



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lyudmila Franke; Maria Reznikova; Alexander Reznikov

File: B-275164; B-275164.2; B-275164.3; B-275165; B-275165.2; B-275165.3;
B-275166; B-275166.2; B-275166.3

Date: December 18, 1996

Sam Zalman Gdanski, Esq., for the protesters.

Capt. William R. Hinchman and Col. Nicholas P. Retson, Department of the Army,
for the agency.

Tania L. 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 improperly evaluated protesters' quotations as "unqualified" and ineligible for award because they failed to submit sufficient information for the agency to determine that they met a minimum mandatory qualification is denied where the record confirms the validity of the agency's evaluation; given the presence of at least four "qualified" individuals under each of the solicitations at issue, protesters are not interested parties to challenge the evaluation of the awardees' quotations since they would not be in line for award even if their protests were sustained.

DECISION

Lyudmila Franke, Maria Reznikova, and Alexander Reznikov protest the Army's decision not to issue them purchase orders under requests for quotations (RFQ) Nos. DAJA02-96-Q-9046, DAJA02-96-Q-9047, and DAJA02-96-Q-9048, issued to obtain the services of instructors at the George C. Marshall European Center for Security Studies in Garmisch, Germany. The protesters allege that the Army's evaluation of their quotations as "unqualified" was improper and motivated by bad faith and anti-semitism.

We deny the protests.

The United States and German Departments of Defense established the Center to train former Eastern Bloc military and high-level civilian personnel in how to operate a military force in a democratic environment. The Center's Institute for Eurasian Studies and its Arms Control Division (ACD), which issued these requirements, deal primarily with military combat equipment as identified in various international treaties.

The Army issued these solicitations on behalf of the ACD on September 13, 1996. RFQ No. DAJA02-96-Q-9046 anticipated the award of two contracts for treaty verification instructors; RFQ No. DAJA02-96-Q-9047 anticipated the award of one contract for an assistant course developer-military and one contract for an assistant course developer-consecutive interpretation; and RFQ No. DAJA02-96-Q-9048 anticipated the award of one contract for a Russian language instructor. The RFQs, issued pursuant to the simplified acquisition procedures found at Federal Acquisition Regulation (FAR) Part 13, contemplated the award of contracts which would run for 1 base year and 1 option year.

Quotations would be evaluated under three technical factors--education, language, and professional experience--and each RFQ contained a list of minimum mandatory qualifications related to these factors. One of the minimum mandatory qualifications considered under the most important factor, professional experience, concerned military experience. The combined technical factors were considered to be equal to price, and award would be made to the individuals submitting the most advantageous proposals.

The protesters were among numerous individuals submitting quotations under these solicitations. The Army's evaluation board evaluated the quotations by assigning point scores under the technical evaluation factors and their components.¹ The quotations of all three protesters under all three solicitations were determined to be unacceptable--and the protesters deemed "unqualified"--because their submissions did not contain sufficient information to show that they met the minimum mandatory qualification concerning military experience.² The Army considered the

¹The protesters' complaint that the evaluation documents do not contain narrative explanations of their strengths and weaknesses overlooks the fact that such narratives are not required under simplified acquisition procedures. FAR § 13.106-2(b)(1) (FAC 90-40).

²The individual evaluation sheets indicate other shortcomings in these quotations, but the final ranking sheets and agency submissions here suggest that the chief failing concerned the military experience qualification. Ms. Franke's quotation in response to the assistant course developer-consecutive interpretation position is an exception, as it was rejected on the basis of a failure to meet a mandatory education qualification. Since she was advised of this fact on October 10, her December 6 protest in this regard is untimely. Bid Protest Regulations, section 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2) (protests of other than alleged solicitation improprieties must be filed not later than 10 days after the basis of protest is known or should have been known). In a similar vein, the Reznikovs' December 6 protest that they did, in fact, submit

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numerous remaining "qualified" quotations and divided the total price of each by its total point score to determine which would be most advantageous to the government. Purchase orders were issued to other individuals submitting "qualified" quotations for amounts ranging between \$31,586 and \$46,747. The protesters were notified that they were not selected for award on October 10, and filed their protests on October 18.

The protesters' principal challenge to the Army's evaluation of their quotations concerns the military experience qualification. The protesters also challenge the technical evaluation of the awardees' quotations, arguing that they were "fraudulent" and "filled with lies." The protesters finally allege that the Army's rejection of their quotations was motivated by bad faith and anti-semitism.

In reviewing an agency's technical evaluation, we examine the agency's evaluation to ensure that it was reasonable and consistent with the evaluation criteria stated in the solicitation. Carol Solomon & Assocs., B-271713, July 19, 1996, 96-2 CPD ¶ 28. Mere disagreement with an agency's evaluation does not itself render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. Based on our review of the record, we agree with the Army that the protesters' submittals did not contain sufficient information to establish that they met the military experience qualification.

The qualification varied slightly between the first two solicitations and the third. The former solicitations required a prospective instructor to "[h]ave been a member of Active Duty Military Service and or Active Reserve Service within the [Former Soviet Union/Eastern and Central Europe (FSU/E&CU)] in either Combat or Combat Support Organizations." The latter solicitation required a prospective instructor to "[h]ave been a member of Active Duty Military Service within the FCU/E&CU in either Combat or Combat Support Organizations."³ Prospective instructors were cautioned that it was mandatory that their quotations meet the solicitation's minimum qualifications, and that it was their responsibility to submit evidence which fully documented and supported the stated minimum requirements: "[f]ailure

²(...continued)

quotations for this position is also untimely because they knew no later than November 20 of the agency's position that they did not submit such quotations. Id.

³This slight difference in wording is critical in the case of Ms. Franke's and Ms. Reznikova's proposals under the third solicitation, since their submittals showed that their military experience was in reserve, not active, service. Consequently, they are ineligible for award under this solicitation notwithstanding their remaining allegations.

to submit the required documentation may result in the rejection of the contractor's bid or offer."

Ms. Franke's quotations showed that she possessed a diploma as a registered nurse in civil defense with a specialization in chemical and nuclear warfare, and that she was the equivalent of a reserve second lieutenant in the United States Army. She stated that she had held her military obligation for 25 years and had annually served 2 weeks in professional development. Her resume included the statement, "Combat Support Organization." Similarly, Ms. Reznikova's proposals showed that she possessed a diploma as a registered nurse in civil defense, with her reserve service taking place between 1978 and 1987. Mr. Reznikov's proposals showed that he had served as an active member of the military between 1970 and 1972 in the Moscow Region of the FSU, and that his reserve service had extended to 1990.

The record shows that the problem concerning the sufficiency of the information provided by the protesters did not concern their military experience per se, but the nature of their military experience--whether it was in a combat or combat support unit. In this regard, the evaluation board and the contracting officer determined that reserve medical service was not generally considered to be service in a combat or combat support organization, relying upon the following Army definition:

"Army units accomplish combat, combat support, and combat service support missions. Combat units fight battles to destroy or capture the enemy. Mechanized infantry, armor, tank and attack helicopters are types of combat units. Combat support units provide 'operational assistance' to combat elements. Signal battalions, combat engineer battalions, military police companies, and military intelligence companies are typical combat support units. Combat Service Support Units perform the functions associated with personnel services, finance, and logistic support. Examples of combat service support units are maintenance companies, supply companies, transportation companies, medical companies and personnel service companies." (Emphasis added.)

Since both Ms. Franke's and Ms. Reznikova's military experience had been in the medical area, they were determined to have experience in combat service support units, not the required combat or combat support units. Mr. Reznikov's submittals included no information on the nature of his military experience.

Notwithstanding this definition, however, the contracting officer states that she would have considered any information that the protesters provided that would explain how their military experience had been with a combat or combat support unit. In this regard, the Reznikovs had asked her to consider the fact that their status as Soviet Jews precluded them from documenting their military experience.

The contracting officer states that she was sympathetic to this request, and considered not just documentation, but any explanation provided by any of the prospective instructors.⁴ She received no such explanations here. As noted above, Ms. Franke's submittals contained the statement "Combat Support Unit," but provided no support for or explanation of this statement. Ms. Reznikova's and Mr. Reznikov's submittals were silent on the matter of their combat or combat support experience. As a result, the contracting officer determined that none of the protesters had met the solicitation's clear requirement to support their claims to be qualified in this regard, and she considered them to be "unqualified."

The protesters argue that the military experience minimum mandatory qualification is "such an incredibly ambiguous statement that it is certainly open to interpretation," and contend that they assumed that Soviet military definitions, not American military definitions, would be used. However, a solicitation term that is so "incredibly ambiguous" that it is "certainly open to interpretation" must be protested prior to the time established for the submission of quotations. Bid Protest Regulations, section 21.2(a)(1), 61 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.2(a)(1)). The protesters' failure to do so here renders this allegation untimely.⁵ Id.; see General Exhibits, Inc., B-225721, May 5, 1987, 87-1 CPD ¶ 473. In any event, it is clear that the evaluation here did not turn on the above definition or the absence of documentation, but on the failure of the protesters to provide the agency with any information--such as the narrative explanations and descriptions that they now provide--to support their claims to be qualified.

To the extent that the protesters are arguing that the agency's determination here was unreasonable, we cannot agree. The protesters bore the burden of submitting an adequately written quotation for the agency to evaluate and were required to demonstrate their qualifications within the four corners of the quotation. EOD Technology, Inc., B-266026, Dec. 18, 1995, 95-2 CPD ¶ 273. They did not meet this burden, and since the information that they now provide was not submitted with their quotations, it cannot now be used to support their claims to be qualified. Electronic Sys. USA, Inc., B-246110, Feb. 14, 1992, 92-1 CPD ¶ 190. Under the circumstances, we find that the Army reasonably concluded that the protesters

⁴The Reznikovs' complaint that the contracting officer should have extended this consideration solely to them flies in the face of the fundamental principle that all offerors be treated equally by a procuring activity. See Marine Research Specialists, B-265869, Jan. 2, 1996, 96-1 CPD ¶ 1.

⁵As for Ms. Franke's claim that she had previously been awarded contracts with the ACD with her nursing experience, the Army states, and she does not dispute, that her prior contracts did not contain the combat or combat support requirement.

failed to submit sufficient information to show that they met this minimum mandatory qualification. See System Resources Corp., B-270241 et al., Feb. 12, 1996, 96-1 CPD ¶ 69; Decision Sys. Technologies, Inc.; NCI Information Sys., Inc., B-257186 et al., Sept. 7, 1994, 94-2 CPD ¶ 167.

Since the agency reasonably evaluated these quotations as unacceptable for the reasons discussed above, and the protesters consequently are ineligible for award, we need not address the protesters' remaining contentions regarding the evaluation of their quotations. See Decision Sys. Technologies, Inc.; NCI Information Sys., Inc., supra. Moreover, the protesters are not interested parties to challenge the evaluation of the awardees' quotations. Parties are not interested to maintain protests if their direct interest would not be affected by the award of a contract or by the failure to award a contract. Bid Protest Regulations, section 21.0(a), 61 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.0(a)); Marine Pollution Control Corp., B-270172, Feb. 13, 1996, 96-1 CPD ¶ 73. Aside from the awardees, there are at least four "qualified" prospective instructors who are eligible for award under each of these solicitations, and their status has not been challenged. Since the protesters would not be in line for award if we were to sustain their protests of the agency's evaluations of the awardees' quotations, they are not interested parties to assert these challenges. Decision Sys. Technologies, Inc.; NCI Information Sys., Inc., supra.

As a final matter, in their initial protests, the protesters set forth a sweeping accusation of bad faith on the part of the Army, supported solely by reference to a 1993 federal court decision and a 1991 Army Inspector General's report springing from incidents which took place in the early 1990s. The Army responded by correctly pointing out that the protesters had made absolutely no connection between these documents--neither of which had anything to do with the protesters--and these acquisitions, and flatly denied the allegation.

In their December 2 and 6 filings, the protesters, for the first time, provided a lengthy description of alleged acts on the part of agency officials intended to show a pattern of bad faith and anti-semitism toward the protesters. A review of these allegations shows that the protesters knew or should have known of these when they timely filed their protests, but inexplicably provided no details at that time. Where, as here, protesters raise a broad ground of protest in their initial submissions, but fail to provide any detail on the protest grounds until later, so that a further response from the agency would be needed for an objective review of the matter, we decline to consider such protest grounds because they are presented in a piecemeal fashion, which is disruptive to the prompt and orderly resolution of the protest. See Bucky X-Ray Int'l Corp., B-231353, July 25, 1988, 88-2 CPD ¶ 79, recon. denied, B-231353.2, Aug. 23, 1988, 88-2 CPD ¶ 172; Sermor, Inc.--Request for Recon., B-219173.2, Oct. 28, 1985, 85-2 CPD ¶ 470. In any event, these allegations, which include complaints about an alleged Army delay in issuing an identification card,

alleged Army retaliation for raising "unpleasant" questions, and alleged Army violations of the Privacy Act, have no obvious connection to the reason for which the protesters' quotations were rejected. Further, the protesters' timely allegations that the evaluators manipulated the evaluation to devise ways to exclude their proposals, as well as their characterization of each and every Army statement and action taken here as motivated by bad faith and anti-semitism, are similarly disconnected from the facts evident from the record. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition, such as is present here. Atherton Constr., Inc., B-266345, Feb. 8, 1996, 96-1 CPD ¶ 51.

The protests are denied.

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