

DECISION

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

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FILE: B-215902**DATE:** December 3, 1984**MATTER OF:** The Communications Network**DIGEST:**

1. In reviewing protests against allegedly improper evaluations, GAO will not substitute its judgment for that of the contracting activity's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations.
2. In negotiated procurements, the contract award need not be made to the low offeror unless the solicitation so specifies.
3. Determinations of responsibility are made only with respect to prospective contractors, not to offerors who have failed to win the competition.
4. The legal issue of alleged bid qualification relates to formally advertised procurements, and thus is wholly inapplicable regarding procurements conducted through competitive negotiation.

The Communications Network (TCN) protests the award of a contract for an employee development training program to Word Masters under a request for proposals issued by the Department of the Navy, Navy Aviation Supply Office. The purpose of the training program is to instruct Navy civilian clerical employees in various communication and organizational skills relevant to their duties. TCN asserts that the Navy acted improperly by failing to award it the contract as the low bidder, and by failing to refer the matter of the firm's nonresponsibility to the Small Business Administration for a final determination under

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applicable certificate of competency procedures. In addition, TCN alleges that the bid of Word Masters was non-responsive because it had been qualified. We deny the protest.

TCN has misunderstood the nature of the procurement and consequently has miscast the issues raised in its protest. Contrary to TCN's belief, this was not a formally advertised procurement (invitation for bids) in which the contract award must be made to that responsible bidder submitting the low, responsive bid. See, e.g., J.T. Systems, Inc., B-213308, Mar. 7, 1984, 84-1 CPD ¶ 277. Rather, the procurement in issue was conducted under the procedures for competitive negotiation, in which the government evaluates the technical merit of submitted proposals in accordance with established criteria, and then may hold discussions and request best and final offers. See, e.g., Los Angeles Community College District, B-207096.2, Aug. 8, 1983, 83-2 CPD ¶ 175. However, the government is not required to make award to the firm offering the lowest cost unless the RFP specifies that cost will be the determinative factor. See A.B. Dick Company, B-207194.2, Nov. 29, 1982, 82-2 CPD ¶ 478.

In this matter, the Navy evaluated the submitted proposals of Word Masters, TCN, and Pennsylvania State University under the following criteria: (1) ability to meet training needs; (2) quality of training including methods; (3) cost effectiveness; (4) timeliness of training; and (5) evaluation. Out of a total possible score of 81, Word Masters' proposal received 75 points, TCN's received 66 points, and Pennsylvania State University's received 64 points. The proposals of Word Masters and TCN were evaluated as being generally equal in all areas except quality of training, where the Navy's evaluators determined that TCN's proposal was markedly inferior. TCN had not provided a detailed description of its methods of instruction, and had been much less explicit as to the focus and objectives of the training. In this crucial area, Word Masters' proposal received 20 points out of a possible 26, versus only 12 points for TCN's.

Both proposals received 19 points out of a possible 19 in the area of cost effectiveness. TCN offered a total price for the training program of \$3300 or \$55 per employee,

while Word Masters offered \$3835 or \$64 per employee. According to the Navy's evaluation format, proposals offering a price less than \$100 per employee were to receive the maximum number of points in this area. Hence, the two proposals were scored equally for cost effectiveness.

In essence, the crux of TCN's protest is a challenge to the Navy's evaluation of its proposal. In reviewing such protests, this Office will not substitute its judgment for that of the contracting activity's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations. See D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 CPD ¶ 396.

After an examination of the proposals, we conclude that the Navy's determination that TCN's proposal was technically inferior in the area of quality of training is reasonable. For example, for each skill to be developed, Word Masters' proposal set forth an hourly instructional time-frame, a concise focus on the points of emphasis, an explanation of the educational objectives to be reached, and a full description of the methods to be utilized. In contrast, TCN's proposal was much more limited, offering only a generalized indication of the firm's instructional content. In a negotiated procurement, the burden is clearly upon the offeror to submit sufficient information with its proposal so that the agency can make an intelligent evaluation. See Marvin Engineering Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15. Therefore, the Navy's evaluators did not act unreasonably in downgrading TCN's proposal for quality of training.

Because TCN's proposal was found to be technically inferior, there is no merit in the firm's assertion that it should have received the award as the firm offering the lowest cost for the training program. See Quest Research Corporation, B-203167, Dec. 10, 1981, 81-2 CPD ¶ 456. The RFP did not indicate that cost would be the determinative factor, but rather that it was only one of several evaluation criteria. As we have already stated in this regard, the government is not required to make award to the low

offeror in a negotiated procurement unless the solicitation so specifies. A.B. Dick Company, supra. Accordingly, we see nothing objectionable in the contract award to Word Masters, the higher-priced, but technically superior, offeror. See Price Waterhouse & Co., B-203642, Feb. 8, 1982, 82-1 CPD ¶ 103.

TCN is mistaken in its belief that the Navy found the firm, a small business, to be nonresponsible and then improperly failed to refer the matter to the Small Business Administration (SBA) for a final determination under the certificate of competency procedures.^{1/} The Navy in fact made no determination as to TCN's responsibility since such determinations are made regarding prospective contractors, not firms who have failed to win the competition. The certificate of competency procedures would only have become applicable here if TCN were in line for award as the result of the evaluation, and the Navy found the firm to be non-responsible. See F&F Pizano Trucking Company, Inc., B-212769, Nov. 30, 1983, 83-2 CPD ¶ 629. That point was never reached in the procurement, and it is obvious that TCN has confused the Navy's evaluation of its proposal as technically inferior with a determination that the firm was not a responsible prospective contractor.

Finally, with respect to TCN's allegation that Word Masters' offer was qualified, thus rendering it "non-responsive," we again point out to TCN that this was not a formally advertised procurement. The legal issue of alleged bid qualification simply does not apply to procurements conducted through competitive negotiation. Cf. Inland Associates, B-213579, Apr. 9, 1984, 84-1 CPD ¶ 398. Word Masters' proposal to spend one day interviewing prospective attendees to obtain their views and determine their precise needs, the basis for TCN's objection, does not alter Word Masters' basic obligation to provide the training specified in its offer.

^{1/}Under the provisions of the Small Business Act, 15 U.S.C. § 637(b)(7) (1982), the SBA has conclusive authority to certify whether a small business concern is responsible.

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The protest is denied.

Milton J. Fowler
for Comptroller General
of the United States