that the contracting officer, an evaluation board member, was aware of the strengths and weaknesses of Northwest's proposal.

The record also supports HHS's assessment of Northwest's web-based offer. The RFP sought commercial, off-the-shelf, web-base training. Northwest's proposal and response to the agency's inquiries made clear, however, that the protester did not have off-the-shelf, web-based training to offer. That is, Northwest was still in the process of developing its web-based training courses. The agency reasonably concluded that the protester was not offering off-the-shelf, web-based training, as envisioned by the first delivery preference.

Given Northwest's failure to offer off-the-shelf web-based training, we find no merit to Northwest's complaint that its proposal under the first delivery option should have been selected for award without consideration of BMRA's and the other offeror's proposals under the second delivery option. Moreover, the RFP provided that the agency would limit its evaluation to first delivery option offers only where the agency received "an adequate number" of highly rated offers under that option. Here, Northwest's proposal, which was not highly rated, was the only one offering web-based training. We think that the contracting officer properly decided to evaluate the second delivery option offers.

We also do not agree that the agency was required to evaluate Northwest's proposal as offering traditional classroom instruction. The RFP required offerors to identify

under which delivery option or options the offerors were proposing. Northwest proposed only under the web-based training option, although the RFP permitted Northwest to offer any number of options.

From our review of the record, we find that the contracting officer reasonably determined to exclude Northwest's proposal from the competitive range. FAR § 15.306(c)(1) directs contracting officers to establish a competitive range that is comprised of all the most highly rated proposals (unless the range is further reduced for purposes of efficiency, if such efficiency is provided for by the solicitation). The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency, which we will question only if the agency's judgment is shown to be unreasonable or inconsistent with the evaluation criteria. Ervin & Assocs., Inc., B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 3.

Here, Northwest's proposal was substantially lower-rated than the other offerors' proposals under every evaluation factor. Under the most important past performance factor, Northwest received only 21 of 50 possible points, while BMRA and the other offer received 50 and 42 points respectively. Northwest has not challenged its or the other offerors' ratings under the past performance factor (nor any factor other than the technical approach factors, which was worth only 10 points). In the absence of a reasoned challenge to the agency's evaluation of Northwest's proposal or the other offerors' proposals, there is no basis to question the agency's judgment that Northwest's proposal was not among the most highly rated or that Northwest's proposal had no reasonable chance of being selected for award. Northwest's protest is nothing more than mere disagreement with the agency's exercise of its discretion that the protester's proposal should be excluded from the competitive range.

The protester also complains that HHS failed to timely notify Northwest of its exclusion from the competitive range. FAR § 15.503(a) requires contracting officers to promptly notify offerors when their proposals are excluded from the competitive range. Although HHS could more promptly have notified Northwest of its exclusion from the competitive range, this procedural defect does not provide us with any basis to question the agency's evaluation of proposals or selection decision. E&T Elecs., Inc., B-238099.2, July 10, 1990, 90-2 CPD ¶ 24 at 8. In any event, the protester was not prejudiced by any delay in pursuing its protest, given our decision denying its challenge to the exclusion of its proposal from the competitive range. Criterion Corp., B-266050, Jan. 23, 1996, 96-1 CPD ¶ 217 at 5 n.1.

Northwest also complains that the agency failed to suspend performance of the contract until the resolution of Northwest's protest. As amended, the Competition in Contracting Act of 1984 provides that if the contracting agency receives notice of a protest filed with our Office within 10 days of the date of award of a contract or within 5 days of the date of a requested and required debriefing, the agency must stay the award of the contract or suspend performance of the contract, unless a

written determination allowing performance is approved by the head of the contracting activity. 31 U.S.C. § 3553(d)(3) (1994). Here, however, Northwest did not protest within 10 days of the date of award or within 5 days of its debriefing. Consequently, HHS was not required to suspend performance of the contract pending our resolution of the protest.

The protest is denied.⁵

Anthony H. Gamboa
Acting General Counsel

⁵ Northwest also complains that HHS did not respond to Northwest's Freedom of Information Act (FOIA) request for information related to this procurement. Our Office has no authority to determine what information an agency must disclose in connection with a party's request to an agency under FOIA. The protester's recourse in this regard is to pursue the disclosure under the remedies provided by FOIA. LNM Corp., B-247669, Apr. 29, 1992, 92-1 CPD ¶ 405 at 2.