

Ashen

DECISION



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

31538

FILE: B-218338 **DATE:** June 24, 1985

MATTER OF: Employment Perspectives

DIGEST:

1. Protest that contracting agency refused to provide protester with access to certain documents for the development of its protest is denied. The contracting agency has the primary responsibility for determining which documents are subject to release under the Competition in Contracting Act of 1984, Pub. L. 98-369, § 2741(a), 98 Stat. 1175, 1199-1203, and, therefore, GAO will not question the agency determination in the absence of a showing of fraud or bad faith on the part of contracting officials.
2. GAO has no authority under the Freedom of Information Act, 5 U.S.C. § 552 (1982), to determine what information agencies must disclose under the act.
3. Protest that copy of the solicitation was not received until 10 days after issuance of the solicitation, that solicitation did not provide information as to previous contracts for the same services and that the solicitation was otherwise defective is untimely where not filed until after the closing date for receipt of proposals. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to that closing date in order to be timely.
4. Protest that contracting agency did not use the formal source selection process set forth in the Federal Acquisition Regulation, § 15.612, and issue a source selection plan in procuring counseling services is denied where the procurement was not a high-dollar-value acquisition and the contracting agency's regulations did not otherwise

032392 127260

require use of the formal source selection process.

5. A protest filed more than 10 working days after the basis for protest is known or should have been known, whichever is earlier, is dismissed as untimely.
6. While a contracting agency generally must be as specific as practical considerations permit in disclosing perceived deficiencies in a proposal, if the agency is to satisfy its requirement of conducting meaningful discussions, the degree of specificity required is not constant and is primarily a matter for the agency to determine. Accordingly, GAO will not question an agency's judgment in this regard where the protester fails to establish that it lacked a reasonable basis.
7. Where a deficiency in a proposal was first introduced in the offeror's best and final offer, the contracting agency was not required to reopen discussions in order to allow the protester an opportunity to revise its proposal.
8. Protest that discussions were inadequate is denied where GAO is unable to conclude that any inadequacy in discussions prejudiced the protester by depriving it of an opportunity for award.
9. Since the determination of the relative merits of proposals is the responsibility of the procuring agency, GAO does not conduct a de novo review of technical proposals or make an independent determination as to their relative merit. Accordingly, a protest against the evaluation of proposals will be denied where the protester does not demonstrate that the evaluation was either unreasonable, not in accordance with the listed evaluation criteria, or in violation of procurement statutes or regulations.
10. Protest that contracting officials were biased in favor of the incumbent as a result of familiarity with the firm and that any

technical superiority the incumbent's proposal may have had resulted from advantages acquired by reason of incumbency is denied. Agencies may consider a firm's performance as an incumbent and a competitive advantage gained by virtue of incumbency is not an unfair advantage which must be eliminated.

11. Protest that contracting officials failed either to contact more than one of the references listed in a proposal or to recontact a reference which claimed not to recall the work purportedly done by the protester is denied. Contracting officials have no duty to check any or all of the references listed in a proposal, to further investigate the accuracy of the information received from the references, or to permit an offeror to rebut information received from the references.
12. Protest that award was not made to the low offeror in a negotiated procurement is denied where the solicitation provided that technical factors would be more important than cost and contracting officials reasonably determined that the significant technical superiority of the awardee's proposal justified award at the higher price.
13. Protest that notice of award was late and inadequate will not be considered on the merits, since a contracting agency's failure to give sufficient notice of award is a procedural deficiency that does not affect the validity of an otherwise proper award.

Employment Perspectives protests the award of a contract to BEMW, Inc., Counseling and Training Associates (BEMW), under request for proposals (RFP) No. RS-ADM-85-214, issued by the Nuclear Regulatory Commission (NRC) for career counseling services. Employment Perspectives alleges that the solicitation was defective, that the discussions which NRC conducted with it were inadequate or misleading, and that NRC improperly or unfairly evaluated proposals. We deny the protest in part and dismiss it in part.

NRC requested proposals for providing, on a fixed-price, requirements basis, career counseling to NRC employees at its headquarters in Washington, D.C. In addition, although NRC planned to procure career counseling services for employees at NRC regional offices through other separate career counseling contracts, the contractor selected pursuant to this contract was to assist in selecting and training the contract career counselors for the NRC regional offices in the event the regional contracts were not yet in effect. Finally, the contractor was required to provide liaison between NRC and regional contract career counselors and to supply career counseling materials for use in the regional counseling programs.

The solicitation indicated that award would be made to the offeror whose proposal was technically acceptable and whose technical/cost relationship was considered most advantageous to the government. In this regard, offerors were cautioned that while price would be a factor in evaluation, technical merit would be a "more significant factor." The solicitation provided for a maximum technical score of 100 points, including:

"M.2.1 Experience 55 Points

A. Experience of contractor personnel to be assigned to this project:

(1) Demonstrated Career Counseling Capabilities and Experiences (25 Points):

- Experience in working with individuals on a 'one-to-one' basis as opposed to working with individuals in group sessions (the proposed effort will not involve group sessions) (15)
- Working knowledge of federal job series and grade structure and experience in counseling federal employees (10)

(2) Qualifications (20 Points)

- Educational Background--General
(10)

- Educational Background--Career
Counseling (10)

B. Experience of the Firm (10 Points)

Work experience of the firm in the field of career counseling particularly with federal employees and independent regulatory agencies

"M.2.2 Technical 30 Points

A. Completeness and adequacy of technical proposal and approach (20)

B. Understanding of the Work Statement (5)

C. Knowledge of NRC's organizational structure and overall mission (5)

"M.2.3 Management 10 Points

Project Scheduling, Planning and Structure

"M.2.4 Counseling 5 Points

Facilities appropriate for conducting counseling sessions

100 Points"

NRC received three proposals, one of which it excluded from the competitive range. The agency then commenced discussions with the remaining firms, Employment Perspectives and BEMW, the incumbent contractor, by first submitting written questions to them concerning their proposals and then conducting oral discussions.

Upon evaluation of best and final offers (BAFO's), the source selection evaluation board found BEMW's BAFO to be strong in all areas, including experience, technical understanding and approach, management and facilities. Accordingly, the board assigned it a technical evaluation score of 92 points. By contrast, while the board considered Employment Perspectives proposal to be "not technically unacceptable," it did perceive major weaknesses in the proposal and, accordingly, assigned it a technical score of only 52 points. Although BEMW had proposed a base year cost of \$63,379, or 22.8 percent more than the \$51,618 proposed by Employment Perspectives, the board determined that given the "superior technical merit" of BEMW's proposal, that proposal presented the most favorable technical/cost relationship. The board therefore recommended that award be made to BEMW.

NRC orally informed Employment Perspectives of the resulting award to BEMW on March 11. Shortly thereafter, by letter of March 14, NRC informed Employment Perspectives of the general reasons as to why its proposal was not accepted, including:

- "A. Experience of the proposed personnel was preponderantly devoted to working with individuals in group sessions as opposed to a one-to-one relationship.
- "B. The educational background of the proposed counselors, while adequate in the general area, was not strong in the specific field of career counseling.
- "C. Experience of the firm as that of the counselors proposed, was primarily group work in providing and conducting career counseling workshops. Those counseling contracts undertaken were with a specific objective in mind, i.e., the job search mode due to reduction-in-force, rather than the broad objectives contained in our Statement of Work.
- "D. The technical and management approach did not fully demonstrate how the contract objectives would be achieved."

Employment Perspectives thereupon filed this protest with our Office.

ACCESS TO PROCUREMENT INFORMATION

Employment Perspectives initially complains that NRC has denied it access to certain information and documents which the protester believes to be useful in the development of its bid protest. In particular, we note that NRC has requested us not to provide to Employment Perspectives BEMW's proposal and much of the evaluation material which NRC supplied to our Office in the administrative report responding to this protest. In addition, we understand that NRC has not supplied all of the information requested from the agency under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1982).

The Competition in Contracting Act of 1984, Pub. L. 98-369, § 2741(a), 98 Stat. 1175, 1199-1203 (to be codified at 31 U.S.C. §§ 3551-3556), provides in pertinent part that:

"(f) Within such deadlines as the Comptroller General prescribes, upon request each Federal agency shall provide to an interested party any document relevant to a protested procurement action (including the report required by subsection (b)(2) of this section) that would not give that party a competitive advantage and that the party is otherwise authorized by law to receive."

31 U.S.C. § 3553(f). Clearly, the contracting agency has the primary responsibility for determining which documents are subject to release under the above provision, and, therefore, we will not question the agency determination in the absence of a showing of fraud or bad faith on the part of contracting officials. No such showing has been made here.

As for Employment Perspectives' FOIA request, our Office has no authority under the act to determine what information agencies must disclose under the act. A protester's sole recourse where information is not furnished is to pursue the remedies provided under FOIA. See also Spectrum Leasing Corporation, B-213647.3, Sept. 10, 1984, 84-2 C.P.D. ¶ 267.

Employment Perspectives also complains that NRC refused to provide information as to previous awards for the same services, information which it requested in order to prepare its proposal.

Since, however, Employment Perspectives did not protest NRC's denial of the information prior to the closing date for receipt of proposals, this ground for protest is untimely. Cf. Colorado Research and Prediction Laboratory, Inc.--Reconsideration, B-199755.2, May 11, 1981, 81-1 C.P.D. ¶ 369. Protests which are based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the next closing date in order to be timely. 4 C.F.R. § 21.2 (1985). In any case, Employment Perspectives has not shown that the information requested was necessary in order to submit an informed proposal. See John J. Moss--Reconsideration, B-201753.2, May 26, 1981, 81-1 C.P.D. ¶ 409.

SOURCE SELECTION PLAN

Employment Perspectives contends that the lack of a "source selection plan," "pre-established standards" or "selection criteria" rendered this procurement defective. We understand the protester to be referring to the formal source selection process described in Federal Acquisition Regulation (FAR), § 15.612, 48 C.F.R. § 15.612 (1985). That section provides that when using formal source selection, the agency head or a designee shall ensure that prior to issuing a solicitation the source selection authority approves a source selection plan which includes, among other things, a summary of the acquisition strategy, a statement of the proposal evaluation factors and their relative importance, and a description of the evaluation process, methodology and techniques to be used. FAR, § 15.612(b) and (c).

Initially, we note that Employment Perspectives' allegation in this regard may be untimely in part or in total, since the firm was informed at a March 22, 1985, debriefing that there were no "pre-established standards" for the procurement but did not raise this allegation with our Office until May 6, more than 10 working days later. Our Bid Protest Regulations require that protests other than those based upon alleged improprieties in a solicitation must be filed within 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

In any case, this contention is without merit. FAR, § 15.612(a), provides that the formal source selection process "is generally used in high-dollar-value acquisitions and may be used in other acquisitions as prescribed in agency regulations." The contract here, which totals less than \$70,000 per year, is not a high-dollar-value acquisition. Further, Employment Perspectives has cited no agency regulation requiring a formal source selection plan in these circumstances, while NRC has advised us that, pursuant to its usual practice, it did not draw up a source selection plan for this individual procurement because of the relatively low dollar value and degree of complexity involved.

DEFICIENCIES IN THE SOLICITATION

Employment Perspectives complains that although it made a request to NRC for a copy of the solicitation prior to its issuance, the firm did not receive the solicitation until 10 days after its issuance.

We understand Employment Perspectives to be alleging that it had insufficient time in which to prepare its proposal. Since, however, its protest in this regard was not filed until March 18, after the closing date for receipt of proposals, the protest is untimely as to this ground. Cf. Jets Services, Inc., B-207205, Dec. 6, 1982, 82-2 C.P.D. ¶ 504.

Employment Perspectives further alleges that the solicitation is defective on the grounds that it exceeded the NRC's minimum requirements by requiring knowledge of NRC's organization and overall mission, that it unduly restricted competition by requiring that the counseling be provided at a location within a 15-minute walk of NRC's offices in Bethesda, Maryland, that it improperly failed to provide for consideration of prior experience in counseling individual private clients, that it insufficiently defined the evaluation criteria, that it failed to disclose the relative importance of price vis-a-vis technical factors, and that it was otherwise vague. Since, however, Employment Perspectives failed to protest these alleged deficiencies in the solicitation prior to the closing date for receipt of initial proposals, its protest as to these grounds is likewise untimely. 4 C.F.R. § 21.2(a)(1). See Rapid America Corp., B-214664, Dec. 26, 1984, 84-2 C.P.D. ¶ 696.

In its March 14 notice of award, NRC informed Employment Perspectives that its proposal had been rejected, in part, because the firm's experience was primarily oriented towards job searches, as distinguished from NRC's "broad objectives" set forth in the statement of work. NRC has explained in the administrative report that since the agency viewed its counseling program as a means of improving employee morale and performance through a broad spectrum of career planning techniques, Employment Perspectives' proposal of a program primarily oriented towards counseling NRC employees how to find another job was viewed as one of the most critical failings of the proposal.

Employment Perspectives, on the other hand, argues that the solicitation failed to disclose that NRC viewed its career counseling program as broader in scope than merely aiding NRC employees in job searches. See also CMD, Inc.; DMC, Inc., B-209742, May 25, 1983, 83-1 C.P.D. ¶ 565 (it is a fundamental principle of federal procurement law that offerors must be advised of the criteria to be employed in the evaluation of proposals.)

We initially note that since the protester did not protest this alleged deficiency until May 6, more than 10 working days after its March 18 receipt of the written notice of award, when it knew or should have known that the NRC interpreted the solicitation as requiring more than job-search counseling, its protest is untimely in this regard.

In any case, nothing in the solicitation indicated that the career counseling would be limited to only counseling in aid of job searches. On the contrary, the work statement described the career counseling program as offering "career and life planning counseling" as part of the agency's "comprehensive . . . executive and management development program." Moreover, NRC revealed its dissatisfaction with Employment Perspectives' narrow interpretation of the solicitation when it requested during discussions that the firm demonstrate how its job search expertise related to the NRC requirement.

DISCUSSIONS

Employment Perspectives, however, questions the adequacy of these discussions, alleging (1) that NRC's written questions were not received until 2 days prior to oral discussions, (2) that contracting officials never informed Employment Perspectives of some of the deficiencies

in its proposal, and (3) that not only did contracting officials not express any dissatisfaction with Employment Perspectives' answers at oral discussions, but, on the contrary, "[u]pon receiving the answers at the discussion which the protester had prepared to the alleged deficiencies" identified in NRC's written questions, they responded, "'This is great!'."

In negotiated procurements, agencies generally must conduct written or oral discussions with all responsible offerors within the competitive range prior to awarding a contract. This requirement can be satisfied only when the discussions are meaningful, which means that negotiations generally should be as specific as practical considerations will permit. See SISA Pharmaceutical Laboratories Incorporated, B-214314, Dec. 3, 1984, 84-2 C.P.D. ¶ 595.

The degree of specificity required in conducting discussions is not constant, however, and is primarily a matter for the procuring agency to determine. Our Office will not question an agency's judgment in this area unless it lacks a reasonable basis. In this regard, we have said that the requirement for meaningful discussions dictates only that the agency proceed in a manner that alerts offerors to perceived weaknesses in their proposals, and have held that agency statements made during discussions that lead offerors into particular areas of their proposals are sufficient to put them on notice that their proposals may be deficient in those areas. See SISA Pharmaceutical Laboratories, Incorporated, B-214314, supra, at 3.

We initially note that much of Employment Perspectives' protest in this regard is untimely. Its protest that it had insufficient time after receipt of written questions in which to prepare for oral discussions is untimely because it was not filed in our Office until March 18, more than 10 working days after it knew the basis for this ground of protest. Likewise, its protest that discussions were otherwise inadequate is also untimely as to those deficiencies in its proposal which NRC identified in its notice of award, i.e., that the experience of Employment Perspectives and its counselors was primarily in group counseling, that Employment Perspectives was narrowly oriented towards job searches, that the educational background of its proposed career counselors was not strong, and that Employment Perspectives had failed fully to document how its technical and management approach would achieve the contract objectives. Although Employment Perspectives learned of these deficiencies, and thus of the grounds for its allegation

that NRC had failed to disclose the deficiencies during discussions, as early as March 18 when it received the notice of award, it did not protest in this regard until May 6, more than 10 working days later.

In any case, we note that the written questions which NRC submitted to Employment Perspectives prior to oral discussions disclosed NRC's concern as to the firm's one-on-one counseling experience, the training and education of its counselors, the value of its expertise in job searches, and other perceived deficiencies which might affect the success of its efforts satisfactorily to perform under a contract.

In addition to the deficiencies identified in the notice of award, however, NRC evaluators also found fault with Employment Perspectives' proposal on the basis (1) that the limited experience of some of its proposed counselors rendered the consistent provision of quality counseling difficult, (2) that, in response to a written question from NRC as to the number of hours of administrative work which its counselors would perform, Employment Perspectives in its BAFO had unrealistically increased the total number of hours of work to be performed by its counselors without providing for a commensurate increase in their compensation, (3) that since the facility proposed by Employment Perspectives was not its normal place of business and would be staffed by a counselor only when an appointment was scheduled, NRC foresaw the possibility of problems should an NRC employee arrive early and the counselor arrive late; and (4) that not only was an evaluation test which Employment Perspectives proposed to administer not well known, but, in addition, it "became apparent during discussions" that only two of the proposed counselors could administer all the proposed tests.

In considering whether adequate discussions occurred in regard to these deficiencies, we initially note that Employment Perspectives and NRC present conflicting versions of the oral discussions. As indicated above, Employment Perspectives maintains that contracting officials responded to the firm's answers to NRC's written questions with the statement, "This is great!."

NRC, on the other hand, denies that Employment Perspectives was ever informed that its answers were adequate. In any event, even assuming the initial reaction of contracting officials, after an on-the-spot examination of Employment Perspectives' answers, was positive, a more

detailed consideration of the answers and the firm's BAFO revealed the continuing technical inferiority of the proposal. The burden of preparing an adequate proposal rests with the offeror, and an agency need not help an offeror along through a series of negotiations so as to improve its technical rating until it equals the other offerors. Cf. Stewart & Stevenson Services, Inc., B-213949, Sept. 10, 1984, 84-2 C.P.D. ¶ 268.

Employment Perspectives has not demonstrated that discussions regarding the experience level of its counselors were inadequate. While NRC did not specifically express its concern that the limited experience of some of Employment Perspectives' counselors would render difficult the consistent delivery of quality counseling, NRC's written questions as to the experience and education of the proposed counselors, the relation of the experience and expertise to the career counseling required under the contract and the firm's organization and staffing were sufficient to put Employment Perspectives on notice as the NRC's concerns in this area. Although we believe that it would have been more appropriate in terms of initiating meaningful discussions for NRC to have been more specific, this does not demonstrate that NRC acted unreasonably. See CRC Systems, Inc., B-207847, May 2, 1983, 83-1 C.P.D. ¶ 462.

Nor has Employment Perspectives demonstrated that discussions regarding the allegedly unrealistic decrease in the compensation of its counselors were inadequate. This deficiency was first introduced in Employment Perspectives' BAFO and NRC was not required to reopen discussions in these circumstances in order to provide the firm with an opportunity to revise its proposal. See Varian Associates, Inc., B-209658, June 15, 1983, 83-1 C.P.D. ¶ 658.

We believe, however, that the record does demonstrate that meaningful discussions were not conducted concerning whether the proposed counselors could administer the proposed tests and concerning the increased possibility of delays or missed appointments resulting from the use of office space which was not Employment Perspectives' normal place of business. In this latter regard, we note that while NRC questioned Employment Perspectives as to the evidence of the "commitment for [its] proposed facility," nothing indicates that NRC disclosed its concerns as to any scheduling problems associated with the facility.

Nevertheless, given the predominance here of technical over cost factors, given the wide disparity in technical point scores and the numerous major deficiencies in Employment Perspectives' proposal, and since the firm at most could have received two additional technical points for its facility, we are unable to conclude that any inadequacy in discussions prejudiced Employment Perspectives by depriving the firm of an opportunity for award. Cf. Software Associates, Ltd., B-213878, Apr. 3, 1984, 84-1 C.P.D. ¶ 378; Lingtec, Incorporated, B-208777, Aug. 30, 1983, 83-2 C.P.D. ¶ 279; Martin-Miser Associates, B-208147, Apr. 8, 1983, 83-1 C.P.D. ¶ 373.

EVALUATION OF PROPOSALS

Employment Perspectives also alleges that NRC improperly evaluated its proposal.

Employment Perspectives initially questions whether NRC complied with the requirements of FAR, § 15.608(b), which provides that:

"If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the cognizant technical official, in documenting the technical evaluation, shall include-

- (1) The basis for evaluation;
- (2) An analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;
- (3) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and
- (4) A summary of findings."

Our examination of the evaluation documents, which NRC has refused to provide to the protester, indicates that NRC indeed complied with the requirements of section 15.608(b).

Employment Perspectives next questions the judgments of the evaluators in a number of respects, contending (1) that NRC improperly ignored one-on-one counseling experience which followed workshops and ignored one contract under which some of the counseling was provided to those who had not attended the preceding workshop, (2) that whether the experience of the firm was predominantly in workshops on job

searches undertaken in response to reductions-in-force should have been irrelevant in the evaluation because the job-search process is very similar to career and life planning, (3) that NRC improperly focused on whether the proposed counselors had advanced degrees in counseling and ignored the career counseling knowledge and experience of Employment Perspectives' proposed counselors, and (4) that Employment Perspectives had indeed proposed a technical and management approach which demonstrated how the contract objectives would be met.

The determination of the relative merits of proposals is the responsibility of the procuring agency, since it must bear the burden of any difficulties incurred by reason of a defective evaluation. Procuring officials thus enjoy a reasonable degree of discretion in the evaluation of proposals and their determinations are entitled to great weight. See The Bendix Corporation, B-208184, Sept. 16, 1983, 83-2 C.P.D. ¶ 332; cf. The Communications Network, B-215902, Dec. 3, 1984, 84-2 C.P.D. ¶ 609 (wide discretion).

Accordingly, in considering protests concerning a procuring agency's evaluation of proposals, we do not conduct a de novo review of the technical proposals or make an independent determination as to their acceptability or relative merit. Instead, our Office will examine the record to determine whether the evaluation judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes or regulations. See The Communications Network, B-215902, supra, at 3; Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 C.P.D. ¶ 607. Moreover, we note that the protester bears the burden of showing that the evaluation was unreasonable and that its mere disagreement with the results of the evaluation does not meet that burden. See ATI Industries, B-215933, Nov. 19, 1984, 84-2 C.P.D. ¶ 540.

After an examination of the proposals, we conclude that Employment Perspectives has not demonstrated that NRC lacked a reasonable basis for determining that the protester's proposal was technically inferior to BEMW's proposal.

Generally, we believe that Employment Perspectives has not demonstrated that NRC acted unreasonably in downgrading the relevance of the firm's experience in counseling employees in regard to job searches to the agency's broader requirement for career and life planning in aid of executive and management development. Nor has the protester shown the

unreasonableness of NRC's conclusion that Employment Perspectives' proposal did not demonstrate the relevancy to NRC's requirement, for individualized career counseling independent of workshops, of most of the one-on-one experience claimed by the protester, experience which NRC views as "follow-up contacts of some undefined character with attendees at initial or group workshop sessions." Whether Employment Perspectives' claimed one-on-one counseling experience was in fact similar to the counseling required by NRC is irrelevant here, since proposals basically must be evaluated on the basis of the information furnished with them and an offeror, no matter how capable, cannot expect to be considered for award if it does not submit an adequately written proposal. See Stewart & Stevenson Services, Inc., B-213949, supra, at 9.

Further, we believe that Employment Perspectives has not demonstrated that NRC acted unreasonably first in emphasizing in its evaluation the importance of the educational background of the proposed counselors and then in evaluating the educational background of Employment Perspectives' counselors less favorably than it did the educational background of BEMW's proposed counselors. The solicitation clearly indicated that NRC attached great importance to educational background, with 20 of the 100 possible technical evaluation points assigned here. Further, Employment Perspectives indicated in its proposal that only 3 of its 5 proposed counselors had received graduate degrees and that only one of those counselors had received a graduate degree in guidance or counseling. By contrast, all of BEMW's proposed counselors had received graduate degrees in guidance or counseling.

Finally, Employment Perspectives has not shown the unreasonableness of NRC's determination that its proposal did not fully demonstrate how the contract objectives would be met. The firm's focus on job searches called into question its understanding of the contract objectives and left uncertain its approach for meeting them. This is especially significant since 5 technical evaluation points were available for demonstrating an understanding of the work statement, 20 points for the completeness and adequacy of the proposed technical approach and 10 points for the proposed management approach.

We note that Employment Perspectives not only questions the conclusions of NRC's evaluators, but also alleges that

the evaluators were biased in favor of BEMW as a result of their "over-familiarization" with BEMW, the incumbent contractor since 1976. Moreover, Employment Perspectives suggests that "any technical superiority" BEMW's proposal may in fact have had resulted only from BEMW's "natural advantage" of being the incumbent.

A protester alleging bias has the burden of affirmatively proving that offerors were not treated fairly or equally. Further, unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. See Technical Services Corporation, B-214634, Feb. 7, 1985, 63 Comp. Gen. ____, 85-1 C.P.D. ¶ 152. Employment Perspectives has not clearly demonstrated that contracting officials found BEMW's proposal to be technically superior as a result of unfair or prejudicial motives.

That BEMW's prior experience in providing career counseling to NRC employees was advantageous to it is clear to us from our examination of the record. We have previously held, however, that a competitive advantage gained by virtue of a firm's incumbency is not an unfair advantage which must be eliminated, see Rolm Corporation, B-214052, Sept. 11, 1984, 84-2 C.P.D. ¶ 280; Wing Manufacturing; Simulators Limited, Inc.--Request for Reconsideration, B-213046.3, et al., Aug. 17, 1984, 84-2 C.P.D. ¶ 187, and that an agency may consider a firm's performance as an incumbent, see Kirk-Mayer, Inc., B-208582, Sept. 2, 1983, 83-2 C.P.D. ¶ 288. We note that the solicitation here specifically requested offerors to submit references as to prior experience in providing career counseling to individuals.

Employment Perspectives, however, also questions the NRC's use of the references which it submitted. It indicates that NRC contacted only one of the four references submitted to the agency even though the reference contacted informed contracting officials that she did not recall the contract in question. Employment Perspectives objects to NRC's failure either to recontact that reference or to contact the other references.

We have held, however, that procurement officials have no duty to check any or all of the references, or to seek additional references if those contacted do not strongly

support the offeror's competence and experience. Basic Technology Incorporated, B-214489, July 13, 1984, 84-2 C.P.D. ¶ 45. Likewise, they need not permit an offeror to rebut information received from the references, nor must they conduct further investigation into the accuracy of the information received from references. See Schneider, Inc., B-214746, Oct. 23, 1984, 84-2 C.P.D. ¶ 448.

COST/TECHNICAL TRADEOFF

Employment Perspectives further objects to the award on the basis that its proposal met the government's minimum needs at a lower price than offered by BEMW and that NRC has not justified award at a higher price.

In a negotiated procurement, however, there is no requirement that award be made on the basis of lowest cost. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. The judgment of the procuring agency concerning the significance of the difference in the technical merit of offers is accorded great weight. Asset Incorporated, B-207045, Feb. 14, 1983, 83-1 C.P.D. ¶ 150. We have therefore upheld awards to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. See Prison Health Services, Inc., B-215613.2, Dec. 10, 1984, 84-2 C.P.D. ¶ 643.

The solicitation here provided that technical factors would be more significant than cost in the selection of a contractor. Contracting officials, having assigned 92 technical evaluation points to BEMW's proposal and 52 points to Employment Perspectives' proposal, then determined that the superior technical merit of BEMW's proposal justified award at a higher price. Given the clear technical superiority of BEMW's proposal, we are unable to conclude that NRC officials abused their discretion in this regard.

OTHER ALLEGATIONS

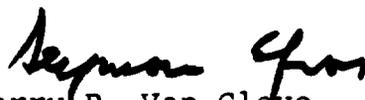
Employment Perspectives argues that the solicitation indicated that each item might be purchased separately. It therefore questions NRC's failure to consider multiple

awards, in particular, failure to consider making a separate award to Employment Perspectives for the line item for the provision of counseling materials to NRC regional offices.

We do not, however, agree that the solicitation contemplated multiple awards. Rather, it indicated that the government would "award a contract . . . to the responsible offeror whose offer" (emphasis added) was most advantageous to the government. The solicitation also required offerors to propose a total estimated cost for all the first year requirements, including the provision of counseling materials to NRC's regional offices. Finally, the solicitation provided that in order to "assure consistency of the program within NRC, the counseling materials [provided to the regional offices] should be in consonance with those . . . used for counseling NRC Headquarters employees," again suggesting that NRC intended to make an aggregate award to one firm. We note that this consistency would not have been achieved had a separate contract been awarded to Employment Perspectives for providing counseling materials to the regional offices, since the firm had proposed supplying a test not offered by BEMW.

Finally, Employment Perspectives alleges that notice of the March 5 award, notice given orally on March 11 and in writing by letter of March 14, was both late and inadequate in detail. We need not, however, consider the merits of this allegation, since a contracting agency's failure to give sufficient notice of award is a procedural deficiency that does not affect the validity of an otherwise proper award. Auchter Industries, B-216841, Nov. 30, 1984, 84-2 C.P.D. ¶ 593.

The protest is denied in part and dismissed in part.

for 
Harry R. Van Cleve
General Counsel