

DOCUMENT RESUME

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[Selection of Higher Priced but Significantly Technically Superior Offer]. B-188207. April 12, 1977. 6 pp.

Decision re: Gloria G. Harris; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Animal and Plant Health Inspection Service.

Authority: 54 Comp. Gen. 612. 55 Comp. Gen. 839. 55 Comp. Gen. 244. 53 Comp. Gen. 36. B-181696 (1974). B-186668 (1976). B-187153 (1976). E-186001 (1976).

A protest was made to the award of a fixed-price contract to Dr. Carol A. Blimline for (1) the development and presentation of assertive training seminars for women, and (2) consultation services in connection with video tape and package development and related training. The selection of a higher priced but significantly technically superior offer was not objectionable in view of evaluation criteria, which gave greater weight to technical than to price considerations, and in the absence from the record of any indication that the proposal evaluation was unreasonable. The protest was denied. (Author/SC)

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L. Zubow
Proc II

COMMISSION



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

FILE: B-188201

DATE: April 12, 1977

MATTER OF: Gloria G. Harris

DIGEST:

1. Selection of higher priced but significantly technically superior offer is not objectionable in view of evaluation criteria which gave greater weight to technical than price considerations and absence from record of any indication that proposal evaluation was unreasonable.
2. Allegation that evaluation board was not qualified to evaluate technical proposals is not matter for review and decision by GAO in absence of allegation of fraud, bad faith, or conflict of interest.
3. Solicitation requirement that lead instructor be licensed psychologist need not be satisfied at time offeror submits proposal. Critical time for actual compliance with licensing requirement may be as late as time for performance.

Gloria G. Harris, Ph. D. (Harris) protests the award of a fixed-price contract to Carol A. Blimline, Ph. D. (Blimline) under request for proposals (RFP) APHIS-3-H-77, issued by the Animal and Plant Health Inspection Service, Department of Agriculture (Agriculture), on November 4, 1976. The solicitation invited proposals for the development and presentation of assertive training seminars for women and for consultation services in connection with video tape and package development and related training.

Seven proposals were received by December 2, 1976, the closing date for receipt of initial proposals, and were submitted for technical evaluation to a board of contract awards (Board). The proposals were evaluated, and Blimline's technical proposal was ranked first with a score of 90. Harris ranked fourth with a technical score of 65. Price proposals were then evaluated by the contracting officer, following which the price score was added to the technical score, with the result that Blimline ranked first with a combined score of 107 and Harris ranked second with a combined score of 85. Agriculture awarded a contract to Blimline without holding discussions on January 11, 1977.

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Harris contends that her proposal, which was lower in price than Blimline's, should have been evaluated as the technically superior proposal and that award therefore should have been made to her. In this regard, Harris contends that the members of the Board were not technically qualified to evaluate the proposals. Harris also maintains that at the time Blimline submitted her proposal, she was not a licensed clinical psychologist although the RFP required that the lead instructor be licensed in clinical psychology.

The RFP provided that both technical and price considerations would govern award selection, with technical (worth a total of 100 points) significantly more important than cost (worth 20 points). The technical evaluation criteria were set forth in decreasing order of importance as follows:

- "A. Past organizational experience in administering Assertive Training.
- B. Qualifications and experience of Contractor personnel assigned to perform the work.
- C. Approach in meeting objectives and content of assertive training program."

The contracting officer describes the Board's technical evaluation as follows:

"I. Past Organizational Experience (Value 50): The Board reviewed this section to determine the extent to which the offerors had been successful in the past in the area of assertive training. The Board evaluated the instructors as well as the assistant instructors. The Blimline proposal received 45 points. In the Blimline proposal it is noted that both she and Dr. Birk [the assistant instructor] have extensive past experience in instructing, counseling and in the delivery of assertive training. The Harris proposal received 35 points. While Dr. Harris herself has extensive experience in assertive training, the proposal reflected that her assistant Ms. Gilbert did not. The Board determined that Harris and Gilbert would not bring individually the same breadth of past experience as the Blimline proposal.

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"II. Qualifications and Experience (Value 30): In this section, the Board was concerned with making an assessment of the capabilities of the offerors relative to their ability to deliver a quality training program in the area of assertive training. The Board considered their academic achievements, work experience, publications and professional affiliation. Simply stated, did the offerors have the background to do the work? The Board's conclusion in the case of Harris and Blimline was that both offerors possessed equal potential to deliver the product to the satisfaction of the Board. They were both correspondingly awarded a point score of 25.

"III. Approach: Dr. Blimline's proposal received 20 points. Her proposal stated specific objectives that were to be accomplished during each segment of the program with clearly stated increments or modules. The Blimline proposal included 15 actual handouts to be used during the course which provided the panel an opportunity to judge the sphere of emphasis. Specific statements concerning the use of the application of video taping were also included. Dr. Harris received only 5 points. This was based on the fact that her proposal contained little information which provided the panel an opportunity to effectively judge the specific objectives and learning techniques to be employed, nor the aids and technical areas to be emphasized. This proposal merely stated that material would be handed out; six items were listed, but no examples were included. The proposal stated that video tape equipment would be used; however, only vague references were given."

It is not the function of this Office to make independent evaluations of proposals to determine which offer should have been selected for award. Applied Systems Corporation, B-181696, October 8, 1974, 74-2 CPD 195. The determination of the relative merit of technical proposals is the responsibility of the procuring activity concerned which must bear the major burden of any difficulties encountered because of defective analysis. UCE, Incorporated, B-186668, September 16, 1976, 76-2 CPD 240, and cases cited therein. Therefore, the procuring activity's determination will ordinarily be accepted by our Office unless it is clearly shown to be unreasonable. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44; Human Resources Company, B-187153, November 30, 1976, 76-2 CPD 459.

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Agriculture's determination that Harris' proposal was technically inferior to Blimline's was based on the relative inexperience of Harris' assistant instructor and on the relatively scant information provided in the proposal on the content of the assertive training program. Our review of the record indicates that the Harris proposal showed that Harris' assistant was completing her doctorate dissertation in clinical psychology on the topic of female socialization, had participated in 2 assertive training workshops and had taken graduate courses relating to the subject of the RFP, while the Blimline proposal reflected that Dr. Birk, who was to assist Blimline, had been an "assertive training consultant" since 1975 and had conducted at least 11 workshops in assertive training of which 7 involved employees of Agriculture. In addition to other work focused on "the deleterious effect of sex role stereotyping on women's career aspirations and general behavioral characteristics," Dr. Birk supervised the research of a doctoral student on the subject of the comparative features of videotape feedback. With regard to the content of the proposed assertive training programs, Blimline provided a plan of approach which included a complete breakdown by hour of the seminar content together with actual copies of the various material to be distributed to the program participants. In comparison, Harris' proposal contained only a topic outline of the program and a listing of material to be distributed.

In view of the above, and despite Dr. Harris' assertions regarding her own expert qualifications, we find no basis for concluding that the evaluation was arbitrary or otherwise unreasonable. Furthermore, in light of the RFP's award criteria, we cannot object to the selection of a higher priced but technically superior offer. See Shapell Government Housing, Inc. et al., 55 Comp. Gen. 839 (1976), 76-1 CPD 161; Bell Aerospace Company, 55 Comp. Gen. 344 (1975), 75-2 CPD 168.

With respect to the qualifications of the members of the Board, we have, in a prior case, reviewed the credentials of both original and replacement evaluation panel members in response to an allegation that an "unusual number of personnel changes were made to the board which replaced allegedly qualified personnel with less qualified personnel." See Dikewood Services Company, B-186001, December 22, 1976, 76-2 CPD 520. However, in general we believe that the selection of technical proposal evaluators is a matter within the discretion of the procuring activities and, absent allegations of fraud, bad faith, or conflict of interest, is not a matter appropriate for review and decision by this Office. Rather, as stated

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above, our concern is whether the evaluation itself is reasonable. We point out, however, that in this case the Board consisted of an equal employment opportunity coordinator and three equal employment opportunity specialists, the combined training and experience of whom included career counseling, upward mobility training, identification of under-utilized employee skills, personnel management and relations, assertive awareness and training.

Harris' final contention concerns the propriety of the award to Blimline who did not have a state license to practice clinical psychology at the time she submitted her proposal.

The solicitation contained a clause concerning licensing requirements as follows:

"REQUIREMENTS

- A. One licensed clinical psychologist, experienced in assertive awareness training to serve as lead instructor at all live sessions. The clinical psychologist can be licensed in any State or the District of Columbia."

The Blimline proposal stated that "The trainees who would conduct the workshop * * * are Maryland certified psychologists." However, it is Harris' position that Blimline failed to comply with the above qualification because in fact Dr. Blimline did not receive her certification until December 11, 1976, some 9 days after the date for receipt of proposals.

There is no merit to this contention. The RFP did not require that the instructors be licensed at the time of proposal submission. It required only that upon commencement of performance, the lead instructor be a licensed clinical psychologist. In this regard, the license requirement is a matter of prospective contractor responsibility. The critical time for actual compliance with a responsibility requirement may be as late as the time for performance. 53 Comp. Gen. 36 (1973). Here, we are informed that Blimline had completed all steps required for certification (i.e., licensing) by the State of Maryland prior to submitting her proposal, and was finally certified by the State of Maryland approximately 1 month prior to contract award. Accordingly, we find no reason to question the award to Blimline for failure to hold a license at the closing date for receipt of proposals.

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The protest is denied.

R. J. Keenan
Deputy Comptroller General
of the United States