

D Gordon



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** JEM Associates  
**File:** B-245060.2  
**Date:** March 6, 1992

J.L. Maznicki for the protester.  
Deborah Erwin, Esq., General Services Administration, for the agency.  
Daniel I. Gordon, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Agency reasonably rejected as technically unacceptable proposal for instructional services where the proposed instructor received poor performance ratings for past courses taught, and the proposal failed to provide evidence of the instructor's current knowledge of subject matter, as required by the solicitation.

## DECISION

JEM Associates protests the award to other offerors of contracts for instructional services under request for proposals (RFP) No. PSM-001, issued by the General Services Administration (GSA). JEM contends that it should have been awarded those contracts for which it proposed the lowest prices, and that the agency improperly failed to provide JEM with timely notification of award and a debriefing.

We deny the protest in part and dismiss it in part.

The RFP was issued by GSA's Interagency Training Center on July 3, 1991, seeking proposals for instructional services for various 1-week courses in procurement. Section M of the RFP provided that technical quality was more important than price, and listed as technical evaluation factors: (1) current knowledge of subject matter; (2) experience teaching case study method; (3) ability to use formal teaching techniques; and (4) past performance. The RFP warned offerors that the agency might award a contract on the basis of initial offers, without holding discussions.

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Twenty proposals were received, of which 11, including JEM's, were found technically unacceptable. On August 29, 1991, on the basis of initial proposals, the agency awarded seven contracts covering the various instructional courses covered by the solicitation.

JEM sent a letter to the agency dated September 23, 1991, requesting the information required to be provided in notifications to unsuccessful offerors as well as a debriefing. The letter was not addressed to the contracting officer and apparently did not reach that official until after this protest was filed. Unsuccessful offerors were notified by letter dated October 17, 1991. A telephonic debriefing was held on November 27, 1991. On October 28, 1991, before that debriefing had been held, JEM filed this protest.

In reviewing a protest against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently evaluate proposals and to substitute our judgment for that of the agency. Research Analysis and Maintenance, Inc., B-242836.4, Oct. 29, 1991, 91-2 CPD ¶ 387. The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the procuring agency, since it is responsible for defining its needs and for deciding on the best methods of accommodating them. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. We will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the evaluation criteria listed in the RFP. Research Analysis and Maintenance, Inc., supra. The fact that the protester disagrees with the agency does not itself render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

Here, we find no basis to question the agency's determination that JEM's proposal was technically unacceptable. The RFP required offerors to identify recent changes to the Federal Acquisition Regulation which impacted their course material, and to submit evidence of attendance by proposed instructors at training courses, conferences, or seminars in order to establish currency of subject matter knowledge, the first listed evaluation criterion. JEM's proposal provided no information in these areas. Concerning the past performance evaluation criterion, the RFP provided that persons who had accepted and inspected, on behalf of a federal contracting officer, the proposed instructor's services would be contacted as references. The references contacted regarding JEM's past performance indicated that JEM's proposed instructor received poor performance ratings

for the relevant courses taught. The agency concluded that these deficiencies were such that JEM's proposal was not susceptible of becoming technically acceptable.

JEM does not directly dispute the substance of the agency's evaluation. Rather, JEM asserts that its proposed instructor's experience teaching classes in procurement constitutes per se evidence of the currency of the instructor's knowledge. JEM's assertion lacks credibility in view of its instructor's poor performance ratings. Moreover, evidence of such experience does not relieve JEM of the obligation to explicitly address in its proposal the currency of the instructor's knowledge in the subject area, as required by the solicitation. Our review confirms that JEM's proposal failed to demonstrate such currency. Furthermore, JEM does not dispute the poor performance ratings which the agency evaluators relied upon in finding JEM's proposal technically unacceptable.<sup>1</sup> Accordingly, we find that the agency reasonably concluded that JEM's proposal was technically unacceptable.

A proposal that is technically unacceptable cannot be considered for award, even where it is the lowest price proposal received and thus would offer cost savings to the government. Color Ad Signs and Displays, B-241544, Feb. 12, 1991, 91-1 CPD ¶ 154. Accordingly, since the agency properly found JEM's proposal technically unacceptable, the fact that JEM proposed a lower price than other awardees is irrelevant.


The agency's failure to provide timely notice to unsuccessful offerors constitutes a procedural flaw which does not affect the validity of an otherwise properly awarded contract. Cinpac, Inc., B-243366, July 15, 1991, 91-2 CPD ¶ 57. Failure to provide timely notice does not form the basis on which to sustain a protest. Trover's Security Serv., Inc., B-242662, Jan. 28, 1991, 91-1 CPD ¶ 78. Similarly, delay of a debriefing does not provide a

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<sup>1</sup>In its comments, rather than responding to the agency's evaluation, JEM challenges the ability of the agency to evaluate offerors' current knowledge of the subject matter of the courses. JEM questions how an offeror can demonstrate currency of knowledge without performing the contract. "Current knowledge of subject matter," however, is one of the RFP evaluation criteria, and the RFP explicitly lists the information required to evidence satisfaction of this requirement. JEM's disagreement with the RFP's evaluation criteria is untimely since it constitutes an alleged apparent solicitation impropriety which is required to be raised prior to the closing time for proposal submission. 4 C.F.R. § 21.2(a)(1) (1991).

basis to sustain a protest. See Canadian Commercial Corp., B-222515, July 16, 1986, 86-2 CPD ¶ 73; Pan Am World Serv., Inc., B-215308.5, Dec. 10, 1984, 84-2 CPD ¶ 641. Accordingly, we dismiss JEM's procedural bases of protest.

The protest is denied in part and dismissed in part.

  
for James F. Hinchman  
General Counsel