



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

126242

# Decision

**Matter of:** Novel Pharmaceutical, Inc.

**File:** B-255374

**Date:** February 24, 1994

Benjamin N. Thompson, Esq., Thompson & Godwin, for the protester.

William B. Barton, Jr., Esq., and William T. Welch, Esq., Barton, Mountain & Tolle, for Experimental Pathology Laboratories, Inc., an interested party.

Terrence J. Tychan, Department of Health & Human Services, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Agency reasonably excluded proposal from the competitive range (leaving a competitive range of one) where the agency properly concluded that the protester's technical proposal had no reasonable chance for award because it did not show that the protester had the required experience and capability to perform the contract services.

## DECISION

Novel Pharmaceutical, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. NIH-ES-93-31, issued by the National Institute of Environmental Health Sciences, Department of Health & Human Services (HHS), for pathology support services. Novel principally challenges the evaluation of its technical proposal and contends that the agency was biased against it.

We deny the protest.

The RFP contemplated the award of a cost-plus-fixed-fee contract to continue pathology services in support of the National Toxicology Program (NTP). The NTP evaluates the toxicity and carcinogenicity studies of chemical agents performed by a variety of testing laboratories under contract to the NTP. This procurement is to obtain independent verification (that is, quality assurance)

of the pathology and clinical pathology findings from these testing laboratories. The agency makes decisions concerning the use of the chemicals based on the studies as independently verified. The RFP's statement of work (SOW) detailed the contract requirements and divided the services into a series of specific tasks.

The RFP stated that technical factors were more important than cost and listed the following evaluation factors (and their relative weights):

- A. Experience and technical capability (50 points)
  - 1. Professional staff
  - 2. Technical staff
- B. Management approach (40 points)
- C. Facilities and equipment (10 points).

Offerors were clearly advised in the proposal preparation instructions of the information to be furnished under each of these evaluation factors.

The HHS received offers from Novel and Experimental Pathology Laboratories, Inc. (EPL), the incumbent contractor for the past 10 years. A three-person evaluation committee reviewed, evaluated, and scored the proposals with respect to how well they met the RFP requirements in each factor. The evaluators' scores were combined to provide a total score for each proposal. Out of a possible total score of 100 points, Novel's proposal received a consensus score of 55 with a proposed cost of \$4,084,855. EPL's proposal received a score of 92 with a proposed cost of \$5,250,145.07.

Novel's proposal was considered weak in all technical areas. Specifically, Novel lost points under the experience and technical capability category because its proposal did not demonstrate that the proposed staff possessed in-depth working experience with pathology peer review and quality assurance programs of the type required in the SOW. The evaluators also found that Novel did not provide sufficient technical details concerning how specific tasks would be performed as required by the RFP.

Under the experience category, the evaluators' main concern was with the lack of specific evidence that Novel's proposed principal investigator had any in-depth working experience with or supervision of relevant pathology peer review and quality assurance programs. The small number of proposed professional staff and their lack of comparable in-depth experience in peer review or quality assurance also caused

concern. The evaluators also found Novel's proposed technical staff had little experience in quality assessment and insufficient evidence that they could perform the various complex tasks required by the SOW.

With regard to the management approach category, the evaluators found that Novel's proposal did not address sufficiently the firm's ability to handle complex peer review and quality assurance functions of the type described in the RFP. The proposal provided little detail about how specific tasks would be performed, the transportation plan lacked sufficient detail, and sample forms for various record keeping tasks were not provided. With regard to facilities and equipment, the evaluators noted that the proposal did not provide sufficient detail as to security and storage conditions and no clear allocation of specific areas for specific tasks was identified in the floor plan.

Based on the evaluators' findings, the contracting officer found that Novel's proposal was unacceptable from a technical and cost standpoint. The contracting officer concluded that Novel did not have a reasonable chance of receiving the contract because of the nature and extent of the weaknesses identified in the firm's proposal, and excluded it from the competitive range. EPL received the award on September 27. The agency provided the protester with a written and oral debriefing, and this protest followed.

Novel contends that the agency was predisposed to award the contract to EPL and, as a result, miscalculated the firm's technical proposal. The protester maintains that exclusion of its technically acceptable proposal from the competitive range was improper since the weaknesses found in its technical proposal could have been explained or corrected during discussions.

The evaluation of proposals and the determination of whether an offer is in the competitive range are matters within the discretion of the contracting agency, since it is responsible for defining its needs and the best method of accommodating them. Automated Datatron, Inc.; California Image Media, Inc., B-215399; B-215399.2, Dec. 26, 1984, 84-2 CPD ¶ 700; Essex Electro Eng'rs, Inc.; ACL-Filco Corp., B-211053.2; B-211053.3, Jan. 17, 1984, 84-1 CPD ¶ 74. Generally, offers that are technically unacceptable as submitted and that would require major revisions to become acceptable may be excluded from the competitive range. Id. Where a proposal is found to be technically unacceptable and therefore outside the competitive range, the agency is not required to hold discussions with the offeror. Id.; Zuni Cultural Resource Enter., B-208824, Jan. 17, 1983, 83-1 CPD ¶ 45.

In reviewing an agency's technical evaluation and competitive range determination we will not independently evaluate proposals; rather, we will consider whether the evaluation had a reasonable basis and was in accord with the listed evaluation factors, and whether there were any violations of procurement statutes or regulations. Management Training Sys., B-238555.2, July 17, 1990, 90-2 CPD ¶ 43. Although we will closely scrutinize an agency decision which results in a competitive range of one, we will not disturb such a determination absent a clear showing it was unreasonable. Native Am. Consultants, Inc.; ACKCO, Inc., B-241531; B-241531, Feb. 6, 1991, 91-1 CPD ¶ 129.

In its comments on the agency report, the protester addresses each of the evaluators' consensus comments concerning the weaknesses in its technical proposal. For example, Novel maintains that the agency's assessment of its proposed principal investigator's qualifications and experience is in error because this individual is a pioneer in the pathology field and an authority in the development of peer review and quality assurance programs. The protester points to his involvement and participation in numerous lectures and his activities with the peer review guidelines committee as illustrative of his specific experience in this area. Similarly, the protester asserts that the agency's evaluation of its responses under the management approach and facilities and equipment factors overlooked or ignored Novel's understanding and innovative approach to meeting the agency's needs.

The RFP required offerors to submit proposals in a clear, concise, and narrative form in sufficient detail to reflect a complete understanding of the services required. Regarding the personnel requirements, the RFP specifically stated that the qualifications and experience of an offeror's principal investigator and other professional staff would be evaluated to determine, among other things, the amount of experience each possesses with pathology peer review and quality assurance programs. Offerors also were required to estimate the level-of-effort required to perform the services set forth in the SOW consistent with their technical approach. In addition, the solicitation specifically advised offerors that their proposal should include a summary of their general corporate experience, organizational experience related to this RFP, pertinent contracts, and pertinent grants. It cautioned that experience and past performance were factors considered relevant to the ability of offerors to perform and omission or an inadequate/inaccurate response would have a negative effect on the overall selection process.

We have reviewed Novel's proposal and the agency's evaluation of the proposal and conclude that HHS's evaluation was reasonable because Novel did not provide sufficient detail to demonstrate its ability to perform the contract. For example, evaluation factor one required offerors to have demonstrated relevant experience in pathology peer review and quality assurance programs. In its proposal, Novel simply stated that during the past 16 years, its principal investigator has managed, directed and supervised toxicologic pathology operations whose scope equaled or exceeded the experience and technical capability required by the RFP. While Novel provided the resume for its principal investigator, the protester did not provide any details concerning the number of toxicologic operations this individual managed, directed or supervised, the method or procedures used, the number of pathologists or other technical staff supervised by this individual in connection with these operations, or the number or nature of the reports prepared as a result of these pathology operations. The evaluators were not required to deduce from the resume and information provided by the protester the ways in which the toxicologic pathology operations performed by its proposed principal investigator equaled or exceeded that required by the solicitation. Nor were the evaluators required to deduce from the resumes Novel provided for the other pathologists that their toxicologic pathology experience in rodent toxicology and tumor pathology was comparable to that required by the RFP. In short, the agency evaluators reasonably found that the proposal failed to establish that the protester's principal investigator and other professional and technical staff had the relevant experience and technical capability to perform the varied and complex tasks required under the contract.

Evaluation factor two concerned the adequacy of the offerors' proposed methods of accomplishing the required services, including a detailed transportation plan indicating how materials would be transferred. In its proposal, Novel indicated that the project would be managed by its principal investigator assisted by a contract manager. Beyond that, the proposal contained no details on how specific tasks would be performed. For example, regarding interactions and communications with NTP, the protester stated that timely interactions and communications would be made on an as needed basis; quality control procedures, the protester indicated, were built into its operation through review by a peer and supervisor prior to review and approval by the principal investigator. The protester's transportation plan included statements to the effect that it would develop a scheduling and tracking system, a receipt and delivery log, and other appropriate documentation. In sum, Novel did not describe with any specifics its proposed methods for performing these

services. Based on this lack of specificity, the evaluators reasonably concluded that Novel did not accurately comprehend the requirements and had not shown the requisite understanding of the contract requirements.

We also have reviewed HHS' evaluation of Novel's proposal under the remaining evaluation factor--facilities and equipment--and our review shows that Novel did not adequately address this factor in its proposal. In view of the evaluators' reasonable concerns about the experience and capabilities of the protester's personnel and the protester's failure to clearly show in its technical approach that it understood the work requirements, we think that HHS' decision that Novel's proposal was technically unacceptable and would require major revisions to become acceptable was reasonable. Accordingly, the agency's exclusion of Novel's proposal from the competitive range was proper.<sup>1</sup>

Next, the protester questions the "vast discrepancy" in the scores given by two evaluators in comparison to the scores given by the third evaluator, who gave Novel a marginally acceptable rating. (Evaluator one awarded Novel 50 points; evaluator two, 43 points; and evaluator three, 72 points). It is not unusual for individual evaluators to reach different conclusions and assign different scores when evaluating proposals since both objective and subjective judgments are involved. Cybernated Automation Corp., B-242511.3, Sept. 26, 1991, 91-2 CPD ¶ 293. The decision to exclude Novel's proposal from the competitive range was made on the basis of the consensus evaluation of the committee; the fact that two members of the committee scored the proposal lower than the other does not mean that the overall evaluation was flawed. Although the scores of the third evaluator were "written over" and revised, there is no evidence in the record that these changes were not independently made by the evaluator without any undue influence by the other evaluators. In fact, this evaluator also wrote over two scores on his evaluation sheet for the awardee. This allegation therefore provides no basis to challenge the evaluation and resulting exclusion of Novel's proposal from the competitive range.

---

<sup>1</sup>Novel maintains that the agency improperly downgraded its proposal for lack of on-site personnel. In response, the agency states that although the evaluators noted Novel's lack of current staff, this had no effect on the actual evaluation of proposals since there was no such requirement in the RFP.

Finally, there is no evidence to substantiate Novel's allegation that the evaluators were biased against Novel or otherwise favored EPL because of a prior working relationship with EPL. Novel has not furnished any evidence to support this allegation and we will not attribute bias in the evaluation of proposals on the basis of inference or supposition.<sup>2</sup> See TLC Sys., B-243220, July 9, 1991, 91-2 CPD ¶ 37.

The protest is denied.

*Christine S. Mulroy*  
for Robert P. Murphy  
Acting General Counsel

---

<sup>2</sup>The protester's speculation notwithstanding, the record contains no evidence of bias in the evaluation of its proposal; instead, the record shows that the evaluation of Novel's proposal was in accordance with the RFP's stated evaluation scheme.