

19739

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203938

DATE: October 9, 1981

MATTER OF: Development Associates, Inc.

DIGEST:

1. Procuring agency made reasonable and good faith effort to obtain accurate information concerning protester's proposed consultant. Protester's incorrect proposal contributed to agency's inability to obtain correct information. Further, since agency reasonably believed that the information obtained was accurate, agency was not obligated to seek clarification from the protester.
2. Procuring agency reasonably explains that protester's score was lower in the final evaluation than in earlier evaluation because agency used a lower-range scale to score proposals the final time.
3. Protester was treated fairly and consistently with the evaluation scheme where one of three evaluators gave each offeror relatively low scores for evidence of satisfactory similar experience and the other two evaluators gave each offeror relatively high scores. Further, the scoring of this evaluation factor was not outcome determinative.
4. Procuring agency's explanation of one evaluator's determination to decrease the score of protester's proposal regarding understanding of intent and requirement is reasonable. Initially, one evaluator gave the protester's proposal the benefit of the doubt but the perspective of additional discussions and proposal revisions provided a reasonable basis for evaluator's determination to decrease protester's score on this factor.

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5. Where, during discussions, procuring agency directed offeror's attention to one evaluator's concern about protester's ability to provide consultation services and where revised proposal addressed that area, agency satisfied its obligation to conduct meaningful discussions.
6. Proposing new bilingual/bicultural models was properly within the scope of the solicitation and the procuring agency was not obligated to discuss other offeror's suggestions with the protester.
7. Where final overall technical scores range from 81 to 85 points, and where protester's contentions of error in evaluation are found to be without merit, agency's determination that proposals were of similar technical quality cannot be questioned by GAO. Thus, selection of second highest scored offeror (83 points), which submitted significantly lower evaluated cost, is reasonable.

Development Associates, Inc. (DAI), protests the award of a contract to U.S. Human Resources Corporation (USHR) under request for proposals (RFP) No. 190-81-0033 issued by the Department of Health and Human Services (HHS) for training and technical assistance services to Head Start grantees in northern California. DAI essentially contends that (1) HHS erred in evaluating its proposal, (2) HHS did not inform DAI of some weaknesses in its proposal, and (3) HHS's erroneous determination that proposals were of similar technical quality resulted in low cost being the main factor in selecting the awardee. We find that DAI's protest is without merit.

HHS initially received six timely proposals. HHS's technical review panel evaluated them and five, including DAI's proposal, were determined to be in the competitive range. Discussions were held with all offerors in the competitive range. After evaluation of best and final offers, HHS determined that two offers were not in the competitive range and that a second round of best and final offers from the three offerors

remaining in the competitive range was necessary. Following evaluation of the second round of best and final offers, HHS selected USHR for award. HHS notified DAI that award was made to USHR and DAI protested to HHS. Although HHS recognized some minor errors in the evaluation of DAI's proposal, after making adjustment for those errors, the technical scores and costs were as follows:

	<u>Technical score</u>	<u>Cost</u>
Vendor C	85	\$105,346
USHR	83	96,982
DAI	81	116,324

HHS denied DAI's protest because USHR's proposal was still considered to be the most advantageous to the Government. DAI then protested here arguing that HHS did not consider each of DAI's contentions and requesting that we review every aspect of its protest.

First, DAI states that the HHS panel obtained inaccurate information about one consultant proposed by DAI. DAI admits that a typographical error in its second best and final offer contributed to the problem by using the proper surname but confusing the first name of consultants, both of whom had worked in the area. DAI contends, however, that HHS should have checked with DAI to clarify the misinformation.

In reply, HHS reports that there was inaccurate information because both persons had performed a similar function in different regions and DAI's proposal directed HHS's inquiry to region VI instead region VII. During evaluation, HHS reports that it believed that it had correct information based on DAI's proposal and, thus, there was no need to check with DAI.

In our view, HHS made a reasonable and good faith effort to obtain accurate information concerning the consultant. It appears that the similarity in name, title, and duties between the persons and DAI's error

in directing HHS's inquiry to the wrong region resulted in the inaccurate information. However, at the time of evaluation, under the circumstances, HHS acted reasonably in not seeking clarification from DAI. Therefore, this aspect of DAI's protest is without merit.

Second, DAI states that one evaluator scored DAI's second best and final offer lower in one category (ability of staff to provide consultation and technical assistance) by three points (15 instead of 18) but provided no explanation. DAI notes that its proposal experienced the least reduction in points through a lower-range scale used by HHS in scoring the second best and final offers but DAI feels that there should be a reasonable technical explanation for the point reduction.

The explanation for the reduction of DAI's points is simply that HHS used a lower-range scale to score the second best and final offers. Procuring agencies are free to change scoring approaches between evaluation of first and second best and final offers because each evaluation is separate and only the results of each evaluation are relative. See WASSKA Technical Systems and Research Company, B-189573, August 10, 1979, 79-2 CPD 110. Thus, this aspect of DAI's protest is without merit.

Third, DAI objects to HHS's determination that DAI submitted insufficient documentation of satisfactory performance on similar contracts. DAI believes that the list of contacts it provided was sufficient. In response, HHS notes that the RFP clearly required evidence of satisfactory performance on similar contracts. One HHS evaluator considered all three proposals to be incomplete in this category and, thus, reduced each offeror's score: out of 15 possible points, Vendor "C" and DAI received 10 points and USHR received 8 points.

We note that the other two HHS evaluators did not share the concern about each offeror's successful similar experience. From these evaluators, Vendor "C" received scores of 15 and 14, DAI received scores of 15 and 14, and USHR received 15 and 13 points. We find that each of HHS's evaluators treated each offeror fairly and consistently with the RFP's evaluation scheme regarding

this aspect of the proposal evaluation. Further, the scoring of this evaluation factor was not outcome determinative. We find this aspect of DAI's protest to be without merit.

Fourth, DAI objects to its score by one evaluator in the category, Understanding of Intent and Requirements. DAI notes that the evaluator rated DAI's initial proposal at 12 of 15, the first best and final offer at 9 of 15, and the second best and final offer at 8 of 15. DAI does not understand why its score was reduced with each evaluation. In response, HHS reports that the evaluator initially gave DAI the benefit of the doubt but after reviewing DAI's first best and final offer, in the evaluator's professional judgment, DAI did not demonstrate an understanding of the development of a cost-effective institutional support network. HHS asked the evaluator to reassess DAI's second best and final offer from the perspective of the total project. HHS reports that the evaluator scored DAI at 8 of 15 because DAI's insistence on unrequired work in the area of nutrition seemed to indicate a lack of understanding of HHS's requirements. In reply, DAI explains that the nutrition work was not major in scope and it was related to the project's scope.

In considering protests concerning a procuring agency's evaluation of proposals, we recognize that the relative desirability of proposals is largely subjective, primarily the responsibility of the procuring agency, and not subject to objection by our Office unless shown to be unreasonable, arbitrary, or violative of law. See, e.g., Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD 439. Here, DAI again overlooks the principle, stated above, that each evaluation is separate and only the results of each evaluation are relative. Accordingly, the important point is not why DAI's score was lower in each round but how DAI's second best and final offer score of 8 compared to the scores of the other offerors' second best and final offers. We note that, on this point, DAI has presented no argument concerning the evaluation of DAI's proposal relative to the other offerors' proposals. After reviewing DAI's contention, and HHS's explanation, we find that HHS's explanation of the basis for the evaluator's scoring

of DAI's proposal is reasonable and not subject to objection by our Office. See Goodyear Aerospace Corporation, B-202722, July 24, 1981, 81-2 CPD 59. Thus, this aspect of DAI's protest is without merit.

Fifth, DAI contends that it lost points in the area of staff ability to provide consultation from one of the three evaluators but, in discussions, HHS did not fully communicate that evaluator's views to DAI nor were HHS's views contained in documentation supporting the scores.

HHS disagrees with DAI, reporting that the weaknesses were covered in discussions. HHS notes that DAI addressed the weakness in its second best and final offer.

The record contains the sharp disagreement between HHS and DAI on what topics were specifically covered in discussions. During discussions, however, HHS clearly directed DAI's attention to this area of its proposal with the view that improvements could be made. Since only one of the three evaluators was concerned, HHS satisfied its obligation to conduct meaningful discussions and was not obligated to do more because each area receiving less than the maximum point score need not be discussed. Gould Inc., B-192930, May 7, 1979, 79-1 CPD 311. This aspect of DAI's protest is denied.

Sixth, DAI contends that it was not advised during discussions that its proposed bilingual/bicultural models were considered to be a weakness by one evaluator. DAI also contends that the RFP did not require offerors to present new models in this area. In response, HHS reports that the RFP encouraged offerors to introduce creativity in their technical approaches. Some offerors suggested new bilingual/bicultural models. DAI did not.

We conclude that the introduction of such new models was properly within the element of creativity in technical approach. We also conclude that it was not a matter, which HHS was obligated to discuss with DAI, since it relates to an innovative approach of other offerors. See Gould Inc., supra. Thus, this aspect of DAI's protest is without merit.

Seventh, DAI objects to HHS's determination that all three proposals were of similar technical quality and that DAI's approach was not particularly creative because two evaluators scored DAI's approach at 23 and 24 of 25 possible points and only one evaluator seemed to see weaknesses in DAI's approach. DAI notes that HHS's determination that the proposals were of similar technical quality resulted in HHS's selection of USHR based on its low evaluated cost.

In reply, HHS reports that two of the three evaluators rated DAI as the low technically scored offeror in the evaluation of the second best and final offer, refuting DAI's contention that one evaluator's views were unduly influential.

The overall technical scores from the three evaluators, as adjusted by HHS after DAI's protest, show that the three offerors scored from 81 to 85 points. In our view, those scores appear to reflect similar technical quality. Moreover, in reaching this decision, we have carefully reviewed each of DAI's specific contentions regarding errors in the evaluations of its proposal and we have found them to be without merit. Therefore, we have no basis to object to HHS's selection of USHR based on its significantly lower evaluated cost and second highest technical score of three excellent proposals. Thus, we find it unnecessary to address DAI's procedural objections concerning (1) HHS's failure to order USHR to stop work pending resolution of DAI's protest and (2) HHS's failure to respond to the protest in a timely manner.

Protest denied.

Larry R. Van Cleave

For the Comptroller General
of the United States