

DECISION

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

*AHEARN**27673***FILE:**

B-213520

DATE: March 13, 1984**MATTER OF:**

Leo Kanner Associates

DIGEST:

1. GAO will not reevaluate proposals, but rather limits review to examination of whether evaluation is reasonable and in accord with listed criteria. GAO will not disturb contracting agency's evaluation of protester's technical proposal unless protester shows abuse of discretion or violation of procurement statutes or regulations.
2. GAO will not disturb procuring agency's exclusion of protester from competitive range based on weaknesses in protester's proposal and on relative superiority of the competition, where protester has not shown that exclusion from competitive range was unreasonable or in violation of procurement statutes or regulations.
3. An offeror whose proposal has been determined to be outside the competitive range is entitled, before award, only to a general explanation of the basis for the competitive range determination.

Leo Kanner Associates (Kanner) protests its exclusion from the competitive range and the award of a contract to Scitran under request for proposals (RFP) No. WA83-D512 issued by the Environmental Protection Agency (EPA) for translation of scientific and environmental material to and from English. The protester contends that it was excluded from the competitive range because its proposal was not properly evaluated.

We deny the protest.

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The RFP provided that selection of an offeror for negotiation and award would be accomplished in accordance with the EPA Source Evaluation and Selection Procedures, which were available upon request. These procedures, which are similar to the four-step procedures employed by the Department of Defense, involve a limited use of discussions until final contractor selection is made. See ICF, Inc., 61 Comp. Gen. 347 (1982), 82-1 CPD 339. In accordance with these procedures, the RFP stated that the technical evaluation panel would evaluate and score technical proposals against the specified technical evaluation criteria which were listed in the RFP as follows:

<u>Technical Review Categories</u>	<u>Numerical Weights</u>
1. <u>Demonstrated Knowledge and Approach to Statement of Work</u>	500
A. Organization plan for accomplishing the work (including rush orders and processing procedures for workflow and quality control).	200
B. Offerors sample translations	200
C. Offerors presentation of work plan	100
2. <u>Project Management</u>	200
A. Demonstrated background and experience of project manager in translation business field. (Offerors must include the percentage of project manager's time to be spent on this project throughout the life of the project.)	75
B. Demonstrated ability to manage multisubcontractor or consultant efforts.	75
C. Demonstrated background and experience of offeror with providing translation services to other government agencies, plus business and industry.	50

3.	<u>Personnel Qualifications</u>	150
A.	Translation experience of principal project staff related to project performance (languages and environmental fields).	50
B.	Educational qualifications - key personnel related to project performance (languages and environmental fields).	50
C.	Qualifications of subcontractors and consultants.	50
4.	Demonstrated ability to respond to rush orders	100
5.	Offeror's resources available in terms of facilities, equipment and tools to ensure fast startup and successful task completion.	50
	TOTAL	<u>1,000</u>

The RFP advised that technical quality was more important than cost.

EPA received seven proposals. The technical scores (out of a possible 1,000 points) and proposed costs of each offeror were as follows:

<u>Offeror</u>	<u>Rating</u>	<u>Proposed Cost</u>
A	951	\$ 705,051
Scitran	845	510,034
Leo Kanner Associates	625	484,360
C	455	414,229
D	390	642,123
E	330	4,556,676
F	0	Undeterminable

Firm "A" and Scitran were included in the competitive range. Contract award was made to Scitran on November 11, 1983.

Kanner disagrees with EPA's evaluation of its technical proposal and its exclusion from the competitive range. The protester asserts that its proposal was not properly read nor given the correct evaluation. The protester also

contends that the guidelines used by EPA to determine the competitive range were not sufficiently objective and were loosely defined.

In resolving cases in which a protester challenges the validity of a technical evaluation, it is not the function of our Office to reevaluate proposals. The determination of the relative merits or technical acceptability of proposals is primarily a matter of agency discretion, which we will not disturb unless shown to be arbitrary or in violation of procurement laws and regulations. Dynalectron Corporation, B-199741, July 31, 1981, 81-2 CPD 70.

Thus, we will not make independent judgments of the numerical scores that should have been assigned to various proposals. Instead, we limit our review to an examination of whether the evaluation was reasonable and in accordance with the listed evaluation criteria. The Farollones Institutes Rural Center, B-211632, November 8, 1983, 83-2 CPD 540.

The first major area of weakness in Kanner's proposal was that the protester's organization plan delegated quality control to meet translation deadlines to an inexperienced individual, a recent college graduate. The protester argues that quality control of the formatting procedures such as typing and graphics would be done by the individual the agency identified as inexperienced. However, quality control of the translations would be done by the protester's "highly experienced linguistic and technical editors." The protester contends that if EPA required at least a master's degree for quality control of the formatting procedures, the RFP should have so stated. However, upon review of Kanner's proposal, we note that most references regarding control relate to the assistant project manager, the alleged inexperienced individual, and in few instances is the project manager referenced.

Second, the agency states that the translation samples submitted by the protester were of poor print quality, too poor to use for microfiche outputs. The protester argues that if the print quality of the translation samples was not suitable for microfiche, the quality could have been discussed and rectified.

Third, the agency states that Kanner's personnel were good in the proposed languages, but seemed to be weak in the environmental fields. The protester states that many resumes of its personnel included titles of recent translations they had accomplished in the environmental fields.

Upon our review of the 37 resumes submitted, 13 showed no recent titles translated and, of the remaining 24, few had done work in the environmental area.

Fourth, the agency contends that Kanner's proposal did not clearly delineate which of two individuals would be project manager. One of the individuals was proposed for 75 percent of her available time, which the agency contends is excessive. The other individual, who appeared to the agency to be the proposed project manager, had no previous experience in the translation business. The protester argues that its proposal clearly specifies by name what personnel would be used in the management effort and delineates in detail what tasks each of them would perform. The protester contends that the evaluation of project management appears to have been done capriciously since the RFP does not state the amount of time the project manager must spend on the project or the minimum years of service for the personnel assisting the project manager. Once again, we note that upon our review, Kanner's proposal accentuates the involvement of the assistant project manager.

The protester has not shown that the evaluators unfairly or unreasonably evaluated the protester's proposal, but basically disagrees with the evaluators' judgment as to the extent Kanner should have been downgraded for the deficiencies. The protester's mere disagreement with the agency's judgment does not meet the protester's burden of showing that the evaluation was unreasonable. SETAC, Inc., B-209485, July 25, 1983, 83-2 CPD 121.

Nor is there any evidence that the evaluation was not conducted in accordance with the evaluation scheme set forth in the RFP. Using a checklist, the evaluation panel numerically rated each offeror with regard to the criteria and subcriteria. The weaknesses found in Kanner's proposal all relate to technical evaluation criteria or subcriteria set out in the RFP. Based on our review of the panel's evaluation sheets and Kanner's proposal, we cannot say that the evaluation of the proposal was unreasonable. While Kanner contends its proposal was not properly read, we find the agency had reasonable bases for the conclusions it drew from Kanner's proposal and the resulting decrease in the technical evaluation score.

To the extent Kanner is questioning the validity of the evaluation criteria set forth in the RFP, its protest is untimely, as protests based on alleged improprieties in an RFP must be raised prior to the closing date for the receipt

of initial proposals to be considered by our Office. National Graduate University, B-203089, November 19, 1981, 81-2 CPD 408; 4 C.F.R. § 21.2(b)(1) (1983). However, we note that while agencies are required to identify major evaluation factors, they are not required to identify explicitly the various aspects of each which might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria. Credit Bureau Reports, Inc., B-209780, June 20, 1983, 83-1 CPD 670.

In resolving cases in which a protester challenges the validity of exclusion from the competitive range, we have stated that a proposal must be considered to be within a competitive range so as to require discussion unless it is so technically inferior or out-of-line with regard to price that meaningful negotiations are precluded. ICF, Inc., supra. We have also recognized that the determination of competitive range, particularly as regards technical considerations, is primarily a matter of procurement discretion which will not be disturbed by our Office in the absence of a clear showing that such determination was an arbitrary abuse of discretion or in violation of procurement statutes or regulations. Art Anderson Associates, B-193054, January 29, 1980, 80-1 CPD 77.

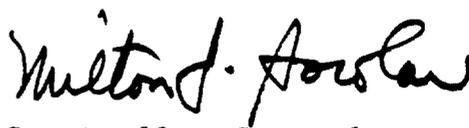
The contracting officer excluded Kanner from the competitive range on the basis of weaknesses in the firm's technical proposal and because of the technical superiority of Scitran and firm "A." Although the EPA evaluators found Kanner's proposal to be "generally adequate," Kanner was excluded because the contracting officer did not believe Kanner had a reasonable chance of award. A proposal which is rated as technically acceptable may be eliminated from the competitive range if there is no reasonable chance of award. Lloyd E. Clayton & Associates, Inc., B-205195, June 17, 1982, 82-1 CPD 598.

On the basis of the competition available in this procurement the contracting officer, in effect, determined that on a relative basis, Kanner's proposal was not within the competitive range. We have approved this "relative" approach to determining the competitive range based upon the array of scores actually obtained by the offerors. See Decision Sciences Corporation, B-199527, December 15, 1980, 80-2 CPD 430.

The protester also questions the propriety of a letter from EPA which advised the firm that it had been excluded from the competitive range. The protester contends that the letter was "deliberately" vague. To the extent Kanner is

protesting its denial of a chance prior to award to explain the weaknesses EPA evaluators perceived existed in Kanner's proposal, that type of discussion is reserved to firms within the competitive range. Federal Procurement Regulations (FPR) § 1-3.805-1 (1964 ed. amend. 153). EPA's exclusion of Kanner from the competitive range reflects EPA's determination that no negotiations would be conducted with Kanner as Kanner did not have a reasonable chance for award. Offerors whose proposals are deficient are limited under procurement regulation to postaward debriefings. FPR § 1-3.802-2(g) (1964 ed. amend. 118). Before award, firms in Kanner's position are entitled only to a general explanation of the basis for the competitive range determination. FPR § 1-3.103(b) (1964 ed. amend. 194); SES, Inc., B-205961, March 4, 1982, 82-1 CPD 201.

For the foregoing reasons, the protest is denied.

for 
Comptroller General
of the United States