



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** State Technical Institute at Memphis

**File:** B-250195.2; B-250195.3

**Date:** January 15, 1993

Charles M. Temple for the protester.  
James R. Lindley, Esq., for Central Texas College, an interested party.  
Charles J. McManus, Esq., Eric A. Lile, Esq., and Michael S. Roys, Esq., Department of the Navy, for the agency.  
Jacqueline Maeder, Esq. and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Solicitation evaluation scheme does not provide for award to the low-priced, technically acceptable offeror where, despite the inclusion of a confusing paragraph concerning technical acceptability, the solicitation states that technical merit is to be evaluated on the basis of three factors in descending order of importance, technical merit is to be weighted more than price and award is not necessarily to be made to low-priced offeror.
2. Protest that awardee lacked experience in conducting courses similar in scope and difficulty to the courses which are the subject of the solicitation is denied where awardee's experience in teaching courses involving different subject matter was reasonably regarded by the agency as involving courses of similar complexity and difficulty to courses to be taught under the solicitation.
3. Agency's downgrading of protester's best and final offer (BAFO) was proper where agency could not reasonably determine from the BAFO what mix of full-time and part-time instructors the protester offered.
4. Agency conducted meaningful discussions with offeror where agency had concerns about staffing levels and pointed those out in a general way. Offeror who then submitted a rewritten BAFO which was ambiguous as to the staffing proposed assumed the risk that such revisions to its BAFO might result in a less favorable evaluation.

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**DECISION**

State Technical Institute at Memphis protests the award of a contract to Central Texas College under request for proposals (RFP) No. N00612-92-R-9012, issued by the Naval Supply Center, Charleston, for instructors to provide training services at the Naval Air Technical Training Center, Millington, Tennessee. State Technical has raised a number of objections to the award. Specifically, the protester argues that (1) the agency improperly made award to other than the low-priced, technically acceptable offeror, (2) the awardee lacks the experience required by the RFP, (3) the protester's best and final offer (BAFO) was improperly downgraded for failing to clearly specify its proposed staffing mix, and (4) the agency did not conduct meaningful discussions.

We deny the protests.<sup>1</sup>

The RFP, issued on December 20, 1991, sought academic and technical training services for the Training Center for a 1-year period, with four 1-year options. Services to be provided included course instruction and curriculum maintenance and development in the three "functional areas" of avionics, air traffic control maintenance and job oriented basic skills. The RFP contemplated award of a level-of-effort, fixed-price contract with a fixed monthly price for each functional area taught by the contractor.

The solicitation called for the submission of proposals in three volumes: (1) "Other Factors", (2) Cost/Price Proposal, and (3) Professional Employee Compensation Plan. The "Other Factors" proposal was to show the offeror's understanding of the statement of work and its ability to perform all required tasks. According to Section M of the RFP, the "Other Factors" proposal was to be evaluated under the following three subfactors: (1) Understanding the Statement of Work: Approach, Method and Ability to Satisfy the Program Requirements; (2) Personnel and Corporate Qualifications; and, (3) Quality Control Plan. The compensation plan was to be evaluated on a pass/fail basis. Price was to be considered in the selection, but the "Other Factors" proposal was to be weighted "one and one-half times price."

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<sup>1</sup>State Technical filed two protests under the solicitation, we will address the issues raised in both protests in this decision.

Three proposals were received, including those of State Technical and Central Texas, by the February 18, 1992, closing date. The technical evaluation committee reviewed the initial proposals. The evaluators found one proposal to be technically acceptable and two others, including the one submitted by State Technical, to be technically unacceptable but susceptible to being made acceptable. Telephone discussions were held with all three firms and, by letter dated May 6, the agency confirmed the telephone discussions and provided each offeror a listing of its deficiencies. Simultaneously, on May 6, the agency issued Amendment 0002 which revised the course schedule and anticipated number of classes for courses in each functional area and called for BAFOs.

Proposals were evaluated a second time after BAFO submissions. Central Texas received a final technical score of 58.03 of a maximum 60 points, which was the second highest received. State Technical received 44.56 points, the lowest received. The evaluation record shows that the agency's major concerns regarding State Technical's "Other Factors" proposal were its failure to clearly outline its staffing proposal and the protester's lack of understanding concerning the relationship between the government and the contractor regarding such matters as control of training time and student assignment.<sup>2</sup> Central Texas' total price for the base and the option years was \$18,585,626 and was assigned 32.51 price points; State Technical's price was \$15,088,920 and, as the low-priced proposal, was assigned the maximum 40 price points. Adding price points and technical points, Central Texas received 90.54, the highest total score of the three offerors; State Technical received 84.56, the lowest total score of the three offerors. Based on the scores, the contract was awarded to Central Texas.

#### METHOD OF EVALUATION

State Technical's initial basis for protest concerns Section M of the solicitation which describes how the proposals were to be evaluated.<sup>3</sup>

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<sup>2</sup>The protester has not questioned the second of the two major concerns raised by the evaluators.

<sup>3</sup>State Technical also complains that the solicitation requirements were altered in such a material way by Amendment 0002 that the agency should have canceled the solicitation and resolicited. This argument, which was not raised until after the award is untimely and will not be considered. Contentions such as this which concern alleged improprieties which are incorporated into a solicitation

(continued...)

Section M first provides that award will be "made on the basis of price, and other factors considered" and that "award may not necessarily be made to the offeror submitting the lowest price." The next sentence states that the "Other Factors" proposal "will be weighted approximately one and one-half times as much as price."

The next paragraph dealing with the evaluation of the "Other Factors" proposal, states as follows:

"Other Factors will be weighted approximately one and one-half (1-1/2) times more than price. The factors listed below are shown in descending order of their relative importance:

SECTION I Understanding the Statement of Work; Approach; Methods and Ability to Satisfy the Program Requirements

SECTION II Personnel and Corporate Qualifications

SECTION III Quality Control Plan

This evaluation will be for the purpose of determining whether offers are:

- (a) Technically acceptable; or
- (b) Technically unacceptable, but reasonably susceptible of being made technically acceptable by additional information clarifying or supplementing but not basically requiring an extensive revision of the proposal, or
- (c) Technically unacceptable."

A subsequent paragraph on price states, again, that award "may not necessarily be made to the offeror submitting the lowest price," but that the "degree of importance [of price] will increase with the degree of equality of proposals in terms of the Other Factors" and may be the controlling factor if proposals are judged to be substantially equal in technical merit.

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<sup>3</sup>(...continued)

must be protested not later than the next closing date for the receipt of proposals following the incorporation. Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1) (1992).

Section M goes on to state that the professional employees compensation plan will be evaluated on a "pass/fail basis" and that:

"Award will be made to that responsible offeror, whose proposal conforming to the requirements of the solicitation, is determined most advantageous to the Government, price, other factors and total professional employee compensation plan considered."

State Technical argues that the RFP evaluation scheme requires that the award be made to the low-priced, technically acceptable offeror. Specifically, the protester argues that the language stating that the evaluation of the "Other Factors" proposals will be to determine whether they are technically acceptable, technically unacceptable but susceptible to being made acceptable or technically unacceptable modifies the other language in Section M and, according to the protester's interpretation of this language, once a proposal is considered technically acceptable, it is entitled to the maximum technical points. Because its proposal was rated "marginally acceptable," the protester argues that it should have been given 60 points for technical merit and awarded the contract as the low offeror.

While Section M of the RFP could have been clearer, we think that the evaluation conducted by the agency--which involved a relative scoring of the "Other Factors" proposals and the weighing of price and technical scores--follows the most reasonable reading of the RFP evaluation scheme. It is true that in order to arrive at this conclusion one must virtually ignore the language set forth under the "Other Factors" part of Section M concerning the "purpose" of the evaluation of the "Other Factor's" proposal.<sup>4</sup> To do otherwise, however, would render meaningless the remainder of the evaluation scheme. By listing the evaluation factors in descending order of importance and assigning different weights to the price and technical evaluations, the RFP evaluation scheme clearly contemplated a comparative technical evaluation balanced against price to determine the most advantageous proposal. See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379; Nation. Test Pilot School--Recon., B-237503, Feb. 27, 1990, 90-1 CPD ¶ 238; recon. aff'd, B-237503.2; B-237503.3, June 22, 1990, 90-1 CPD ¶ 579. All of these features would be meaningless in an evaluation scheme based upon the selection of the low-priced acceptable offer. Lithos Restoration, Ltd., supra.

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<sup>4</sup>The language seems to describe the rating of proposals in a competitive range determination.

We do not believe that it is reasonable to transform this RFP to one based simply on award to the low-priced, acceptable proposal because of the single, apparently errant, paragraph cited by the protester.

#### AWARDEE'S EXPERIENCE

State Technical argues that since Central Texas has no experience in providing training in the functional areas solicited it should not have been given an acceptable score under the evaluation factor which measures a firm's ability to meet the program requirements.

The RFP in the instructions for the preparation of the "Other Factors" proposal states that the offeror was to show that it was experienced in conducting courses similar in scope and difficulty to the courses set forth in this solicitation. Evidence of the offeror's expertise was required and, at a minimum, the offeror was to demonstrate the ability to meet the needs of a large-scale program, flexibility in handling course additions/deletions, knowledge and understanding of specified educational techniques, appropriate instructor orientation and training plans, and transition and implementation plans.

Central Texas stated in its proposal that, among other things, it had extensive instruction experience in avionics, aviation maintenance-related programs, electronics, electronics maintenance and radio and helicopter maintenance. Additionally, Central Texas stated that it had qualified instructors "thoroughly knowledgeable of teaching methods for military training requirements," a "proven management system" to deliver large-scale educational efforts, and appropriate pre-service training. The agency concluded that this experience satisfied the RFP and awarded Central Texas a score of 4.31 of a possible 5 points for this area.

State Technical argues that the agency miscalculated the awardee's experience since avionics, helicopter maintenance and electronics courses are not similar in either scope or difficulty to the air traffic control courses which are the subject of this solicitation. Specifically, the protester argues that air traffic control courses require large-scale, mainframe computer controlled radar system instruction experience and that the agency's acceptance of the awardee's experience as similar in difficulty and scope is unreasonable. According to the protester, the agency too broadly interprets the word "similar" and that, here, experience similar in scope and difficulty to that required by the solicitation could only have been obtained by teaching courses on similar equipment or systems to that used in air traffic control.

The evaluation of technical proposals is primarily a matter within the contracting agency's discretion, since it must bear the burden of any difficulties incurred because of a defective evaluation. Thus, we question the evaluation only if the record demonstrates that it was unreasonable or inconsistent with the RFP's evaluation criteria. Microwave Solutions, Inc., B-245963, Feb. 10, 1992, 92-1 CPD ¶ 169.

Here, the RFP did not require actual experience in teaching on similar equipment or systems or even in teaching air traffic control maintenance courses, but experience in teaching courses similar in scope and difficulty.

In view of the fact that the RFP specified that the experience was to insure that the offeror could handle a large-scale complex training course, we think that the agency could reasonably conclude that Central Texas' experience in a number of large-scale training courses in such areas as avionics, electronics and helicopter maintenance was similar in scope and difficulty to the courses which are the subject of the solicitation. While the protester asserts that only experience teaching courses related to equipment similar to that used in air traffic control will do, the solicitation does not contain such a limited requirement and we see no reason why courses of equal scope and difficulty cannot involve other subjects and other types of equipment.<sup>5</sup>

#### EVALUATION OF STATE TECHNICAL'S STAFFING PROPOSAL

State Technical argues that its BAFO was improperly downgraded because it did not include the breakdown of full-time and part-time employees to be provided for each functional area.

The RFP specified in its proposal preparation instructions that each offeror was to provide its proposed staffing plan and stated that:

"Staffing shall be delineated by labor category and whether full-time or part-time employee. Total number of personnel for contract performance should be provided for each functional area."

The protester contends that the RFP did not require that offerors provide the mix, or fixed number of full-time and part-time instructors for each functional area, arguing that the two sentences quoted above are independent of one

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<sup>5</sup>State Technical's argument concerning Central Texas' experience encompasses only one of the three functional areas which are the subject of the RFP. We have no reason to question the awardee's experience in the other two areas.

another. The protester states that the first sentence requires that an offeror identify job categories and whether the employees in those job categories are full-time or part-time and the second sentence requires that the offeror simply provide the total number of personnel for contract performance in each functional area without regard to full- or part-time status. State Technical concludes that because there are no connectors to join the two sentences, they must necessarily be separate and distinct requirements.

The protester further argues that exact numbers of full-time and part-time instructors could not be provided because the RFP did not include "a class convening schedule" which is necessary to delineate staff in such detail. In the alternative, the protester suggests that if specific numbers of part-time and full-time staff are required, it met this requirement because it provided sufficient numbers of full-time staff to meet all of the RFP's requirements.

The agency responds that State Technical misinterpreted the RFP and that specific, fixed numbers of full-time and part-time employees were required to be specified in each offeror's proposal. The agency states that although State Technical's BAFO included what appeared to be concrete numbers of proposed personnel, these numbers became unclear in light of wording found elsewhere. For example, the protester's BAFO provides a "conversion factor" and describes how to convert 12-month full-time and 9-month full-time instructors to equivalent 9-month full-time and part-time instructors. In one instance, the BAFO states that:

"State Technical proposes to staff the Air Traffic Control Division with 15 full-time twelve month instructional personnel or their equivalent."

As another example, the BAFO states that:

"to accommodate the peaks, valleys and bubbles encountered in multiple repetitions of courses, a special mix of flexible manpower is required. We foresee this mix as including full-time 12-month instructors, 9-month academic year instructors and part-time instructors."

Based on these statements, the agency contends that it could not reasonably determine from State Technical's BAFO what mix of instructors the protester was offering since it provided no concrete numbers of part-time staff and did not specify how it would match the various types of instructors to the courses. This, according to the agency, prevented it from concluding that State Technical had a clear

understanding of the staffing needed to meet the RFP requirements.

Contrary to the protester's allegation, we believe that the most reasonable reading of the RFP was that offerors were required to provide their proposed staffing mix for each area. The two sentences in the RFP are clearly related and it is not reasonable to read each in a vacuum; the requirement should be taken as a whole. It is also relevant we think that neither of the other two offerors interpreted the requirement as did the protester. Both provided their proposed labor mix for each area. More important, even if the RFP did not have a clear requirement for an offeror's staffing mix, we believe that it is reasonable to conclude that the agency wanted a clear delineation of staffing in order to assess if the offeror understands the agency's needs and can perform the work. Here, because of the confusing references to the use of part-time staff in the protester's BAFO, we think that under any circumstances it would be reasonable for the agency to be concerned about exactly what sort of staffing is being offered and whether the offeror understands the staffing requirements. In this regard, the record shows that the evaluators were concerned about the impact of an indeterminate number of part-time instructors upon the quality of instruction. The evaluators concluded that while part-time instructors may be cost effective for the contractor, a significant number of part-time instructors would effect the firm's ability to hire and maintain a qualified, stable full-time workforce. In our view, it was reasonable for the agency to be concerned about and to downgrade State Technical for its vague references to the use of part-time employees in its proposed staffing plan.

As to the protester's argument that the solicitation did not provide a "class convening schedule" which in its view is necessary in order to propose a detailed staff mix, the agency did provide information as to scheduling. Specifically, amendment 002 provided a master schedule summary for classes in each functional area. Additionally, the revised statement of work provided the course length, class size, student-to-instructor ratios with the number of classes to be taught using the various ratios and the convening schedule. For example, for the avionics technician class A1, the work statement provided that the course would require 36 instructional days and a class size of 25. Two classes would convene each week and the two classes would normally be convened on the same day. Similar information was provided for all courses. A five-page attachment listed the planned number of classes per month for each course.

While this information may not have been as detailed or complete as State Technical desired, it appears that it was

the most current information available on course scheduling and adequate for the other two offerors, both of whom proposed detailed staff mixes in their proposals. As to whether the alleged lack of specific information concerning class scheduling reasonably reinforced the protester's view that the RFP did not require the submission of information concerning the number of full-time and part-time staff to be used in a particular area, we point out that, as stated above, whether or not the RFP specifically required that information, the vague manner in which the protester referred to the use of part-time staff in its BAFO was a legitimate concern for the evaluators in the staffing area.

We disagree with State Technical's alternate argument that, if specific numbers of full-time and part-time instructors were required by the RFP, it met this requirement because it provided specific numbers of 12-month full-time personnel in its proposal and based its cost proposal on the same numbers. Again, State Technical, by its references in its BAFO to the possible use of part-time staff, raised a reasonable doubt as to whether the proposed number of full-time instructors was fixed or could be varied, or converted, by the firm to include part-time personnel. Indeed, the protester states in its BAFO that it anticipated that the agency would want a combination of staff members and that "this mix" would include both full-time and part-time instructors.

#### OTHER EVALUATION MATTERS

State Technical argues that the agency acted improperly in evaluating the firm's professional compensation plan. The plan was to some extent considered in the evaluation of the "Other Factors" proposal. Also, matters included in the evaluation of the "Other Factors" portion of the proposal were considered in rating the compensation plan. According to the protester, this was contrary to a solicitation requirement that the compensation plan be evaluated separately.

While the RFP evaluation scheme stated that the compensation plan would be evaluated on a "pass/fail" basis prior to the evaluation of the "Other Factors" and the price proposals. The solicitation provided that the compensation plan was to be sent to a different location than the "Other Factors" proposal, but the RFP did not specify that the compensation plan had to be separately evaluated. Moreover, the RFP stated that in the final selection, the compensation plan would be considered along with price and the "Other Factors" proposal. We therefore see nothing improper or inconsistent with the RFP evaluation scheme with the same evaluators considering both the "Other Factors" proposal and the compensation plan.

In fact, the record shows that while the evaluators considered State Technical's compensation plan to be good, they were concerned because of the vague references in the protester's "Other Factors" BAFO to the use of part-time employees. Since the compensation plan was, according to its terms, to apply only to full-time employees and since it was not clear how many part-time employees would be used, the evaluators were unsure as to the impact of the plan on staff that State Technical would actually employ. In other words, an excellent compensation plan that does not apply to a significant number of a firm's staff is not a great benefit to the agency. This was an appropriate matter for the evaluators to consider and we do not think that they acted improperly when they considered the substance of the compensation plan in the context of State Technical's proposed staffing in its "Other Factors" proposal.

State Technical also argues that the agency evaluators misunderstood its compensation plan which, according to the protester, was to be applied to all its staff. The protester states that this should have been clear since its price proposal applied the compensation benefit package to all job categories.

The record shows that the evaluators were aware that State Technical's price proposal listed all full-time instructors and applied the benefits package to each of them. Nevertheless, since the protester's "Other Factors" proposal indicated that it might substitute an undefined quantity of part-time employees for the listed full-time employees, the evaluators concluded that this uncertainty could affect the compensation plan. In our view, the evaluators did not misunderstand State Technical's proposal. They were reasonably concerned about the impact that an indefinite number of part-time instructors would have on State Technical's compensation plan and its overall performance.

State Technical's proposal was also downgraded for failing to address "on-going training in the area of safety, teaching techniques, methodologies." State Technical argues that this was improper because the "requirement to provide on-going training of this nature is not supported by the solicitation." While the agency argues that the RFP did require such training, it points out that less than 1/2 point was deducted from State Technical's proposal for this. Because State Technical's standing would not be affected even if the agency's evaluation were improper, there is no reason to review the propriety of this particular portion of the evaluation. Lithos Restoration, Ltd., supra.

## MEANINGFUL DISCUSSIONS

Finally, State Technical argues that the agency failed to conduct meaningful discussions. The protester bases this contention on the fact that while it failed to specify a fixed number of part-time instructors in its original proposal, the agency never identified this in discussions.

Agencies are required to conduct meaningful discussions with all offerors within the competitive range. Miller Bldg. Co., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. Although agencies are not obligated to afford all-encompassing discussions or to discuss every element of a technically acceptable proposal that receives less than the maximum possible score, they still generally must lead offerors into the areas of their proposals which require amplification or correction. Delta Food Serv., B-245804.2, Feb. 11, 1992, 92-1 CPD ¶ 172.

In its initial proposal, State Technical offered a fixed number of full-time instructors in each functional area and specified the number of hours part-time instructors would work. The proposal did not, however, set forth the number of part-time personnel to be used. The evaluators were not particularly concerned about State Technical's failure to propose a specific number of part-time staff since the number of part-time hours was specified and, in the agency's view, the proposed use of part-time staff for about 20 percent of the total proposed level-of-effort was not significant. A portion of that part-time effort was to include testing clerks rather than instructors.

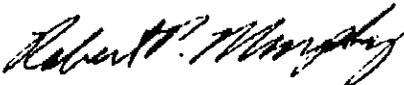
During discussions, the agency informed State Technical that it had problems with the offeror's proposed staffing and stated that the proposal does not "clearly demonstrate how satisfactory performance can be accomplished with the use of nine and eleven month employees and adjunct faculty." The agency states that it believed that by stating its concern about sufficient personnel, it put State Technical on notice that it should review all of its staffing levels.

State Technical completely revised its proposal and, in its BAFO, the protester conditioned the use of full-time personnel on "equivalents" for full-time instructors and stated that it would use part-time personnel, including neither the number of part-time hours it intended to use nor the number of part-time staff it intended to use in a particular area, or in total. The agency states that points were deducted, therefore, not only because the number of part-time personnel were not specified, but, because the protester reserved the right to use an indeterminate number of part-time staff. Thus, the evaluators could not be sure

what the full-time staff would be and had questions about the protester's understanding of the work to be performed.

We agree with the agency that discussions conducted with State Technical did generally raise the evaluators' concern with the firm's staffing proposal and were sufficient to put the protester on notice that it should review its staffing levels. Moreover, as the agency notes, State Technical's point reduction in its BAFO did not result from its failure to specify part-time instructors per se but, as stated above, because its BAFO did not clearly address how State Technical intended to satisfy the required staffing. These matters first became significant in State Technical's BAFO. Under the circumstances, where State Technical chose to submit a rewritten BAFO which reserved to it the right to later determine the staffing mix, the protester ran the risk that there would be questions about whether its staffing satisfied the agency. Where problems are introduced in a BAFO, the agency is not obligated to reopen discussions so that an offeror may remedy the defects. Federal Bus. Sys., Inc., B-246514, Mar. 13, 1992, 92-1 CPD ¶ 283.

The protests are denied.

  
for James F. Hinchman  
General Counsel