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United States General Accounting Office
Washington, DC 20548

Comptroller General
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Decision

Matter of: National Center For Family Literacy

File: B-288134; B-288134.2

Date: September 20, 2001

Edward Waters, Esq., and Jennifer D. Leonard, Esq., Feldesman, Tucker, Leifer, Fidell & Bank, for the protester.

Jeffrey C. Morhardt, Esq., and Jose Otero, Esq., Department of Education, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against agency's rejection of proposal as technically deficient, and therefore unacceptable, is denied where record shows that evaluation was reasonable and consistent with solicitation's evaluation criteria.

DECISION

The National Center for Family Literacy (NCFL) protests the failure of the Department of Education (DOE) to award it a contract under request for proposals (RFP) No. ED-00-R-0061, for technical and analytical support services. NCFL argues that the agency misevaluated its proposal and, as a result, improperly determined that it was technically unacceptable.

We deny the protest.

The RFP contemplated the award of multiple indefinite-delivery/indefinite-quantity contracts to perform technical and analytical support services in one or more of nine identified issue areas. Agency Report (AR), exh. 10, Revised Statement of Work, at 3. Offerors were advised that proposals would be evaluated under several technical areas: management and staffing plan (40 possible points), personnel qualifications/key personnel (40 points), organizational experience (20 points), and small business participation (10 points); past performance was also to be evaluated (and was worth a possible 36 points). RFP at 82-85. The technical and past performance criteria together were significantly more important than price. The

RFP stated that contracts would be awarded only to offerors whose proposals were deemed to have no deficiencies. RFP at 82.¹

The agency received a large number of proposals, and after evaluating them decided to make award on the basis of initial offers. Of the 39 large business proposals received (the RFP provided for the separate evaluation of proposals received from large and small businesses, RFP at 82), DOE determined that 35 were without deficiencies and made award to those offerors. The agency determined that the remaining four large business proposals, including the protester's, were deficient, and therefore technically unacceptable. In this regard, NCFL's proposal received a consensus past performance score of 36 (out of a possible 36) points, but a technical score of only 48 (out of a possible 110) points,² for a combined score of 84 points. In addition to numeric scores, the agency evaluators prepared narrative materials reflecting the evaluated deficiencies. NCFL challenges the evaluation of its technical proposal.

In reviewing protests challenging an agency's evaluation of technical proposals, our Office will not independently reevaluate the proposals; rather, our review is limited to considering whether the evaluation was reasonable and consistent with the solicitation's evaluation scheme and applicable procurement statutes and regulations. McHargue Constr. Co., B-279715, July 16, 1998, 98-2 CPD ¶ 21 at 5. We find nothing improper in the evaluation here.

NCFL asserts that its proposal was improperly downgraded for proposing multiple project directors, citing the language of the personnel qualifications/key personnel evaluation criterion, which provides:

Key personnel [may] include the manager(s), supervisor(s) and project director(s) proposed in Labor Classification I or II whom the Offeror proposes to assign full time responsibility for the performance of the prospective task orders awarded under this contract.

RFP at 83. NCFL concludes that offerors were permitted to propose multiple project directors, and that its proposal therefore should not have been downgraded based on its offering 15 task order project directors.

¹ The agency's source selection plan instructed the evaluators to find a proposal deficient where it reflected a material failure to meet a government requirement, or a combination of significant weaknesses in a proposal that, together, increase the risk of unsuccessful performance to an unacceptable level.

² The consensus was an average of the individual evaluators' scores. Technical Evaluation Summary Report at 16.

NCFL's argument is without merit. The record shows that, under the personnel qualifications/key personnel evaluation criterion, the agency did not downgrade NCFL's proposal for offering multiple project directors; indeed, no mention is made in the evaluation materials relating to this criterion of the firm's proposed management approach. Instead, the evaluators found NCFL's proposal "inadequate and unacceptable" under the personnel qualifications/key personnel criterion because of an insufficient commitment of high-level staff to performance during the early years of the contract. AR exh. 138 at 17. Specifically, the evaluators found that 14 of NCFL's 24 class I and II personnel were not available at all for performance during the first year of contract performance, and that 5 of these employees were unavailable during the second year of performance. (We note as well that NCFL's proposal shows, for example, that of the 10 class I and II personnel who were available for performance during the first year of contract performance, 7 were committed for only 10 percent of their time, 1 was committed for only 20 percent of his time and the remaining 2 were committed for only 30 percent of their time. During the second year of performance, only 1 of the 24 class I and II personnel was committed for 50 percent of his time, with the remaining personnel available for lesser amounts of time.) NCFL does not take issue with—or even mention—this finding of the evaluators which, in our view, reasonably led them to conclude that NCFL's proposal was deficient, and therefore unacceptable for this reason alone; the evaluation criterion specifically required firms to identify class I and II personnel that would be assigned full time responsibility for performance of the task orders.

The agency did criticize NCFL's proposal under the management and staffing plan criterion for reasons relating to its project directors, but its concerns related to NCFL's overall management approach rather than to the mere fact that it proposed multiple project directors. The management and staffing plan criterion provided in pertinent part:

The management and staffing plan will be evaluated on the organization, staffing, and management of the Offeror, and the procedures and controls in place for ensuring the quality and timeliness of the services and deliverables to be provided. Details of quality control and cost containment plans and methods should be included. The Offeror shall include an organizational chart that details line of authority and responsibility.

RFP at 82. The evaluators did not criticize NCFL's proposal for offering more than one project director per se; rather, they criticized it for failing either to identify one or more individuals that were responsible for overall contract management, or to show clear lines of authority within the organization. Specifically, the evaluators found that the proposal included only a vague general discussion of overall contract management that did not provide a clear sense of what strategies were in place to provide for adequate management; that there was little indication of how quality, cost containment and timeliness would be ensured; that personnel had been

identified as having central responsibility for the overall contract; and that there were no clear lines of authority identified within the organization. AR exh. 112. NCFL does not challenge these conclusions, which are supported by our reading of NCFL's proposal and consistent with the areas expressly identified in the management and staffing plan evaluation criterion.

NCFL also argues that its proposal was improperly downgraded for demonstrating expertise in only one of the RFP's nine areas of expertise, the family literacy area. NCFL notes in this regard that the RFP permitted firms to offer in "one or more" of the nine areas. Even if NCFL were correct, it would have no impact here, because this consideration was not relied on in the agency's source selection decision. The source selection decision document does not even refer to NCFL's lack of expertise outside the family literacy area; it cites instead the other deficiencies discussed above (NCFL's lack of an adequate management and staffing plan, and its failure to adequately commit its high-level personnel) as the basis for the agency's decision to eliminate NCFL from award consideration. AR exh. 140, at 6.

NCFL contends that the agency improperly failed to give consideration to what it describes as its relatively favorable proposed cost. However, since a proposal that has been found technically unacceptable has no chance of being selected for award no matter how low its pricing, it properly may be rejected without regard to its cost. Phantom Prods., Inc., B-283882, Dec. 30, 1999, 2000 CPD ¶ 7 at 6 n. 4.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ In its original protest, NCFL alleged that the awarded contracts lack adequate consideration and are therefore invalid. This contention is untimely since the terms of the intended consideration for the resulting contracts were clearly outlined in the RFP; protesters are required to challenge alleged solicitation improprieties apparent on the face of a solicitation prior to the deadline for submitting proposals. 4 C.F.R. § 21.2(a)(1) (2001). Moreover, although NCFL requests in its original protest that we invoke either the significant issue exception or the good cause exception to our timeliness requirements, 4 C.F.R. § 21.2(c), we decline to do so. NCFL did not advance any explanation of why we should invoke the good cause exception, and we have previously considered questions relating to the adequacy of consideration under task order contracts. Satellite Servs., Inc., B-280945, et al, Dec. 4, 1998, 98-2 CPD ¶ 125. NCFL also argued that the agency improperly failed to assign its proposal a combined quality rating that gave consideration to the results of both the technical and past performance evaluations. NCFL makes no mention of this assertion in its comments on the agency report; we therefore deem it abandoned. Life Oxygen & Health Servs., Inc., B-282243, June 18, 1999, 99-1 CPD ¶ 112 at 5 n. 1.

