



## Decision

**Matter of:** Undercover Training, LLC

**File:** B-418170

**Date:** January 9, 2020

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Charlie Fuller, for the protester.  
Captain Brian C. Habib, and Scott N. Flesch, Esq., Department of the Army, for the agency.

Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the agency's evaluation of the protester's proposal is denied because the agency's evaluation was reasonable and consistent with the terms of the solicitation.

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### DECISION

Undercover Training, LLC, a small business, of Brunswick, Georgia, protests the award of a contract to Professional Law Enforcement Training, LLC (PLET), a small business, of Dallas, Texas, under request for proposals (RFP) No. W912LP-19-R-0010, which was issued by the Department of the Army, for the acquisition of technical instruction services for an "Undercover for Narcotics" course for the Midwest Counter Drug Training Center at Camp Dodge, Iowa. The protester challenges the agency's evaluation of its proposal.

We deny the protest.

### BACKGROUND

On August 8, 2019, the Army issued the RFP seeking commercial technical instruction services for undercover narcotics officers using the streamlined acquisition procedures under Federal Acquisition Regulation subpart 12.6. RFP at 1. The procurement was set aside for small businesses and contemplated the award of a fixed-price contract, with a base period from the date of award through May 31, 2020, and four, 12-month option periods. Id., attach. No. 1, Performance Work Statement (PWS), at 1.

Award was to be made on a best-value basis, considering three factors: (1) technical; (2) past performance; and (3) price. Id., attach. No. 2, Provisions & Clauses, at 6. Technical and past performance, when combined, were approximately equal to price. Id. Only the technical factor is relevant to the issues presented in the protest.

Under the technical factor, the agency was to assess the offeror’s ability to provide the PWS’ required course of instruction. Id. at 8. The technical factor included two equally weighted subfactors: (1.1) course content; and (1.2) offeror/instructor qualifications. Id. Under the course content subfactor, the agency would evaluate the offeror’s inclusion of required course topics and ability to achieve the PWS’ learning objectives. Id. The PWS identified nine required courses/learning objectives, including undercover department policy and standard operating procedures and ethics. Id., attach. No. 1, PWS, at 9. The RFP warned offerors that the failure to submit the required course content information would result in a negative technical rating for the subfactor. Id., attach. No. 2, Provisions & Clauses, at 8.

As to offeror/instructor qualifications, the RFP set forth requirements for both the offeror and its proposed instructors; only the instructor qualifications are relevant here. Offerors could propose the number of required instructors, but the RFP warned that “[e]ach proposed instructor must meet the minimum qualifications.” Id. (emphasis in original). The RFP required instructors to have a law enforcement training background, and to be currently engaged in training civilian law enforcement officers on basic and advanced street gang courses similar in length to the RFP’s requirements. Id. The RFP required instructors to have a minimum of 15 years of total law enforcement experience, including 10 years as a civilian gang enforcement officer, and 5 years as a civilian narcotics officer. Id. at 9. Instructors were also required to have at least 5 years of experience teaching basic and advanced street gang courses similar to the RFP’s requirements. Id. The RFP warned offerors that the failure to submit required instructor qualification information would result in a negative technical rating. Id.

The Army received five proposals in response to the RFP. Army Request for Dismissal (RFD), exh. 4, Source Selection Decision (SSD), at 4. Relevant here, the Army evaluated the proposals of Undercover Training and PLET as follows:

	<b>Undercover Training</b>	<b>PLET</b>
<b>Technical</b>	Green/Acceptable	Purple/Good
<b>Past Performance</b>	Substantial Confidence	Substantial Confidence
<b>Price</b>	\$516,500	\$477,600

Id.

Undercover Training was rated yellow/marginal under the course content subfactor, and purple/good under the offeror/instructor subfactor. RFD, exh. 5, Evaluation Report, at 7. As to course content, the agency evaluated three strengths and two significant weaknesses. The Army assessed significant weaknesses because the protester’s

proposal did not provide definitive information or examples of department policy and standard operating procedures, or ethics, as required by the RFP. Id.

As to offeror/instructor qualifications, the Army assessed multiple strengths for three of the protester's four proposed instructors. The Army, however, assessed weaknesses relating to one of these three proposed instructors (Instructor A), as well as the fourth instructor (Instructor B). With respect to Instructor A, the Army assessed a weakness because his resume did not demonstrate that he met the RFP's requirement for at least 5 years of undercover experience. With respect to Instructor B, the Army assessed a weakness because his resume did not demonstrate that he had 15 years of law enforcement, 10 years of narcotics enforcement, or undercover experience. Id.

The Source Selection Authority ultimately decided that PLET's proposal presented the best value to the government. SSD at 5. Following a debriefing, Undercover Training filed this protest with our Office.

## DISCUSSION

Undercover Training primarily challenges the Army's evaluation of its proposal.<sup>1</sup> The protester argues that the agency's evaluation "nitpicked" the protester's proposal, resulting in unwarranted assessed weaknesses and significant weaknesses. For the reasons that follow, we find no basis to sustain the protest.<sup>2</sup>

In reviewing protests challenging the evaluation of an offeror's proposal, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable, and in accordance with solicitation criteria and applicable procurement statutes and regulations. Goldbelt Falcon, LLC, B-410251, Nov. 21, 2014, 2014 CPD ¶ 355 at 4-5. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. ARBEiT, LLC, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4; Orion Tech., Inc., B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 5.

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<sup>1</sup> The protester raised other collateral arguments. Although our decision does not specifically address each of the protester's arguments, we have carefully reviewed all of the arguments and find that none provides a basis on which to sustain the protest.

<sup>2</sup> The agency submitted a thorough request for dismissal, including the production of relevant documents, and the protester submitted a detailed response. Based on our review of the parties' submissions, we concluded that certain aspects of the protest had to be resolved on the merits. However, in light of the parties' thorough submissions, our Office did not request that the Army submit an agency report in response to the protest. Rather, the record submitted with the agency's request for dismissal was sufficient for our Office to conclude that the agency's evaluation was reasonable and in accordance with the RFP's terms.

As to course content, Undercover Training does not contend that its course agenda or course topic overviews specifically address the topics of ethics or standard operating procedures/policy. See Protest at 1 (“[W]e did not know we had to have a specific classroom time devoted to those subjects.”). In this regard, neither the protester’s submitted course agenda, nor the accompanying topic overviews for the proposed courses, specifically address the protester’s proposed course of instruction on the topics of standard operating procedures/policy or ethics. See RFD, exh. 15, Undercover Training Proposal – Vol. 1.B, Course Agenda; id., Undercover Training Proposal – Vol. 1.C. Rather, Undercover Training advances two primary arguments challenging the agency’s assessed weaknesses.

First, the protester effectively argues that these topics should have been of lesser importance than other learning objectives that the protester believes are more important for undercover police officers. See Opposition to Request for Dismissal at 4 (“To spend hours and hours of instruction on Policy is a waste of valuable training time.”); Protest at 2 (“As to Ethics, instead of a one or two hour presentation on what Ethics are and how they should be conducted, we focus on the fact that they are law enforcement officers and have attended numerous training events where ethics are discussed. They already know what is ethical and nonethical. . . .”). To the extent Undercover Training argues the Army unreasonably considered an offeror’s discussion of its ethics and standard operating procedures/policy course work in its proposal, such arguments are untimely challenges to the RFP’s terms. Under our Bid Protest Regulations, protests based upon alleged solicitation improprieties must be protested not later than the closing date for proposal submission. 4 C.F.R. § 21.2(a)(1). The RFP here unequivocally identified ethics and standard operating procedures/policy as required learning objectives, and explicitly notified offerors that the failure to address required objectives would result in a negative evaluation.

Second, Undercover Training argues that the Army unreasonably assessed weaknesses based on the protester’s failure to specifically identify a block of instruction for ethics and standard operating procedures/policy. The protester contends that the RFP only required offerors to “cover” the subject matter, and it does intend to address the topics both in its proposed classroom instruction and in accompanying reference materials. Undercover Training, therefore, argues that it was unreasonable for the agency to assess weaknesses based solely on the protester’s course agenda and topic overviews without considering the totality of the information submitted by the protester with its proposal. We find no basis to object to the agency’s evaluated concerns.

As addressed above, it is an offeror’s responsibility to submit a well-written proposal clearly demonstrating its compliance with the RFP’s requirements. ARBEIT, LLC, supra; Orion Tech., Inc., supra. Agencies are not required to piece together general statements and disparate parts of a protester’s proposal to determine the protester’s intent. Enterprise Servs., LLC, et al., B-415368.2 et al., Jan. 4, 2018, 2018 CPD ¶ 44 at 7. The RFP explicitly required offerors’ course of instruction to cover, among other topics, undercover ethics and standard operating procedures/department policy. PWS,

at 9. Offerors were notified that their proposals would be evaluated based on the inclusion of required course topics and the ability to achieve the PWS' objectives. Id., attach. RFP, attach. 2, Provisions & Clauses, at 8. Thus, the RFP reasonably put offerors on notice that they would be evaluated based on the extent to which their proposals adequately addressed their proposed approach to the enumerated courses/learning objectives.

As addressed above, Undercover Training's course agenda and topic overviews do not specifically address or otherwise provide any linkage to the PWS' required ethics and standard operating procedures/policy learning objectives. Similarly, none of the protester's submitted practical exercises specifically relate to or establish a linkage to these required learning objectives. See RFD, exh. 15, Undercover Training Proposal – Vol. 1.f, Practical Exercises. Furthermore, the protester's proposed presentation slides do not clearly demonstrate that the required learning objectives will be addressed. For example, Undercover Training argues that ethics will be addressed during its "Psychological Impact of Undercover" course. Neither the course overview description, nor the accompanying proposed presentation slides, however clearly address ethics or the linkage to the PWS' learning objectives. See RFD, exh. 15, Undercover Training Proposal – Vol. 1.d.9, Presentation Slides. In the absence of any clear articulation in its proposal regarding how the protester proposed to address these required courses/learning objectives, we find no basis to question the agency's evaluation.

We also find no merit to the protester's argument that the Army should have more favorably considered the materials that Undercover Training proposed to provide to class attendees on a memory stick. The provision of such materials was not an adequate substitute for the protester's failure to reasonably address its technical approach to achieving the PWS' learning objectives in its proposal. See LexisNexis, Inc., B-299381, Apr. 17, 2007, 2007 CPD ¶ 73 at 6-7 n.6 (denying protest that agency failed to reasonably evaluate material included in an appendix to the proposal because the protester failed in its responsibility to clearly demonstrate compliance with the RFP requirements). On this record, we find no basis to conclude that the Army unreasonably identified concerns with the protester's failure to adequately address the RFP's required ethics and standard operating procedures/policy learning objectives in its proposal.

Additionally, as to instructor qualifications, Undercover Training concedes that the resume for Instructor B fails to demonstrate that he meets the RFP's minimum experience requirements. See Protest at 3 ("I understand their problems with [Instructor B]"). The RFP explicitly stated, in bold, that each proposed instructor must meet the RFP's minimum qualifications. RFP, attach. No. 2, Provisions & Clauses, at 8. Thus, as one of its four proposed instructors concededly fails to meet the RFP's minimum qualifications, we find no basis to object to the agency's assessment that the proposal did not establish an outstanding approach to instructor qualifications.<sup>3</sup>

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<sup>3</sup> As set forth above, we find that the Army's cumulative evaluation was reasonable. We note, however, that even if Undercover Training were to prevail on its challenge to the  
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In sum, Undercover Training essentially argues that the Army placed undue weight on relatively minor issues.<sup>4</sup> These arguments, however, reflect the protester's disagreement with the agency regarding the significance of its proposal's shortcomings. Disagreements about the weight assigned to the evaluated concerns do not provide a basis to conclude that the agency's evaluation was unreasonable. Protection Strategies, Inc., B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 7; SOS Interpreting, Ltd., B-287505, June 12, 2001, 2001 CPD ¶ 104 at 8.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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remaining assessed weakness regarding Instructor A's qualifications, the protester cannot reasonably establish competitive prejudice. Competitive prejudice is an essential element of any viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7. In this regard, the presence of several other weaknesses would still support the agency's ultimate evaluation conclusion that Undercover Training offered only an acceptable non-price proposal. Protection Strategies, Inc., *supra* at 8 n.3; Electrosoft Servs., Inc., B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ 7 at 5.

<sup>4</sup> Undercover Training also alleges that the Army was biased in favor of the awardee because it is a minority-owned business. We find no merit to this argument. We have consistently explained that government officials are presumed to act in good faith, and a contention that procurement officials are motivated by bias or bad faith must be supported by convincing proof; our Office will not attribute unfair or prejudicial motives to procurement officials based upon mere inference, supposition, or unsupported speculation. JMark Servs., Inc., B-417331.2, July 22, 2019, 2019 CPD ¶ 277 at 7. The burden of establishing bad faith is a heavy one; the protester must present facts reasonably indicating, beyond mere inference and suspicion, that the actions complained of were motivated by a specific and malicious intent to harm the protester. AeroSage, LLC, B-417289.2, May 14, 2019, 2019 CPD ¶ 180 at 2 n.2. As addressed above, we find that the agency's evaluation was reasonable, adequately documented, and in accordance with the RFP's terms; we find no basis to impute prejudicial motives to the agency.