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**DECISION**



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

**FILE: B-203089**

**DATE: November 19, 1981**

**MATTER OF: National Graduate University**

**DIGEST:**

1. Authority to make award on basis of initial proposals where adequate competition indicates that proposed prices are reasonable does not apply where there is a technical uncertainty in the low-priced proposal within the competitive range. Where such uncertainty exists, agency must clarify proposals through discussions.
2. Since evaluation criteria set forth in RFP clearly stated that the award would be based on combined evaluation score composed of 80 points for technical merit and 20 points for price, protest that award did not go to proposal having the lowest price but not best technical score is without merit. If protester is challenging the evaluation criteria, protest filed after closing date for receipt of initial proposals is untimely.

National Graduate University protests the award of a contract to University Faculty Associates under request for proposals No. 101-5-81 issued by the Veterans Administration Central Office, Washington, D.C. for the development, planning, and presentation of a series of management training courses for VA employees.

National contends that the award was improper because the VA failed to conduct discussions with offerors within the competitive range and because award was not made on the basis of the lowest priced, technically acceptable

proposal. Because the record shows that the VA evaluation found that significant aspects of University Faculty Associates' proposal were not clear, we sustain the protest on the basis that the VA's failure to conduct discussions was improper.

### Background

The solicitation required offerors to develop and present a four-day management training session to VA employees in six regional locations.

The solicitation provided that award would be based on the highest total score by assigning 20 points to price and 80 to the technical evaluation and listed the following technical evaluation criteria in descending order of importance:

- a) Ability to effectively meet training needs and objectives in accordance with adult learning principles.
- b) Previous VA-related experience
- c) Ability to enhance positive interaction between administrative and clerical personnel and to emphasize the importance of the team approach in achieving hospital goals.
- d) Ability to relate course content to the VA system and structure.
- e) Previous background and experience in conducting similar programs.
- f) Qualifications of personnel

The solicitation also provided that award might be made without discussions on an initial proposal basis.

Six firms responded to the solicitation. The VA evaluation committee found that the following three offerors were within the competitive range:

<u>Firm</u>	<u>Technical Score</u>	<u>Price</u>
National Graduate University	57	\$41,200
Joseph Groen	67	\$99,168
University Faculty Associates	71	\$55,800

The evaluation formula set forth in the solicitation resulted in a total evaluated score of 85.8 for University Faculty Associates, 77 for National and 75.3 for Joseph Green.

After the initial proposals were evaluated but prior to the award, National protested to the contracting officer the award of the contract to other than the low, technically acceptable offeror. Two days later, the VA denied the protest and awarded a fixed-price contract to the highest ranked offeror, University Faculty Associates, on the basis of its initial proposal. National's protest to this Office was received four days later.

#### Award on Initial Proposal Basis

National contends that the VA failed to conduct discussions with it as required by Federal Procurement Regulations (FPR) § 1-3.805-1(a) and improperly awarded a contract to University Faculty Associates on an initial proposal basis.

The VA states that it made award to University Faculty Associates on the basis of initial proposals because "the RFP in question did contain such a notice [notice that award may be made without discussions] and there was adequate competition to determine that award would result in a fair and reasonable price." At the time the award was made on April 24, 1981, the contracting officer also determined that it was urgent that award be made immediately so that the courses could be held in the current fiscal year.

In negotiated procurements, discussions are generally required to be conducted with all offerors within a competitive range. The regulations permit the agency to make award without discussions where it can be demonstrated from the existence of adequate competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussions would result in a fair and reasonable price. This exception to the general rule requiring that discussions be conducted with all firms in the competitive range does not, however, apply "(i)n any case where there is uncertainty as to the pricing or technical aspects of any proposals." FPR § 1-3.805-1(a)(5).

Therefore, while an agency may make award on an initial proposal basis, even to other than the low-priced offeror, Shapell Government Housing, Inc. and Goldrich and Kest, Inc., 55 Comp. Gen. 839 (1976), 76-1 CPD 161, it should not do so when through discussions it may be able to clear up uncertainties in other proposals and realize substantial cost savings. See Decision Sciences Corporation, B-196100, May 23, 1980, 80-1 CPD 357.

Here, the VA evaluation committee report discloses a substantial degree of uncertainty regarding National's proposal. In particular, after noting National's excellent proposed faculty, the committee stated that it "was very unclear as to how they would be used," and that using different faculty at each location would be undesirable due to lack of continuity. The difficulty here is that the solicitation did not require the designation of individual instructors for each session. Instead of downgrading National's proposal for this potential defect, this area should have been clarified through discussions with National.

Although the VA evaluators concluded that National's proposal responded to the basic solicitation requirement that proposed case studies be related to the VA setting, the evaluators also downgraded National because its proposal lacked detail in this area. This concern too could have been resolved readily through the conduct of discussions.

Finally, National's proposal was downgraded because it failed to provide for a follow-up evaluation of trainees, a critical aspect of the job according to the VA evaluation report. The solicitation did not specifically require a follow-up evaluation and, again, this concern should have been the subject of discussions.

In sum, it appears that these matters could have been readily clarified through discussions without any great delay or cost. In light of this and considering that National's price was lower, it is our view that the VA should have conducted discussions with all offerors within the competitive range. We are not unmindful of the fact that on April 24 the contracting officer determined that there was an urgent need for the services.

The record, however, indicates that the evaluation of initial proposals was complete on November 26, 1980 and there is no indication that, at that point, sufficient time did not exist to conduct at least one round of discussions.

#### Selection Procedure

National also protests award to other than the lowest, technically acceptable offeror. The solicitation clearly stated that award would be based upon a combined evaluation score, composed of 80 points for technical considerations and 20 points for price. When the evaluation scores for technical merit and price are totaled in accordance with that formula it is clear that University Faculty Associates must be assigned the highest score. Thus, there is no evidence that the evaluation was not conducted in accordance with the evaluation scheme set forth in the RFP. If National is questioning the validity of the evaluation criteria set forth in the RFP, its protest is untimely as protests based on alleged improprieties in an RFP must be raised prior to the closing date for the receipt of initial proposals to be considered by our Office. 4 C.F.R. § 21.2(b)(1) (1981).

#### Use of VA Personnel

Our review of the file also disclosed another matter, which warrants comment even though not raised by the parties, namely the proposed use of senior VA personnel as instructors by two offerors. We have been informed by the VA that its Inspector General's Office is conducting an investigation to determine whether this employment violates the personal conflict of interest requirements applicable to VA personnel. By letter of today we are advising the Administrator of Veterans Affairs of our concerns in this regard.

#### Award

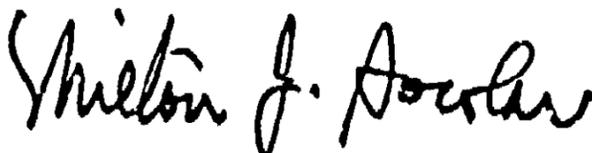
Finally, National contends that award should not have been made prior to resolution of the protest and that notice of award was not given.

As to the first issue, the letter the VA dispatched on April 24 responded to National's protest. As no protest had been filed with this Office at that time, the VA was free to award the contract on that date.

The allegation that the VA failed to provide prompt notice of award concerns a procedural matter which does not affect the validity of the award, Bow Industries, Inc., B-196667, March 25, 1980, 80-1 CPD 219.

Conclusion

The protest is sustained. However, because the contract has been completed, corrective action is not possible in this case. We have, by separate letter, requested the Administrator of Veterans Affairs to take steps to preclude recurrence of the deficiencies noted in making award on an initial proposal basis and informed the Administrator of our concerns regarding the proposed use of VA employees as faculty members.

*for*   
Comptroller General  
of the United States