

6948
DECISION



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

FILE: B-191453

DATE: July 7, 1979

MATTER OF: The Center for Education and Manpower
Resources

DIGEST:

1. Contracting officer's affirmative determination of responsibility, which should consider past performance of offeror's proposed staff, will not be reviewed by GAO absent allegation of fraud or other circumstances not applicable here.
2. Alleged failure of project officer, on prior year contract, to maintain adequate records of performance is matter of contract administration not for consideration by our Office.
3. Allegation, filed after closing date for receipt of proposals, that RFP contained misleading information, is untimely under 4 C.F.R. § 20.2 (b)(1) of Bid Protest Procedures since impropriety was apparent from solicitation.
4. Scoring by one of three evaluators of experience under all evaluation criteria instead of one may have been prejudicial to protester. Proposal should be rescored consistent with RFP to ascertain if error effected selection.

The Center for Education and Manpower Resources (CEMR) has protested the award of a contract by the Department of Health, Education, and Welfare, Regional Office, San Francisco, California (HEW), to The Institute for Professional Development (IPD) under request for proposals (RFP) No. 190-78-0002(P).

The contract is for the operation of a Head Start Supplementary Training/Child Development Associate (HSST/CDA) Program in California.

CEMR and IPD submitted the only proposals and both proposals were found to be technically acceptable. The IPD and CEMR proposals received technical scores of 84 and 78 points, respectively. IPD's best and final cost proposal was \$270,329, with CEMR proposing a cost of \$277,382.

Initially, CEMR argues that the contracting officer did not have complete information prior to making the award to IPD or, if it was available, the information was ignored. The information to which CEMR has reference is the record of alleged poor past performance of the staff proposed by IPD, which was the same staff utilized by Far West Laboratory in the prior year contract.

We note that the contracting officer found IPD to be a responsible offeror and the areas which CEMR requests our Office to investigate involve IPD's responsibility. Concerning the questioning of a contracting officer's affirmative determination of an offeror's responsibility, it is the policy of our Office not to review these determinations absent an allegation or demonstration of fraud on the part of contract officials or other circumstances not applicable here. Gillette Industries, Inc., B-189912, August 29, 1977, 77-2 CPD 160.

While CEMR also argues that the HEW project officer on the prior years' contracts did not maintain adequate records or conduct the types of performance evaluations required by the HEW regulations in the area, that concerns the administration of a contract which is not for consideration by our Office. Virginia-Maryland Associates, B-191252, March 28, 1978, 78-1 CPD 238.

Next, CEMR contends that the RFP contained misleading information regarding a list of grantees and colleges that were supposed to have had CDA training programs meeting Administration for Children, Youth and Families (ACYF) guidelines. CEMR states that its investigation revealed that only one of the 10 colleges listed met these guidelines.

Under our Bid Protest Procedures (4 C.F.R. part 20 (1977)), we find this basis of protest to be untimely. Section 20.2(b)(1) of the Procedures requires protests based on alleged improprieties in a solicitation, which are apparent prior to the closing date for receipt of initial proposals, to be filed prior to the closing date. Since the list was contained in the RFP as issued and the protest was not filed prior to the closing date for receipt of proposals, it is untimely.

Finally, CEMR protests the manner in which the proposals were evaluated in general and, particularly, the evaluation of IPD's proposed personnel under that evaluation factor.

The RFP listed the following evaluation criteria and the weights which would be given each:

<u>Criteria</u>	<u>Weight</u>
Introduction	15
Technical Approach	45
Related Experience	20
Personnel	20

CEMR states that the type of information which is mentioned above, in connection with IPD's responsibility, should have been considered in the evaluation of "Related Experience" and "Personnel" criteria.

As IPD did not have this contract before, the alleged unsatisfactory performance by Far West Labs, the prior contractor, would have no relevance to the evaluation of IPD's "Related Experience." However, IPD did propose to use some of the same personnel as Far West. The RFP required that "The technical proposal shall specify the names and complete curricula vitae of the proposed Project Director and other professional persons who will be employed to perform under this contract." We cannot say that the evaluation of IPD's proposal was inconsistent with the above. Any other items of information would relate to the offeror's responsibility.

However, one portion of the proposal evaluation does give our Office concern. HEW states in its cover letter to its response to the protest:

"* * * While we do not concur [with the contracting officer] that proposals were evaluated in accordance with the stated criteria in all instances (one evaluator improperly evaluated CEMR's experience), this did not prejudice the protestant since negotiations were conducted with both offerors and best and final offers were deemed to be essentially equal in technical quality."

We find this error may have prejudiced CEMR. The problem in evaluating CEMR's experience was that one of the three evaluators considered CEMR's experience under all of the other evaluation criteria rather than restricting it to the 20-percent "Related Experience" criterion. This had the effect of making past experience worth more in the evaluation process than the 20 percent stated in the RFP.

As regards the statement that both proposals were considered technically equal and, therefore, no prejudice was involved, we note that in the contracting officer's statement on the protest, it is stated that "Since IPD was the highest technically qualified and submitted the lowest price, award was proposed to be made to IPD." Further, the RFP advised that cost was secondary to quality.

Accordingly, since the two proposals were only \$7,000 apart, we recommend that CEMR's proposal be rescored in accordance with the RFP by the evaluator that misapplied the stated criteria to ascertain if the error had an effect on the selection process. In the event it did, consideration should be given to taking appropriate action to correct the situation.

R. F. Kottler

Deputy Comptroller General
of the United States