



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Louisiana Department of Education  
File: B-222591.2  
Date: October 9, 1986

### DIGEST

1. General Accounting Office (GAO) will consider, in camera, relevant, but sensitive material concerning an ongoing procurement which was submitted by a contracting agency to GAO, but which the agency did not provide to the protester.
2. Determination of whether a proposal should be included in the competitive range is primarily within the contracting agency's discretion. Where an agency determines that protester's proposal was not reasonably susceptible of being made acceptable without major revisions, this is a sufficient basis for exclusion from competitive range and preaward notices need not contain specific reasons why proposal was excluded.
3. Offeror's outstanding qualifications and standing as a state agency are not determining factors in the evaluation of proposal. Rather, qualifications must be demonstrated in the proposal submitted in response to specific requirements of the request for proposals.
4. Offeror is not entitled to credit for the expertise and qualifications of other state agencies, where, notwithstanding offeror's assertion of a "consortium" effort, the record establishes that the proposal is submitted only on behalf of the offeror, with no specific commitment to participate by the other agencies from different states.
5. Agency is not required to conduct discussions with an offeror whose proposal has been determined to be outside the competitive range.
6. Protester has the burden of proving bias on the part of procurement officials, which is not met by mere speculative allegations regarding bias or the unfair conduct of a procurement.

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## DECISION

The Louisiana Department of Education (Louisiana) protests the award of a contract to InterAmerica Research Associates, Inc. (IRA), under request for proposals (RFP) No. 86-026, issued by the United States Department of Education (Education) for the design, development and operation of regional multifunctional resource centers for bilingual education programs. While the RFP covered 16 geographic regions, this protest only concerns the award for service area five, which includes the states of Arkansas, Illinois, Indiana, Louisiana, and Missouri. Louisiana protests that Education unreasonably excluded it from the competitive range, and that Education failed to conduct meaningful discussions with Louisiana. In addition, Louisiana generally protests the entire conduct of the evaluation process. We deny the protest.

The RFP provided for award to the offeror whose proposal represents the combination of technical merit and cost most favorable to the government, without specifying the relative importance of each. The RFP identified four specific evaluation criteria and the points allotted to each as follows: (1) approach (40 points); (2) staffing (30 points); (3) management (20 points); and (4) organizational capability (10 points). The subcriteria and points assigned each sub-criterion were also listed under the four evaluation criteria.

Initially, we note that Louisiana was not provided with Education's documents or detailed arguments dealing with the evaluation of the proposals, but this material was provided for our in camera review. While Louisiana objects to the propriety of this nondisclosure, the agency report was provided while the procurement was still being conducted. A procuring agency should not disclose information which it believes might adversely affect the procurement process or impart a competitive advantage to an offeror. Raytheon Ocean Systems Co., B-218620.2, Feb. 6, 1986, 86-1 C.P.D. ¶ 134.

Louisiana and IRA were the only two offerors which submitted proposals for service area five. A five-member technical evaluation panel reviewed and rated the two proposals. The panel gave Louisiana's proposal an average technical score of 51 out of a possible score of 100, and recommended that the proposal be found technically unacceptable. Four panelists found Louisiana's proposal technically unacceptable, while one panelist found the proposal technically unacceptable, but capable of being made acceptable. IRA's proposal received an

average technical score of 91 points, and all five panelists determined that the proposal was technically acceptable. The contracting officer's technical representative (COTR) reviewed the panel findings and the proposals, including the prices, and concurred with the panel recommendation. In addition, the COTR noted that while Louisiana proposed a lower price, he questioned the figure because it included an in-kind contribution from the State of Illinois without evidence of Illinois' support of this contribution. The COTR also concluded that the price was not relevant because Louisiana's proposal was "so beset by weaknesses as to necessitate a major rewrite," and, therefore, was technically unacceptable.

The contracting officer adopted the findings of the panel and the COTR, and determined that the Louisiana proposal was technically unacceptable and not capable of being made acceptable without major revisions and, therefore, was not in the competitive range. Specifically, the contracting officer determined that the Louisiana proposal was:

"Weak in its approach in that it lacks a knowledge of the needs outside of Louisiana. It also has an inadequate theoretical framework to develop training and respond to the diversity of the client needs. The implementation procedures and description of facilities are vague. We feel that these weaknesses cannot be corrected without a major rewrite of the proposal."

By letter of June 4, 1986, the contracting officer notified Louisiana that its proposal was not included in the competitive range because of deficiencies in approach, staffing, management and organizational capability. Thereupon, Louisiana protested to our Office. Subsequently, on August 29, Education determined that the urgent and compelling circumstances did not permit the further staying of the award and performance of the contract, and award was made to IRA.

Louisiana's argument that it was improperly excluded from the competitive range and that Education improperly failed to conduct negotiations with it is based on Education's June 4 letter stating that Louisiana was not in the competitive range. The letter did not advise that Louisiana's proposal was technically unacceptable. Accordingly, Louisiana concludes that under the Federal Acquisition Regulation (FAR), §§ 15.609 and 15.610 (1985), since Louisiana's proposal was not found technically unacceptable, there is doubt whether Louisiana's proposal was in the competitive range and it should have been included.

However, the record clearly establishes that the contracting officer determined that Louisiana's proposal was technically unacceptable, and not capable of being made acceptable without major revisions. Such a determination provides the basis for exclusion from the competitive range, Metric Systems Corp., B-218275, June 13, 1985, 85-1 C.P.D. ¶ 682; there is no requirement that a specific statement of technical unacceptability be included in a preaward notice to an offeror whose proposal has been determined not to be in the competitive range, and the absence of such a statement does not itself give rise to any doubt, in a legal sense, as to whether the proposal was in the competitive range.

Louisiana's proposal was viewed as outside the competitive range because the contracting officer found it to be substantially deficient in all areas of evaluation. Many of these deficiencies related to Louisiana's failure to provide required information regarding how it planned to implement proposed program methodology. The record discloses that the consistent underlying basis for the contracting officer's conclusions was his determination that Louisiana's proposal, while relatively strong with respect to providing services to the State of Louisiana, was extremely weak with respect to the services being provided to the other four states in the service area.

The crux of Louisiana's disagreement with this assessment is its contention that its proposal was prepared as a "consortium" effort with the departments of education of the other four states. Louisiana contends that Education's evaluation is highly questionable because the participating state government entities must be credited with substantial stature and experience.

We disagree with the protester. First, it incorrectly assumes that the inherent expertise or capability of an offeror by itself necessarily determines that technical rating of a proposal. On the contrary, an agency does not consider the presumed capability of the offering entity per se; rather, it evaluates the proposal presented, which must affirmatively demonstrate the qualifications and capability in relation to meeting the RFP requirements. The Management and Technical Services Co., a subsidiary of General Electric Co., B-209513, Dec. 23, 1982, 82-2 C.P.D. ¶ 571; University of New Orleans, B-184194, Jan. 14, 1976, 76-2 C.P.D. ¶ 22.

Moreover, notwithstanding Louisiana's characterization of its proposal as a consortium effort, Education concluded that there was insufficient evidence of a consortium effort in the proposal, which was signed only on behalf of Louisiana.

While Louisiana argues that it included letters in its proposal from the other four states as evidence of their participation, our review of these letters show that they only indicate a general willingness to cooperate with Louisiana in the event that Louisiana receives the award. All of the letters reference only Louisiana's participation in the procurement, and there is no specific commitment of any personnel or resources on the part of the other states. In our view, this does not represent a "consortium" effort, absent any concrete proposal input or specific commitment to participate by any of the other four departments. Accordingly, Louisiana's argument regarding the nature of its offer is contradicted rather than supported by the evidence which it has offered. Since the majority of Education's specific deficiency findings in the Louisiana proposal involve lack of experience, expertise, and delivery capability with respect to the other four states, we cannot conclude that they lacked a reasonable basis.

Consequently, while we closely scrutinize determinations that result in a competitive range of one, Falcon Systems, Inc., B-213661, June 22, 1984, 84-1 C.P.D. ¶ 658, we find no abuse of discretion by the agency here. Moreover, in light of the evaluation and the exclusion of Louisiana from the competitive range, the agency had no obligation to enter into discussions with Louisiana. Delcor International, B-221230, Feb. 13, 1986, 86-1 C.P.D. ¶ 160.

Louisiana also objects, in general terms, to the entire evaluation process, suggesting that Education's manner of conducting this and other similar procurements evidences bias on the part of its evaluators. The critical tests for determining bias in the evaluation of proposals is whether all offerors in the competition were treated fairly and equally. Development Associates, Inc., B-205380, July 12, 1982, 82-2 C.P.D. ¶ 37. The protester has the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. A.R.F. Products, Inc., 56 Comp. Gen. 201, 208 (1976), 76-2 C.P.D. ¶ 541.

Here, in essence, Louisiana is attempting to show that its low evaluation score must have resulted from bias, because it does not accurately represent the proposal's merits. However, since we have determined that the contracting officer's determination that Louisiana was technically unacceptable was reasonable, and Louisiana has submitted no independent evidence of bias, Louisiana's allegation is mere speculation which does not meet the protester's burden of affirmatively proving its case. Eastern Metal Products &

Fabricators Inc., B-220549.2 et al., Jan. 8, 1986, 86-1 C.P.D. ¶ 18. Moreover, while Louisiana specifically contended that one panel member in particular had a bias against it, our review of the evaluation shows that this individual did not participate in any way in the evaluation of the proposals for service area five.

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel