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**Comptroller General
of the United States**

**United States General Accounting Office
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Decision

Matter of: DRA Software Training

File: B-289128; B-289128.2

Date: December 13, 2001

Ronna L. Fickbohm, Esq., Gabroy, Rollman & Bosse, for the protester.
Maj. Kateni T. Leakehe, Department of the Army, 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

Protests that contracting agency unreasonably evaluated awardee's proposal and improperly evaluated price are denied where the record shows that the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria.

DECISION

DRA Software Training protests the award of a contract to Internet Institute USA, Inc. (IIUSA) under request for proposals (RFP) No. DABT63-01-R-0032, issued by the Department of the Army to obtain computer training and associated supplies at Fort Huachuca, Arizona. DRA contends that the Army unreasonably evaluated IIUSA's technical capability and past performance, and improperly evaluated price.

We deny the protests.

The solicitation, issued as a commercial item procurement, contemplated the award of a fixed-price contract to a small business to conduct these courses over 1 base year and up to 3 option years. Award was to be made to the offeror whose proposal was most advantageous to the government considering the following evaluation factors, listed in descending order of importance: (1) technical capability of the school or company, its particular instructors to be used on this work, and the text and other materials to be used to meet the government requirement; (2) past performance; and (3) price. The first two factors, when combined, were twice as important as price. RFP at 17-18.

Offers were required to include completed pricing of the schedule of services; a description of any services offered above the solicitation's requirements, such as technical support, and pricing information, if necessary; two references for past

performance information, with a preference for experience with military/tactical situations; and a statement identifying colleges/universities which offer college credits for the offeror's courses and applicable degree programs to which the credits can be applied. Id. at 14. With respect to price, the Army planned to evaluate offers by adding the total price proposed for all options to the total price proposed for the basic requirement. Id. at 18.

The Army received three proposals by the closing date, including those from DRA and IIUSA. The Army conducted a comparative evaluation of offerors' technical capabilities and a past performance evaluation based upon information obtained from references. The Army gave DRA's proposal the highest technical rating based on its ability to make quick changes to the courses as required and its clear outline of college accreditation and degree programs. The Army gave IIUSA's proposal the second-highest technical rating because it proposed instructors with equal qualifications as those proposed by DRA, but its course descriptions were not as detailed and its college accreditation program was not as clear. The Army found that references for both firms gave them the highest marks for quality, knowledge, and timeliness and, as a result, rated both offerors as excellent-low risk for past performance. IIUSA's offer was the lowest-priced, at \$1,719,052, and DRA's offer was the highest-priced, at \$2,735,869. The Army concluded that DRA had a slight technical advantage over IIUSA, but that DRA's significantly higher cost could not be justified. Award was made to IIUSA and these protests followed.

DRA alleges that the agency unreasonably evaluated IIUSA's past performance as excellent-low risk. DRA acknowledges that IIUSA's past performance rating was based upon the experience of certain key personnel--the quality of which it does not challenge--but asserts that IIUSA should have received a neutral past performance rating because it has no past performance as an entity.

The evaluation of technical proposals, including the evaluation of past performance, 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. Federal Env'tl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. 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. The record here provides no basis to object to the evaluation of proposals.

Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iv) provides that, for past performance evaluations, in the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance. In evaluating past performance, however, agencies are permitted to take into account performance information regarding predecessor companies, key personnel who have relevant experience, or information about subcontractors which will perform major

or critical aspects of the requirement when such information is relevant to the acquisition in question. FAR § 15.305(a)(2)(iii). Since this solicitation did not define the type of past performance information the agency would consider, the agency was permitted to evaluate a variety of past performance information submitted by an offeror provided it was relevant to the acquisition.

The contract specialist and the contracting officer discussed the fact that IIUSA is a new company with no corporate experience and decided that it would be appropriate to evaluate the key personnel capabilities for IIUSA rather than the company. The record shows that IIUSA's chief executive officer and two of its instructors, both of whom were also proposed for management positions and were previously employed by DRA under its prior contract for these services, all received excellent ratings from their references, and that these ratings formed the basis for the firm's excellent-low risk rating. Since the relevance of the experience of key personnel experience in an acquisition for training is self-evident, the Army properly considered such experience in evaluating IIUSA's proposal for past performance. SDS Int'l, B-285822, B-285822.2, Sept. 29, 2000, 2000 CPD ¶ 167 at 4; see also Technical Res., Inc., B-253506, Sept. 16, 1993, 93-2 CPD ¶ 176 at 5. Moreover, since the solicitation did not require an offeror to submit information regarding its past performance as an entity, the Army was not required to give lower ratings to offerors with no such past performance in the absence of evidence that lower ratings were warranted; there is no such evidence here. Although DRA insists that IIUSA should have been given a neutral rating, the agency correctly points out that such a rating is reserved for firms without a record of relevant past performance; IIUSA had relevant past performance in the form of its key personnel.

DRA also alleges that the Army improperly failed to consider the total cost to the agency "and its soldiers" in evaluating price. Supplemental Protest, Nov. 16, 2001, at 5. DRA contends that its proposal allowed soldiers the opportunity to earn college credit by successfully completing a challenge exam at no additional charge, while IIUSA's proposal stated that college credit would cost approximately \$130 per credit. DRA contends that the monetary value of this benefit to soldiers should have been considered in the price evaluation. We do not agree. The RFP clearly advised offerors that price was to be evaluated by adding the total prices for the option items to the total prices for the base items. RFP at 18. To the extent that DRA did not account for the above-referenced tuition reimbursement in its pricing schedule, the Army was not required to consider it in evaluating price.

DRA contends that the Army's evaluation of IIUSA's technical capability was based upon misinformation regarding the firm's ability to meet the RFP's requirement to include "[a] statement . . . identifying colleges/universities which offer college credits for the offeror's courses and applicable degree programs to which the credits can be applied." Id. at 14. IIUSA's proposal stated that it "offers . . . courses that lead to college credit from Pima Community College, after passing challenge examinations administered through [the] [Industry Training Credit Approval Process (ITCAP)]."

IIUSA Proposal at 19. ITCAP is a private corporation that works with Pima Community College to allow students to receive college credit for technology training; this credit approval process applies only to courses offered at training facilities that are authorized ITCAP centers. ITCAP Home Page, <www.itcap.com>. DRA contends that, as of the date of award, IIUSA was not an authorized ITCAP center but was merely making arrangements to become one, citing as support for its contention several affidavits from individuals employed by ITCAP.

The Army correctly asserts that the RFP did not require offerors to demonstrate their ability to meet this requirement prior to award. The RFP merely required offerors to provide a “statement” identifying colleges/universities which offer college credits for the offeror’s courses and applicable degree programs to which the credits could be applied; IIUSA’s statement that it would provide a particular method of enabling soldiers to obtain college credits for its courses fulfilled its obligations as required by the solicitation. It is true that IIUSA’s proposal implied that it currently offered courses leading to credit from Pima Community College through ITCAP when the record shows that the firm was merely attempting to obtain this ability at the time of award and ultimately arranged to meet the requirement through other means. There is no evidence, however, that the Army’s evaluation and award decision would have been affected had it known these facts at the time it evaluated proposals. The record shows that the accreditation requirement was but one of six issues considered in the evaluation of technical capabilities, and that IIUSA’s second-high technical capabilities ranking already reflected the Army concern about its ability to meet this requirement. Considering this fact, as well as IIUSA’s high past performance rating and its lowest offered price, we have no basis to conclude that the Army would have made award to DRA had it known that IIUSA was not an authorized ITCAP center at the time it submitted its proposal, so that DRA was not prejudiced by any alleged error by the agency. Competitive prejudice is an essential element of every viable protest. Lithos Restoration Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5.

Finally, citing FAR § 9.104-1(d), which states that a prospective contractor must have a satisfactory record of integrity and business ethics, including satisfactory compliance with the law in order to be determined responsible, DRA alleges that IIUSA does not comply with a state law requiring that vendors offering training such as that required here must be approved by a state board. To the extent DRA is arguing that IIUSA should have been found nonresponsible, our Office will not

review an agency's affirmative determination of a contractor's responsibility absent a showing of possible bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may not have been met. 4 C.F.R. § 21.5(c). Neither exception applies here.¹

The protests are denied.

Anthony H. Gamboa
General Counsel

¹ Moreover, compliance with state or local requirements is generally a matter between the contractor and the issuing authority, and will not be a bar to contract award absent a specific requirement in the solicitation. Mark Dunning Indus., Inc., B-258373, Dec. 7, 1994, 94-2 CPD ¶ 226 at 6; Honolulu Marine, Inc., B-248380, Aug. 6, 1992, 92-2 CPD ¶ 87 at 3-4. The RFP does not require the approval cited by DRA.