

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**Knox
PZ-II
29402**FILE:** B-213747**DATE:** September 24, 1984**MATTER OF:** University of the District of Columbia**DIGEST:**

1. GAO will not review the qualifications of agency technical evaluation panel members absent a showing of possible fraud, bad faith or conflict of interest.
2. Protest filed within 10 days of agency debriefing at which protester learned specific reasons for its exclusion from the competitive range, is timely and will be considered.
3. Protest that agency improperly excluded the protester from the competitive range as the result of an inadequate evaluation of its technical proposal is denied. The record shows that the evaluation panel found a substantial number of weaknesses in the protester's proposal and while the protester challenges some of those weaknesses, it has not disputed others. Thus, the protester has failed to show that the agency's ultimate determination, that the proposal could not be made acceptable without substantial revision, is unreasonable.

The University of the District of Columbia (UDC) protests the rejection of its proposal under request for proposals (RFP) No. 83-061 issued by the Department of Education. UDC contends that the members of the agency's technical evaluation panel were not qualified to evaluate its proposal and as a result its proposal was inadequately evaluated. We deny the protest.

030120

The agency solicited proposals for the award of two 60-month cost-reimbursement contracts to establish programs of research and related activities designed to address the special education needs unique to handicapped minority children. The solicitation contemplated award of one contract to create an institute to conduct research focused in the area of language proficiency, and one contract for an institute to conduct research in the area of attitudes/learning styles. Each offeror was to select one of these two areas as the focus of its proposed institute.

The agency received six proposals in response to the solicitation, including UDC's proposal to establish a handicapped minority research institute to conduct an "Assessment of Language Proficiency in Black Handicapped Children Who Acquire Nonstandard Features of English." The agency convened two panels of evaluators--one panel to evaluate proposals in each of the two areas. After technical evaluation of the proposals, the agency found that four of the proposals, including the protester's, were unacceptable and thus outside the competitive range. It included the other two proposals which it determined were "unacceptable but susceptible of being made acceptable" within the competitive range. After discussions with each of the two offerors within the competitive range, the agency awarded a contract to each.

UDC complains that the evaluation panel was not able to properly assess the merits of its proposal because its members included no experts or specialists in the area of speech-language problems of black handicapped children. In this regard, however, absent a showing of possible fraud, bad faith, or conflict of interest, we will not review the qualifications of agency technical evaluation panel members. Tex-La Cable T.V., Inc., B-201558, Apr. 5, 1982, 82-1 CPD ¶ 300. Since UDC has not made that showing, we have no basis for considering further this aspect of its protest.

UDC also complains that the agency improperly excluded it from the competitive range as the result of an inadequate evaluation of its proposal. UDC challenges certain of the weaknesses of its proposal found by various members of the evaluation panel and argues that the evaluators' comments with respect to these weaknesses are either

clearly erroneous or they reflect the evaluators' lack of understanding of UDC's proposed research. UDC asserts that its target population and the proposed focus of its institute fully met the RFP's requirements.

Specifically, UDC rejects a concern expressed by certain of the evaluators that UDC had not adequately justified the necessity of one of its proposed studies--to gather data concerning the language development of normal children. These evaluators felt that adequate data in this area already exists. UDC maintains, however, that while there is some data in this area there are gaps within that data which in part its study is designed to fill.

A second weakness perceived by certain members of the evaluation panel was that UDC used dated literature in justifying the need for its proposed research. UDC disagrees and argues that while its literature may appear to be dated, it is in fact the most current available. For this reason, UDC asserts, it concluded that additional research in this area was warranted.

Another example of the inadequacy of the technical evaluation, UDC argues, concerns its proposed study of language handicapped children and a comment made by one evaluator that questioned whether language impairment constituted a handicap. This evaluator also concluded that UDC's proposed research focus was not critically important. UDC points out that language impairment is clearly defined as a handicap by applicable statutes and argues that the evaluator's conclusion conflicts with the research priorities identified by recognized experts in this field.

Finally, UDC disputes evaluator comments questioning the extent of the experience some of UDC's proposed staff have had with handicapped children. UDC asserts that all of its core staff have had experience with handicapped children.

The agency contends that this aspect of UDC's protest is untimely because UDC knew that it had been excluded from the competitive range more than 10 days prior to the date it filed its protest with our Office. UDC did not know the specific reasons for the agency's action, however, until

after it received a debriefing. Since UDC filed its protest within 10 days of that debriefing, we consider the protest to be timely and will consider it on the merits. See Lambda Corporation, 54 Comp. Gen. 468 (1974), 74-2 CPD ¶ 312.

The evaluation of technical proposals and the resulting determination of whether an offeror is in the competitive range is a matter within the discretion of the contracting activity. In considering protests such as this, we will not evaluate proposals de novo, but will only examine the agency's evaluation to ensure that it had a reasonable basis. Essex Electro Engineers, Inc.; ACL-Vilco Corporation, B-211053.2; B-211053.3, Jan. 17, 1984, 84-1 CPD ¶ 74.

We have considered each of UDC's examples of alleged evaluation inadequacy and we conclude that UDC has not shown that the agency's decision to exclude it from the competitive range was unreasonable. Our conclusion is based in part on our examination of the merits of UDC's specific contentions and in part on our consideration of the entire record which shows that the evaluation panel found substantial weaknesses in UDC's proposal that UDC has not challenged, and which we believe support the agency's ultimate determination that UDC's proposal could not have been made acceptable without substantial revision.

Regarding first UDC's examples of evaluation inadequacies, we agree that the criticism of its proposal, made by one evaluator, that UDC's research was not targeted toward a handicapped group, is unfounded. In fact, the RFP specifically includes children with speech impairments as an example of those included within the target population. With respect to UDC's other examples, however, we do not agree that they demonstrate inadequacies in the technical evaluation. For example, while certain evaluators criticized the currency of UDC's literature review, others felt that the literature review was current and up-to-date. This latter view was reflected in the evaluation summary which listed UDC's literature review as one of the strengths of its proposal. Further, although UDC

challenges evaluator comments questioning the necessity of its proposed study of normal children, it admits that some studies in this area do exist. We believe that it is a matter for the subjective judgment of the technical evaluators to determine whether in their opinion additional studies in this area are needed. UDC's disagreement with the exercise of that judgment does not provide a basis for us to determine that the evaluators' conclusions are unreasonable.

Finally, UDC apparently has misinterpreted the evaluators' comments regarding the experience level of its proposed staff. The record shows that the evaluators recognized the extensive background of UDC's proposed staff in the area of speech/language pathology. Thus, to this extent they were not questioning the experience of the proposed staff with research involving handicapped children. Rather, it appears that the evaluators felt that the proposed staff lacked experience with respect to the special education of handicapped children. Since one of the purposes of the RFP was to foster research to address the special education needs of handicapped minority children, we have no basis to object to the evaluators' determination that the limited experience of UDC's proposed staff in this area constituted a weakness in its proposal.

In addition to the weaknesses found in its proposal which UDC has challenged, the panel found numerous other weaknesses that UDC has not disputed. For example, Task 1 of the RFP requires the successful offeror to conduct two longitudinal studies, one extending from year one through year four and the other from year two through year four. It also required the contractor to complete at least "two highly related one-year research projects" each project year. UDC proposed to conduct two parallel 18-month longitudinal studies during years one and two of the contract and to use the data obtained from these studies to conduct five shorter term studies during the remainder of the contract term. The evaluators felt that UDC failed to meet the RFP's requirements regarding the duration of its longitudinal studies and the number of its one-year studies. They also felt that the proposal lacked detail with respect to the small studies. Thus, the panel

27402

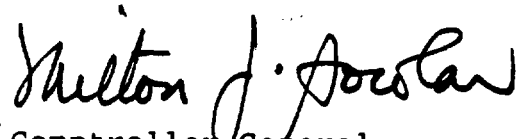
B-213747

concluded that there was a weakness in this aspect of UDC's procedural plan.

Similarly, the panel expressed concern with the fact that one of UDC's proposed co-directors for the District of Columbia-based institute is a professor at Michigan State University and would not be devoting full time to the institute. The evaluators determined that this would present problems with her being able to effectively participate in the administration and research of the institute. Consequently, this would place an extraordinary burden on the remaining co-director--the only full-time member of the institute's staff--to carry the majority of the institute's research and to manage its activities.

In short, the evaluation panel found substantial weaknesses in UDC's proposal and their findings are reasonably supported by the record. Under these circumstances, we have no basis to object to the agency's action.

The protest is denied.

for 
Comptroller General
of the United States